

**The African Committee of Experts on the Rights and Welfare of the Child
(ACERWC) Admissibility Ruling
Communication No. 0026/Com/001/2025
Decision On Admissibility No. 001/25 Mr. Emhemed Elremalli (On behalf of
Mohamed Elremalli) Against the State of Libya**

I. Submission of 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 on 18 November 2024, according to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by Mr. Emhemed Elremalli (On behalf of Mohamed Elremalli) (the Complainant) Against the State of Libya (the Respondent State).
2. In accordance with Section III of the Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions (Communication Guidelines), the Secretariat undertook preliminary review and requested the complainants to revise the submission and incorporate additional information in compliance with the requirements of Form and Content. The Complainants submitted a revised communication, on 13 February 2025.
3. The Secretariat duly transmitted the Communication to the Respondent State on February 25, 2025, requesting the same to submit its arguments on the admissibility of the Communication within 60 days from the date of the request per Section IX(2)(iv) of the Communication Guidelines. On 05 May 2025 the Committee granted the Respondent State an additional 30 days to submit arguments on admissibility, noting the expiry of the 60 days deadline. Despite the initial 60 days and the additional 30 days granted, the Respondent State failed to submit its arguments on admissibility. Subsequently, the Committee considered the admissibility of the Communication during its 46th ordinary Session as per Section IX (3) of the Revised Communication Guidelines.

II. Summary of Alleged Facts

4. The communication concerns alleged violations of the rights of Mohamed Elremalli, a Libyan minor born on 27 August 2020 in Misrata City, Libya. According to the applicants, due to alleged gross medical negligence, Mohamed suffered Hypoxic-Ischemic Encephalopathy (HIE). The HIE caused permanent disability for Mohamed. The applicants further allege that Mohamed's disability, combined with the lack of accessible rehabilitation and special education services, has limited his participation in education and society. The family has allegedly incurred significant financial burdens due to Mohamed's medical costs, with no institutional support from the Libyan government. It is submitted by the applicants that Libya's healthcare system lacks essential paediatric rehabilitation services, leaving Mohamed without necessary medical support.
5. The applicants document systemic degradation of Libya's healthcare system, which directly impacted Mohamed's access to necessary care; it is noted that in 2022, over 50% of healthcare facilities operational in 2019 closed due to security

threats and insufficient funding. Essential services, including paediatric care and reproductive health, were unavailable nationwide. In 2020, 3.5 million people lacked consistent access to primary and secondary healthcare services. Systemic deficiencies include 90% of primary healthcare centres (PHCs) in conflict-affected regions being non-operational in 2021 due to critical shortages of medical staff and supplies, severely restricting access to emergency obstetric care. Furthermore, 37% of health facilities nationwide were fully or partially damaged. Additionally, 73% of facilities in southern Libya reported insufficient capacity to manage obstetric complications due to outdated equipment and gaps in specialized staff training.

III. The Complaint

6. The Complainant submits that the Respondent State has violated the following provisions of the African Charter on the Rights and Welfare of the Child due to failure and refusal to investigate and prosecute the alleged perpetrator:

- **Article 1(1) (Obligations of State Parties)**
- **Article 5 (Right to Survival and Development)**
- **Article 11 (Right to Education and Dignity)**
- **Article 20 (Parental Responsibilities)**
- **Article 14 (Right to Health and Health Services)**
- **Article 16 (Protection against Child Abuse)**
- **Violation of Article 21 (Protection from Harm and Neglect)**

IV. Admissibility

A. Complainant's Submission on Admissibility

7. The Complainant submits that the Communication meets the admissibility requirements under Section IX (1) of the Revised Communications Guidelines. It is submitted that all available domestic legal remedies were pursued through formal proceedings initiated to address Mohamed's medical negligence case. However, systemic judicial inefficiencies, including indefinite adjournments, lack of specialized medical negligence tribunals, and institutional corruption have rendered these remedies ineffective and unreasonably prolonged.

8. The Complaints allege that the Libyan government has failed to investigate the medical negligence or provide institutional support, despite multiple legal petitions. It is submitted that legal action was initiated in the Misrata Misdemeanour Court (Case No. 2022/406) to seek redress for Mohamed's injuries. The Complainants allege that legal proceedings have faced delays and procedural obstacles, making domestic remedies ineffective, and that the Libyan judiciary has failed to adjudicate

the case within a reasonable timeframe due to chronic delays, procedural mismanagement, and a lack of expertise in medical negligence claims. The Complainants further allege systemic judicial inefficiencies, such as indefinite adjournments, lack of specialized medical negligence tribunals, and institutional corruption, which have rendered remedies ineffective and unreasonably prolonged. It is submitted that the Libyan authorities have neither initiated an independent investigation into the clinic's negligence during Mohamed's birth nor provided compensation for the resulting harm.

9. Furthermore, the Complainant alleges that the communication is submitted after four (4) years of the incident (27 August 2020). It is submitted that this is owing to Libya's failure to adjudicate the case within a reasonable time and it should be justified as a delay due to state-caused systematic barrier. Based on these submissions, the Complainant requests that the Committee declares the communication admissible.

B. The ACERWC's Analysis on Admissibility

10. The Committee notes that the Communication is submitted according to Article 44 of the African Children's Charter, which gives the Committee the mandate to receive and consider complaints from "any person, group or non-governmental organization recognized by the Organization of the African Unity, Member States, or the United Nations on matters covered by the Charter".
11. Furthermore, Section I (1) of the Revised Communication Guidelines stipulates that 'any individual or group of natural or legal person including children', can submit a Communication before the Committee. The Committee notes that the Complainant's representative is an individual, a parent of the alleged victim, Mohamed Elremalli; hence has *locus standi* to submit the case. Moreover, the Respondent State is a State Party to the African Charter on the Rights and Welfare of the Child (Charter) since 23 September 2000.
12. Furthermore, in line with Section I (iv) (a) of the Revised Communication Guidelines, the Committee's jurisdiction is determined by the victim's age at the time of the alleged violation. In the case at hand, the alleged violation happened when Mohamed Elremalli was an infant, therefore, the Committee assumes jurisdiction over the matter.
13. The admissibility of a Communication is determined based on the conditions provided under the Revised Communications Guidelines. Accordingly, the Committee examines the elements of admissibility in line with the conditions of admissibility provided under Section IX (1) of the Revised Communication Guidelines.

14. The first condition of admissibility set forth under Section IX (1) (a) prescribes that a Communication is compatible with the provisions of the Constitutive Act of the African Union and the Charter. The Committee has previously clarified that a Communication is compatible with the Charter if it reasonably alleges a violation of the same, thereby indicating a clear breach of the provisions of the Charter.¹ In the present Communication, the Complainant alleges and establishes prima facie violations of the provisions of the Charter; hence, the submission is compatible with the Constitutive Act of the AU and the Charter.
15. The second requirement relates to the provisions prescribed under Section IX (1) (b) of the Revised Guidelines, which requires that a Communication should not be exclusively based on information disseminated through the media. In the matter at hand, the Complainant submits that the alleged facts presented are not solely reliant on information from media reports. The Complainant provides medical certificate and proof of court application as evidence of the claims made in the submission. Therefore, the Committee notes that the Communication is not solely based on media but rather based on documentary evidence.
16. In accordance with the third condition of admissibility outlined in Section IX (1) (c) of the Revised Communication Guidelines, a Communication should not raise matters pending settlement or previously settled by another international body or procedure by any legal instruments of the African Union and principles of the United Nations Charter. In this regard, the Committee has found no evidence of any pending or previously settled matters about the issues raised in the present Communication. Accordingly, the Committee decides that the Communication complies with the requirement in Section IX (1) (c) of the Revised Communication Guidelines.

Exhaustion of domestic remedies

17. Section IX (1) (d) provides the fourth condition of admissibility, which states that a Communication should be submitted after having exhausted available local remedies unless it is evident that this procedure is unduly prolonged or ineffective. The principle of exhaustion of local remedies is an important aspect of promoting respect for national sovereignty. It recognizes the importance of allowing states to address alleged violations of rights through their legal systems before resorting to external forums. Furthermore, it helps to prevent the international tribunal from acting as a court of first instance rather than as a body of last resort.
18. For the rule of exhaustion of domestic remedies to apply, the remedies must be 'available,' 'effective,' or 'sufficient.'² A remedy is considered available if the

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

² 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, ACERWC, Minority Rights Group International and

petitioner can pursue it without facing any obstacles and for a remedy to be deemed effective, it must offer a realistic prospect of success in addressing the complaint. Lastly, a remedy is considered sufficient if it is capable of adequately redressing the complaint.³ If the remedy fails to meet one of the criteria; availability, accessibility, or effectiveness, then the local remedy fails to meet the requirements for providing adequate redress and, hence, may not be exhausted.

19. In the current case, the complainants submit that all available domestic legal remedies were pursued through formal proceedings initiated to address Mohamed's medical negligence case. However, the applicants note that systemic judicial inefficiencies, including indefinite adjournments, lack of specialized medical negligence tribunals, and institutional corruption have rendered these remedies ineffective and unreasonably prolonged. The Complainants further allege systemic judicial inefficiencies, lack of specialized medical negligence tribunals, and institutional corruption, which have rendered remedies ineffective and unreasonably prolonged. It is submitted that the Libyan authorities have neither initiated an independent investigation into the clinic's negligence during Mohamed's birth nor provided compensation for the resulting harm. In this regard, the Complaints allege that the Libyan government has failed to investigate the medical negligence or provide institutional support, despite multiple legal petitions.
20. To support the claim that all available domestic remedies were pursued and that they are ineffective and unreasonably prolonged, the complainants note that legal action was initiated in the Misrata Misdemeanour Court (Case No. 2022/406) to seek redress for Mohamed's injuries. The applicants attach two documents in relation to this. The first document is from the State of Libya Ministry of Justice, Judicial Expertise and Research Centre dated 03/08/2023, which is a forensic report on child Mohamed Emhemed Elremalli detailing the conditions of birth of the child. The document indicates that the child suffered from birth asphyxia, and immediately after birth, a breathing tube was installed inside the trachea and the new-born was placed on a mechanical ventilator (MV) due to the state of sagging, slackening and low pulse. It is also noted that he was given the necessary oxygen, solutions and medications and placed under observation. The conclusion in the document is that the new-born suffered from birth asphyxia, which led to cerebral palsy. The second document submitted is from West Misrata First Instance Prosecution Summary Public Sector Prosecution dated 31/10/2023, which responds to the legal application filed by the applicants (Case No. 2022/406). The

SOS-Esclaves (on behalf of Said Ould Salem & Yarg Ould Salem) v. Mauritania, Communication No.007/Com/003/2015, para 23.

³ 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, see also ACHPR, Communication 147/95 and 149/96, Sir Dawda K. Jawara v The Gambia, paras 31 and 32.

prosecution labelled the incident as a misdemeanour under Articles: 1/1, 2/c, 5/a, 36, of Law No.17/1986 regarding medical liability and set a court session for 26/12/2023. The complainants have not submitted any additional document or information regarding the status of the court session set for 26/12/2023.

21. In its previous decisions, the ACERWC has noted that if a complainant alleges that a remedy is either unavailable, ineffective, insufficient or unreasonably prolonged, the allegation must be substantiated by evidence. However, in the current case, despite alleging that all available local remedies are pursued, the applicants did not provide any information or evidence in relation to the court session set for 26/12/2023. In relation to the claim of unreasonably delay, the complainants have not presented any arguments in their submission. Analysis of the documents submitted indicate that the applicants initiated a claim in 2022 and on 03/08/2023 the State of Libya Ministry of Justice, Judicial Expertise and Research Centre issued a forensic report on the child. Subsequently on 31/10/2023 West Misrata First Instance Prosecution Summary Public Sector Prosecution responded to the legal application filed by the applicants labelling the incident as a misdemeanour under Articles: 1/1, 2/c, 5/a, 36, of Law No. 17/1986 regarding medical liability and set a court session for 26/12/2023. The Committee notes that there is no adequate indication of unreasonable delay from the analysis of the documents submitted. Additionally, the complainants have not provided any arguments or evidence of the claim of systemic judicial inefficiencies, indefinite adjournments, lack of specialized medical negligence tribunals, and institutional corruption.
22. Furthermore, in accordance with Section IX(2) vii, which mandates to Committee to invite the parties to submit additional information, where it deems necessary, before deciding on admissibility, the Committee requested the complainants to submit any evidence on the court session set for 26/12/2023. However, the complainants were unable to provide further evidence of the proceedings on or after the court session set for 26/12/2023.
23. The Committee reiterates its previous jurisprudence which notes that casting doubt about the effectiveness of a remedy without substantiating it with evidence, is not sufficient to absolve complainants of the obligation to exhaust or attempt to exhaust the remedy.⁴ In the present case, the complainants have not substantiated the various claims regarding the judiciary in the state party, such as the claims of systematic ineffectiveness, indefinite adjournments or institutional corruption. The documents presented as evidence in relation to exhaustion of local remedies are incomplete and the submission is silent regarding the court session set for 26/12/2023 and any other proceedings at appellate level. Hence the Communication does not fulfil the requirement of exhaustion of local remedies.

⁴ Dalia Lotfy on behalf of Ahmed Bassiouny V. The Governemnt of the Arab Republic of Egypt No. 008/Com/001/2016.

24. The fifth requirement of admissibility is stipulated under Section IX(1)(e) of the Revised Communications Guidelines provides that a communication must be presented within a reasonable time after exhausting local remedies at the national level, ensuring that the Complainant acts with due diligence in pursuing their cases. This requirement aims to maintain the communication's credibility and effectiveness in achieving the intended outcome while avoiding rights abuse. The Committee also notes that this section of the Revised Communications Guidelines is intended for situations where remedies are exhausted, not when an exception to the exhaustion rule is invoked. In the present communication, the complainants invoke an exception to the rule of exhaustion of local remedies, hence the fifth requirement is not applicable.
25. Lastly, the Committee notes that the Communication does not contain any disparaging or insulting language, and therefore, it is in compliance with the last requirement of admissibility under Section IX (1) (f) of the Revised Guidelines.

V. Decision on Admissibility

33. After thoroughly examining all the arguments and evidence provided, the Committee decides that the Communication has not fulfilled the admissibility condition of exhaustion of local remedies, as provided under Section IX (1) (d) of the Revised Guidelines; hence it is accordingly declared inadmissible.

Adopted in December 2025 during the 46th Ordinary Session of the ACERWC



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