



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

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

Comit  Africano dos Direitos e  
Bem-Estar da Crian as

اللجنة الأفريقية المعنية بحقوق الطفل ورفاهه

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

### ADMISSIBILITY RULING

**Communication No: 0015/Com/003/2020**  
**Decision on Admissibility N 001/2022**

#### **AUTHORS:**

Taha Fadul, Nisreen Mustafa, Somia Shampaty and Nawras Elfatih (on behalf of  
Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and  
Fadoul Almoula Aljaili Nourallah)  
(Taha Fadul *et al*)

**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 24 Feb 2020. The Communication is submitted by Taha Fadul, Nisreen Mustafa, Somia Shampaty and Nawras Elfatih (herein after referred to as Taha Fadul *et al* or the Complainants), on behalf of Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aljaili Nourallah (Abbas, Modhatir and Fadoul) against the Government of the Republic of the Sudan (“the Respondent State”).
2. Two separate Communications were initially submitted on 24 Feb 2020 by the Complainants on behalf of Abbas Mohamed AL-Nour Musa Al-Emam and Modathir Alrayah Mohamed Badawi. Subsequently the complainants submitted an additional communication on 21 August on behalf of Fadoul Almoula Aljaili Nourallah.
3. Considering the similarity of the alleged violations and prayers requested, the ACERWC has decided to join the Communications and consider them as one single Communication in accordance with Section VI (1) of its Revised Guidelines for the Consideration of Communications.

## **II. Summary of Alleged Facts**

4. The Communication alleges that Abbas Mohamed AL-Nour Musa Al-Emam has been sentenced to death for a crime he committed on 27/08/2013 at the age of 15 years old. It is also added that in 2019 the Constitutional court has confirmed the sentence despite an appeal made by the applicants, in ruling No 51/2017 on 5/14/2019 and reviewed by ruling No 27/2019 on 11/24/2019. The Complainants added that Abbas has been in handcuff in prison with adult convicts who are on death row since 2013.
5. The Communication also alleged that Modathir Alrayah Mohamed Badawi has also been sentenced to death for a crime he committed on 7/31/2012 when he was 17 years old. It is alleged that he was sentenced to death by the constitutional court in court ruling No 236/2014 on 2/6/2019 and review No 36/2019 on 12/04/2019. The Complainants added that Modathir has been in handcuff in prison with adult convicts who are on death row since 2012.
6. It is further alleged that Fadoul Almoula Aljaili Nourallah has been sentenced to death for a crime he committed when he was 17 years old. Following his conviction, he was sentenced to death by the Constitutional court ruling 51/2016 on 2/6/2019 and review No 34/2019 on 10/10/2019. The Complainants added that Fadoul has been in handcuff in prison with adult convicts who are on death row since 2013. It is also alleged that all the alleged victims, Abbas, Modathir and Fadoul can be executed anytime, as the constitutional court is the final court of appeal in the country.

### III. The Complaint

7. On the basis of the above facts, the Complainants submit that the Government of The Sudan violated the following provisions of the African Charter on the Rights and Welfare of the Child
  - Article 1(2) Obligation of State Parties;
  - Article 5 (1 and 2) Survival and Development and;
  - Article 17 (1 and 2) Administration of Juvenile Justice.
8. The Complainants further allege that the Government of the Sudan has violated article 37(a) of the Convention on the Rights of the Child and articles 5 and 6 of the International Covenant on Civil and Political Rights.
9. Based on the allegations, the Complainants request the Committee to order the Government of the Sudan to undertake the following measures:
  - A stay of execution of the death penalty against Abbas, Modhatir and Fadoul;
  - Revoke of the death penalty against Abbas, Modhatir and Fadoul;
  - Repeal article 27(2) of the Sudanese criminal act of 1991, which states '*with the exception of Hudud and retribution (Qisas) offences, death sentence shall not be passed against any person who has not attained the age of eighteen*', as it permits the execution of children;
  - Provide compensation for the Psychological, moral and material harm sustained by the alleged victims; 30,000 dollars each for Fadoul and Modhatir, and 10,000 dollars for Abbas; and
  - Pay the legal fees and expenses in the amount of 10,000 dollars.

### IV. Preliminary Examination and Transmission of the Communication

10. The Secretariat of the ACERWC initially received the Communication on 24 Feb 2020 by the Complainants on behalf of Abbas Mohamed AL-Nour Musa Al-Emam and Modathir Alrayah Mohamed Badawi. Subsequently the complainants submitted an additional communication on 21 Aug 2020 on behalf of Fadoul Almoula Aljaili Nourallah. As noted above the Communications were joined as one in accordance with Section VI (1) of the Revised Guidelines for the Consideration of Communications, as the Communication reveal the same pattern of alleged violations.
11. 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 individuals on behalf of the alleged victims who were children at the time the alleged violations took place. The Communication is also duly signed by the Complainants and written in an official language of the Committee.

12. 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 Joined Communication to the respondent State Party on 18 September 2020.
13. The Respondent State did not submit response on admissibility despite expiry of given deadline.

## **V. Issuance of Provisional measure**

14. The Complainants further requested the Committee to issue request for provisional measure to the Respondent State for the stay of execution of the death sentences against Abbas, Modhatir and Fadoul.
15. Noting that death penalty raises an urgent issue of grave violation with the likelihood of irreparable harm, and reiterating article 5 (3) of the Charter, which states that death sentence shall not be pronounced for crimes committed by children, the Committee, in accordance with section VII of the Revised Communication Guidelines, issued request for provisional measure to the Respondent State on 18 Sep 2018.
16. The Request for provisional measures urged the Government of the Republic of the Sudan to urgently ensure the death sentence passed against Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aljaili Nourallah is not enforced.
17. The Respondent State was requested to report to the Committee about implementation of the provisional measure within **15 days** of the receipt of the request, in accordance with Section VII (4) of the ACERWC Revised Guidelines for Consideration of Communications. However, the Respondent State did not report to the Committee on implementation of the request.

## **VI. Consideration of Admissibility**

### **a. Complainants' submission on admissibility**

18. The Committee, during the 37th Ordinary Session which was held on 15-26 March 2021 considered the Communication where it noted that the application document fails to fulfil the elements required by the ACERWC's Revised Guidelines for the Consideration of Communications. Particularly, the Committee noted that the Application does not contain arguments on the conditions of admissibility as provided under Section IX(1) and requirement of content of a communications provided under Section II(3) of the Revised Guidelines for the Consideration of Communications. Therefore, the Committee decided to resend the Communication for the Complainants to revise the application document with a view to align it with the Revised Guidelines for the Consideration of Communications and

provide specific arguments on the admissibility as well as merits of the allegations. Following the Committee's request the Complainants submitted the revised Communication on 06 June 2021.

19. Moreover the complainants have submitted the following additional documents to strengthen their claim; birth certificates of Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aljaili Nourallah to prove that the victims were children at the time the alleged violations were committed and decisions from Constitutional Court of Sudan on the cases of Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aljaili Nourallah, suggesting exhaustion of local remedies.

#### **b. The ACERWC's Analysis and Decision on Admissibility**

20. 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". The Committee notes that the Communication is brought by a group of individuals, Taha Fadul, Nisreen Mustafa, Somia Shampaty and Nawras Elfatih, on behalf of Abbas Mohamed AL-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aljaili Nourallah, who were children at the time the alleged violations took place. The subject matter of the Communication is the pronouncement of death penalty for crimes committed by children, which is a matter covered by Article 5 (3) of the Charter. Hence, the Committee notes the Complainants have the required standing to submit the Communication before the Committee.
21. In addition to the provisions of the Charter, the Committee's analysis on admissibility of the Communication is based on Section IX (1) of its Revised Guidelines for Consideration of Communications.
22. 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<sup>1</sup> 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 the following provisions of the Charter ((Articles 1(2), 5 (1 and 2) and 17 (1 and 2) and hence fulfils the criteria of compatibility.
23. Section IX (1) (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 documentary evidence in the form of domestic court decisions. Hence the Committee

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<sup>1</sup> The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine Pour La Defense Des Droits de L'Hommes Vs the Government of Senegal, ACERWC 2014, Para 18.

notes that the Communication is not exclusively based on media sources.

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 rationale 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. In the present Communication, the Committee notes, the Complainants' submission where they said "the communication has not been before any other international or regional human rights body". In the absence of any fact to the contrary, and as far the Committee's investigation goes, the later considered that the matter has not been pending or previously settled by another international procedure.

24. Section IX Article 1(d) of the Revised Guidelines further provides that the author of a communication should exhaust all available and accessible local remedies before it brings the matter to the Committee, unless it is obvious that this procedure is unduly prolonged or ineffective. As this Committee in the Children of Nubian descendants case<sup>2</sup> 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." In the present Communication the complainants submitted that "all available local remedies under the Sudanese legal system have been exhausted, as the last degree of litigation is the Constitutional Court which rejected the appeals, the appeals for review, and uphold the decisions of the death sentences against the three victims". Considering that the Constitutional court is the final court of adjudication in the Republic of the Sudan, the Committee notes the fulfillment of the criteria of exhaustion of local remedies.

25. Section IX (1) (e) of the Revised Guidelines provides that the Communication must be presented within reasonable time after exhaustion of local remedies. As noted by this Committee in the case of *Legal and Human Rights Center and Center for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania*<sup>3</sup>, the Revised Guidelines are silent on the amount of time within which cases should be submitted to the Committee after exhaustion of local remedies, and that such calculation is to be done by examining reasonableness of delays, if any, in submission of Communications. In this regard, the Complainants submitted that "the communication is brought within reasonable time in conformity with Section IX (e) of the revised Guidelines for the Consideration of the communications, as the complaint was submitted on 24 February 2020, and the local remedies were exhausted in November 2019 with regard to Abbas, in December 2019 with regard Modathir, and in October 2019 with regard to Fadul Almoula. And so, the complaint was submitted as soon as we could, after collecting the required documents". From the submission and the annexed materials, the Committee

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<sup>2</sup> 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.

<sup>3</sup> Communication No: 0012/Com/001/2019 *Legal and Human Rights Center and Center for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania*

notes that the final Constitutional court decisions regarding the cases of Abbas and Modhatir were rendered in November 2019 and December 2019, while the final decision on the case of Fadoul was rendered on October 2019. On the other hand the Communications on behalf of Abbas and Modhatir were indeed brought to the Committee on 24 Feb 2020 while the Communication on behalf of Fadoul was brought on 21 Aug 2020. Hence, the matter was first brought to the attention of the Committee within two months after local remedies were exhausted while the latest joined addition was brought within 8 months. Considering the preparation time it may take to access final decisions of courts in domestic legal systems and preparing for litigation at a treaty body, the Committee finds that the Communication was brought within reasonable time after exhaustion of local remedies.

26. Section IX (1) (e) of the Revised Guidelines provides that a Communication should not contain disparaging or insulting language. The Committee notes that the language of the Communication does not contain any disparaging or insulting language.

## **VII. Decision on Admissibility**

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

**Done at the 38th Ordinary Session of the ACERWC, 15-26 November 2021**



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