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

ACERWC Secretariat | E-mail: acerwc-secretariat@africanunion.org
Tel: +266 52 01 00 18 | **P.O.Box:** 13460,
Address: Nala House, Balfour Road Maseru
Kingdom of Lesotho

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: 003/2025

I. Submission of the 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 08 April 2022, submitted under 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 communication during its 40th Ordinary Session held from 23 November to 01 December 2022, the Committee requested that the Applicants revise and resubmit the Communication limited to alleged violations concerning children of Jehovah's Witnesses domiciled in the State of Eritrea, as the original submission included alleged violations concerning adults beyond the Committee's mandate.

3. The Applicants accordingly resubmitted the communication on behalf of children of Jehovah's Witnesses domiciled in the State of Eritrea on 02 May 2023.

4. On 05 May 2023, the Secretariat transmitted a Note Verbale to the State of Eritrea (Ref. ACE/OL/10/216.23), requesting its arguments on the admissibility within 60 days, as per Section IX(2)(iv) of the Revised Guidelines for Consideration of Communications by the Committee. The 60-day period lapsed on 28 July 2023; the Secretariat thereafter transmitted a reminder Note Verbale (Ref. ACE/OL/10/370.23) on 31 July 2023.

5. Despite the reminders, no submissions were received from the Respondent State. As a result, the Committee deliberated on the admissibility in the absence of State observations and declared the communication admissible at its 42nd Ordinary Session held in Addis Ababa, Ethiopia from 08–17 November 2023.

6. Following the admissibility decision, the Respondent State was invited to submit its arguments on the merits of the Communication and to participate in a hearing scheduled during the Committee's 43rd Ordinary Session held from 15 to 24 April 2024, in Maseru, the Kingdom of Lesotho. Despite several reminders, no submissions were received from the Respondent State.

7. A hearing on the merits was consequently conducted during the 43rd Ordinary Session of the Committee in the presence of the Applicants only. Thereafter, the Committee decided to undertake an investigative mission to the Respondent State to ascertain the facts. A Note Verbale (ACE/OL/10/391.24), dated 10 June 2024, was accordingly transmitted to the Respondent State requesting its cooperation in facilitating the mission. The Committee received no response from the Respondent State.

8. The Committee, regrettably, was compelled to deliberate on the merits of the Communication in the absence of submissions from the Respondent State and without the benefit of an investigative mission.

II. Summary of Alleged Facts

9. The children mentioned in the Communication were all born in the territory of the State of Eritrea. The Communication involves both named and unnamed child victims.

10. The named victims domiciled and resident in Eritrea and their dates 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.

11. The Applicants also included victims, domiciled in Eritrea but residing elsewhere under compulsion:

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

12. The Communication also concerns other unnamed children of Jehovah's Witnesses presently domiciled in the State of Eritrea.

13. The Applicants 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. The Applicants allege that, as a consequence of this decree, Jehovah's Witnesses and their children have since been denied access to state and judicial services, including, inter alia, education, employment opportunities, citizenship-related rights, and the enjoyment of their rights to freedom of religion, expression, and conscience.

14. Further, the Applicants allege that the named children have been subject to imprisonment, physical abuse, expulsion from school, and separation from parents due to their religious affiliations. According to the Applicants, these measures have resulted in the destruction of family life, economic and social damage, and traumatic stress that has left them scarred and has delayed their development. Further, it is alleged that the State-sanctioned harassment of the children of Jehovah's Witnesses has driven several of the named victims from the country, and in each such case, they risked their lives to escape. 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

15. The Applicants submit that the acts and omissions attributed to the Government of the State of Eritrea constitute violations of 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 (Parental 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

16. Based on the allegations, the Applicants further requested the Committee to order the Government of the State of Eritrea to undertake the following provisional measures pending the determination of the merits of the Communication:

a) Immediately cease 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) Immediately release any child belonging to Jehovah's Witnesses who is 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. The Applicants further request that, where a child is dependent upon a parent who is similarly arbitrarily detained, the State Party release the parent forthwith to protect the rights of the Child under the African Children's Charter;

c) Immediately implement 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) 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) Immediately appoint an independent investigator, vested with powers comparable to those of a Special Rapporteur and accountable to the Committee, to investigate and verify the allegations concerning the treatment of children belonging to Jehovah’s Witnesses, including the

named victims in the present Communication. The Applicants further request that the investigator be empowered, where appropriate, to refer individuals or institutions alleged to have committed violations of domestic or international criminal law to the relevant competent bodies and to monitor the implementation of any provisional measures or directives issued by the Committee or other organs of the African Union; and

f) Cooperate fully with the entry and activities of the Special Rapporteur or investigator mandated to examine the allegations contained in the Communication, including by facilitating access to relevant locations, information, and persons. The Applicants further request that, upon conclusion of such investigation, the Special Rapporteur or investigator make a report to the Committee and such other organ of the African Union or international bodies as may be appropriate.

V. Issuance of Provisional Measures

17. The Committee recalls that the purpose of provisional measures is to preserve the rights of the parties pending the determination of a Communication on the merits and to prevent the occurrence of irreparable harm. In considering a request for provisional measures, the Committee assesses, inter alia, whether the circumstances disclose a situation of extreme gravity and urgency and whether there exists a real and imminent risk of irreparable harm to the alleged victims if such measures are not granted.

18. Having examined the request for provisional measures and the information submitted by the Applicants, the Committee is not satisfied that the circumstances presented demonstrate the existence of a real and imminent risk of irreparable harm requiring its immediate intervention pending the determination of the Communication on the merits. The Committee further notes that the measures sought under the request for provisional measures substantially overlap with the remedies sought in the Communication itself and would, if granted, effectively prejudge issues that are to be determined at the merits stage.

19. In light of the foregoing, the Committee finds that the threshold for the issuance of provisional measures has not been met in the present Communication and, accordingly, declines to grant the provisional measures requested by the Applicants.

VI. Admissibility

Applicants' Submissions on Admissibility

20. The Applicants submit that the Communication fulfils the requirement of admissibility under Section IX (1) of the Revised Communications Guidelines. In particular, the Applicants contend that the Communication does not concern a matter pending before, or previously settled by, another international body or

procedure in accordance with the legal instruments of the African Union and the principles of the Charter of the United Nations. The Applicants further submit that they have fulfilled the requirement to exhaust available and accessible domestic remedies.

21. The Applicants submit that it is not possible to exhaust domestic remedies in Eritrea because domestic systems are practically unavailable in the Respondent State. In particular, the Applicants contend that no independent legal profession can provide effective representation and that they have been unable to secure legal assistance within Eritrea. According to the Applicants, this situation persists to date, compelling them to retain legal counsel operating from outside the Respondent State.

22. It is the Applicants' submission that domestic remedies are considered unavailable if the victims cannot access judicial remedies because of legal or administrative obstacles. They further contend that a remedy is insufficient if it is merely nominal; for a remedy to be available, effective, and sufficient, it must be at least accessible and certain.

23. Based on these submissions, the Applicants request the Committee to declare the Communication admissible.

24. The Committee notes that, despite having been duly notified of the Communication and allowed to submit its observations on admissibility, the Government of the State of Eritrea did not provide any submissions in relation to the present Communication.

VII. The ACERWC's Analysis and Decision on Admissibility

25. 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 African Unity, by a Member State, or the United Nations relating to any matter covered by this 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."

26. The Committee notes that 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.

27. Furthermore, in Section I (4) (a) of the Revised Communication Guidelines, the Committee's jurisdiction is determined by the victims' age at the time of the alleged violation. All the named victims were children within the meaning of Article 2 of the Charter at the time of the alleged violations. The Committee

therefore has jurisdiction ratione personae and holds that the Applicants have *locus standi* to submit the Communication.

28. 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 reviewed the elements of Section IX of the Revised Communications Guidelines on the conditions of the Procedure of Admissibility. The Committee shall examine each requirement in turn.

a) Compatibility with the Constitutive Act of the African Union and the African Children's Charter

29. The first condition of admissibility set forth under Section IX (1) (a) requires that a Communication be compatible with the provisions of the Constitutive Act of the African Union and the Charter. The Committee has consistently held that a Communication is compatible with the Charter if it reasonably alleges a violation of its provisions, thereby indicating a clear breach of the Charter.[1] In the present Communication, the Applicants allege violations of Article 6 (Name and Nationality); Article 9 (Freedom of Thought, Conscience and Religion); Article 11 (Education); Article 19 (Parental 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.

b) The communication is not exclusively based on information circulated by the media or groundless

30. Section IX(1)(b) of the Revised Communications Guidelines requires that a Communication not be exclusively based on information circulated by the media and that it not be manifestly groundless. In the Communication at hand, the Committee notes that the allegations are founded on the Eritrean Presidential Decree No. EG/H03/0004/94 of 25 October 1994, as well as witness accounts and other supporting evidence submitted by the Applicants. Consequently, the Committee is satisfied that the Communication meets the criteria outlined in Section IX (1) (b) of the Revised Communication Guidelines.

c) 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

[1]ACERWC, Communication No. 003/Com/001/2012, The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense Des Droits de l'homme (Senegal) v. The Government of Senegal, para 18; See also ACERWC, Communication No 0016/Com/004/2020, African Centre for Justice and Peace Studies (ACJPS) (on behalf of Ms. Umjumah Osman Mohamed) v The Sudan, Decision on Admissibility No 002/2021, para 31.

31. Section IX (1) (c) of the Revised Communication Guidelines prohibits the Committee from considering a Communication which is concurrently under consideration by other mechanisms. In this regard, in the absence of a response from the Respondent State, the Committee made inquiries with 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.

d) Whether or not the Applicants have exhausted local remedies, and whether the Applicants should be exempted from exhausting local remedies

32. 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 obvious that this procedure is unduly prolonged or ineffective. The Committee has pronounced itself on the rationale for the requirement of exhaustion of local remedies. In the *Nubian Case,* the Committee elaborated that the main purpose of the requirement of exhaustion of local remedies is to inform and afford the Respondent State an opportunity to redress the violations at the domestic level.[2] This prevents the international tribunal from acting as a court of first instance rather than as a body of last resort.[3] While recognising the Applicants' obligation to exhaust local remedies, the Committee reiterates that this requirement is not intended to impede access to international redress mechanisms.[4]

    In the present Communication, the Applicants contend that domestic remedies are unavailable in Eritrea because of the absence of effective judicial recourse and Jehovah's Witnesses' inability to meaningfully access domestic institutions. The Committee recalls its jurisprudence, as well as that of the African Commission on Human and Peoples' Rights, which establishes that remedies must be available, effective, and sufficient in practice and not merely in theory.

33. In *Jawara v The Gambia*,[5] the African Commission on Human and Peoples' Rights held that "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

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[2] ACERWC, Communication no 002/2009, Institute for Human Rights and Development in Africa (IHRDA) and others (on behalf of children of Nubian Descent in Kenya) v Kenya, Decision no 002/2011, para 26-27.
[3] ACHPR, Obert Chinhamo v Zimbabwe Application No.307/05, para 52.
[4] ACERWC, Communication no 012/Com/001/2019, Center for Reproductive Rights and Legal and Human Rights Center (on behalf of Tanzanian girls) v Tanzania, Decision no 0012/Com/001/2019, para 17; 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.

it is found sufficient if it is capable of redressing the complaint." The African Commission further clarified 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]

34. Several factors come into play when assessing the availability of domestic remedies. One factor is the lack of standing in national courts. An exception to the exhaustion requirement applies if applicants cannot institute any legal proceedings domestically. This may be the case where the applicants do not have the legal ability to bring the matter before the State because they 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 the citizenship and civil rights of members of Jehovah's Witnesses. Having been deprived of their civil rights, Jehovah's Witnesses cannot approach the domestic courts for redress. Domestic remedies are therefore unavailable to the Applicants.

35. Another factor in assessing the availability of domestic remedies is an instance whereby the victim or claimants are in fear or under threat. An exception has also 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 "if the Applicants 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 "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 of 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 victims, it is noted that some of the victims fled the country because of the violations they faced and cannot return to the Respondent State.

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

37. 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

[6] As above, para 35.
[7] Admissibility of complaints before the African Court Practical Guide (2016) 49.
[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.

the 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 international community has well documented these violations over many years.

38. Regarding ongoing harm, the Committee notes that systemic violations also typically involve ongoing violations 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 Witnesses are still not enjoying their rights – hence an indication of ongoing harm/violations.

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

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

40. 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. This requirement is intended to ensure that Applicants who allege violations act with due diligence in pursuing their cases.[14]

41. 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

[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.
[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.

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* 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).[17]

42. The Committee further looks to the jurisprudence of the African Commission in its case of *Obert Chinhamo 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]

43. In the present communication, the Committee notes that the Communication alleges violations that are ongoing in nature and continue to affect children currently residing within the Respondent State. In such circumstances, the passage of time does not extinguish the possibility of bringing a complaint concerning continuing violations.

44. The Committee observes that the Applicants could not exhaust local remedies and the Communication asserts that ongoing violations continue to impact children in the Respondent State. Accordingly, the Committee finds that the Communication was submitted within a reasonable time.

f) The Communication Does Not Contain Any Disparaging or Insulting Language

45. 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. The Committee has reviewed the Communication and finds that it does not contain disparaging, insulting, or offensive language directed against the Respondent State, its institutions, or the African Union. The Communication therefore satisfies the requirement under Section IX(1)(f) of the Revised Communications Guidelines.

VIII. Decision on Admissibility

46. Based on the analysis above, the Committee concludes that the Communication submitted by the Applicants fulfils the admissibility criteria outlined under Article

[16] As above.
[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 Chinhamo v Zimbabwe, para 89.

44 of the Charter and Section IX (1) of the Revised Communication Guidelines; therefore, it declares it admissible.

IX. Submissions on the Merits of the Communication

The Applicants' submission on the Merits

47. The Applicants allege that the State of Eritrea has failed to uphold its obligations to respect, protect, and fulfil the rights of Jehovah's Witness children as envisioned under the Charter, to which the Respondent State is a Party. The Applicants identify four children (Y.H., M.A., B.A., and L.M.) as the direct victims of the alleged violations in the Communication. The Applicants state that 'these four children are the victims in this Communication, but not the only victims,' acknowledging other affected children while limiting the scope of the present complaint to the four identified victims. The Committee therefore confines its determination on the merits to the four identified victims and considers the accounts concerning the other children as context.

Alleged violation of Article 6 on the right to nationality

48. The Applicants submit that L.M., a newborn child, was denied birth registration because her parents are Jehovah's Witnesses who did not participate in military service or the national referendum. Although Eritrean procedures require registration within 90 days, the authorities allegedly refused to register and issue her a birth certificate. As a result, it is alleged that L.M. has been denied access to essential services, including medical care, food coupons, and other government benefits for newborns. It is further alleged that her lack of documentation will expose her to ongoing disadvantages throughout her life, including barriers to education, social services, and proof of nationality. The Applicants further allege that L.M.'s case reflects a broader pattern affecting other children of Jehovah's Witness families, whose parents face similar refusals when attempting to register their children's birth. According to the submissions, parents face intimidation, detention, and loss of civil rights if they approach authorities, leading many to avoid the registration process altogether. Additional testimonies allege that Jehovah's Witness adults are denied identification documents such as national ID cards and passports, which further undermines the legal status of their children.

49. The Applicants allege that these practices constitute a systematic and deliberate policy of religious discrimination, effectively rendering affected children stateless and denying them the rights guaranteed under Article 6 of the African Children's Charter, as a result of the Presidential Decree issued by the President of Eritrea.

Alleged violation of Article 9 on freedom of thought, conscience and religion

50. The Applicants allege that the victims respectfully refused to sing the national anthem, salute the flag, or contribute to the military owing to their deeply held

religious convictions. The Applicants submit that the victims' refusal was grounded in their conscientious belief that acts such as bowing down, saluting a flag, or singing a national anthem constitute forms of religious worship which, according to their faith, may only be offered to God. The Applicants further submit that the victims have at all times demonstrated respect for the national emblems and institutions of the State through their solemn demeanour and dignified conduct. The Applicants emphasise that the victims did not seek to prevent or discourage others from participating in such ceremonies but rather exercised their individual conscience in choosing not to perform acts they considered religious in nature.

51. The Applicants state that, despite the peaceful and respectful way the victims exercised their beliefs, the authorities, acting through government-controlled school officials, compelled all students to participate in the ceremonial rites. The Applicants allege that when some of the victims respectfully declined to do so, they were subjected to physical assault, public humiliation, and expulsion from their respective schools. The Applicants further allege that one of the victims, Y.H., was not only expelled from school but also arrested and imprisoned without charge, where he remains to date. On the other hand, it is submitted that M.A. and B.A. were also expelled for refusing to salute the flag and sing the national anthem, and their father was arrested following the incident.

52. Further, it is the Applicants' submission that, because of these measures, none of the victims has been able to complete their basic education within the territory of Eritrea. They allege that some children were apprehended by government security agents while peacefully worshipping with their families, including instances where children were seized while still of tender age. Others were compelled to flee the country altogether owing to persecution for the peaceful exercise of their freedom of thought, conscience, and religion.

Alleged violation of Article 11 on the right to education

53. The Applicants allege that children of Jehovah's Witnesses are denied basic education in two forms. First, students are compelled to participate in ceremonial acts, namely saluting the national flag and singing the national anthem, that violate their religious conscience. They are expelled or otherwise punished for refusing to comply. Second, all students, including Y.H., are required to attend a mandatory final year of military training at a military camp as a precondition for graduation. In support of these allegations, the Applicants rely on the alleged expulsion and detention of Y.H. and the expulsion of M.A. and B.A. for refusing to salute the flag and sing the national anthem. The Applicants further rely on testimonial and documentary evidence alleging that children of Jehovah's Witnesses face broader restrictions affecting access to documentation, citizenship rights, and public services, and that such restrictions exacerbate educational exclusion. They argue that the cumulative effect of

these measures deprives the victims of their right to education and severely undermines their prospects.

Alleged violation of Articles 19, 25 (1), 26 and 30

54. The Applicants have presented arguments in a consolidated manner, in light of alleged violations of Articles 19, 25(1), 26 and 30 of the African Children's Charter. The Applicants submit that the victims in this Communication, namely, Y.H., M.A., and B.A., have been directly affected by the Respondent State's actions. They assert that the Respondent State's practice of imprisoning Jehovah's Witnesses without charge or trial, including parents of minor children, has destroyed family unity and deprived children of their right to reside with and be cared for by their parents. The Applicants maintain that these measures are not isolated incidents, but part of a consistent State practice aimed at coercing Jehovah's Witnesses to renounce their faith.

55. With regard to Y.H., the Applicants submit that he has been separated from his parents as a result of his illegal and arbitrary detention. They explain that Y.H.'s father has been imprisoned for over twelve years, and his mother has also been detained on several occasions for attending religious meetings. Y.H. himself, then sixteen years old, has been detained three times in his life, the first when he was two and a half years old, alongside his mother and siblings. The Applicants emphasise that his repeated arrests, coupled with the prolonged detention of his father, have deprived him of consistent parental care and subjected him to inhumane treatment.

56. The Applicants also refer to the case of M.A. and B.A., who were expelled from school after refusing to sing the national anthem, and whose father was arrested for supporting them. They claim that the father's imprisonment constitutes arbitrary interference with family life and an unlawful separation from parental care, given that his release is conditioned on renouncing his faith.

57. Similar accounts are presented regarding other children, not necessarily named as victims, who were detained as infants alongside their mothers and separated from their fathers for many years. The Applicants describe the poor conditions of detention, including exposure to adult prisoners and unsanitary facilities. Testimonies recount that infants were forcibly removed from nursing mothers, families torn apart, and parents threatened with death if they continued practising their faith. The Applicants argue that the Respondent State has made no arrangements for the welfare, contact, or reunification of families separated by these detentions. They note that Jehovah's Witness children whose parents are imprisoned receive no State support, alternative care, or protection from abuse.

58. The Applicants further contend that the pattern of persecution of Jehovah's Witnesses has destroyed the fabric of family life within the Jehovah's Witness community in Eritrea, undermining the deeply rooted cultural value of close

family bonds. In support of these claims, the Applicants invoke comparative references to the treatment of Jehovah's Witnesses under totalitarian regimes, where children were banned from school, and families were divided as part of State policy. They argue that Eritrea's actions echo such practices and therefore represent grave violations of the rights enshrined in the Charter.

X. The Committee's analysis of the Merits of the alleged violations

59. The Committee considers and analyses the alleged violations in the order submitted in the Communication.

a) Alleged violation of Article 6 on name and nationality

60. Article 6 of the African Children's Charter provides as follows:

> I. Every child shall have the right from birth to a name.
> II. Every child shall be registered immediately after birth.
> III. Every child has the right to acquire a nationality.
> IV. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognises the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

61. The Applicants allege that the denial of birth registration to L.M., and the broader refusal to issue civil documentation to children of Jehovah's Witnesses, constitute violations of Article 6 of the Charter. They contend that these measures are linked to the Presidential Decree and amount to discriminatory practices that deprive affected children of nationality, documentation, and access to basic services. The Applicants allege that these practices constitute a systematic and deliberate policy of religious discrimination, effectively rendering affected children stateless.

62. Accordingly, based on the allegations submitted and the hearing conducted in relation to the alleged violations of Article 6, the Committee identifies the following issues for determination:

- Whether the Presidential Decree issued under Ref. No. EG/H03/0004/94 of 25 October 1994, declaring that members of the Jehovah's Witnesses community had revoked their Eritrean citizenship and instructing government institutions and regional administrations to deny them access to government services and passports, based on their refusal to participate in the national referendum and to perform national service, amounts to a violation of Article 6 of the Charter; and
- Whether the alleged denial of birth registration to L.M. constitutes a violation of Article 6 of the Charter.

63. The Committee reiterates that birth registration is one of the fundamental human rights that serves as a foundation for the enjoyment of other rights.[19] It is expressly recognised in international and regional instruments,[20] as well as in the domestic laws of the State of Eritrea.[21] In its General Comment No. 7 on implementing child rights in early childhood, the CRC Committee recommends that, as a first step in ensuring the rights to survival, development and access to quality services for all children, States parties take all necessary measures to ensure that all children are registered at birth.[22]

64. Furthermore, the use of the term "every" in Article 6(2) of the African Children's Charter underscores that no child's birth should remain unregistered, regardless of the parents' or legal guardians' race, ethnic background, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other circumstance. [23] Accordingly, none of these factors can justify the denial of a child's right to birth registration, and discrimination on any ground undermines the principle of universal birth registration. [24] In this regard, the Committee considers that discrimination should be interpreted to include any legal, administrative, or judicial measures that result in discriminatory treatment or exclusion on any ground.

65. The Committee further recalls that the denial of birth registration and civil documentation may place children at an immediate risk of statelessness. Although statelessness may arise formally through the absence of nationality, a child may also be exposed to the risk of statelessness where the State withholds the legal documentation necessary to establish entitlement to nationality. The Committee notes that under the Eritrean Nationality Proclamation No. 21/1992, Eritrean nationality is acquired principally by descent (***jus sanguinis***). Consequently, where a child is denied birth registration because of the religious beliefs or civil status of the parents, this may impede the child's ability to obtain official proof of the parentage upon which entitlement to Eritrean nationality depends.

66. The Committee recalls its General Comment No. 2 on Article 6 on the Right to Birth Registration, Name, and Nationality, noting that birth registration is a vital legal process mandated by State obligations and must be carried out through

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[19] United Nations High Commissioner for Human Rights and the Office of the High Commissioner and the Secretary General, Use of digital technologies to achieve universal birth Registration, Annual report of the Human Rights Council Fifty-ninth session 16 June–11 July 2025

[20] Article 7(1) of the UN Convention on the Rights of the Child; Article 24(2) of the International Covenant on Civil and Political Rights.

[21] According to Eritrean law (Art. 57, 58, 72, 73 of the Transitional Civil Code, in conjunction with Art. 5 and 6 of the EPLF Civil Code), parents must register births with the civil authorities within 90 days.

[22] UN CRC, General Comment 7 (2005) Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev 1, para 25.

[23] ACERWC, General Comment No. 2 on Article 6 (Name and Nationality) of the African Charter on the Rights and Welfare of the Child (2014) para 16.

[24] As above.

competent government authorities.[25] While birth registration is administrative in nature and records the occurrence of a child's birth, it also constitutes the State's first official acknowledgement of the child's existence before the law. The Committee therefore reiterates that birth registration is not merely a procedural formality, but a foundational legal act. In this regard, the Committee refers to the decision in *Institute for Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of children of Nubian descent) v. Kenya*,[26] where it recognised the intrinsic relationship between birth registration, legal identity, and the enjoyment of the right to nationality. The Committee emphasised that the absence of birth registration and identity documentation creates significant barriers to acquiring and proving nationality, thereby exposing children to the risk of statelessness and exclusion from the protection of the law. The Committee therefore notes the close link between Article 6(2) and Article 6(3) of the Charter. The absence of a birth certificate may further undermine the effective enjoyment of various rights, including access to education, healthcare, and essential services such as passports, national identification, and inheritance rights.[27]

67. The Committee further recalls that, under Article 1 of the Charter, States Parties are required to adopt legislative, administrative, and other measures to give effect to the rights guaranteed under the Charter. The State is responsible for ensuring compliance with Article 6. It must maintain effective oversight to ensure that all levels of government, including regional and local authorities, implement birth registration obligations in a manner consistent with the Charter.

68. In the present Communication, the Committee notes that Article 3 of the Constitution of Eritrea guarantees every child born to an Eritrean father or mother the right to Eritrean nationality by birth. This Constitutional safeguard is further reinforced by the Eritrean Nationality Proclamation No. 21/1992, which provides that any person born to a father or mother of Eritrean origin is an Eritrean national by birth. The Committee further observes that the Transitional Civil Code of Eritrea provides for compulsory birth registration and requires recording a child's birth as part of the State's civil registration system.

69. Before examining the effect of the Presidential Decree on birth registration, the Committee first considers whether the Decree is discriminatory. The Committee recalls that differential treatment on a prohibited ground can only be justified where the reasons are founded in a legitimate State interest, and the limitation of rights is strictly proportionate to and absolutely necessary for the advantages

[25] ACERWC, General Comment No. 2 on Article 6 of the African Charter on the Rights and Welfare of the Child (2014), para 13.
[26] ACERWC, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. The Government of Kenya*, Communication No. 002/Com/002/2009, para 42.
[27] As above.

to be obtained.[28] Article 3 of the Charter expressly prohibits distinctions based on the religion of the child or of his or her parents or legal guardians.

70. The Committee notes that the Decree declares that Jehovah's Witnesses who are Eritrean by birth have revoked their Eritrean citizenship by refusing to participate in the national referendum and national service, and instructs all government institutions and regional administrations to deny members of the Jehovah's Witnesses community access to government services, passports, travel documents, land, housing, property, and employment within government institutions. Members of the Jehovah's Witnesses community, as persons entitled to Eritrean nationality by birth under the Constitution and the Eritrean Nationality Proclamation No. 21/1992, are in a comparable situation to all other Eritrean nationals entitled to these services. The Decree, however, singles them out by name as a religious community and applies to all its members, including children who could neither vote in the referendum nor perform national service. The difference in treatment is therefore based on religious identity. Furthermore, the stated reason for the Decree, namely the refusal to participate in the national referendum and to perform national service, itself arises from the religious convictions of Jehovah's Witnesses.

71. The Committee considers that the Decree cannot be justified. Even if the enforcement of civic obligations can be accepted as a legitimate State interest, depriving an entire religious community of its citizenship and of access to government services and official documentation, without any individual assessment, is not proportionate and not necessary for that interest. The Committee therefore finds that the Decree is discriminatory.

72. Although the Decree does not expressly mention birth registration, the Committee considers it reasonably foreseeable that a directive instructing all government institutions and regional administrations to deny services to members of the Jehovah's Witnesses community would influence the conduct of authorities responsible for civil registration and facilitate discriminatory practices in implementing birth registration laws. While the Committee acknowledges that the State of Eritrea has established legal and institutional frameworks intended to facilitate birth registration, the Decree could reasonably be expected to undermine their implementation by local authorities.

73. This is substantiated by the case of L.M., who was initially denied birth registration because her parents are Jehovah's Witnesses and, due to their religious beliefs, cannot participate in military service and the national referendum.

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[28] African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Government of Kenya*, Communication No. Com/002/2009, Decision No. 002/Com/002/2009, para 56-57.

74. In this regard, the Committee reiterates that there is no plausible justification for linking a child's right to birth registration to the performance of national service by the parents, nor should any deprivation or limitation of parental rights in the State of Eritrea have any bearing on the enjoyment of the child's rights.

75. As noted above, the Committee has interpreted the term "every child" in Article 6 as requiring universal and non-discriminatory birth registration, irrespective of the status or circumstances of the child's parents.[29] The Committee therefore considers that making access to birth registration dependent upon parental compliance with national service obligations or participation in the national referendum is incompatible with Article 6 (2) of the Charter. The Committee emphasises that the obligation arising under Article 6 is unconditional and requires the State to take proactive measures to ensure universal, non-discriminatory birth registration.

76. The Committee reiterates that, for the purpose of determining a violation of the Charter, the number of victims is not determinative, and that a single instance in which a State Party's legal or administrative practice results in the violation of a child's rights is sufficient to establish a breach. However, the Committee also notes that the Applicants did not provide nationwide or comprehensive statistical evidence demonstrating the number of Jehovah's Witness children who have been denied birth registration; the evidence before the Committee primarily concerns the circumstances of L.M. In the absence of sufficient evidence demonstrating the scope and extent of the alleged practice nationwide, the Committee cannot make a general finding of violations of Article 6 in respect of all children belonging to the Jehovah's Witness community. The Committee confines its findings to the facts established in the present Communication.

77. Accordingly, the Committee finds that the Respondent State violated Article 6(2) of the Charter in respect of L.M. through the initial denial of her birth registration on discriminatory grounds. The Committee notes that L.M. subsequently obtained a birth certificate and passport through the assistance of her grandfather, who is not a Jehovah's Witness. This subsequent registration does not, however, negate the initial refusal to register her birth, as Article 6(2) requires registering every child immediately after birth.

78. The Committee further notes that the initial denial of birth registration impeded L.M.'s ability to establish her legal identity and could have created difficulties in establishing and proving her nationality. The Committee is mindful that the Decree purports to treat Jehovah's Witnesses who are Eritrean by birth as having revoked their citizenship, and that it applies to all members of the community. However, the evidence before the Committee does not establish that the Decree has been applied to deny or withdraw the nationality of L.M. The Committee nonetheless expresses grave concern that a decree purporting to

[29] ACERWC General Comment No.2 on Article 6, para 51.

revoke the citizenship of an entire religious community, including its children, exposes such children to a real risk of statelessness, which is incompatible with the object and purpose of Article 6 of the Charter. However, on the evidence before it, the Committee cannot find a violation of Article 6(3) of the Charter.

79. ***As a result of the foregoing, the Committee finds that Presidential Decree Ref. No. EG/H03/0004/94 of 25 October 1994, insofar as it facilitates the denial of birth registration and official documentation to children based on their own or their parents' religious affiliation, is discriminatory and constitutes a violation of Article 6 (2) of the African Children's Charter.***

The Committee further finds that the Government of Eritrea has violated Article 6(2) of the African Children's Charter in respect of the child L.M., through the denial of her immediate birth registration on discriminatory grounds.

The Committee does not find a violation of Article 6(3) of the African Children's Charter as the evidence before it does not establish that L.M. was denied the right to acquire a nationality.

b) Alleged violation of Article 9 on freedom of thought, conscience and religion

80. Article 9 of the African Children's Charter provides that every child shall have the right to freedom of thought, conscience and religion. It further provides that parents, and where applicable, legal guardians, have a duty to provide guidance and direction in exercising these rights, having regard to the evolving capacities of the child. States Parties shall respect the duty of parents and, where applicable, legal guardians, to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

81. The Applicants allege that the victims respectfully refused to sing the national anthem, salute the flag, or contribute to the military owing to their deeply held religious convictions.

82. Accordingly, the Committee identifies the following issues for determination:

- Whether the Respondent State has violated Article 9 of the Charter by compelling the victims, particularly Y.H., M.A. and B.A., to participate in national ceremonies such as singing the national anthem, saluting the flag or undertaking alleged compulsory military service, contrary to their religious beliefs.
- Whether the punishment, humiliation, and expulsion of the victims from school for refusing to perform the national ceremonies amounts to a violation of Article 9 of the Charter.

83. In determining these issues, the Committee notes from the outset that the right to freedom of thought, conscience and religion protects an individual's freedom

to have or adopt a religion or belief, including the right to replace one's current religion or belief, which is protected unconditionally, as well as the freedom to manifest that religion or belief in worship, observance, practice and teaching.[30] Article 9(2) and (3) further recognise the duty of parents and legal guardians to provide guidance and direction to the child in the exercise of this right, having regard to the child's evolving capacities and best interests, and the corresponding duty of the State to respect this parental role. In interpreting the scope of this right, the Committee draws guidance from the Human Rights Committee's General Comment No. 22 on Article 18 of the ICCPR, which describes this freedom as "far-reaching and profound", encompassing "freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."[31] The Committee notes in particular that "no one can be compelled to reveal his thoughts or adherence to a religion or belief," and that the freedom to hold or adopt a religion or belief "is protected unconditionally."[32] The Committee further recalls that Article 18(2) of the ICCPR prohibits any form of coercion that impairs freedom of conscience or religion. As elaborated in General Comment No. 22 of the Human Rights Committee, this prohibition extends to "the use of threat of physical force or penal sanctions," as well as to "policies or practices having the same intention or effect," including those "restricting access to education, medical care or employment." [33] The Committee considers that these interpretive principles apply to Article 9 of the African Children's Charter.

84. The Committee also notes that the United Nations Special Rapporteur on Freedom of Religion or Belief, in his 2010 report to the Human Rights Council, reaffirmed that no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice and that this inner forum of conscience enjoys absolute protection. The Special Rapporteur further emphasised the duty of States to uphold confessional neutrality in public education,[34] to accommodate children of all religions or beliefs based on equality and non-discrimination. The report also recalled that, under Article 14(2) of the Convention on the Rights of the Child, States must respect both the right of parents to guide their children's moral and religious education and the child's evolving capacity to make personal decisions concerning belief.

85. The European Court of Human Rights in *Buscarini and Others v. San Marino*[35] examined the case of two parliamentarians who were required by law to take an oath "on the Holy Gospels" as a condition for assuming their elected offices.

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[30] Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4 (1993), para 3–5.
[31] CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), para 1.
[32] CCPR General Comment No. 22, para 3.
[33] CCPR General Comment No. 22, para 5.
[34] Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, (2010) A/HRC/16/53, para 44.
[35] *Buscarini and others v. San. Marino*, ECtHR, Application No. 24645/94, para 29-41.

The Applicants, who did not wish to make a religious declaration, argued that the requirement violated their freedom of thought, conscience and religion under Article 9 of the European Convention. The Court held that freedom of conscience protects not only the right to hold or manifest a belief but equally the right not to be compelled to perform an act that implies adherence to a particular faith. In the Court's view, conditioning the exercise of a civic function on a religious affirmation was a form of coercion incompatible with the pluralism and neutrality that underpin a democratic society. It therefore concluded that requiring the Applicants to swear on the “Gospels” under pain of forfeiting their parliamentary seats violated Article 9 of the European Convention.

86. The Committee considers that the principle articulated by the European Court is instructive in the present Communication. Where individuals are compelled to perform an act which, according to their sincerely held beliefs, carries religious significance, and are sanctioned for refusal, such compulsion amounts to coercion incompatible with freedom of conscience. In the present communication, the Committee notes that the victims were compelled to participate in national ceremonies, including the singing of the national anthem and saluting of the flag, which they allege to be acts of worship contrary to their religious convictions. Their refusal resulted in punitive measures, including expulsion and detention. The Committee considers that such measures constitute interference with the right protected under Article 9(1).

87. Furthermore, in *Hudoyberganova v. Uzbekistan*,[36] the Human Rights Committee considered the case of a university student who was expelled from her institution for wearing a headscarf in accordance with her Muslim faith. The Human Rights Committee held that the exclusion constituted coercion impairing the author’s freedom of religion, contrary to Article 18 of the ICCPR. It reaffirmed that the manifestation of religion, including through dress or conduct, is protected by Article 18(1), and that any restriction must be strictly justified under Article 18(3) as necessary and proportionate to a legitimate aim. The Human Rights Committee noted that Uzbekistan failed to demonstrate any such justification for denying access to education because of the author’s religious observance. The Human Rights Committee underscored that forcing a person to choose between education and adherence to their faith exerts impermissible pressure to abandon religious convictions.

88. Similarly, in the present Communication, the Committee notes the testimony concerning Y.H., who was expelled from school in January 2023 for declining to sing the national anthem and salute the flag in accordance with his faith. Despite his courteous conduct and the explanation that his refusal was a matter of conscience, his school reported him to the security authorities. Shortly thereafter, his father was summoned, interrogated, and arbitrarily detained on

[36]Human Rights Committee, *Ms. Raihon Hudoyberganova v Uzbekistan*, Communication No. 931/2000, CCPR/C/82/D/931/2000.

28 February 2023. When security officials came to the family home searching for his mother, Y.H. was not present. Upon learning that they were looking for her, he voluntarily presented himself to the security officials to prevent her arrest. They immediately apprehended and imprisoned him without charge. The Committee notes from the testimony that this is the third time in Y.H.'s life that he has experienced imprisonment, having first been detained with his mother as an infant and later during her re-arrest.

89. The Committee further notes the witness testimony concerning M.A. and B.A., twin eleven-year-old children who were expelled from school for declining to participate in ceremonies involving the national anthem and saluting the flag. Their father, who supported their conscientious decision, was immediately arrested and imprisoned. The testimony further reveals that the children were expressly told they would only be allowed to return to school if they agreed to salute the flag. This condition placed them in the untenable position of choosing between access to education and adherence to their religious convictions.

90. These incidents demonstrate the coercive environment in which the victims were compelled to act against conscience and mirror the circumstances in the Hudoyberganova *case*, where exclusion from education was used as a means of suppressing religious belief. Such punitive exclusion constitutes a form of coercion that directly contravenes the guarantees of freedom of thought, conscience and religion under Article 9 (1) of the Charter.

91. The Committee also recalls its own findings in its Concluding Observations on the Initial Report of Eritrea (2017), where it noted that, although Article 14 of the Transitional Civil Code guarantees the right of all persons to think and express their ideas and the Constitution prohibits religious discrimination, children of certain religious groups remain unable to enjoy these rights in practice. The Committee expressed particular concern that "children who belong to the Jehovah's Witnesses face harsh treatment" and urged the State Party to "recognise and fully implement a child's freedom of thought, conscience and religion without discrimination." The Committee further recalls its Concluding Observations on the State Party Report of Eritrea (2022), in which it reiterated concern about the State Party's policy of recognising only four religious affiliations, and recommended that this policy be revised so that it does not violate the Charter and to ensure that children make informed decisions about their spiritual practices without fear of any resulting disadvantages. The facts of the present Communication demonstrate that these concerns remain unresolved.

92. The Committee also takes note of the findings of the United Nations Committee on the Rights of the Child (CRC) in its Concluding Observations on Eritrea, where it expressed concern "at the allegation that followers of unrecognized religious denominations, including children, face restrictions in the exercise of their religious faith and practices and are often harassed, persecuted or denied

official identity cards." The CRC Committee therefore urged the State Party to respect the right of children belonging to all religious denominations, including Jehovah's Witnesses, to exercise their right to freedom of religion and ensure that they are not harassed or prosecuted.[37]

93. Furthermore, the findings of the United Nations Commission of Inquiry on Human Rights in Eritrea (2016)[38] corroborate the Applicants' allegations. The Commission established that the Government recognizes only four religious denominations and that "religious practice by members of non-authorized religions is prohibited, and subject to systematic repression." It found that Jehovah's Witnesses have been targeted since May 1991 and that their persecution forms part of the State's broader campaign to suppress freedom of religion and conscience. The Commission concluded that Eritrean officials have committed the crime of persecution "in a widespread and systematic manner," specifically identifying the targeting of Jehovah's Witnesses and other unrecognized groups as emblematic of this pattern.[39] While the Committee's finding under Article 9 is based on the specific facts concerning the named child victims, these findings provide important contextual support for the conclusion that the punishment, humiliation, expulsion, and detention imposed on the victims for adhering to their religious beliefs constituted coercive interference with their freedom of thought, conscience and religion under Article 9 of the Charter.

94. The Committee also deems it fit to consider the alleged denial of birth registration to L.M. and whether it constituted a violation of her right to freedom of thought, conscience and religion. The Applicants submit that the Presidential Decree stripped Jehovah's Witnesses of their civil rights and access to government services and benefits on account of their religious affiliation. In respect of L.M., the evidence before the Committee indicates that she was denied birth registration because her parents are Jehovah's Witnesses and, on account of their religious beliefs, had not participated in national service or the national referendum. The Committee notes that these facts establish that the denial was linked to the religious affiliation and convictions of her parents. However, in determining whether there has been an interference with Article 9, the Committee must consider whether the conduct impaired L.M.'s freedom to hold or manifest a religion or belief, or her parents' ability to provide guidance and direction to her in the exercise of this right as recognised under Article 9(2) and (3). Given L.M.'s age, she is not yet able to form or manifest religious beliefs of her own, and her right under Article 9 is therefore exercised primarily through the guidance of her parents. The evidence before the Committee does not show

[37] UN CRC Concluding observations on the fourth periodic report of Eritrea (2015), CRC/C/ERI/CO/4, para 34-35.
[38] Human Rights Council, Report of the Commission of Inquiry on human rights in Eritrea (2016) A/HRC/32/47.
[39] As above, para 42 & 88.

that the denial of birth registration prevented L.M.'s parents from guiding her religious upbringing, or that it was used to compel L.M. to adopt or abandon any religion or belief. The Committee notes that, while policies restricting access to services may in certain circumstances amount to coercion impairing freedom of religion, the harm established in respect of L.M. is the denial of birth registration on discriminatory grounds. The Committee has addressed this under Article 6 of the Charter above and therefore does not find a separate violation of Article 9(1) in respect of L.M.

95. With respect to the alleged compulsory military training and national service, the Applicants contend that the requirement for students to complete their final year of secondary education in "military training" is contrary to their personal religious conscience. The Committee notes that the Eritrean National Service Proclamation No. 82/1995 mandates that all citizens from 18 to 50 years of age have an obligation to carry out national service. Further, all citizens from 18 to 40 years of age have the compulsory duty of performing active national service. The Proclamation thus establishes national service as a general civic obligation applicable to Eritrean citizens within the prescribed age range. The Committee notes in this regard that the applicable national framework of Eritrea characterises the programme as national service, while the Applicants allege that it entails mandatory "military training". References to "military training" in this analysis or the Committee's decision therefore reflect the characterisation used by the Applicants and the information contained in the reports relied upon and should not be understood as a finding by the Committee that the national service programme constitutes military training.

96. The Committee recognises that alleged compulsory military training may raise issues concerning freedom of thought, conscience and religion where such service conflicts with sincerely held religious or conscientious beliefs. In *Yoon and Choi v. Republic of Korea*, the Human Rights Committee observed that while the right to manifest one's religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides protection against being forced to act against genuinely held religious beliefs, and found that the conviction of the authors for refusing compulsory military service on religious grounds amounted to a restriction that the State had not shown to be necessary.[40] The Human Rights Committee subsequently affirmed, in *Jeong and others v. Republic of Korea*, that the right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion, and entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The Human Rights Committee further noted that this right must not be impaired by coercion, and that any alternative service required by the State

[40] Human Rights Committee, *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, Communications Nos. 1321/2004 and 1322/2004, CCPR/C/88/D/1321-1322/2004 (3 November 2006), paras 8.3–8.4.

must be civilian in nature, outside the military sphere, and not punitive.[41] Similarly, the European Court of Human Rights, in *Bayatyan v. Armenia*, a case concerning a Jehovah's Witness, held that opposition to military service attracts the protection of freedom of religion where it is motivated by a serious and insurmountable conflict between the obligation to serve and a person's deeply and genuinely held religious or other beliefs.[42] Drawing from the jurisprudence of the Human Rights Committee and the European Court, the Committee considers that compulsory military training or service will amount to an interference with Article 9 of the Charter where: (a) the individual holds a genuine religious or conscientious belief; (b) that belief is in serious and insurmountable conflict with the obligation to perform military training or service; (c) the obligation applies to and is enforced against the individual concerned; and (d) the State compels participation or imposes sanctions or other disadvantages for refusal, particularly in the absence of a genuinely civilian alternative. Whether such an interference arises must therefore be determined on the basis of the specific circumstances and evidence before the Committee.

97. In the present Communication, the Applicants submit that all secondary school students, including Y.H., are required to complete their final year at the Sawa Training Camp in order to graduate, and that this requirement is contrary to his religious belief. However, the Committee notes that the evidence before it is general in nature and supported by general reports. The evidence before the Committee does not establish that the named victims were compelled to undertake alleged military service or were subjected to punishment specifically for refusing to participate in military service on grounds of conscience. Furthermore, the evidence before the Committee shows that Y.H. was expelled from school for refusing to sing the national anthem and salute the flag, and not in connection with any requirement to undertake military training. The Applicants have not provided any evidence that Y.H. was required to report to Sawa, was compelled to undertake military training, or was subjected to any sanction or disadvantage for refusing to do so. Unlike the ceremonial acts of saluting the flag and singing the national anthem, which the victims were directly compelled to perform and for which they suffered expulsion, detention, and other punitive measures, the submissions concerning alleged military training have not been substantiated by the Applicants. Accordingly, the Committee is unable to conclude that the Respondent State violated Article 9(1) of the Charter with respect to the alleged compulsory military training in respect of the named victims. The Committee emphasises that this conclusion is based solely on the lack of substantiation of the claim and should not be understood as an endorsement of "military training" involving children.

[41] Human Rights Committee, Min-Kyu Jeong and Others v. Republic of Korea, Communication Nos. 1642–1741/2007 (2011), para 7.3 -7.4.
[42] Bayatyan v. Armenia [GC], Application No. 23459/03, 7 July 2011, para 110.

98. ***As a result of the foregoing, the Committee finds that the Respondent State has violated Article 9 (1) of the African Children's Charter by compelling the victims Y.H., M.A. and B.A. to participate in national ceremonies, including the singing of the national anthem and saluting of the flag, contrary to their religious beliefs, and by expelling them for their refusal to do so.***

The Committee further finds that the subsequent arbitrary detention of Y.H., as well as the punishment imposed on the families of the victims as a result of their refusal to participate in such ceremonies, constituted coercive measures that unlawfully interfered with their right to freedom of thought, conscience, and religion, in violation of Article 9(1) of the African Children's Charter.

However, the Committee is unable to conclude that the Respondent State violated Article 9(1) of the African Children's Charter in relation to alleged compulsory military training or national service, as the evidence before it does not establish that the named child victims were compelled to undertake the alleged military training or national service, or were subjected to coercive measures for refusing to participate.

The Committee is also unable to conclude that the Respondent State violated Article 9 (1) of the African Children's Charter in relation to the alleged denial of birth registration of L.M. as the evidence does not establish an interference with her freedom of thought, conscience, and religion.

c) Alleged violation of Article 11 on education

99. Article 11(1) of the Charter provides that "every child shall have the right to education." Article 11 further sets out the aims of education and the measures States Parties must take to achieve the full realisation of this right, including the obligation to take measures to encourage regular attendance at schools and the reduction of drop-out rates, and to ensure that a child who is subjected to school discipline is treated with humanity and with respect for the inherent dignity of the child.

100. The Applicants allege that children of Jehovah's Witnesses are denied basic education as they are compelled to participate in ceremonial acts, namely saluting the national flag and singing the national anthem that violate their religious conscience, and are expelled or otherwise punished for refusing to comply. They also allege that all students, including Y.H., are required to attend a mandatory final year of military training at a military camp as a precondition for graduation.

101. Accordingly, the Committee identifies the following issues for determination with regard to the alleged violation of Article 11 of the ACRWC:

- Whether or not compelling Y.H., M.A. and B.A. to perform ceremonial acts, and expelling, punishing or detaining them for refusal, violates Article 11 of the Charter;
- Whether or not the alleged mandatory military training requirement amounts to a violation of Article 11 of the Charter.

102. The Committee notes that the right to education is an inherent right of all children, recognised under the Charter and other international and regional instruments. Article 11 of the Charter guarantees every child an unconditional right to education and sets out the aims of education and States' obligations to realise it. Read together with Article 3 of the Charter, it reinforces the principle of non-discrimination, requiring that no child be denied education based on factors such as religion, disability, gender, ethnicity, or social status. States Parties must prohibit by law any social, cultural, or religious practices that unfairly restrict children's access to education. In addition, States Parties should identify and address the causes of exclusion and eliminate legal or practical barriers that hinder children's access to education.[43]

103. States are therefore obligated to identify and address barriers that keep children, especially those in vulnerable situations, out of school, and to adopt special measures to ensure their access to education. The wording *"shall have"* in Article 11 underscores the mandatory and justiciable nature of this right, leaving States no discretion to condition access to education on compliance with practices unrelated to legitimate educational objectives. In this regard, Article 11(3)(d) of the Charter, which requires States to encourage regular school attendance and reduce dropout rates, further informs the scope of the obligations under Article 11. Measures that result in expulsion, exclusion, or the detention of children, especially where such measures are triggered by the exercise of freedom of conscience or religion, may undermine the effective enjoyment of the right to education.

104. In assessing the measures in question in the present Communication, the Committee also considers Article 31 of the Charter on the Responsibilities of the Child. Article 31 recognises that children have responsibilities towards their families and society, the State, other legally recognised communities and the international community. These include the responsibility to serve their national community by placing their physical and intellectual abilities at its service and to preserve and strengthen social and national solidarity.[44] The Committee therefore recognises that children are not only rights holders but also members of their national communities with responsibilities towards those communities.

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[43] ACERWC General Comment No. 9 on Article 11 of the African Charter on the Rights and Welfare of the Child (2025), Para 12-13

[44] Article 31 (1) (b) & (c) of the Charter.

As elaborated in the Committee's General Comment on Article 31, children's responsibilities towards the national community contribute to their development and enable them to participate positively in society.[45]

105. The Committee further recalls that Article 11 and Article 31 are closely connected. Education is one of the means through which children are prepared for responsible life, learn about their communities and nations, and develop the ability to contribute positively to society.[46] Children's responsibilities should therefore reinforce, rather than undermine, their enjoyment of the right to education. In this regard, the Committee's General Comment on Article 31 states that children's responsibilities cannot be understood or applied outside the framework of the rights guaranteed by the Charter and that the non-fulfilment of such responsibilities should not be used to justify the violation of children's rights.[47]
106. Accordingly, while the State may legitimately seek to promote national identity, civic responsibility, and national solidarity among children, including within the school environment, the fulfilment of children's responsibilities towards the State cannot be made a condition for enjoying their rights under the Charter.
107. In further assessing the compatibility of the above measures with Article 11 of the Charter, the Committee refers to Article 11 (5) of the Charter, which obliges States to take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the Charter. In the present Communication, the Committee considers that the expulsion of M.A., B.A. and Y.H. for refusing to participate in compulsory ceremonial acts cannot be regarded as disciplinary measures that respect the dignity of the child. Such punitive actions were disproportionate, excluded the victims from the education system, and punished them for acting in accordance with their religious conscience.
108. The Committee therefore finds that, while Article 31 of the Charter recognises the promotion of children's responsibilities towards their national community and fostering national solidarity, the measures imposed on the victims for refusing to salute the national flag and sing the national anthem interfered with their right to education under Article 11. The issue is not the State's promotion of respect for the national flag and the national anthem, but the consequences attached to the children's refusal to participate in those acts. Making continued access to education conditional upon such participation placed an additional burden on children whose religious beliefs prohibited such acts. The resulting expulsion of M.A. and B.A., and the expulsion and detention of Y.H., denied the victims access to education based on their religious beliefs. Rather than encouraging

[45] ACERWC 'General Comment on article 31 of the African Charter on the Rights and Welfare of the Child "The Responsibilities of the Child"' (2017) para 66.
[46] ACERWC General Comment on article 31, para 33-34.
[47] ACERWC General Comment on article 31, para 20-21.

regular school attendance as required under Article 11(3)(d) of the Charter, the measures resulted in their exclusion from the education system. The Committee accordingly finds that the Respondent State has violated Article 11 (1) of the Charter by expelling M.A., B.A. and Y.H. from school for refusing, on account of their religious beliefs, to sing the national anthem and salute the national flag, and by subsequently detaining Y.H., thereby denying the victims access to education.

109. Regarding the allegation concerning alleged mandatory military training, the Committee notes the Applicants' claim that requiring students, including Y.H., to complete their final year of secondary education within a military training camp interferes with the right to education, particularly for children of Jehovah's Witnesses whose religious beliefs prohibit participation in military-related activities. The Committee acknowledges that the national service system applies to citizens from 18 years of age. However, the UN Special Rapporteur on the situation of human rights in Eritrea reported in 2022 that every year thousands of secondary school students, the majority of whom are underage, are required to complete their final year of education and undergo "military training" at the Sawa Training Camp.[48] The Committee notes that these concerns relate to the broader structure and implementation of the education and national service system and are not issues faced exclusively by children of Jehovah's Witnesses. The Committee considers that the reported requirement for underage students to undergo such training as part of their secondary education raises concerns under the Charter. In addition, for children whose sincerely held religious or conscientious beliefs prohibit participation in military activities, such requirements may raise distinct concerns under the Charter. The question before the Committee, however, is whether the Applicants have established that this requirement denied Y.H.'s right to education.

110. The Committee notes that in the present communication, the Applicants have not provided sufficient specific or verifiable evidence to demonstrate that the alleged requirement to undergo military training, as applied, resulted in the effective denial of Y.H.'s right to education. The Committee notes that, as established above, Y.H.'s denial of education resulted from his expulsion from school and subsequent detention, rather than from the alleged compulsory military training requirement. Therefore, while acknowledging the broader concerns arising from the documented reports concerning children being compelled to undergo military training, the evidence before the Committee does not establish that the alleged requirement was applied to Y.H. or resulted in his denial of education. In the absence of evidence establishing a direct causal link between the alleged requirement of compulsory military training and the alleged denial of education, the Committee cannot conclude that the Respondent State

[48] United Nations 'Report of the Special Rapporteur on the situation of human rights in Eritrea'(2022) A/HRC/50/20 para 27.

violated Article 11 of the Charter in respect of Y.H. on this ground. This conclusion should not be understood as an endorsement of military training involving children.

111. ***As a result of the foregoing, the Committee finds that the Respondent State violated Article 11(1) of the African Children's Charter with regard to Y.H., M.A. and B.A. by expelling them from school for failing to perform ceremonial acts and by subsequently detaining Y.H.***

The Committee is unable to conclude that the Respondent State violated Article 11(1) of the African Children's Charter in relation to the alleged compulsory military training, as the evidence before it does not establish that the requirement resulted in the denial of education to the named child victims.

d) Alleged violation of Article 19 on parental care and protection

112. Article 19 of the Charter provides as follows:

> 1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child.
> 2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
> 3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
> 4. Where a State Party apprehends a child, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

113. The Applicants allege that the Respondent State has violated Article 19 of the ACRWC by unlawfully interfering with the victims' right to parental care and by arbitrarily separating children from their parents as part of a broader practice of persecution against Jehovah's Witnesses. They contend that Y.H. has been repeatedly separated from his parents without judicial authorisation or due process, and that such separations form part of a broader pattern of extrajudicial detentions affecting Jehovah's Witness families.

114. The main issue for determination before the Committee is whether the arrest and detention of the victims and their parents, as alleged, amount to an arbitrary separation from parental care and a failure by the Respondent State to protect the rights guaranteed under Article 19 of the Charter.

115. In assessing whether the Respondent State has met its duties under Article 19, it is important to note that Article 19 enshrines an essential principle of children's rights, particularly that children should not be separated from their parents unless it is necessary for their best interests. It also affirms children's rights to

maintain relations and contact with both parents and places a duty on the State to inform parents and children of the whereabouts of either if the State has caused their separation. These words are echoed in the preamble of the ACRWC, which states that "… the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding."[49]

116. Furthermore, the provisions of Article 19 are consistent with the Charter's articulation on the child's right not to be subject to arbitrary or unlawful interference with his family home (Article 10); children's right to protection of the family (Article 18); and the provisions on the duty of parental care (Article 20). The Charter's default stance is that all children are entitled to care and protection by their parents within a family context. The overarching theme of the Charter is that the family environment, including parental care, is a prerequisite for a child's optimal development.[50]

117. The Committee considers each aspect of Article 19 separately.

118. In terms of Article 19(1) of the Charter, this article emphasises that separation from parents without justification violates children's rights. Special circumstances apply only when a judicial authority determines, in accordance with the appropriate law, that it is in the child's best interests to be separated from the parents. The reference to a **"**judicial authority**"** requires that a court, tribunal, or other independent and impartial body vested with judicial power make the decision to separate a child from his or her parents. The Committee observes that the reference to a "judicial authority" in the Charter is equivalent to the term "competent authority" in Article 9 of the CRC. Competent authority in this regard refers to an authorised position rather than to ability; nonetheless, such authorities must have the skills to determine, based on the evidence, what is in the child's best interests.[51] The State should be able to demonstrate that the competent authorities can genuinely give paramount consideration to the child's best interests, which presupposes a degree of flexibility in decision-making.[52] On the other hand, the term 'appropriate law' in this case refers to the need for legislation governing any procedure where the child is separated from his or her parents against his or her will, whether it is the State intervening to remove the child or a third party.

119. In the present Communication, regarding Article 19(1), the Applicants argue that Y.H. was separated from his parents against his will and without any judicial procedure. In this regard, the Committee recalls that the African Commission,

[49] Preamble of the ACRWC.
[50] G. Odongo 'Article 19' The African Charter on the Rights and Welfare of the Child: A Commentary Edited by J Sloth-Nielsen, E. Fokala & G. Odongo (2024) 276.
[51] UNICEF 'Implementation handbook for the Convention on the Rights of the Child' 3rd edition (2007), 127.
[52] As above, 128.

in *Abdel Hadi, Ali Radi & Others v Republic of Sudan*,[53] held that arrests carried out without a legal basis under domestic law constitute a violation of protected rights. The Committee notes that no information before it demonstrates that Y.H.'s arrest and detention were grounded in any identifiable legal basis. The evidence further indicates that the detention of Y.H. and his father occurred as a direct consequence of their religious beliefs, and not pursuant to any criminal conviction or lawful determination. Furthermore, the evidence did not show that a judicial authority ordered his separation from his parents or assessed it in accordance with his best interests. In the absence of any determination by a judicial authority in accordance with appropriate law, the separation described cannot be justified under Article 19(1) of the Charter.

120. Regarding Article 19 (2) of the Charter, the article emphasises the need for a child separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis. The Committee notes that for a child separated from parents, maintaining relations and regular contact is a key factor for the prospects of the child's reintegration and eventually enabling parental care and protection.[54] Whilst Article 19(2) is most commonly applied where parents are divorced or separated and a child is consequently separated from one of them, the Committee considers that its scope is broader. In its view, the provision equally applies in situations where a parent has been imprisoned, or where the child is detained, and there remains a continuing need to preserve personal relations and direct contact between the child and their parent. The underlying purpose of Article 19 (2) is to safeguard the child's right to parental care and protection, and it applies regardless of the nature of the separation.

121. The Applicants submit that the Respondent State did not provide Y.H. or other child victims the right to maintain personal relations and direct contact with both parents regularly.

122. Regarding children in detention, such as Y.H., the Committee draws inspiration from the Guidelines for action for children in the criminal justice system recommended by the Economic and Social Council Resolution 1997/30 of 21 July 1997, which state that 'to maintain a link between the detained child and his or her family and community, and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.'[55] Furthermore, the United Nations Rules for the Protection of Juveniles Deprived

[53] ACHPR, Communication 368/09 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, November 2013, para 80.
[54] UN Guidelines for the Alternative Care of Children, adopted by General Assembly Resolution A/RES/64/142, 24 February 2010, para 3.
[55] Guidelines for action for children in the criminal justice system recommended by the Economic and Social Council Resolution 1997/30 of 21 July 1997.

of their Liberty[56] provide that 'every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends, and other persons or representatives of reputable outside organisations; to leave detention facilities for a visit to their home and family; and to receive special permission to leave the detention facility for educational, vocational, or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.'[57]

123. In the present Communication, the Committee notes that the Applicants make a general submission that children are prohibited from direct contact with their imprisoned parents. However, the Applicants do not allege any specific facts regarding Y.H.'s contact with his parents during his detention. The evidence before the Committee does not provide information on whether Y.H. maintained contact with either parent, whether his family sought such contact, or whether the authorities restricted or prevented it. The Committee observes that, unlike Article 19(3) and (4), which concern information within the control of the Respondent State, such facts would ordinarily be within the knowledge of the family members, as well as the Applicants who brought this Communication on his behalf. Furthermore, while the Committee may draw inferences from a Respondent State's failure to respond to allegations, the Applicants must first establish a prima facie case. In the absence of specific allegations or evidence regarding Y.H.'s contact with his parents, the Committee is unable to conclude that the Respondent State violated Article 19(2) of the Charter.

124. Regarding Article 19(3), this article details instances where separation results from state action, in contrast to separation that may result from private acts or conduct, such as divorce between parents. While the Charter does not list the examples or instances of State action that may result in separation, potential instances of separation occasioned by State action may be drawn from the corresponding CRC provision that expressly lists such cases in a non-exhaustive manner and includes instances of detention, imprisonment, exile, deportation, or death of either or both parents or of the child.[58] The scope of this sub-Article regarding separation applies to a child's separation from the parents or, where relevant, a family member who may presumably be in a parental relationship with the child.

125. The State obligation under Article 19(3) is to provide 'essential information' about the whereabouts of the family member(s) whose separation from the child occurs because of State conduct. In interpreting the equivalent CRC provision,

[56] United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly resolution 45/113 of 14 December 1990.
[57] As above, para 59.
[58] Article 9(4) of the CRC

and given the purpose of maintaining the child's connection with the parents and family members, the Committee considers that 'essential information' should, at the very least, be interpreted to include the address or location of the child, parent or family member and the possibility of visitation or contact between the child and the parent or family member.[59] The beneficiary of this right to information is both the affected child and, where relevant, an appropriate family member. The first part of Article 19(3) of the Charter, thus, does not make the right or duty to provide information dependent on a request from the child or a relevant family member.

126. The Committee further notes that Article 19(3) requires States Parties to ensure that submitting a request for such information does not entail adverse consequences for the person or persons concerned. The Committee considers that this constitutes an additional protection when a request for information is made. This may be interpreted to mean that States and their officials are prohibited from retaliating, punishing, or taking any adverse action against individuals for exercising this right.[60]

127. The Committee notes that Y.H.'s separation from his family resulted from State action through his detention. While the evidence indicates that at least some members of Y.H.'s family subsequently became aware of his detention and place of detention, such knowledge does not establish that the Respondent State discharged its obligation under Article 19(3) to provide the required information. In this regard, the Applicants specifically allege that Y.H.'s family members outside the place of detention were not advised of his whereabouts, and the Respondent State has not provided any information to rebut this allegation or demonstrate that the relevant information was provided. The Committee therefore finds that the Respondent State failed to comply with its obligation under Article 19(3) of the Charter.

128. Lastly, the Committee assesses whether the Respondent State has met its obligations under Article 19(4) of the Charter, which requires States to notify the parents or guardians as soon as possible if the child is arrested and placed in custody. In contrast to Article 19(3), the State must meet this obligation 'as soon as possible' after the child's arrest or placement into custody. It is not contingent on a request by the parent or guardian for information about the arrest, apprehension, or detention.[61] This is in line with the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which require that 'upon the apprehension of a juvenile, his or her parents or guardian shall be immediately notified of such apprehension and where such immediate notification is not possible, the parents or guardian shall be notified within the

[59] Odongo (n 50) 284.
[60] J Tobin & J Cashmore 'Art 9. The right not to be separated from parents in J Tobin (ed) *The UN Convention on the Rights of the Child: A commentary* (2019) 339.
[61] Odongo (n 50) 285.

shortest possible time thereafter'.[62] The underlying rationale for this obligation aligns with the overall premise of Article 19: to preserve and enable the child's right to parental care and protection, even when the child is apprehended and detained.[63]

129. In the present Communication, the Applicants allege that Y.H. was detained after he voluntarily presented himself to the security officials upon learning that the authorities were looking for his mother. It is alleged that his father was already imprisoned at the time. While the evidence indicates that some members of his family became aware of his detention and where he was detained, the Committee has no evidence that the relevant authorities notified his parents or guardian of his apprehension as required under Article 19(4). The fact that family members later became aware of Y.H.'s detention does not absolve the State of its obligation to provide such notification. In the absence of any information from the Respondent State demonstrating that it provided such notification, the Committee finds that the Respondent State failed to comply with its obligation under Article 19(4) of the Charter.

130. ***As a result of the foregoing, the Committee finds the Respondent State in violation of Article 19(1) of the African Children's Charter due to separation of Y.H. from his parents; Article 19 (3) of the Charter due to failure to provide essential information about his whereabouts; and Article 19 (4) of the African Children's Charter due to its failure to notify Y.H.'s parents after his apprehension.***

The Committee is, however, unable to conclude that the Respondent State violated Article 19(2) of the African Children's Charter, as the evidence before it is insufficient to establish that Y.H. was denied regular contact with his parents.

e) Alleged violation of Article 25(1) on separation from parents

131. Article 25(1) of the Charter provides that any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance. The inclusion of the phrase 'for any reason' in Article 25(1) suggests that the entitlement to 'special protection and assistance' encompasses a wider array of circumstances, thus covering a broader scope of children.[64]

[62] UNGA 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)' 29 November 1985 A/Res/40/33, Rule 10.1
[63] As above.
[64] N Cantwell & A Holzscheiter 'A commentary on the United Nations Convention on the Rights of the Child Article 20: Children deprived of their family environment' in A. Alen and others (eds) A commentary on the United Nations Convention on the Rights of the Child (2008) para 37.

132. The Applicants specifically submit that the Respondent State has failed to provide any such special protection or assistance to Y.H., and rather than caring for him as a child victim, it has singled him out for specific discriminatory abuse.

133. In that regard, the main issue for determination by the Committee is whether the Respondent State has failed to provide Y.H., who is currently detained, with the special protection and assistance required under Article 25(1) of the Charter.

134. To begin with, the Committee notes that Article 25 (1) is analogous to Article 20 of the CRC, which concerns children who are temporarily or permanently unable to live with their families, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed for their best interests.[65] It should be noted that this provision refers to family, not parents, an important distinction.[66] This is why the Committee has defined children without parental care as "abandoned children; double orphans and/or children in child-headed households; children in detention, incarceration, or remand homes; children participating in conflict (child soldiers, abducted girls); children living in residential care settings; children living in institutions; street-connected children or children living on the streets; unaccompanied minors; trafficked children; and children in forced or child marriages."[67]

135. Furthermore, the Committee recalls that Article 25(1) of the Charter, as clarified in its General Comment No. 10 on children without parental care, envisions any temporary or permanent deprivation of a family environment; it applies to situations from temporary incapacities of a short- to medium-term nature to more long-lasting situations such as the death of parents or the "definitive withdrawal of parental rights and responsibilities." While it is not possible to define 'temporary' to cover all such situations, a general guide is that a temporary placement should not exceed, at most, three months. The State Party must become involved in a temporary placement at the earliest opportunity, at minimum in an oversight capacity, unless it is a temporary placement in informal kinship care in which state involvement is not necessitated. The reasons for the deprivation of a family environment are not relevant, and may include death, abandonment, voluntary departure, economic circumstances, natural disaster, and national or internal armed conflict. [68] Based on the above, the Committee is of the view that Y.H. falls within the scope of Article 25(1), as he is currently deprived of his family environment as a direct result of his arbitrary detention.

136. The Committee notes that the word "entitled" under Article 25(1) stresses the obligation the State has towards children who cannot be cared for by their

[65] UNICEF, Implementation handbook of the CRC, 277.
[66] As above 288.
[67] ACERWC 'Children without parental care in Africa' 2023, IV.
[68] ACERWC General Comment No.10 on Children Without Parental Care in the Context of Article 25 of the African Charter on the Rights and Welfare of the Child and Care Systems Reform, para 33.

parents. It goes to the heart of the duty all societies owe children: 'if parents cannot meet their children's needs, then the children have a moral claim on the rest of us.' [69] In this respect, the State is the primary duty-bearer, even where a non-governmental organisation or other entity provides day-to-day care.

137. In determining the nature of the special protection and assistance required in Y.H.'s circumstances, the Committee considers Article 25(1) together with Article 17 of the Charter. Article 17(1) provides that every child accused or found guilty of having infringed penal law is entitled to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for the human rights and fundamental freedoms of others. Of relevance to the present Communication is Article 17(2)(c)(iv), which requires that a child accused of having infringed penal law 'shall have the matter determined as speedily as possible by an impartial tribunal.' The Committee considers that these safeguards inform the meaning and scope of the "special protection and assistance" required under Article 25(1) where, as in the present case, a child is deprived of his family environment as a result of detention.

138. In the present Communication, the Committee notes that Y.H. remains in detention without charge. The witness testimony before the Committee further describes the conditions of his detention, including allegations that children are detained together with adults and without adequate protection. While the information before the Committee is general and insufficient to establish all aspects of the conditions of Y.H.'s detention, his continued detention without charge is of particular concern. The Committee considers that keeping a child in detention without charge, and without having the case determined as speedily as possible, is inconsistent with the special treatment and safeguards contemplated under Article 17 and, in Y.H.'s case, with the special protection and assistance required under Article 25(1).

139. ***In light of the foregoing, the Committee finds that the Respondent State violated Article 25(1) of the African Children's Charter by failing to provide Y.H. with special protection and assistance while in detention, separated from his parents.***

f) Alleged violation of Article 26 on protection against apartheid and discrimination

140. Article 26 (2) of the Charter places an obligation on States Parties to individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilisation.

141. The Applicants invoke comparative references to the treatment of Jehovah's Witnesses under totalitarian regimes, particularly Nazi Germany, where children

[69] UNICEF, Implementation handbook of the CRC, 279.

were banned from school, and families were divided as part of State policy. They argue that the Respondent State's actions echo such practices and therefore represent grave violations of the rights enshrined in the Charter.

142. The main issue for determination by the Committee is whether the conditions described by the Applicants amount to a "regime practising religious discrimination" within the meaning of Article 26(2) of the Charter, and, if so, whether the Respondent State accorded the highest priority to their special needs.

143. The Committee recalls that Article 26 aims to shield children from a system whose effects are punitive and discriminatory, resulting in violations of their rights to equality and non-discrimination and impairing access to other fundamental rights. The wording *"children living under regimes practising racial, ethnic, religious or other forms of discrimination*" requires an assessment of the character and operation of the relevant regime, not merely a finding that one or more discriminatory acts occurred. Whether a regime practises discrimination must be determined from the evidence, including the relevant laws and policies, their implementation, the pattern and effects of State conduct, and the situation of the affected children.

144. In assessing whether the conditions described by the Applicants amount to a "regime practising religious discrimination" within the meaning of Article 26, the Committee notes that General Comment No. 20 of the UN Committee on Economic, Social and Cultural Rights describes systemic discrimination as pervasive and persistent discrimination that is deeply embedded in social behaviour and institutional structures, often through indirect or unchallenged practices.[70] It may arise from laws, policies, practices, or dominant cultural attitudes that place certain groups at a relative disadvantage while privileging others.[71]

145. The Committee also takes account of the general approach in regional human rights jurisprudence, which assesses structural discrimination contextually and cumulatively. Such an assessment may consider recurring patterns, the scale and effects of differential treatment, institutional responses, and obstacles to the equal enjoyment of rights. The Inter-American Court of Human Rights has recognised contexts of structural discrimination based on recurring patterns of violence and institutional inaction, [72] while the European Court of Human Rights has found systemic discrimination where entrenched practices, such as the consistent channelling of Roma children into special schools, demonstrated

[70] UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (2009), Para 12.
[71] UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (2009), Para 12.
72 Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico*, Judgment of 16 Nov. 2009, paras. 401–402, and 450.

exclusion and disproportionate impact. [73] Together, this jurisprudence indicates that systemic discrimination should be examined on a case-by-case basis, considering indications of continuous patterns, the scale of discriminatory effects, and structural obstacles that reveal a persistent deprivation of rights for a specific group of children.

146. The Committee first examines the Presidential Decree Ref. No. EG/H03/0004/94 of 25 October 1994. The Presidential Decree explicitly identifies members of the Jehovah's Witnesses community, declares that they have revoked their Eritrean citizenship and directs public authorities to deny them access to government services and civil entitlements. While this constitutes prima facie evidence of State-imposed differential treatment on grounds connected to religious identity, the facts before the Committee do not establish the scope, scale, or systematic implementation of these measures nationwide. The Respondent State did not respond to the allegations or explain the Decree, its purpose, scope, or application. That failure leaves the Applicants' evidence unrebutted; however, it does not, by itself, establish every alleged fact or determine whether Article 26(2) has been violated. The record does not clearly establish the Decree's duration or the extent to which it has been applied to children.

147. The Committee also recalls that Proclamation No. 82/1995 on National Service establishes compulsory national service for all citizens, without exception. The only exemptions available are health-related and must be approved by the designated authorities under Articles 10 and 11 of the Proclamation. The Committee also observes that non-compliance with national service may result in imprisonment, and that rights such as access to licences, visas, land tenure and public employment may be suspended under Article 37. The Proclamation is framed in general terms and does not, on its face, single out a religious group. Its general wording does not, however, resolve whether its application has discriminatory effects in practice. The question is whether the evidence links its operation to the alleged discrimination against Jehovah's Witness children. The record before the Committee establishes that the policy forms part of the relevant context but does not sufficiently clarify how it applied to the children concerned.

148. The Committee acknowledges that the evidence before it establishes serious violations affecting the named children, including expulsion from school for refusing to participate in patriotic ceremonies, the arrest and detention of Y.H., and the denial of birth registration to L.M. The Committee further notes reports indicating broader restrictions and repression affecting members of the Jehovah's Witnesses community in Eritrea. However, while these instances demonstrate grave interferences with the rights of specific children, the facts

[73] The European Court of Human Rights (ECtHR), *D.H. and Others v. Czech Republic*, GC Judgment, App. No. 57325/00, paras. 185–209.

before the Committee do not sufficiently establish the extent, consistency or institutional coordination of the measures affecting children as a group.

149. The evidence of these individual violations and the broader restrictions reported against Jehovah's Witnesses is serious. Nevertheless, having considered the Decree, its unclear application to children, the individual cases and the reports before it cumulatively, the Committee finds that the communication does not sufficiently establish the character and operation of the circumstances as a regime practising religious discrimination against children within the meaning of Article 26(2). Accordingly, the Committee finds that the Respondent State has not been shown, on the evidence before it, to have violated Article 26(2) of the African Children's Charter.

150. The Committee's finding under Article 26(2) does not dispose of the allegation of religious discrimination. The Committee therefore considers whether the facts established disclose discrimination under Article 3 of the Charter. The Committee notes that while the Applicants refer to Article 3 in their Communication, they did not provide any arguments on the article. However, the allegation of discrimination on religious grounds is central to the Applicants' case and is the basis of the alleged violations.

151. The Committee recalls that it is not bound by the legal characterisation of the facts advanced by the parties and may examine the facts before it in light of any relevant provision of the Charter. In *ACJPS (on behalf of Osman Mohamed) v. Sudan*, the Committee, considering the nature of the case, found a violation of Article 27 of the Charter although the Complainant had not alleged a violation of that provision.[74] This approach is consistent with the principle of *iura novit curia* applied by other human rights bodies. The Inter-American Court of Human Rights, for instance, has applied the general obligation under Article 1(1) of the American Convention on Human Rights although it was not specifically alleged, holding that a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them.[75] The European Court of Human Rights has similarly held that it does not decide outside the scope of a case where it recharacterises in law the facts complained of by basing its decision on a provision not relied on by the applicants, provided that it does not base its decision on facts not covered by the complaint.[76] The Committee's assessment under Article 3 is accordingly based on the facts already established in respect of the substantive rights examined above.

152. Article 3 of the Charter provides that "every child shall be entitled to the

[74] ACERWC, Communication No 0016/Com/004/2020, African Centre for Justice and Peace Studies (ACJPS) (on behalf of Ms. Umjumah Osman Mohamed) v The Sudan, Decision on Merits No. 003/2022, para 87-90.
[75] *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, Judgment of 29 July 1988 (Merits), Series C No. 4, para 163.
[76] *Radomilja and Others v. Croatia* [GC], Application Nos. 37685/10 and 22768/12, 20 March 2018, para 124–126.

enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status." The provisions are complementary but distinct. Article 3 protects every child against discrimination in enjoying the rights set out in the Charter. Article 26(2) concerns the State's obligation toward children living under regimes that practise discrimination. A violation of Article 3 may therefore be established in an individual case even where the evidence is insufficient to establish the broader circumstances required for a finding under Article 26(2).

153. Article 3 prohibits discrimination on prohibited grounds, including religion, and extends to discrimination by association, where a child suffers disadvantage based on their parents' religion or beliefs. The Committee recalls its decision concerning children of Nubian descent, where it held that facts disclosing differential treatment on a prohibited ground establish a prima facie case of discrimination, thereby shifting the burden to the State to show that the treatment is founded in a legitimate State interest and is strictly proportionate and absolutely necessary.[77] The Respondent State's failure to respond leaves the allegations without a justification in this communication.

154. The Committee notes that the treatment of Y.H. is directly linked to the religious identity of his parents as Jehovah's Witnesses. As previously established, discrimination may arise not only from explicit distinctions but also from any State action that has the purpose or effect of impairing the equal enjoyment of rights on prohibited grounds, including religious belief. In this case, Y.H.'s repeated detentions, first at 2.5 years old alongside his mother, again at seven, and later at 16, show that he was subjected to violations of his rights that were neither based on his own conduct nor grounded in any lawful justification. Instead, these measures resulted from the authorities' actions against his parents' faith. This differential treatment, rooted in the religion of his parents, disproportionately affected Y.H. and constitutes discriminatory interference with the rights of a child protected under Article 3 of the African Children's Charter.

155. Moreover, the cumulative impact of these actions, including lifelong separation from his parents, exposure to arbitrary detention during early childhood, repeated instability, and the denial of a normal family life, shows that Y.H. experienced violations inseparable from the discriminatory targeting of his parents. Under Article 3, States must ensure that every child enjoys their rights without distinction of any kind, including on the basis of religion or the beliefs of parents. The pattern of arrests, prolonged detentions without legal process, and the absence of any individualised assessment of Y.H.'s circumstances

[77] African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Government of Kenya*, Communication No. Com/002/2009, Decision No. 002/Com/002/2009.

demonstrate that the State failed to recognise him as an independent rights-holder and instead penalised him for his family's religious affiliation. This constitutes discrimination by association, falling under Article 3 and breaching the State's duty to provide equal protection and non-discriminatory treatment to all children regardless of their beliefs or the beliefs and status of their parents.

156. The Committee further finds that M.A. and B.A. were expelled from school after refusing to salute the flag and sing the national anthem. Their exclusion placed them at a disadvantage in enjoying education because of their religious beliefs. The Applicants also alleged that their father was required to renounce his faith before they could return to school. The Committee has no independent evidence establishing that this condition was imposed and does not rely on that allegation as a factual finding. The expulsions themselves, which the Respondent State has not rebutted or justified, constitute discrimination contrary to Article 3, in addition to the Article 11 violation found above. As found under Article 6 above, the denial of L.M.'s birth registration on account of her parents' religious affiliation also constitutes discrimination contrary to Article 3.

157. The Committee finds that the Respondent State violated Article 3 in respect of L.M., Y.H., M.A. and B.A., as set out above.

g) Alleged violation of Article 30 on children of imprisoned mothers

158. Article 30 of the Charter provides that States Parties shall afford special treatment to expectant mothers and to mothers of infants and young children who are accused or convicted of offences under the penal law. It further requires that courts give primary consideration to non-custodial sentences when sentencing such mothers, that alternative measures to imprisonment be developed and promoted, and that special facilities be established for their care and rehabilitation. Article 30(d) explicitly prohibits imprisoning a mother together with her child, underscoring the Charter's protection of the child's best interests and welfare in all circumstances.

159. The Applicants allege that the Respondent State violated Article 30 of the Charter by unlawfully detaining Y.H.'s mother together with Y.H. They submit that this incident is not isolated but rather reflects a systematic policy and practice of punishing families, including children, based on their parents' religious beliefs. Although the Communication identifies other victims, the alleged violation under this provision, as submitted by the Applicants, concerns only Y.H. The Committee notes the supplementary evidence provided regarding similar cases involving other children and parents, which provides useful context; however, to determine whether the Respondent State has violated the Charter, the Committee limits its analysis to the identified victim.

160. The Applicants submit that Y.H.'s father has been imprisoned for over twelve years and was again detained without due process on 28 February 2023. Following his father's initial imprisonment, Y.H.'s mother was also arrested for

attending a religious meeting where all participants, including children, were taken into custody and held in harsh and inhumane conditions. At the time, Y.H. was approximately 2.5 years old and was detained together with his mother, three-year-old brother, and ten-year-old sister. Y.H. remained in detention for about two and a half years before being released. His mother was released on 4 January 2012 but was later re-arrested on 27 April 2014, during which Y.H. (seven years old at the time) was again detained with her for three days.

161. The Applicants further argue that the Respondent State failed to comply with its obligations under Article 30. They argue, first, that no non-custodial alternatives were considered when detaining mothers, contrary to Article 30(1)(a). Second, they submit that the Respondent State has not established any special or alternative institutions for the detention of mothers, in violation of Article 30(1)(c). Instead, women are held in general facilities. Third, the Applicants maintain that the Respondent State has entirely disregarded the obligation under Article 30(1)(d) to ensure that mothers are not imprisoned with their children, as evidenced by Y.H.'s repeated detention as a child. Finally, they note that no safeguards were in place to protect the best interests of Y.H., including consideration of his nutritional and developmental needs, assessments of his best interests, or monitoring of the treatment and conditions of children living in prison with their mothers.

162. Accordingly, the issue for determination by the Committee is whether the imprisonment of Y.H.'s mother and the resulting deprivation of liberty experienced by Y.H. amounts to a violation of Article 30, particularly 30 (1) (a); (c); and (d).

163. In analysing the issue, the Committee is guided by its General Comment No. 1 on Article 30 of the African Charter on the Rights and Welfare of the Child,[78] which clarifies that the protection afforded under this provision extends beyond children of imprisoned mothers to include children of incarcerated and imprisoned parents and primary caregivers. The Committee notes that the application of Article 30 encompasses various scenarios involving parents and primary caregivers accused or found guilty of violating criminal law, including long-term incarceration, short-term incarceration, sporadic incarceration, and even the death penalty. The measures outlined in Article 30 and subsequently in General Comment No. 1, which States Parties should undertake, include special treatment, prioritising non-custodial sentences for such mothers, promoting alternative measures to institutional confinement, establishing specialised alternative institutions for these cases, ensuring mothers are not imprisoned with their children, prohibiting the imposition of the death sentence on such mothers, and emphasising the ultimate goal of the penitentiary system

[78] ACERWC, General Comment No. 1 on Article 30 of the African Charter on the Rights and Welfare of the Child on "Children of Incarcerated and Imprisoned Parents and Primary Caregivers" (November 2013).

as the reformation, integration of the mother back into the family, and social rehabilitation.

164. The Committee further draws inspiration from Article 24 (b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003, which mandates States Parties to ensure 'the right of pregnant or nursing women…in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity'. Additionally, Article 4 (2) (j) also prohibits the imposition of the death penalty on pregnant and nursing mothers. The Guidelines for the Alternative Care of Children, adopted by the UN General Assembly through Resolution 64/142 on December 18, 2009, also serve as a framework to inform policy and practice. Regarding children of incarcerated parents and caregivers, the Guidelines emphasise the prioritisation of non-custodial measures in cases where a child's primary caregiver faces potential deprivation of liberty due to preventive detention or sentencing, ensuring the child's best interests are paramount.[79]

165. Recognising the need for gender-specific standards, the General Assembly adopted the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in December 2010. These rules addressed the specific characteristics and needs of women offenders and prisoners.[80] Moreover, the Bangkok Rules not only clarified existing provisions in the Tokyo Rules concerning women prisoners and offenders but also expanded into new areas. The specific safeguards for children of incarcerated mothers are outlined below: Rule 49: Children in prison with their mother should never be treated as prisoners; Rule 50: Mothers must be allowed as many opportunities as possible to spend time with the children who are imprisoned with them; Rule 51: The environment provided for such children's upbringing shall be as close as possible to life for a child outside; Rule 52: The decision as to whether a child is to be separated from its mother must be based on individual assessments and the best interests of the child; and Rule 64: Non-custodial alternatives to custody should be applied wherever possible if someone facing imprisonment has sole caring responsibilities.

166. The Committee first examines whether the Respondent State complied with its obligation under Article 30 (1) (a) of the Charter to consider a non-custodial sentence when dealing with mothers of infants and young children accused or found guilty of infringing the penal law. The Committee notes that this obligation reflects the Charter's recognition that depriving a primary caregiver of liberty has direct and profound consequences for the child and therefore requires heightened scrutiny and restraint. The Committee further recalls, as clarified in

[79] UN General Assembly, Resolution 64/142 Guidelines for the Alternative Care of Children (18 December 2009) UN Doc A/RES/64/142 (2009), para 48.
[80] UN General Assembly, Resolution 65/229 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (21 December 2010) UN Doc A/RES/65/229 (2010).

its General Comment No. 1 on Article 30, that the obligation to prioritise non-custodial measures applies at all stages of the criminal justice process, including arrest.[81] States Parties must therefore demonstrate that alternatives to detention were considered and that custodial measures were imposed only as a measure of last resort, with due regard to the best interests and welfare of the child.

167. In the present Communication, the Committee notes that Y.H.'s mother was arrested and detained on multiple occasions in connection with her participation in religious meetings. In the absence of submissions on the merits by the Respondent State, the Committee finds no information on record indicating that non-custodial alternatives were considered at the time of her arrest or detention, nor that any assessment was undertaken regarding her status as a mother of infants and young children. In that regard, the Committee finds that the Respondent State failed to comply with its obligation under Article 30(1)(a) of the Charter to give primary consideration to non-custodial measures in respect of Y.H.'s mother.

168. The Committee next examines whether the Respondent State complied with its obligation under Article 30(1)(c) of the Charter to establish special alternative institutions for mothers of infants and young children. As clarified in the Committee's General Comment No. 1 on Article 30, such institutions are intended to operate as a measure of last resort. They must be specifically designed to safeguard children's rights and best interests, including by ensuring appropriate living conditions, access to care, and maintenance of family bonds.[82] The Committee recalls that the General Comment emphasises that special alternative institutions must focus on realising children's rights and should not merely replicate ordinary detention facilities. Such institutions require tailored conditions that address children's developmental, nutritional, emotional, and social needs, and must be supported by a clear legal and institutional framework rather than ad hoc arrangements or discretionary practices.[83] Where such institutions do not exist, States Parties are required to prioritise non-custodial measures in order to avoid exposing children to the harms associated with detention.

169. In the present Communication, given that the Respondent State did not submit its arguments on the merits, the Committee has no information or record indicating that the Respondent State has established or utilised any special alternative institutions for mothers with infants and young children. On the contrary, the facts of the Communication indicate that Y.H.'s mother was detained in ordinary detention facilities together with Y.H., without any evidence of child-specific arrangements, safeguards, or services designed to protect their rights and welfare. The Committee also recalls the testimony of one witness

[81] ACERWC General Comment No. 1 on article 30, para 11.
[82] ACERWC General Comment No. 1 on article 30, para 50.
[83] ACERWC General Comment No. 1 on article 30, para 51.

during the hearing, who stated that she was once imprisoned with her mother and her father was also held separately in the same prison. In the absence of such institutions or equivalent protective measures and given the lack of information indicating that detention was unavoidable, the Committee finds that the Respondent State failed to comply with its obligations under Article 30(1)(c) of the Charter to establish special alternative institutions for holding mothers of infants and young children.

170. The Committee examines whether the Respondent State has complied with its obligations under Article 30(1)(d) to ensure that a mother shall not be imprisoned with her child. In determining that, as already alluded to, the Committee notes that the provisions of this article reflect the importance the Charter places on children growing up in a 'family environment in an atmosphere of happiness, love and understanding.' This provision also reinforces the obligation on States Parties to provide alternatives to pre- and post-trial custody for caregivers and/or pregnant women.[84] Where a child is permitted to remain with an incarcerated mother, States Parties remain fully obligated to respect, protect, and fulfil the child's rights. They must put in place appropriate safeguards, including regular assessments of the child's best interests and measures addressing the child's nutritional and developmental needs.[85]

171. As already noted by the Committee, Y.H. was imprisoned with his mother as an infant and remained in detention with her for an extended period of time. The Committee further notes that this occurred without any information indicating that alternatives to detention were considered or that safeguards were put in place to protect the child's rights and welfare. In that regard, the Committee finds that the Respondent State did not comply with its obligations under Article 30(1)(d) of the Charter.

172. ***As a result of the foregoing, the Committee finds the Respondent State in violation of Article 30 (1) (a); (c); and (d) of the African Children's Charter.***

XI. Request for compensation

173. The Committee notes that the Applicants have requested that the Respondent State compensate the families of the victims and other Jehovah's Witness children for out-of-pocket expenses relating to private schooling, as well as for missed educational opportunities resulting from suspension or expulsion for the exercise of their religious conscience. The Applicants have not specified the amount claimed, nor have they provided detailed justification or documentary proof to substantiate the alleged material losses.

174. The Committee emphasises that where a State is found internationally responsible for a violation of the Charter, it bears the primary obligation to ensure that the victim is adequately compensated, notwithstanding the

[84] ACERWC General Comment No. 1 on article 30, para 54.
[85] ACERWC General Comment No.1 on article 30, para 55.

existence of complementary avenues for redress under domestic law. The African Court has reiterated that the right to reparations for breaches of human rights obligations is a fundamental principle of international law, and that a State responsible for an international wrong must make full reparation for the damage caused.[86] As affirmed by the African Court in *Rev. Christopher R. Mtikila v. United Republic of Tanzania*, a core principle of contemporary international law on State responsibility, now recognised as customary international law, is that any breach of an international obligation that results in harm creates a corresponding duty on the State to provide adequate reparation.

175. In this Communication, the Committee found the Respondent State in violation of Articles 3, 6(2), 9, 11, 19(1), (3) and (4), 25(1), and 30(1)(a), (c) and (d) of the African Children's Charter, and thus responsible for the wrongful act against the victims. The Committee considers that these violations give rise to harm that can be compensated, including lost educational opportunities, mental and emotional harm, moral damage, and other consequences resulting from the established violations.

176. In determining appropriate reparations following a finding of violations of the Charter, the Committee is guided by its Guidelines on Reparations.[87] These Guidelines require reparations to be fair, adequate, prompt, and effective. They should also be proportionate to the damage suffered.[88] Furthermore, reparations must adopt a child-victim-centred approach, requiring a full understanding of the harm suffered and the specific needs and circumstances of the child victim.[89]

177. According to the Committee's Guidelines on Reparations, in assessing compensation, consideration is given to factors such as physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage, such as pain, suffering, harm to dignity, and mental and emotional harm; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.[90]

178. The Committee notes that the violations established in the present Communication affected the named victims in different ways. In respect of Y.H.**,** the Committee notes that he was detained, separated from his parents, excluded from education and subjected to interference with his freedom of thought, conscience and religion. These violations resulted in loss of educational opportunities and are also capable of causing mental and emotional harm, particularly considering his age and the circumstances of his detention and separation from his family. In respect of M.A. and B.A.**,** the Committee notes

[86] AfCHPR, Application No. 006/2012, *African Commission on Human and Peoples' Rights v Republic of Kenya*, para 36.
[87] ACERWC Guidelines on Reparations (2025).
[88] Para 17.
[89] Para 22-24.
[90] Para 90.

that their expulsion from school resulted in loss of educational opportunities and disrupted their education. The circumstances surrounding their expulsion and the detention of their father may also have caused mental and emotional harm and affected their family life. With respect to L.M.**,** the Committee notes that the violation concerned the failure to register her immediately after birth, which interfered with the timely recognition and documentation of her legal identity. While the evidence does not establish the same forms of harm identified in relation to the other named victims, the Committee considers that the nature and consequences of the violation suffered by L.M. should also be considered in determining the appropriate reparation.

179. In determining the specific amount of compensation to be awarded, the Committee notes that the Applicants have not specified the amount claimed and have not provided sufficient information or evidence to enable the Committee to quantify the harm suffered by each named victim. The Committee considers, however, that the absence of a specified amount does not, in itself, preclude an award of compensation where the violations established have resulted in compensable harm.

180. The Committee is therefore of the view that the amount of compensation is best determined at the national level, as provided in its Guidelines on Reparations, which state that "if the Committee considers compensation to be an appropriate reparation but is unable to determine such, it can decide that the amount is best determined at the national level." A similar approach was adopted by the African Commission in *J (Represented by the Initiative for Strategic Litigation in Africa (ISLA) & Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)) v Namibia*,[91] where the Commission, having found violations of the African Charter on Human and Peoples' Rights, held that compensation was warranted but could not determine the amount due to insufficient substantiation of the claim. The Commission therefore directed the Republic of Namibia to determine the amount of compensation to be awarded to the victim. The Committee similarly followed this approach in *People Serving Girls at Risk & Equality Now on behalf of Maggie v Republic of Malawi*,[92] where it found compensation warranted but, in the absence of sufficient information to determine the quantum, directed the Respondent State to determine and award compensation through an appropriate mechanism.

181. In light of the foregoing, the Committee directs the Respondent State to determine and award compensation to the victims through an appropriate mechanism, in compliance with the following requirements derived from the Guidelines on Reparations:

    a) The process shall be child-sensitive and accessible.[93]

[91] Communication 734/19 [2024] ACHPR 11 (8 March 2024).
[92] ACERWC, Communication No: 0021/Com/003/2022**,** *PSGR & Equality Now v Malawi*, Decision No: 002/2025, para 155-157.
[93]Paras 22-24, 119-120.

b) The victims shall be informed and enabled to participate, subject to their evolving capacity.[94]

c) The determination of compensation shall take into account the full extent of harm, including physical, psychological, and moral damage.[95]

d) The Respondent State shall ensure that the compensation is adequate, proportionate, and responsive to the victims' needs.[96]

e) Where necessary, the Respondent State shall adopt measures to safeguard the compensation, including the establishment of appropriate mechanisms.[97]

182. The Committee also considers that other forms of reparation, such as restitution and rehabilitation, are necessary.

183. Accordingly, the Committee finds that restitution requires the immediate release of Y.H. from detention and the adoption of all necessary measures to ensure his prompt reintegration into the educational system without discrimination or delay. The Respondent State shall further provide Y.H. with appropriate educational, psychological, and social support necessary for his rehabilitation and reintegration into society.

184. In respect of M.A. and B.A., restitution requires that the Respondent State take all necessary measures to secure their unconditional readmission to school and guarantee their continued access to education without coercion, discrimination, or interference with their freedom of thought, conscience and religion.

185. As a guarantee of non-repetition, the Respondent State shall adopt all necessary legislative, administrative, and other measures to ensure that no child is denied access to education, birth registration, or other public services on account of his or her religion or belief. The Respondent State shall further ensure that children are not subjected to coercion, punishment, expulsion, detention, or other adverse consequences for refusing to participate in patriotic ceremonies on grounds of conscience or religion.

XII. Decision of the Committee

186. Based on the analysis, the Committee finds the Respondent State in violation of Articles 3; 6 (2); 9; 11(1); 19(1), (3), (4); 25 (1); and 30 (1) (a, c, & d) of the African Charter on the Rights and Welfare of the Child.

187. The Committee does not find a violation of Article 19(2) and Article 26(2) of the African Charter on the Rights and Welfare of the Child.

188. The Committee, therefore, recommends that the Respondent State:

[94]Paras 52-55.
[95]Para 90.
[96]Para 17.
[97]Para 111(d).

a. Take all necessary legislative and administrative measures to rescind or amend Presidential Decree Ref. No. EG/H03/0004/94 of 25 October 1994 and ensure that no child is denied birth registration, official documentation or recognition of Eritrean nationality on account of his or her own or his or her parents' religious affiliation.
b. Immediately release Y.H. from detention and ensure that he is not subjected to further deprivation of liberty and provide appropriate measures to support his rehabilitation and reintegration into his family and community.
c. Take immediate and effective measures to facilitate the reintegration of Y.H., M.A., and B.A. into the formal education system without discrimination, including the provision of appropriate remedial educational support where necessary.
d. Take comprehensive legislative and administrative measures to ensure that all children in the State Party, including children of Jehovah's Witnesses, are protected from discrimination and enjoy their rights under the African Children's Charter without distinction of any kind, particularly with respect to birth registration, access to education, freedom of thought, conscience and religion, and protection from arbitrary separation and detention.
e. Take adequate measures to compensate the victims for the pecuniary and non-pecuniary damage suffered because of the above-mentioned violations.

189. In accordance with Section XXII (1) of the Guidelines for Consideration of Communications and Monitoring Implementation of Decisions of the African Committee of Experts on the Rights and Welfare of the Child, the Government of Eritrea shall report to the Committee on all measures taken to implement this decision within 180 days from the date of receipt.

Done at the ACERWC 46th Ordinary Session, from 26 November 2025 to 06 December 2025, Maseru, Lesotho



Honourable Sabrina Gahar
Chairperson
African Committee of Experts on the Rights and Welfare of the Child