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

**Admissibility Ruling  
Communication No: 0017/Com/001/2021  
Decision on Admissibility No:001/2023**

**Child Rights and Rehabilitation Network, Institute for Human Rights and  
Development in Africa and Center for Human Rights (On Behalf of Children  
Affected by Witchcraft Accusations in Nigeria)**

**V**

**The Federal Republic of Nigeria**

**August 2023**

## **I. Submission of the Communication and Procedure**

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a Communication dated 07 December 2021 pursuant to article 44 of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by the Child Rights and Rehabilitation Network, Institute for Human Rights and Development in Africa and Center for Human Rights (On Behalf of Children Affected by Witchcraft Accusations in Nigeria) (the Complainants) against the Federal Republic of Nigeria (the Respondent State). After receiving the Communication, the Secretariat conducted a preliminary review and registered the submission as Communication No: 0017/Com/001/2021 pursuant to Section III of the Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions (the Revised Communication Guidelines). The Communication was duly transmitted to the Respondent State through a Note Verbal ACE/OL/10?307.21 dated 15 December 2021 for the Respondent State to submit its arguments on the admissibility of the Communication within 60 days according to Section IX(2) of the Revised Communications Guidelines. Up on the expiry of the 60 days, the Committee sent additional five reminders for the Respondent State to submit its arguments. Despite the reminders, no submission was made by the Respondent State on the admissibility of the Communication.
2. The Committee, therefore, decided to proceed and consider the admissibility of the Communication without the arguments of the Respondent State, considering the several reminders sent to the Respondent State and the best interests of the children involved in the Communication.

## **II. Summary of alleged facts**

3. The Complainants allege that many children between the ages of 3 and 14 years in Nigeria are affected by accusations of witchcraft practices. It is submitted that 81% of street children are affected by witchcraft accusations and subsequent abuses. The Complainants allege that the practice of witchcraft accusations is deeply rooted in the cultures and traditions of some communities in Nigeria and that cases have been recorded in areas including Abia, Akwa Ibom, Bauchi, Cross River, Delta, Edo, Kaduna, Nasarawa and Taraba States. The Complainants provide that affected children include children in street situations, children with disabilities, including children with albinism and children with autism, and children born twins, premature, or in breech positions. Moreover, the Complainants submit that children who have red eyes, who allegedly stare at others or avoid looking at the eyes of others are often accused of witchcraft practices.

4. The Complainants allege that perpetrators of the violence are family members, community members, and religious groups. They further submit that children accused of witchcraft are subjected to severe beating that causes death, killings, burning by fire or acid, forced ingestion of poison, hazardous work and starvation. It is further alleged that children accused of witchcraft accusation are stigmatized, discriminated against, abandoned, tortured, in some cases buried alive, and denied their basic rights such as education and health care.
5. The Complainants allege that the practice of child witchcraft accusation has increased notably in the Niger Delta Region where the practice is entrenched in religious beliefs. They submit that children accused of witchcraft continue to be persecuted and that the United Nations Committee on the Rights of the Child also expressed concerns regarding the violation of the rights of children accused of witchcraft practices during the Consideration of the State Party report of the Respondent State. While acknowledging that the Constitution of Nigeria has provisions that safeguard the right to life, dignity, personal liberty, and freedom from discrimination, the Complainants allege that the Government of Nigeria has failed to enforce the law by failing to investigate and prosecute cases of witchcraft accusation and to undertake other measures to protect children who are affected by witchcraft accusation. The Complainants, in their Communication, submit various instances of reported cases of abuse against children accused of witchcraft where the police refused to investigate and prosecute the alleged perpetrators.
6. Based on these facts, the Complainants allege that the Respondent State violates the following provisions of the Charter:
  - Article 3 on the right to non-discrimination
  - Article 5 on the right to life, survival, and development
  - Article 11 on the right to education
  - Article 13 on the rights of children with disabilities, and
  - Article 16 on freedom from torture and inhumane treatment

### **III. Complainants' Submission on admissibility**

7. The Complainants submit that the Committee has the jurisdiction to consider the Communication in line with Article 44 of the Charter and Section II(1) of the Revised Communications Guidelines. The Complainants submit that the Respondent State has ratified the Charter and that their allegations concern violation of the Charter. Moreover, the Complainants submit that they have standing before the Committee to submit the Communication in line with Section I(1) of the Revised Communication Guidelines; they are registered in a Member State of the African Union. Moreover, it is provided that, two of the Complainants, the Institute for

Human Rights and Development in Africa and the Center for Human Rights, have observer status before the Committee. The Complainants also submit that there is no need to get the victims' consent to submit the Communication as it was impractical due to the systemic violation of their rights basing their argument on the precedent of the Committee in the *Nubian case*.

8. Regarding the Conditions of admissibility, the Complainants submit that they have fulfilled all the conditions of admissibility listed under Section IX(1) of the Revised Communications Guidelines. More specifically, the Complainants submit detailed arguments on the exhaustion of local remedies and argue that the requirement of exhaustion of local remedies is not without exceptions. The Complainants submit that the Respondent State has been duly notified about the ongoing violations, which is one of the rationale for exhaustion of local remedies. The Complainants substantiate their arguments based on the jurisprudence of the Committee in the *Michelot Hansungule and others v Uganda* case as well as the jurisprudence of the African Commission on Human and Peoples' Rights (ACHPR) in the Communication of *SERAC v Nigeria*. The Complainants argue that the alleged violations are massive violations affecting a large number of children, in which case the Committee grants exemption from the exhaustion of local remedies as per the *Talibes Case*. The Complainants further submit that in the present case, the available local remedy is conditioned on the action of the Respondent State which has the primary duty to investigate and prosecute perpetrators and that it is not up to the victims to undertake investigation. In this regard, the Complainants refer to the jurisprudence of the ACHPR in the *Zimbabwe Human Rights NGO Forum v Zimbabwe* case where the ACHPR decided that in cases that require criminal action against perpetrators, victims cannot be required to exhaust local remedies.<sup>1</sup> Furthermore, the Complainants submit that the Communication is submitted within a reasonable time as the violations are ongoing and that there is no disparaging language in the Communication.

#### **IV. The Committee's analysis of the admissibility of the Communication**

9. The Committee analyses the admissibility of this Communication based on Article 44 of the Charter and the Revised Communication Guidelines. Pursuant to Article 44 and section I (1) of the Revised Communication Guidelines, 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. The Committee notes that the three

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<sup>1</sup> African Commission on Human and Peoples' Rights (ACHPR), Communication No. 245/2002, *Zimbabwe Human Rights NGO Forum V Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 70.

Complainants, Child Rights and Rehabilitation Network (CRARN), the Centre for Human Rights (CHR) and the Institute for Human Rights and Development in Africa (IHRDA), are registered in Nigeria, South Africa, and The Gambia, respectively. Moreover, the Committee notes that the Communication is filed on behalf of children whose rights provided in the Charter are being affected by witchcraft accusations and submitted against a State Party to the Charter. The Committee, therefore, accepts that the Complainants have standing to present the case and that it has the jurisdiction to consider the Communication.

10. Concerning the admissibility of the Communication, the Committee assesses if the conditions provided under Section IX (1) of the Revised Communications Guidelines are fulfilled. In the absence of any argument from the Respondent State, the Committee below assesses whether or not each of the six admissibility conditions set forth under Section IX(1) are met in the present Communication.
11. The first condition provided under Section IX (1) (a) is that a Communication must be compatible with the Charter. The Committee, in its previous decisions has explained that a Communication is compatible with the Charter if it makes a reasonable allegation of the violation of the provisions of the Charter, which means that it demonstrates a prima facie violation of the provisions of the Charter.<sup>2</sup> The Current Communication alleges violations of Articles 3, 5, 11, 13, and 16 of the provisions of the Charter against children accused of witchcraft in the Respondent State. The Committee, hence, finds that the Communication is compatible with the Charter.
12. The second condition under the Revised Communication Guidelines is that a Communication should not exclusively be based on media information as indicated under Section IX (1) (b). The Committee, indeed, notes the vital role media can play in reporting human rights violations; hence, media report is not disregarded in the proceeding of Communications. The same has been noted by the African Commission on Human and Peoples' Rights in the *Jawara case*.<sup>3</sup> However, the information that is obtained from the media should further be supported by other forms of evidence to prove the correctness of the media reports.<sup>4</sup> In the present case, the Committee observes that the Communication contains information from credible reports, including reports of UN Agencies such as UNICEF, as well as

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<sup>2</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Communication No 003/Com/001/2012, *The Centre for Human Rights (University of Pretoria) and another v Senegal*, para 18; 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.

<sup>3</sup> ACHPR, Communications 147/95 and 149/96, *Sir Dawda K Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 25.

<sup>4</sup> As above, Para 26.

other documentaries, studies and data in addition to media reports. The Committee, therefore, believes that the Communication is not solely based on media reports and that the condition under Section IX (1) (b) is fulfilled.

13. Pertaining the third condition under Section IX (1) (c) of the Revised Communication Guidelines, which provide that a Communication should not be pending before other mechanisms, the Committee tried to verify the issue. In the absence of a response from the Respondent State, the Committee investigated to assess if a similar issue against the Respondent State is pending before other mechanisms. The Committee did not find any similar issues pending in other adjudication mechanisms. Hence, the Committee finds that the condition under Section IX (1) (c) of the Revised Communication Guidelines is met by the present Communication.
14. The fourth condition under Section IX (1) (d) of the Revised Communication Guidelines relates to the requirement that a Communication should be filed before the Committee after exhaustion of local remedies. The Complainants note that they have not exhausted local remedies but argue that they should be exempted from exhausting local remedies. The Complainants specifically argue that the Respondent State has been duly notified about the ongoing violations through various sources including the reports of UN Agencies and other NGOs, the concluding observations and recommendations of the UN Committee on the Rights of the Child, and other NGOs and yet failed to take action; the violations are massive affecting large numbers of children; and the nature of the matter is criminal, hence, the Respondent State has a duty to investigate and prosecute.
15. The Committee has pronounced itself in the *Nubian Case* where it has extensively addressed the rationale for the requirement of exhaustion of local remedies. In the *Nubian Case* the Committee highlighted that the main purpose of the requirement of exhaustion of local remedies is to allow the Respondent State to be informed about the violations and allow the Respondent State to redress the violations.<sup>5</sup> While the Complainants must exhaust local remedies, this requirement is not intended to create an impediment to accessing international redress mechanisms<sup>6</sup>, rather it is meant to give States the chance to redress violations domestically. In the present case, the Complainants have demonstrated that the Respondent State has been notified about the ongoing violations against children accused of

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<sup>5</sup> ACERWC, Communication no 002/2009, *Institute for Human Rights and Development in Africa (IHRDA) and other (on behalf of children of Nubian Descents in Kenya) v Kenya*, Decision no 002/2011, para 26-27.

<sup>6</sup> 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;

witchcraft both at domestic and transnational levels. While allegations that the Respondent State is aware of the violations in and by itself do not automatically guarantee an exemption from exhausting local remedies, the fact that States have been given ample notice indicates that the object and purpose of the principle of exhaustion of local remedies is fulfilled. Considering that the exemption of exhausting local remedies is assessed based on the facts of the case, the Committee proceeds to examine the elements of the present Communication.

16. The Complaints argue that they should not be required to exhaust local remedies as the nature of the violation is a massive violation that affects large numbers of children. Based on its previous decision on the impractical aspect of exhausting local remedies in cases of massive violations<sup>7</sup>, the Committee finds it necessary to analyse when a violation is deemed massive to determine its applicability in the present case. The Committee draws inspiration from the African Commission on Human and Peoples' Rights, which held that a massive violation affects a large number of persons, either in a specific region or all over the territory of a State Party.<sup>8</sup> Concerning the nature of the violation, the Commission further held that 'the violation must be the consequence of continual and pre-determined actions having an impact on a right or a group of rights under the African Charter'.<sup>9</sup> Considering that a large number of children are affected by witchcraft accusations and that the nature of the violation they are facing is a result of pre-determined and continuous action, the Committee notes that the alleged violations in the present case are massive and large-scale violations. However, the Committee notes that the main issue is how the massive nature of the violation relates to the exhaustion of local remedies. In this regard, the Committee, according to Section IX (1) (d) of the Revised Communication Guidelines, notes that the exception to the exhaustion of local remedies applies if the local remedies are 'unduly prolonged or ineffective'. Furthermore, the Committee reiterates that local remedies need not be exhausted if they are not available, ineffective, and insufficient.<sup>10</sup> Therefore, the Committee further needs to assess how the massive nature of the violation relates to the unavailability, ineffectiveness, or insufficiency of the local remedies to grant the exemption to the Complainants. In this regard, the Committee refers to its decision

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<sup>7</sup> ACERWC, Communication no 001/Com.001/2005, *Michelo Hunsungule and others (on behalf of children in northern Uganda) v. Uganda*, Decision No. No. 001/Com/001/2005, Para 24, 27 and 28; ACERWC, Communication no 003/Com/003/2012, *The Centre for Human Rights (University of Pretoria) and la Rencontre Africaine pour la défense des droits de l'homme (on behalf of Talibes children) v Senegal*, Decision No 003/ Com/001/2012, Para 15 and 21.

<sup>8</sup> ACHPR, Communication No 318/06, *Open Society Justice Initiative v Cote D'ivoire*, (2006), para 46-49

<sup>9</sup> As above

<sup>10</sup> ACERWC, Communication no 002/2009, *Institute for Human Rights and Development in Africa (IHRDA) and other (on behalf of children of Nubian Descents in Kenya) v Kenya*, Decision no 002/2011, para 28; ACHPR, Communications 147/95 and 149/96, *Sir Dawda K Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 31

in the *Michelo Hunsungule and Others (on behalf of children in Northern Uganda) v. Uganda* case, where the Committee held that massive and large-scale violations render local remedies unavailable and impractical to be pursued.<sup>11</sup> Moreover, the Committee held that the massive nature of the violation leads to the presumption that the State is aware of the violation that is taking place.<sup>12</sup> The Committee concurs with the jurisprudence of the African Commission on Human and Peoples' Rights that the scale and the nature of the alleged human rights violations make local remedies unavailable as it becomes impractical or undesirable for the Complainants to exhaust local remedies.<sup>13</sup>

17. Moreover, the Complainants argue that the available local remedy involves criminal prosecution which makes it the responsibility of the Respondent State to prosecute the perpetrators. Concerning the type of local remedy available and its relation with the requirement of exhaustion of local remedies, the Committee in the *Talibes* case has ruled that the failure of the Respondent State to take action to investigate and prosecute perpetrators makes local remedies unavailable and ineffective.<sup>14</sup> Furthermore, the African Commission on Human and Peoples' Rights has consistently ruled that "Whenever there is a crime that can be investigated and prosecuted by the State on its initiative, the State has the obligation to move the criminal process forward to its ultimate conclusion. In such cases, one cannot demand that the complainants or the victims or their family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards. Instead, by failing to properly investigate a criminal matter of which it has been notified and to move the criminal process forward to its ultimate conclusion within a reasonable time, a State "forfeit[s] its prerogative to deal with the matter domestically."<sup>15</sup>

18. In the present Communication, the Committee notes that criminal proceedings against perpetrators are the main local remedy available and notes from the allegation of the Complainants that the Respondent State has not portrayed due

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<sup>11</sup> ACERWC, Communication no 001/Com.001/2005, *Michelo Hunsungule and others (on behalf of children in northern Uganda) v. Uganda*, Decision No. No. 001/Com/001/2005, para. 27.

<sup>12</sup> As above

<sup>13</sup> ACHPR, Communication No. 279/03 – 296/05, *Sudan Human Rights Organisation & Centre on Human Rights and Evictions (COHRE) v. Sudan*, (2003) paras. 94, 97, 100; ACHPR, Communication No. 25/89-47/90-56/91-100/93, *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v DRC*, (1995) para. 35-38; ACHPR, Communication No. 338/07, *Socio-Economic Rights and Accountability Project (SERAP) v the Federal Republic of Nigeria*, (2010) para. 67.

<sup>14</sup> ACERWC, Communication no 003/Com/003/2012, *The Centre for Human Rights (University of Pretoria) and la Rencontre Africaine pour la défense des droits de l'homme (on behalf of Talibes children) v Senegal*, Decision No 003/ Com/001/2012, para 22-23

<sup>15</sup> ACHPR, Communication No 275/2003, *Article 19 v Eritrea*, (2007) para 72; ACHPR, Communication no 386/10, *Dr Farouk Mohamed Ibrahim v Sudan*, (2013) para 48



diligence in the prosecution of perpetrators, which in effect renders local remedies ineffective to the concerned children. Considering the above reasonings, the Committee decides that local remedies are not available and ineffective in the present case, hence the Complainants should not be obliged to exhaust local remedies.

19. The fifth condition of admissibility spelt out under Section IX (1) (e) of the Revised Communication Guidelines is that a Communication has to be submitted within a reasonable time after exhausting local remedies. The Committee notes that the Complainants have not exhausted local remedies as they are arguing that they should be granted an exemption from the requirement of exhaustion of local remedies. Moreover, the Communication alleges ongoing violations which are still occurring and affecting children in the Respondent State which makes the complaint still ripe. Therefore, the Committee finds that the Communication is in line with the requirement of 'reasonable time'.
20. The sixth and last condition for admissibility relates to the language used in the Communication as provided under Section IX (1) (f) of the Revised Communication Guidelines which stipulates that a Communication should not contain any disparaging or insulting language. The Committee observes that the Communication does not contain any disparaging or insulting language and is presented decently.
21. In light of the above analysis, the Committee finds that the current Communication fulfils all the admissibility conditions set forth under Article 44 of the Charter and Section IX(1) of the Revised Communication Guidelines, hence, declares the Communication admissible.

**Adopted in May 2023 during the 41<sup>st</sup> Ordinary Session of the ACERWC  
Honorable Anne Musiwa**

**Ag. Chairperson  
African Committee of Experts on the Rights and Welfare of the Child**