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

ADMISSIBILITY RULING

Communication N^{o}: 0011/Com/001/2018

Decision on Admissibility N^{o}:001/2019

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Respondent: The Government of the Republic of the Sudan

I. Registration of the Communication

1. The current Communication is submitted pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC) and duly registered by the Secretariat of the ACERWC on 26 August 2018. The Communication is submitted by Project Expedite Justice, The Al Khatim Adlan Centre for Enlightenment and Human Development, The International Refugee Rights Initiative, African Centre for Justice and Peace Studies, Horn of Africa Civil Society Forum and National Human Rights Monitors Organization (herein after referred to as Project Expedite Justice *et al* or the Complainants), on behalf of children in South Kordofan and Blue Nile states (jointly the "Two Areas") against the Government of the Republic of the Sudan ("the Respondent State").

II. Summary of Alleged Facts

2. The Complainants allege that in June 2011, conflict erupted in the Blue Nile and South Kordofan regions of The Sudan between the Respondent State and the Sudan People's Liberation Army-North (SPLA-N). It is alleged that the Respondent State has deliberately and indiscriminately targeted civilians and engaged in a campaign of aerial and ground attacks by the Sudanese Armed Forces (SAF). The Complainants stated that as a direct result of the Respondent State's campaign, infants and children have been killed, entire towns and villages have been depopulated, and over a million people have been forced into camps as Internally Displaced People (IDPs) or abroad as refugees.
3. The Complainants further allege that the Respondent State's persistent bombing of civilians has killed and maimed children far from the frontlines of the conflict, and served no legitimate military purpose. As part of their submission, the Complainants refer to various instances of bombing that targeted civilians, including high number of children, particularly the May 2015 areal bombardment that caused displacement and a disruption of basic services, including children's access to vaccination and health services, and the destruction of schools; and the bombing campaigns in 2014 and 2015, called "Operation Decisive Summer," which allegedly resulted in an increase in the violent deaths of civilians, widespread displacement and extreme food insecurity. The Complainants stated that Barrel bombs are released from high-flying Antonov aircrafts and there is an increased use of cluster munitions.
4. The Complainants further site various examples of instances of attacks against children. On 18 November 2012, four children were playing under a fruit tree in Al Dar, Buram locality, when a SAF Antonov plane dropped a bomb on them. Two brothers, ages five and ten were killed instantly. Their two cousins, ages three years and two months, were injured when pieces of flying shrapnel hit their limbs. Less than one month later, on 12 December 2012, a second Antonov bombed their family's home. All eight members of

their family, including the remaining seven children, were forced to flee. On 3 November 2013, a family was in their home in Farandala when it was bombed at approximately 9:00 am, as a result a five-year-old sustained serious injuries to his stomach, causing his intestines to fall out. While they were on the way to the hospital, the hospital was also bombed and the facilities to treat the injured boy were all destroyed. It is also alleged that on 16 October 2014, six children in Heiban village were killed when a bomb hit a house in which seven children between the ages of five and twelve were hiding. Only one child survived. On 7 January 2015, a seven-year-old boy was hit by shrapnel from a SAF fighter jet attack on Abu Lila, South Kordofan. The boy's right foot was severely damaged. He also had deep cuts on his back and suffered blood loss from other injuries sustained by the shrapnel. Though the child was taken to the nearest clinic, he eventually died from the injuries. Moreover, according to the Complainants, in February 2015 in Umdorein, a family of eight children ran to a foxhole for shelter. As they hid, their foxhole caught on fire, burning one child to death immediately. Four siblings were severely burned and driven to Gidel Hospital, a four-hour drive away. The three-year-old girl died from her injuries within a few days. Her ten-year-old sister died after becoming infected with tetanus, and her eight-year-old brother died after maggots swarmed into his wounds. Only a five-year-old boy survived the attack, and he now suffers from severe PTSD. On 1 May 2016, the Respondent State's aerial bombardment on Heiban violently killed six children aged between four and twelve years. The Complainants state that between 1 March 2011 and 21 December 2016, 328 cases of children either maimed or killed has been recorded in the Two Areas.

5. The Complainants allege that as early as 2014, SAF began employing Sukhoi jets to attack civilians. Despite the increased accuracy, improved technology and the ability of the Sukhoi jet to deliver a wider range of destructive weapons, such as FAB 500 parachute bombs with a destructive area of 1,500 square meters and S-8 rockets, civilian causalities increased following their introduction. Drawing from the above instances, the Complainants submit that the high increase in civilian causality, considering the fact that Sukhoi jets are designed to reduce civilian causality, proffes that the Respondent State deliberately targeted civilians.
6. Following aerial bombing campaigns, according to the Complainants the Government armed groups continued to carry out ground attacks on villages, looting and arbitrary arrests, including of children, and that the Government allowed such attacks to continue with impunity.
7. It is alleged that the Respondent State has also obstructed humanitarian access including the distribution of foreign food aid, and has failed to reach a permanent solution that will end the conflict and ease the suffering of the children in the Two Areas.
8. The Complainants state that after seven years of attacks, unexploded ordnance litters the Two Areas, posing an additional and ongoing danger, especially to children. It was alleged that the Respondent State employed anti-personnel mines in clear violation of its

obligations under the Convention on the Use, Stockpiling, Production and Transfer of Anti-Personnel Land Mines.

9. The Complainants allege that bombings intensify during key planting and harvesting seasons, thereby severely impacting civilians' ability to cultivate crops. Approximately 2.1 million children in Sudan are reportedly malnourished, most of which live in the Two Areas. It is alleged that 1205 people, half of them children, starved to death in Payam Wadaka, Blue Nile Region, from 2011 to 2012.
10. The Complainants also allege that persistent bombing destroyed hospitals and clinics and forced their closure, leaving only a few functioning health services in all of the Two Areas. It is stated that the Gidel Hospital, which attends to a population of more than half a million people, was targeted by 60 bombs between May and June 2014, including eleven times in a two-day period on 1 and 2 May 2014. When UNICEF and the Ministry of Health launched a measles immunization campaign, the Respondent State prevented them from accessing SPLM-N controlled areas of South Kordofan, resulting in a widespread outbreak. The lack of access to vaccines in the Two Areas has placed approximately 160,000 children under five, at risk of polio and other preventable diseases since 2011.
11. It is alleged that schools were targeted by bombing campaigns despite the fact that they are far from the frontline and are not used as garrisons by the SPLM-N. In 2015 the bombings destroyed approximately 20 schools in the Nuba Mountains, forcing most remaining schools to operate outdoors and others to cease operations.
12. The Complainants allege that on 28 February 2012, twenty-two children perished along the road as a group of 4,500 civilians fled conflict that had erupted in Trugi, South Kordofan Region. Between January and June 2016, 7,500 people fled South Kordofan to South Sudan refugee camps, 3,000 of them in May alone. Almost 90% were women and children, and about 10% were children travelling alone.
13. The Complainants claim that the Respondent State has committed violations, including harassment, arbitrary detention, and torture of those perceived to be supporters of the SPLM/A-N or based on their non-Arab ethnicity. Children experience torture in detention such as beaten with sticks, hoses and gun butts, suspended up-side down from the ceiling and burnt with molten plastic bottles. Minors have been victims of rapes including by the police, Government forces, and Government aligned militias. In other instances, minors witnessed the rape of their family members including their mothers and sisters.
14. The Complainants narrate that on 25 October 2011, six boys ages twelve to eighteen were stopped by Popular Defense Force (PDF) forces in Dilling and accused of being SPLM-N, likely because they were of Nuban ethnicity. The six children were taken away in different directions. Five boys were killed. A thirteen-year-old child was arrested in Shamshaga village, Abu Kershola, South Kordofan in November 2013 during a raid of the village by SAF, Military Intelligence, National Intelligence Security Service (NISS), PDF and (Rapid Support Forces) RSF personnel. While in detention, the child was beaten with sticks, hoses and gun butts, suspended up-side down from the ceiling and burnt with

molten plastic bottles. The child was brought before a military court on charges of undermining the constitutional system and waging war against the state. On 15 May 2012, a nine-year-old boy was reportedly raped by a police officer at the Al Guenis Market outside of Alrois, Blue Nile. A 14-year-old girl from Khor Maganza, Blue Nile was arrested in September 2014 alongside her mother and sister and taken to the military barracks, where she was raped by four different soldiers. On 22 March 2015, a sixteen-year-old girl from Damazin, Blue Nile was raped by a SAF soldier. She reported the incident to Family and Child Protection Police; the Medical Assessment Report confirmed that rape had occurred and that the victim suffered injuries to her head and shoulder. However, the police failed to follow up and the perpetrator was never summoned to the administration unit as promised. On 2 January 2016, five women, including an eleven-year old girl, were raped by the RSF when it attacked the main market in El Abbasiya.

III. The Complaint

15. On the basis of the above facts, the Complainants submit that the Government of The Sudan has failed to protect the children in the two areas from various forms of harms, hence it has violated the following provisions of the African Charter on the Rights and Welfare of the Child:
    i. Article 1- obligation to give effect to the charter;
    ii. Article 5- right to life, survival and development;
    iii. Article 11- right to education;
    iv. Article 14- right to health and health services;
    v. Article 17- administration of juvenile justice;
    vi. Article 22- rights of children during armed conflict and
    vii. Article 27- sexual abuse and violence.

IV. Preliminary Examination and Transmission of the Communication

16. The Secretariat of the ACERWC received the Communication on 26 August 2018.

17. In accordance with Section III of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Guidelines), the Secretariat of the ACERWC undertook preliminary review of the Communication. The Secretariat reviewed the Communication against the requirements of form and content and noted that the Communication is directed against a State Party to the Charter, as the Respondent State, within whose jurisdictions violations of the rights enshrined in the Charter have allegedly been committed, ratified the ACRWC on the 18 July 2010. The Communication was brought by organizations legally recognized by Member States of the African Union.

It is brought on behalf of children in Blue Nile and South Kordofan regions of the Sudan. It is also duly signed by the Complainants and written in an official language of the Committee. Therefore, as the Communication meets the requirements of form and content, the Secretariat, according to Section IX (2) (I) of the Guidelines, transmitted a copy of the Communication to the respondent State Party.

18. The Respondent State submitted a written response on the issue of admissibility on 4 December 2018.

V. Consideration of Admissibility

Complainants' submission on admissibility

19. The complainants claim that the Communication is compatible with the provisions of the Constitutive Act of the African Union, the African Children's Charter, and it is in compliance with the requirements set forth in the Revised Guidelines.
20. The Complainants state that the information contained in the Communication was collected through onsite investigations, including interviews with victims and witnesses. The investigations and interviews were conducted by, inter alia, Project Expedite Justice and local human rights activists who have documented the Respondent State's aerial and ground attacks. A vast majority of the illustrative incidents referred to in this brief are also corroborated by documentary, photographic, and video evidence, as shown in Annex B of the Complainants' application document. The information and evidence presented also includes official reports from the UN, foreign governments, and NGOs.
21. The Complainants provide that local remedies have not been exhausted because of the following reasons: due to the number of victims, domestic remedies would be neither practicable nor desirable, and would be unduly prolonged; domestic remedies for serious human rights abuses are unavailable, ineffective and insufficient in Sudan; the Respondent State fails to remedy the situation despite ample notice; and climate of fear which prevents exhaustion of domestic remedies in the Respondent State.

Respondent State's submission on admissibility

22. The Respondent State on its part submits its responses to the allegations and argues that the Communication should be declared inadmissible as it is not in line with the requirements under the African Children's Charter and the Revised Guidelines.
23. The Respondent State submits that the Communication is not compatible with the Constitutive Act of the African Union and the African Children's Charter. The Respondent State argues that it is the duty of the State to maintain security and

peace for the citizens of these Two Regions and to maintain the integrity of the country's territory from violent armed rebel groups. The Respondent State further mentions various treaties that recognize the duty of the state to maintain peace and security.

24. The Respondent state also submits that all the allegations in the Communication are based on second hand information which is gathered only from the media and various websites.
25. The Respondent State further alleges that the matters in the Communication are still pending before the African Commission on Human and Peoples' Rights (the Commission) and under other mechanisms. The Respondent State argues that there are 14 United Nations Security Council resolutions, which resulted in the establishment of country monitoring and reporting task forces. Following the establishment of the task force, the Government of the Republic of the Sudan prepared and signed an action plan with the aim of enhancing the overall protection of children in conflicts. Furthermore, a technical committee was formed under the chairmanship of the National Council for Child Welfare and the membership of the concerned bodies. The Respondent State adds that the UN and armed groups in the Two Areas, with the agreement of the Government, signed two actions plans. The Respondent State further argues that the Communication should not be admissible because it creates a situation of conflict with the obligations under Article 103 of the Charter of the United Nations and that if such a complaint is accepted, a conflict of jurisdiction arises between the Security Council and the Committee, as the matter is being addressed by the Security Council.
26. The Respondent State argues that the justifications given by the Complainants for not exhausting local remedies are unfounded and incorrect. The Sudan has a functional system for the protection of children in armed conflict established by Presidential Decree No. (89) of 2016 operated through a Higher Ministerial Committee represented by all relevant Ministries and Government institutions.
27. With regard to the allegation that there is an atmosphere of apprehension preventing the exhaustion of national remedies and that Sudanese legislation lacks provisions protecting victims and witnesses, the Respondent State submits the following arguments. The Respondent State refers to article 115 (2) of the Penal Code of 1991 which prohibits and punishes any public authority personnel who lures, threatens or tortures any witness, defendant or opponent to testify and not to give any information in any case. Further reference is made to article 156 of the Criminal Procedure Act of 1991 (Witnesses Protection) which requires the court to prevent any act that affects witnesses or to pose any questions that are irrelevant to the case and to protect them from statements and comments that frighten or harm them. Following the enactment of the Children's Act in 2010, according to the Respondent State, specialized courts and prosecution agencies for the childhood sector are instituted, as well as the Child's

Units in the Ministry of the Interior. Public Prosecution, the National Council for Child Welfare, National Assembly and the State Legislature, Ministerial committee established through presidential decree for them protection of children in armed conflicts, ministerial level technical committee. Despite the existence of all these mechanisms, the Respondent State submits that it has not received any formal complaint, notice or report on the occurrence of any of the allegations contained in the current Communication.

28. The Respondent State also argues that the Communication contains derogatory and inappropriate terms which are not supported by any evidence or legal basis. The Respondent State particularly identifies the following statement by the Complainants derogatory: 'the State has launched a campaign of ground and air attacks by the armed forces led by President Omar al-Bashir, resulted in the killing of a group of infants and children, the emptying of a number of towns and villages and the displacement of more than one million people to camps for displaced persons and refugees'. According to Respondent State the above-mentioned statement is insulting and the inclusion of the name of the President of the Republic in this Complaint, is inappropriate as he is a symbol of the State sovereignty and is an elected President assuming the post after a legitimate election; and who does not exercise any military commanding functions in the Armed Forces or carrying out ground or air campaigns, but exercises his functions consistent with the law and the Constitution as the supreme commander of the armed forces like any other head of state.
29. The Respondent State further argues that the Communication should be inadmissible as it shows political motivation. It was stated that the political motivation can be inferred from the inclusion of the name of the head of State in the report and some State leaders, and expressions of views that justify the position of the armed movements.

The ACERWC's Analysis and Decision on Admissibility

30. The ACERWC notes that the current Communication is submitted pursuant to Article 44 of the African Children's Charter which gives the Committee the mandate to receive and consider complaints from "any person, group or non-governmental organization recognized by the Organization of the African Unity, Member States, or the United Nations on matters covered by the Charter''. In addition to the provisions of the Charter, the Committee analyses on admissibility of the Communication is also based on Section IX of the Revised Guidelines.

31. In the matter of compatibility with the Charter and the AU Constitutive Act, provided in Section IX (a) of the Revised Guidelines, the Committee reiterates its Decision in

Talibés case[1] and notes that the condition of compatibility with the African Union Constitutive Act and the Charter is met if a Communication alleges violations of the African Children's Charter. The present Communication alleges violations of various provisions of the Charter and hence fulfils the criteria of compatibility.

32. Section IX (b) of the Revised Guidelines provides that a Communication must not be exclusively based on media information. The Committee notes that from the text of the Communication and the annexed documents, the Communication is based on reports and official documents of various United Nations agencies and treaty bodies, reports from international non-governmental organizations with observer status at the Committee and international media sources. Hence the Committee notes that the Communication is not exclusively based on media sources.
33. Section IX (1) (C) of the Revised Guidelines states that for a Communication to be admissible it should not 'raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter'. The Committee notes that a similar criterion, albeit with slight variations, is applied in other treaty bodies including in the African Commission on Human and Peoples' Rights. The rational for such criteria is mainly to prevent conflicting judgments and to promote efficiency by ensuring that the same case is not considered by multiple separate bodies. This can be inferred from decisions of various treaty bodies. In its decision, on *Mpaka-Nsusu Andre Alphonse v. Zaire*, the African Commission on Human and Peoples' Rights, 'Considering that the communication had already been referred for consideration to the Human Rights Committee established under the International Covenant on Civil and Political Rights'[2] declared the Communication inadmissible.

34. The Respondent State argues that the same matter is pending in other international procedures, hence it is important to clarify what is meant by "another international body or procedure" and what is meant by "matters" in the Guidelines. The term "matters" should be understood to include the alleged violations and victims whether or not they are lodging the complaint themselves or through representatives**.** In the case of *Leirvag v. Norway*[3] the Committee on Civil and Political Rights noted that the words "the same matter" within the meaning of article 5, paragraph 2 (a), of the Optional Protocol to the ICCPR, must be understood as referring to one and the same claim concerning the same individual, as submitted by that individual, or by some other person empowered to act on his behalf, to the other international body". Similarly, in the case of *Fanali v. Italy*, the UN Human Rights Committee while disagreeing with the Respondent State which argued that the same matter had been

[1] The Centre for Human Rights (University of Pretoria) and La Rencontre Africanine Pour La Defence Des Droits de L'Hommes Vs the Government of Senegal, ACERWC 2014, Para 18.
[2] Mpaka-Nsusu Andre Alphonse / DRC ACHPR para 2.
[3] Leirvag v. Norway, Comm. 1155/2003, U.N. Doc. A/60/40, Vol. II, at 203 (HRC 2004).

brought before the European Commission of Human Rights, held that the concept of "the same matter" had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body.[4] In the case of ***Kayhan v. Turkey***, the Committee on the Elimination of Discrimination against Women, taking inspiration from the Human Rights Committee noted that one of the elements for determining whether a case was settled by another body is the identity of the complainant.[5]

35. In determining weather or not the same matter is pending or settled before another procedure, the ACERWC takes inspiration from the above-mentioned jurisprudence and underscores the importance of the identity of the child/children whose are victims and the rights that are allegedly violated in accordance with the Communication. In the present Communication, the Respondent State claims that the matter is pending before the African Commission on Human and Peoples' Rights. In this regard, the Committee has got confirmation from the Commission that there is no Communication with similar facts or parties pending at the Commission.
36. The Respondent State further argues that the issue is under the jurisdiction of the UN Security Council and is being addressed by mechanisms created by the council, and argues that this amounts to a similar matter pending in another procedure in accordance with the Guidelines.
37. The Committee notes that its mandate pertains to monitoring the implementation of the rights recognized in the Charter. For the Committee to consider any other procedure as considering or having settled a matter, the body or procedure must be able to address in substance the rights given to the child by the African Children's Charter**.** Hence, the organ or body in question must have a mandate comparable to the Committee. Furthermore, as the Committee is a quisi-judicial treaty body that monitors the Charter with independence and impartiality, hence the procedure or body in question must be an independent and impartial mechanism free from political influence.

38. The Committee notes that in a similar Communication in which the Respondent State argued that the matter is already being handled by the UN Security Council, the African Commission raised the importance of the mandate and nature of the organ in question. The Commission noted that "while recognizing the important role played by the United Nations Security Council, the Human Rights Council (and its predecessor, the Commission on Human Rights) and other UN organs and agencies on the Darfur crisis, it is of the firm view that these organs are not the mechanisms envisaged under Article 56(7). The mechanisms envisaged under Article 56(7) of the Charter

[4] Fanali v. Italy, Comm. 75/1980, U.N. Doc. A/38/40, at 160 (HRC 1983) 7.2
[5] Kayhan v. Turkey, Comm. 8/2005, U.N. Doc. A/61/38, at 69 (2006) Para 7.3

must be capable of granting declaratory or compensatory relief to victims, not mere political resolutions and declarations."[6]

39. In another case, *Madoui v. Algeria*, the Human Rights Committee noted that the matter was submitted to the United Nations Working Group on Enforced or Involuntary Disappearances. However, it recalled that "extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not constitute procedures of international investigation or settlement" Accordingly, it was ruled that the fact that Menouar Madoui's case was registered before the Working Group on Enforced or Involuntary Disappearances does not make it inadmissible.[7]
40. In light of the foregoing, the ACERWC notes that the argument of the Respondent State, that the Communication should be inadmissible as the matter is being handled by mechanisms of the UN Security Council, is not tenable. While noting the significant contribution of the UN Security council and other UN and AU agencies in the conflict in the Two Regions, the Committee notes that such mechanisms do not address the rights of the child from a human rights protection angle by finding the State accountable for violations and rendering corresponding recommendations. Hence, the fact the matter is being addressed by the UN Security Council does not preclude the Committee from admitting the Communication under its Guidelines.
41. Section IX Article 1(d) of the Revised Guidelines further provide that the author of a communication should exhaust all available and accessible local remedies before it brings the matter to the Committee, unless it is obvious that this procedure is unduly prolonged or ineffective. As this Committee in the Children of Nubian descendants case[8] noted, "one of the main purposes of exhaustion of local remedies, which is also linked to the notion of state sovereignty, is to allow the Respondent State be the first port of call to address alleged violations at the domestic level."
42. The Committee notes that according to Section IX (1) (d) of the Guidelines Communication must be submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective.
43. The Respondent State, as mentioned above, argues that local remedies are available, accessible and effective in the Sudan and the Complainants should have exhausted the remedies. While the Complainants argue that due to the number of victims, domestic remedies would be neither practicable nor desirable, and would be unduly prolonged; and that domestic remedies for serious human rights abuses are

[6] Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v. Sudan
[7] Madoui v. Algeria, Comm. 1495/2006, U.N. Doc. CCPR/C/94/D/1495/2006 (HRC 2008) para 6.2.
[8] The Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against The Government of Kenya (2011) para 26.

unavailable, ineffective and insufficient in Sudan, among other things.

44. The Committee notes that the requirement of exhaustion of local remedies is only applicable if the remedies are available, effective, accessible and not unduly prolonged. The Committee reiterates the jurisprudence of the Commission in this matter and notes 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 it is found sufficient if it is capable of redressing the complaint. In the case that involved a grave and massive violation of human rights, the Commission noted that it "has never held the requirement of local remedies to apply literally in case where it is impractical or undesirable for the Complainant to seize the domestic courts in the case of each violation.'[9] The Commission further noted that 'given the vast and varied scope of the violations alleged" exhaustion of local remedies can be exempted.
45. In another Communication against Sudan in which it was alleged that tens of thousands of people have allegedly been forcefully evicted and their property destroyed, the Commission ruled that it is impracticable and undesirable to expect these victims to exhaust local remedies. The Commission added that "the scale and nature of the alleged abuses, the number of persons involved *ipso facto* make local remedies unavailable, ineffective and insufficient"[10] Additionally in its Decision in the *Talibés case*[11], this ACERWC also noted that when a remedy is impractical due to the number of victims and the practically challenging process of exhausting it, then it is considered unavailable.
46. The Committee notes that the requirements of availability, accessibility and effectiveness contained in Section IX (1) (d) of the Revised Guidelines, are cumulative. If one of them are not met then the requirement of exhaustion of local remedies can be set aside. In the present Communication, millions of children have allegedly been forcefully displaced, malnourished, died of starvation, killed or maimed as a result of armed conflict. Hence, even though various remedies may be put in place, due to the scale and nature of the alleged violations, it is indeed unreasonable to expect the Complainants to comply with the requirement of exhaustion of local remedies. The large number of victims and the complexities of the violations raise concerns of efficiency; it is wishful thinking to expect local courts to try the cases of millions of children in a reasonable time in keeping with the best interest of the child. The Committee also notes that in a situation of armed conflict in which the Government is involved, as alluded to by the Respondent State, it is unreasonable to expect local remedies to offer a likelihood of success as it relates to alleged violation resulting from the conflict itself, thus rendering the remedies ineffective. Furthermore

[9] Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah / DRC ACHPR para 37.

[10] Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan, ACHPR para 100

[11] The Centre for Human Rights (University of Pretoria) and La Rancontre Africanine Pour la Defense des Droits de L'homme versus the Government of Senegal para 23.

the delicate situation of instability and insecurity on the ground resulting from armed conflict is an impediment to exhausting local remedies, thus making them in fact unavailable. The Respondent State failed to show the effectiveness and efficiency of the remedies put in place to address violations arising from the conflict. Additionally, a large number of the victims have allegedly been forced to flee to other countries, making domestic remedies inaccessible for them. Hence the Committee notes that local remedies are inaccessible for a large number of the victims, ineffective and unavailable. Furthermore, the rational of the requirement of exhaustion of local remedies is to give States the opportunity to address human rights violations domestically.[12] As can be adduced from various reports, including UN Security Council resolutions, the Respondent State had adequate notice of the impact of the conflict in the Two Areas on the rights of children, and hence had ample opportunity to address the matter.

47. Section IX (1) (e) of the Revised Guidelines provides that the Communication must be presented within reasonable time after exhaustion of local remedies. The Respondent State argues that the alleged facts and the associated information thereof date back to the years 2011, 2012 and 2013 with the latest referring to the middle of 2016 - more than two years before the submission of the Communication to the Committee, which is considered an unreasonable period of delay. While the Complainants state that the Communication was filed in a timely fashion, as it concerns ongoing violations. They further state that although active hostilities have eased since the most recent ceasefire, the Respondent State's assault on the Two Areas continues, as demonstrated by their unwillingness to negotiate a peace settlement that will allow people to return to normal life; and that the Respondent State continues to violate children's rights by its actions and inactions, and the situation of instability, coupled with the Respondent State's unwillingness to undertake measures to improve the lives of children in the Two Areas,
48. The Committee notes that the Communication contains alleged violations that took place in events starting from 2011 to July 2018 and certain violations that are allegedly still ongoing. The alleged armed attack of children, as contained in the Communication dates up to 2018, while threats to the lives of children cause by unexploded ordnance, is allegedly ongoing. Furthermore, the consequences of armed conflict such as forced displacement, lack of access to medical services, and destruction of food sources leading to malnutrition are allegedly ongoing violations. Hence the ACERWC notes that most of the allegations and their impacts are ongoing.
49. Moreover, the Committee refers to Section IX (1) (e) of the Revised Guidelines which states that Communication must be presented within reasonable time after

[12] Free Legal Assistance Group, Lawyers Committee for Human Right, Union Interafricaine Des Droits De L'Hommes, Les Témoins De Jehova V. DRC

exhaustion of local remedies. The rational for this rule is ensuring legal certainty, if a specific case is settled in national courts, in order to ensure certainty there ought to be a time limit to take the matter to any other forum. The same reasoning is used by the Inter-American Court of Human Rights in the case of Plan de Sanchez Massacre v. Guatemala. The Court noted that rule of brining a case within in a timely manner after exhaustion of local remedies (which is within six months from the date on which the complaining party was notified of the final judgment at the domestic level, in accordance with the Inter-American system) "ensures legal certainty and stability once a decision has been taken" and that it "does not apply when it has been impossible to exhaust internal remedies".[13] Additionally the African Court on Human and Peoples' Rights, in the case of Late Nobert Zongo et al V Burkina Faso, noted that the requirement of submission within a reasonable time after exhaustion of local remedies does not apply when an exception to the rule of exhaustion of local remedies is applied. [14]

50. With regards to reasonable time period for brining Communications that benefit from exceptions to the rule of exhaustion of local remedies, the Inter-American Court has adopted a case by case approach. The Court noted that in situations where local remedies are not exhausted due to permitted exceptional grounds, the timeliness of a Communication should be assessed "considering the circumstances of each specific case"[15]
51. In the present Communication, as stated above, local remedies are not exhausted and the Communication falls in the exception to this rule. This renders Section IX (1) (e) non-applicable as it related to communications that come after exhaustion of local remedies. Moreover, the Committee notes that Communications should be brought within reasonable time even in situations where local remedies are not available. Communications are based on facts and events that need to be proved by the complainants; hence if a Communications is lodged after unreasonable delay from the time of acts/events allegedly causing violation, it is detrimental to ascertaining the truth. However, the present case deals with a situation of armed conflict that has started in 2011 and continued up to 2018 with most of its elements allegedly still ongoing. Hence the Committee notes that the Communication is brought within a reasonable time.
52. Section IX (1) (e) of the Revised Guidelines provides that a Communication should not contain disparaging or insulting language. In this regard, the Committee takes inspiration from the Commission in striking balance between freedom of expression and the prohibition of the use of insulting language. While discouraging insulting

[13] Plan de Sanchez Massacre v. Guatemala IACHR 1999 para 29.
[14] Beneficiaries of Late Norbert Zongo et al. v. Burkina Faso, Af. Ct. H.P.R, 2014.
[15] Plan de Sanchez Massacre v. Guatemala, App. No. 11,763, Int.-Am. Ct. H.R., para. 29.

language, the enjoyment of human rights such as the right to freedom of expression should not be violated.[16] In view of this, the Committee notes that Section IX (1) of the Revised Guidelines should be interpreted looking at whether or not the alleged insulting language is a factual allegation or a derogatory characterization of a Government body or official. Criticism of the actions and policies of government organs or individuals is an integral part of democratic exercise in an open society and necessary in building good governance and hence should not be condemned.

53. In the present case, the inclusion of the name of the head of state in the Communication as leader of the armed forces of the country is a factual claim that does not contain any derogatory characterization of the head of state. Therefore, Committee notes that the Communication does not contain any language that is disparaging or insulting.

54. In determining the alleged political nature of the Communication, the Committee notes that the text of the Communication is limited to explaining various facts that are relevant to the alleged violations. As the situation in the Two Areas is characterized by armed conflict, the mere mentioning of the various actors involved in the conflict and the steps taken or lack of actions towards peace building, does not amount to politicization of the Communication.

iv. Decision on Admissibility

55. On the basis of all the above arguments and analysis, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the author has fulfilled the admissibility conditions as laid down in the Charter and the Committee's Guidelines on Consideration of Communication. The Committee will proceed to consider the merits of the Communication.

Done in March 2019

Goitseone Nanikie Nkwe
Chairperson
ACERWC

[16] Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa Vs Zimbabwe 2008 ACHPR para 52.