

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

**COMMUNICATION NO.0027/COM/002/2025
DECISION ON ADMISSIBILITY NO. 001/2026**

**COMMITTEE FOR JUSTICE
ROBERT F. KENNEDY HUMAN RIGHTS
SINAI FOUNDATION FOR HUMAN RIGHTS**

ON BEHALF OF

BAHAA EL-DIN FATHY MOHAMED MAHER ISMAIL KHALIL

V.

ARAB REPUBLIC OF EGYPT

APRIL 2026

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 23 October 2025, pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by the Committee for Justice (CFJ), Robert F. Kennedy Human Rights (RFKHR), and the Sinai Foundation for Human Rights (On Behalf of Bahaa El-Din Fathy Mohamed Maher Ismail Khalil) (the Applicants) against the Arab Republic of Egypt (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 of the ACERWC conducted a preliminary review of the Communication. After verifying the formal and substantive prerequisites, in accordance with Section IX (2) (I) of the Communication Guidelines, the Committee transmitted a copy of the Communication to the Respondent State on 20 November 2025 through Note Verbale ACE/OL/10/1045.25. The Respondent State submitted its response on 20 January 2026.
3. The Applicants submitted observations to the Respondent State's submissions on 27 March 2026. The observations were forwarded to the Respondent State on 08 April 2026 through Note Verbal ACE/OL/10/262.26.
4. The Committee deliberated on the admissibility of the Communication during its 47th Ordinary Session held from 17 to 25 April 2026.

II. Summary of Alleged Facts

5. The Communication concerns alleged violations of the rights of Bahaa El-Din Fathy Mohamed Maher Ismail Khalil (Bahaa El-Din), an Egyptian citizen born on 28 October 2007. At the time of the alleged violation, he was 16 years old and resident in Al-Arish city, North Sinai Governorate, Egypt.
6. The Applicants allege that on 23 September 2024, Bahaa El-Din received a phone call from his friend, Ahmed Mohamed Hamza, who said he had been expelled from his home and requested Bahaa El-Din to pick him up near the cemeteries outside Abu Saqal, in Al-Arish, North Sinai. When Bahaa El-Din arrived on the main road, in front of the Pepsi Company Building in North Sinai, his bicycle tire went flat. He was then approached by three plain-clothes National Security Agency officers, who without providing any justification forcefully apprehended Bahaa El-Din, placed him in a vehicle and took him to an undisclosed location. The Applicants allege that several bystanders witnessed the apprehension.
7. It is alleged that on 24 September 2024, while Bahaa El Din remained detained, officers searched his home and confiscated his school tablet and his father's mobile phone.

8. The Communication alleges that Ahmed Mohamed Hamza, a friend of Bahaa El-Din, who was previously detained, had arranged with the State Security Officers to hand over Bahaa El-Din to them.
9. It is submitted that the family filed complaints regarding the arrest: on 24 September 2024 a complaint against Col. Mohamed Suleiman Radi, the Director of Security of North Sinai; on 25 September 2024 a complaint to the Ministry of Interior and the Director of Security of North Sinai through telegraph; and On 26 September 2026 two complaints at Al-Arish Prosecution Office. The Applicants state that none of these complaints received substantive responses.
10. The Applicants allege that Bahaa El-Din was detained at Ismailia Security Forces Headquarters, for 103 days, from 25 September 2024 to 2 January 2025. It is alleged that during the first 15 days, Bahaa El-Din was interrogated and subjected to torture and other ill treatment by State Security Officers. The alleged abuses included: being stripped and beaten; forced to sit on a metal chair with wires wrapped around his genital, hands, and legs; insertion of a wire in his ear and placement of an electric generator on his head with repeated electric shocks; suspension from a door with hands tied to a higher point and legs to a lower point producing an arched posture; being tied to a bed with arms and legs stretched (described as resembling crucifixion); pouring salt water into his mouth and nose causing him to suffocate to the point of near death.
11. It is stated that the family was informed of Bahaa El-Din's detention at Ismailia Security Forces Headquarters. Several sources informed the family that Bahaa El-Din was held in solitary confinement for a period of 45 days prior to his transfer to a shared cell. A source further informed the family that Bahaa El-Din was brought in for interrogation every two to three days, returning to the cell bleeding from different parts of his body. A source allegedly indicated that Bahaa El-Din would return from interrogation with new injuries due to the torture. In one instance, his eye was black and obscured, in another, his stomach, back, and legs were filled with injuries.
12. The Applicants allege that Bahaa El-Din's health greatly deteriorated. He lost weight to an extent that his bones were visible from below his skin because of starvation. He was constantly trembling and his body was covered with blisters. Furthermore, the National Security officers yelled coarse insults at him.
13. It is submitted that on 02 January 2025, Bahaa El-Din appeared before the prosecution at Al-Arish First Police Station under Case No. 2 of 2025 State Security. He was charged with joining and financing a terrorist organization and photographing or filming a military installation. These accusations were said to have been made without any evidence provided by the prosecution.
14. The Communication alleges that the family attempted to visit him after his appearance at Al-Arish First Police Station but were denied access. Authorities only permitted them to hand over food and clothing for him.
15. The Applicants allege subsequent transfers of Bahaa El-Din to various facilities: on 03 January 2025 to Al-Arish Central Prison; on 04 January 2025 back to Ismailia Security Forces Headquarters; and on 05 January 2025 to the Supreme State

Security Prosecution (SSSP) in Cairo.

16. The Applicants allege that during an interrogation at the Supreme State Security Prosecution, the prosecutor rephrased and recorded statements in incriminating manner and threatened to return Bahaa El-Din to National Security custody if he refused to sign.
17. The Communication alleges that a source saw Bahaa El-Din at the SSSP where he was said to have been in a weak and vulnerable condition. He was barefoot and his clothes were disheveled. He was unable to stand on his own and was leaning against a wall. His hands were trembling; he had a skin rash on his face and was unable to lift his head and remained bowed.
18. It is alleged that a few days later, Bahaa El-Din was again brought before the Supreme State Prosecution. The prosecutor had written a report claiming that Bahaa El-Din was a member of a sub-group associated with the terrorist organization ISIS. It is stated that Bahaa El-Din was forced to sign the statement under threat of being sent back to the National Security Agency facility.
19. The Applicants allege that after the hearing, because Bahaa El-Din reported being subjected to torture, he was taken to the Forensic Medical Authority in the district of Sayyida Zeinab in Cairo. Despite the visible marks from the handcuffs on his wrists, the Forensic Medical Authority physicians falsely reported that Bahaa El-Din was in good health and had never been tortured.
20. The Applicants allege that thereafter, Bahaa El-Din was returned to Al-Arish First Police Station and placed into solitary confinement for a week, then placed in a cell with three adult detainees. During the period of his detention, he was taken to Al-Arish State Security Headquarters daily for interrogation, from 25 January 2025 onwards.
21. The Applicants allege that on 26 January 2025, Bahaa El-Din's assigned lawyer saw him for the first time during an interrogation appeared in videoconference. The lawyer did not get to see him in person. The lawyer advocated for Bahaa El-Din's family to be allowed to visit him. The family was waiting outside the building at the prosecution's headquarters with hope to see him. Despite this, visitation rights continued to be denied.
22. Based on these facts, the Applicants allege that the Respondent State has violated the rights guaranteed under the African Charter on the Rights and Welfare of the Child (the Charter), particularly Article 10 (Protection of Privacy), 11 (Education), 14 (Health and Health Services), 16 (Protection Against Child Abuse and Torture), 17 (Administration of Juvenile Justice), and 19 (Parental Care and Protection).

III. Applicants' Submission on Admissibility

23. The Applicants submit that the Communication fulfils the requirement of admissibility under Section IX (1) of the Revised Communication Guidelines.
24. The Applicants submit that the Communication is brought in conformity with the provisions of the Charter and the Constitutive Act of the African Union. The Applicants submit that the Communication alleges specific provisions of the

Charter that have been violated by the Arab Republic of Egypt.

25. The Applicants further submit that the Communication is not exclusively based on information obtained from the media or manifestly groundless. The Applicants submit that the information contained in the Communication is based on information received from Bahaa El-Din's family and eyewitness sources regarding his condition during detention.
26. The Applicants further submit that the Communication is not before any other investigation, procedure, or international dispute settlement procedure.
27. The Applicants submit that Bahaa El-Din should be exempt from exhausting all local remedies because they are neither available, effective, nor sufficient. The Applicants refer to the African Commission on Human and Peoples' Rights (ACHPR) decision in *Sir Dawda K. Jawara v The Gambia* wherein it was held that "[a] remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint."¹ The Applicants further refer to the decision of the African Court on Human and Peoples' Rights in *African Commission on Human and Peoples' Rights v. Libya*² in which it was held that the requirement to exhaust local remedies was not applicable to the accused as he had been secretly detained, isolated and had no access to a lawyer or judge. The Applicants allege that similarly, the requirement to exhaust local remedies is not applicable to Bahaa El-Din as he was subjected to enforced disappearance for 103 days, where he was isolated from friends, family and had no access to a lawyer. The Applicants further refer to the decision of the African Commission on Human and Peoples' rights in *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan*,³ in which the complainant had been similarly tortured by the Respondent's State Security Officers who were granted immunity from prosecution as per Sudanese law. In its decision, the African Commission held that the complainant had exhausted local remedies as per the immunity provision "unreasonably limits the opportunity to deal with violations." Similarly, State Security Officers in the Respondent State are granted immunity in Article 8 of the Anti-Terrorism law which states that "enforcers of this law shall not be held criminally accountable if they use force to perform their duties or protect themselves from imminent danger to lives or properties, when the use of this right is necessary and adequate to avert the risk."⁴ The Applicants further refer to *The Institute for Human Rights and Development in Africa on Behalf of ACM v. The Republic of Botswana*,⁵ in which the ACERWC held that in cases of criminal offenses, the victims' task should not be to exhaust local remedies, it is instead the State's obligation to investigate the violations and prosecute. It is further alleged

¹ ACHPR, *Sir Dawda K. Jawara v. The Gambia* Communication No 147/95-149/96.

² AfCHPR, *ACHPR v Libya*, Application 002/2013.

³ ACHPR, *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v Sudan*.

⁴ The Arab Republic of Egypt, Law No. 33(bis) of 2015 (Anti-Terrorism Law), Article 8, available at https://www.atlanticcouncil.org/wp-content/uploads/2015/09/Egypt_Anti-Terror_Law_Translation.pdf

⁵ ACERWC, *IHRDA V Botswana*, Communication No 0024/Com/001/2023.

that despite Bahaa El-Din's report of the torture and the three complaints filed by his family, the Respondent State has failed to meet its obligation to investigate violations and prosecute. The Applicants further submit that local remedies are not effective for Bahaa El-Din as they do not provide a realistic prospect of success in addressing the complaint. The Applicants allege that Egyptian SSSP has a history of systemic failure in investigating and prosecuting allegations of torture.

28. Furthermore, the Applicants submit that the Communication is presented within a reasonable period as the violations raised within the Communication are still ongoing. The Applicants further allege that Bahaa El-Din is exempt from the obligation to exhaust local remedies. As a result, the reasonable time requirement does not apply.
29. Lastly, the Applicants submit that the language used within this Communication is not offensive. The Complainant submits that the Communication has not been cast in any insulting or disparaging language, and that it is written in objective and respectful language throughout.
30. Based on these submissions, the Complainant seeks that the Communication be declared admissible.

IV. Respondent's Submission on Admissibility

31. In its response, the Respondent State argues the Communication is inadmissible based on two principal grounds: (a) its reservation to Article 44 of the Charter; and (b) failure to exhaust domestic remedies.
32. First, the Respondent State submits its reservation to Article 44 of the Charter, as published in the Official Gazette of the Arab Republic of Egypt, Issue No. 48 of 26 November 2015. In this regard, the Respondent State contends that reservation precludes the Committee's competence to entertain the Communication.
33. Second, the Respondent State submits that the Complainant has not exhausted local remedies. The Respondent State refers to Article 56(5) of the African Charter on Human and Peoples' Rights, Article 5(7) of the African Charter on the Rights and Welfare of the Child, and paragraph four of the admissibility criteria set out within the Revised Communication Guidelines, which require domestic remedies to be exhausted prior to admissibility of a communication. The Respondent state further argues that the procedures and investigations of the case are currently ongoing, and the case is pending before the Public Prosecution. Furthermore, the Respondent State states that all the legal guarantees are accessible to Bahaa El-Din. The Respondent State argues that Bahaa El-Din was subjected to lawful investigation procedures and all aspects of his defense were considered, during which he admitted to having joined ISIS, a terrorist organization. The Respondent State argues that the Applicants justification for exempting Bahaa El-Din from the obligation to exhaust local remedies is founded on fragmentary and erroneous allegations and that he was not isolated from his family nor his lawyer, who was

present with him during investigations.

34. The Respondent State submits that the case is still at an early stage, and therefore premature intervention would deprive the national judiciary of the opportunity to address the matter for two reasons. Firstly, an allegation of a violation of child's rights cannot be regarded as sufficient to attain a definitive determination and State fault cannot be derived from unsubstantiated and politically motivated claims. Secondly, the principle of exhaustion of remedies is linked to State sovereignty, therefore, national courts are the best place to examine, monitor and remedy alleged violations.
35. The Respondent State alleges that the Applicants erroneous interpretation of the law led it to conclude that domestic remedies were unavailable and rely on the claim that officers of Egypt's National Security Agency enjoy immunity from criminal responsibility. The Respondent State argues that this claim creates a deliberate distortion of facts aimed to undermine the State and its governance of the rule of law. It renders the law to be illegitimate due to its incompatibility with logic and Egypt's constitutional, national, regional and international obligations. The Respondent State further submits its rejection to comparison of legislation of other States provided in paragraph 40 of the Communication, as such comparisons do not align with Egyptian legal reality. The Respondent State further rejects the use of what it claims to be "sweeping and generalized language" as such language creates unwanted concern for those who follow and apply Egyptian legislation, the work of law enforcement authorities, and the functioning of an independent judiciary. The Respondent State emphasizes that it is unacceptable to assert politically motivated terminology as such claims demonstrate a lack of due care in drafting and undermine admissibility.
36. The Respondent State further refers to Egyptian Child Law which provides for the criminal treatment of children, particularly, Article 111 of the Child Law, as amended by Law No. 126 of 2008, which states, "the death penalty, life imprisonment, or aggravated imprisonment shall not be imposed on an accused who had not attained full eighteen years at the time of committing the crime." The Respondent State further refers to Article 125 of the same law which regulates the child's right to legal assistance and Article 126 which specifies who has the right to attend a child's trial. The Respondent State alleges that these provisions demonstrate the inaccuracy of the allegation that the offence attributed to Bahaa El-Din is punishable by death penalty. Egyptian Child Law prohibits the imposition of a death penalty on a child.
37. Based on these submissions, the Respondent State seeks that the Communication be dismissed for lack of fulfilling admissibility requirements.

v. Applicants' Observations to Respondent State's Arguments

38. The Applicants submit observations in response to the Respondent State's arguments on admissibility pursuant to Section IX(2)(vi) of the Revised Communication Guidelines. The Applicants highlight several alleged factual

discrepancies and misrepresentations in the Respondent State's response.

39. The Applicants submit updates regarding detention conditions of the Complainant since the submission of the Communication in October 2025. The Applicants allege that the Complainant's lawyer submitted several formal requests to the prosecution, requesting it to allow the Complainant to attend his school examinations, to issue parental visitation permits, deliver schoolbooks and to refer the Complainant to a dermatology specialist. These requests were approved by the prosecution, but not all were implemented by the police within reasonable time.
40. The Applicants observe factual discrepancies within the Respondent State's arguments. The Respondent State ignored the timeline of the Applicants arrest. The Complainant was arrested on 23 September 2024 as per the complaint filed by the Complainant's family, and not 03 January 2025 as stated within the Respondent States response.
41. The Applicants submit that claims of the Complainant benefitting from all legal safeguards are inaccurate as the Complainant was forcibly arrested without being informed of the reason for arrest and held incommunicado for 103 days while being tortured in detention. All complaints made by the family were unsuccessful as evidenced in Annexure A.
42. Additionally, the Applicants dispute the Respondent State's submission that Bahaa El-Din did not show any signs of torture when presented before the Forensic Medicine Authority, claiming that he was only presented before the Authority three months after occurrence of the torture and they have not shared the forensic medical report or case file with the Applicants lawyer or family. They further allege experts in Egypt's Forensic Medicine Authority use methods that can count as torture and falsify the cause of death in cases where detainees died in custody. The Applicants observe that the Respondent State failed to directly respond to the torture allegations of the Complainant during his first 15 days of detention in their responding arguments. The Applicants therefore maintain that the Complainant was tortured during his detention which is contrary to international human rights law.
43. The Applicants further dispute the Respondent States claim that the Complainant had legal representation during his interrogation. The lawyer named by the Respondent State Ahmed Ali Ahmed Hejazi, was never appointed by the Applicants family, and never met the Complainant, he only signed the case file. The lawyer appointed by the Applicants family was allegedly denied access to the Complainant, despite being present in the same building. The Applicants submit that the Respondent State continues to deny the Complainant contact with his legal representative, violating his right to legal representation under Article 17(2)(c)(iii) of the Charter.
44. The Applicants observe the Respondent States claim that the Complainant is able to receive family visits regularly as misleading. Only three visits were allowed over the course of a year, the rest were denied.
45. The Applicants maintain that local remedies are unavailable in Egypt as they are not practically accessible to the Complainant. The Applicants emphasize only

remedies available in practice are to be exhausted, and not those in theory in response to the Respondent States argument that procedures and investigations are ongoing and premature intervention would deprive the national judiciary of the opportunity to address the matter. The Applicants refer to *IHRDA & Finders Group Initiative on behalf of TFA (a minor) v. Cameroon*⁶ in which it was held that a remedy is available if a pensioner can pursue it without obstacles and the Committee's definition of 'available' as readily obtainable. The remedy is said to be outside the Applicants practical reach. Additionally, his legal representative is said to not have access to the Complainant's case files and medical documents, which are required to determine remedies. The Applicants observe that the Respondent State failed to bring the Complainant's case before a judge after over 500 days of detention, exceeding the 30-day obligation to present a child before a competent authority after detention.

46. The Applicants submit that detainees in Egypt theoretically have the right to challenge the legality of their detention, but not practically, therefore making this avenue unavailable. The Applicants refer to Articles 164 & 166 of the Egyptian Criminal Procedure Code (Law No. 150 of 1950) which limit the right of defendants to appeal their pretrial detention and pretrial orders. The Applicants submit that the Complainant has little access to his legal representative and no access to the case files, which makes it impossible to challenge his detention.
47. The Applicants observe lack of available avenues to redress torture suffered by Complainant. The Applicants refer to the United Nations Committee Against Torture (CAT), the Human Rights Committee, and States in Egypt's 2019 Universal Periodic Review cycle and emphasize that Egypt has not established an independent mechanism to investigate and address allegations of torture despite recommendations. The Applicants maintain that local remedies remain unavailable additionally due to the lack of a formal mechanism and ignored complaints by the Respondent State.
48. The Applicants observe that local remedies are ineffective as they do not offer a realistic prospect of success. They emphasize that if a State's legal institutional framework offers protection against the violation of rights, then it is necessary for there to be effective implementation of these laws, and an effective remedy is one that offers genuine prospect of success and has the ability to redress the complaint. The Applicants submit that a criminal investigation controlled by the authority being accused of perpetrating and concealing torture cannot be deemed as an effective remedy as the matter should be determined through an impartial investigation. The Applicants refer to the Committee's approach in which if a case is reported but not investigated, the Complainant can be exempt from exhausting local remedies. Additionally, the Applicants refer to reports from international institutions which show that the Respondent State is aware of the systemic human rights violations within the State. These reports express serious concern over Egypt's widespread

⁶ ACERWC, *Institute for Human Rights and Development in Africa and Finders Group Initiative On Behalf of TFA (a Minor) V Cameroon*, Communication No 006/Com/002/201.

use arbitrary and incommunicado detention and torture. The Applicants submit that these consistent violations illustrate that the Respondent State systematically disregards international standards and indicates mass human rights violations.

49. The Applicants observe that local remedies are not sufficient. They submit that local remedies provided by the Respondent State in its response, are not sufficient to redress the complaint of arbitrary detention and torture subjected to the Complainant. The Applicants emphasize that only domestic remedies that are available and sufficient cannot be exhausted as a remedy must be capable of redressing a complaint. The Applicants urge the Committee to consider the gravity of the violations and consider that the physical and psychological suffering experienced by the Complainant cannot be addressed through a process insufficient of independence, effectiveness and urgency. The Applicants submit that no independent authority has been established to review complaints of torture against the State, and it is therefore impossible for authorities to make an objective decision on the Applicants arbitrary detention and torture. The Applicants submit that children differ from adults in their psychological and physical development, therefore prolonged liberty is grave as it harms the child's ability to be a responsible adult.
50. The Applicants observe that the procedure for exhaustion of local remedies is unduly prolonged, which shows Egypt's unwillingness to handle this case. The Applicants refer to Section IX (1)(i)(d) of the Revised Guidelines which provides an exception to the exhaustion of domestic remedies requirement if domestic procedures are unduly prolonged. The Applicants submit that the Complainant was held incommunicado for over 500 days, which amounts to significant time spent in pre-trial detention for a child, and therefore by failing to move the criminal process within a reasonable time, the Respondent State has lost its prerogative to address the matter locally. Additionally, the Applicants observe that the Applicants detention violates temporal limits, particularly that a child who is formally charged should be brought before the competent body no later than 30 days after pre-trial detention.
51. The Applicants observe and contest the Respondent State's reliance on its reservation to Article 44 of the Charter. The Applicants submit that such a reservation is incompatible with the object and purpose of the Charter and invalid under international law. The Applicants refer to *Dalia Lofty on behalf of Sohaib Emad v Egypt*,⁷ in which it was held that Egypt's reservation to Article 44 is incompatible with both the object and purpose of the Charter and Article 19(c) of the Vienna Convention. In that Communication, the Committee held that reservation undermines the core rationales of the treaty. The Applicants therefore maintain that the Committee has jurisdiction to consider the Communication.

V. The Committee's analysis on Egypt's reservation on article 44

⁷ ACERWC, Communication No 008/Com/002/2016, *Dalia Lofty on behalf of Sohaib Emad v Egypt*, Decision on Admissibility No 001/2017.

52. The Committee notes the Respondent State's reliance on its reservation to Article 44 as a bar to jurisdiction. The Committee recalls its decision in *Dalia Lofty on behalf of Sohaib Emad v Egypt*,⁸ where it found the State's reservation to Article 44 incompatible with the object and purpose of the Charter and consequently invalid under Article 19(c) of the Vienna Convention on the Law of Treaties. The Committee held that the provisions subjected to reservation were among the core rationales for the creation of the treaty. Furthermore, the Committee reiterates that reservations that undermine core procedural rights of a human-rights treaty are generally incompatible with the treaty's object and purpose. In line with this legal reasoning, the Committee determines that the Respondent State's reservation to Article 44 does not preclude the Committee's examination of the present Communication.

Vi. The Committee's analysis on admissibility

53. 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."

54. Furthermore, Section I (1) (c) of the Revised Guidelines for the Consideration of Communications stipulates that "Any intergovernmental or non-governmental organisation legally recognised in either one or more of the Member States of the African Union, a State Party to the African Children's Charter or the United Nations" can submit a Communication before the Committee. The Committee notes that the Complainant's representatives, Committee for Justice, Robert F. Kennedy Human Rights (RFKHR), and the Sinai Foundation for Human Rights are non-governmental organisations registered in Switzerland, the United States and the United Kingdom respectively, hence have *locus standi* to submit the case. Moreover, the Respondent State is a State Party to the African Children's Charter since 09 May 2001.

55. 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 occurred when Bahaa El-Din Fathy Mohamed Maher Ismail Khalil was 16 years old, therefore, the Committee assumes jurisdiction over the matter.

56. 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.

⁸ As above, para 2.

The Communication is compatible with the provisions of the Constitutive Act of the African Union and the African Children's Charter

57. As per Section IX (1) (a) of the Revised Communication Guidelines, a Communication should be compatible with the provisions of the Constitutive Act of the African Union and the African Children's Charter. The Committee notes its previous decisions where it has 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.⁹ In the present Communication, the Applicants allege violations of the provisions of the Charter; hence, the submission is compatible with the Constitutive Act of the AU and the Charter. The Communication, therefore, fulfils the requirements of Section IX (1) (a) of the Revised Communication Guidelines.

The Communication is not exclusively based on information circulated by the media or is manifestly groundless

58. Section IX (1) (b) of the Revised Communication Guidelines requires that a Communication should not be exclusively based on information disseminated through the media or is manifestly groundless. In the matter at hand, the Applicants submit that the alleged facts presented are not solely reliant on information from media reports but are based on information received from Bahaa El-Din's family and eyewitness sources regarding his condition during his time in detention. The Applicants have provided a case number for the matter (Case 2 of 2025 State Security) and proof of requests (Annexures A-D) made to the Al Arish-Prosecution Office as evidence of the claims made in the submission. Therefore, the Committee notes that the Communication is neither exclusively based on information circulated by the media nor manifestly groundless. The Communication, therefore, fulfils the requirements of Section IX (1) (b) of the Revised Communication Guidelines.

The Communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter

59. In terms of 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. The Committee has found no evidence of any pending or previously settled matters about the issues raised in

⁹ 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.

the present Communication. The Communication, therefore, fulfils the requirements of Section IX (1) (c) of the Revised Communication Guidelines.

The Communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective

60. Section IX (1) (d) of the Revised Communication Guidelines stipulates that a Communication should be submitted after having exhausted available and accessible local remedies unless it is obvious that this procedure is unduly prolonged or ineffective. As previously noted by the Committee, the requirement to exhaust local remedies is a key principle that supports respect for State sovereignty.¹⁰ It underscores the need to give States the opportunity to address alleged rights violations within their own legal systems before such matters are brought to international or regional bodies. Additionally, it ensures that these bodies function as mechanisms of last resort, rather than serving as courts of first instance.¹¹
61. For the rule of exhaustion of domestic remedies to apply, the remedies must be 'available,' 'effective,' or 'sufficient.'¹² A remedy is considered available if the 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.¹³ Where remedies fail to meet any of these criteria, the requirement to exhaust local remedies does not apply.
62. The Committee emphasizes that its assessment of local remedies is functional rather than purely formal. The evaluation does not limit itself to the mere existence of remedies within domestic legislation but fundamentally extends to whether such remedies are genuinely accessible, available, and effective in practice to the complainant. In its jurisprudence, the Committee has held that "the availability of a local remedy is assessed in terms of the ability of the Applicants to make use of the remedy in their case."¹⁴ Consequently, remedies that only exist as theoretical, or are rendered practically inaccessible, therefore, cannot satisfy the exhaustion requirement under the African Children's Charter.
63. In the present Communication, the Applicants submit that domestic remedies are neither available, effective, nor sufficient, and therefore need not be exhausted. The Committee notes the Applicants' allegation that the victim was subjected to enforced disappearance and held incommunicado for a period of 103 days, during

¹⁰ ACERWC, Communication No. 0026/Com/001/2025, *Mr. Emhemed Elremalli (On behalf of Mohamed Elremalli) Against the State of Libya*. Decision on Admissibility No. 001/25.

¹¹ As above, para 17.

¹² As above, para 18.

¹³ 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.

¹⁴ ACERWC, *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v. United Republic of Tanzania*, Communication No.0012/Com/001/2019, para 17.

which he had no meaningful access to legal representation, case materials, or family contact. The Committee observes the allegations that during this period, the victim was effectively placed outside the protection of the law and judicial oversight was blocked, thereby rendering any attempt to pursue remedies practically impossible. The Committee further notes the allegations that the victim's family nevertheless undertook several attempts to activate domestic protection mechanisms by filing complaints before relevant authorities immediately following the arrest. Despite these efforts, the complaints remain unanswered. Additionally, some requests made by the family were approved by prosecutorial authorities but not implemented in practice. The Committee therefore considers that these actions constitute a good faith attempt to engage domestic mechanisms, which was more than sufficient to trigger the Respondent State's due diligence obligations to promptly investigate the alleged violations.

64. The Respondent State, on the other hand, submits that the Communication should be declared inadmissible for failure to exhaust domestic remedies, arguing that the criminal matter remains under investigation before competent national authorities. The Respondent State maintains that the accused continues to benefit from standard legal safeguards provided under domestic law and that the proceedings are ongoing. It further contends that any intervention by the Committee at this juncture would be premature, as it would deprive the national legal system of the opportunity to address the alleged violations.
65. The Committee observes that, although domestic remedies may exist on paper, their practical availability and effectiveness must be evaluated contextually in light of the specific vulnerabilities of the victim. The Committee notes that the Respondent State's position places emphasis on formal procedural compliance rather than functional accessibility. The Committee recalls its decision in *IHRDA (on behalf of children of Nubian descent) v. Kenya*,¹⁵ where it emphasized that the exhaustion requirement applies only to remedies that are available in practice. In the present Communication, the Committee observes that the Applicants allege significant impediments in accessing such remedies, including lack of access to legal representation during a critical period of detention, denial of access to case files and medical records, and the failure of authorities to respond to complaints submitted by his family. The Committee recalls the African Court on Human and Peoples' Rights case in *African Commission on Human and Peoples' Rights v Libya*¹⁶ where the Court held that domestic remedies were not available where the complainant was detained in a secret location, isolated from family and friends, and denied access to a lawyer. The Court further stated that such grounds were sufficient for it to declare that the complainant had been prevented from accessing local remedies. Furthermore, the Committee expands this principle by holding that the denial of essential court documentation alone can render a remedy unavailable, as established in the *IHRDA & Finders Group Initiative on behalf of TFA (a minor)*

¹⁵ 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.

¹⁶ AfCHPR, *ACHPR v Libya*, Application 002/2013, para 68-69.

v. Cameroon decision.¹⁷ Similarly, in the present communication, the Committee, therefore, considers that remedies which are not practically accessible to the victim cannot be deemed available.

66. The Committee further notes that, although certain traditional legal avenues, such as a *habeas corpus* petition or prosecutorial review may formally exist under Egypt's legal framework, their practical accessibility must be evaluated against the operational realities of the Communication. This Communication concerns allegations against State Security actors operating within the domain of counter terrorism operations. The Committee observes that where judicial oversight of security-related detention is effectively restricted, suspended, or rendered inaccessible in practice, the simple existence of remedies in legislation cannot suffice to establish availability. In this regard, the Committee considers that a child who was allegedly held incommunicado for more than three months, denied access to legal counsel and case files cannot reasonably be expected to navigate complex judicial remedies while remaining entirely dependent on the same authorities allegedly responsible for the violations.
67. The Committee further takes note of the Applicants' submissions regarding Article 8 of Egypt's Anti-Terrorism Law, which shields law enforcement officials from criminal responsibility for the use of force where such force is deemed "necessary" while performing their statutory duties. While the Respondent State disputes the interpretation advanced by the Applicants, the Committee holds that it must assess the practical effect of such broadly framed immunity provisions in determining whether remedies are genuinely available and capable of success. The Committee recalls the reasoning of the African Commission in *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan*,¹⁸ where immunity provisions protecting State security officials were found to unreasonably restrict opportunities for victims to seek redress. Similarly, in the present Communication, the Committee considers that because "necessity" is determined in a closed security track, the legal and practical burden would effectively rest on a child victim to disprove the necessity of force used by security officials against him. This burden of proof renders the prospect of domestic accountability largely illusory. Consequently, such provisions may not merely present a practical difficulty, but operates as a structural, *de jure* barrier to effective local remedies.
68. Regarding the effectiveness of remedies, the Committee recalls its decision in *Minority Rights Group International and SOS-Esclaves (on behalf of Said Ould Salem and Yarg Ould Salem) v. Mauritania*,¹⁹ where it held that remedies must offer a realistic prospect of success and be capable of producing the intended result. The Committee further draws guidance from the jurisprudence of the African Commission in *Jawara v. The Gambia*,²⁰ which establishes that where remedies

¹⁷ ACERWC, IHRDA & Finders Group Initiative on behalf of TFA (a minor) V Cameroon Communication No 006/Com/002/201, para 32.

¹⁸ ACHPR, *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v Sudan*, para 58.

¹⁹ ACERWC, *Minority Rights Group International and SOS-Esclaves (on behalf of Said Ould Salem & Yarg Ould Salem) v. Mauritania*.

²⁰ ACHPR, Communication 147/95 and 149/96, *Sir Dawda K. Jawara v The Gambia*.

fail to meet the criteria of availability, effectiveness, or sufficiency, they need not be exhausted. In the present Communication, the Committee observes that the Applicants have raised concerns regarding the failure of authorities to investigate allegations of ill-treatment, as well as inconsistencies in the Respondent State's account of the victim's access to legal representation. The Committee notes the allegations that although the victim was eventually referred for medical examination, the Applicants have raised concerns on the findings that did not adequately address his allegations of ill-treatment. However, the Committee notes that the referral of the victim for medical examination occurred after an extended period of three months after the alleged torture had taken place, a window during which the physical injuries may have faded. In this regard, the Committee notes that admissibility must be assessed based on availability of remedies at the time of the violation occurred, not after.

69. Further, while the victim was at some point afforded access to legal representation, such access was limited in nature, as the lawyer was only able to communicate with him via videoconference and was not granted in-person access. Based on the Applicants' submissions, the victim is still denied access to his family. The Committee emphasizes that, particularly in cases involving serious allegations, effective remedies require prompt, impartial, and independent investigation. Where such safeguards are lacking in practice, the effectiveness of domestic remedies may be called into question.
70. The Committee further observes that remedies may also be rendered ineffective where pursuing them would objectively expose Applicants or their families to fear of reprisal or place them in a position of heightened vulnerability. In this regard, the Committee draws guidance from the UN Human Rights Committee in *Phillip v. Trinidad and Tobago*, where the complainant was exempted from exhausting remedies due to fear of retaliation.²¹ The Committee notes that the allegations of torture and enforced disappearance inherently create an environment of intimidation capable of discouraging further attempts at domestic remedies, particularly, when the initial complaints lodged by the victim's family members receive no response from authorities. Additionally, the Committee takes cognizance of reports and findings from international human rights mechanisms, including the United Nations Committee Against Torture, concerning persistent allegations of systematic torture and failures to investigate abuses committed by State Security officials in Egypt. While such reports alone are not determinative of admissibility, they constitute important contextual evidence when corroborated by the specific facts of the present Communication, including the alleged inaction of authorities despite several complaints filed by the victim's family, particularly the three domestic complaints filed by the Applicants family, which remain unanswered. Accordingly, when authorities fail to respond to complaints, the victim cannot be expected to pursue additional remedies, as they have not only exercised

²¹ Human Rights Committee, *Phillip v. Trinidad and Tobago*, Communication 594/1992, Views of 3 December 1998, U.N. Doc. CCPR/64/D/594/1992, para 6.4.

their due diligence, but the circumstances also offer no realistic prospect of redress. The Committee refers to *Jawara v. The Gambia*, which held that if a State ignores preliminary complaints in a sensitive environment, additional judicial review is a futility.²² In such circumstances, the Committee considers that requiring the victim to pursue additional remedies would amount to requiring him to engage in procedures lacking realistic prospect of redress. In that regard, the Committee notes that remedies are not effective for the victim.

71. The Committee also considers whether the domestic remedies are sufficient and capable of adequately redressing the alleged violations. In this regard, the Committee recalls its decision in *Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania*,²³ where it held that remedies which exist only in theory and cannot provide adequate redress may be deemed insufficient. The Committee further notes that where a State fails to investigate complaints or provide avenues for redress, the remedies may be considered insufficient. Similarly, in the present communication, the Committee considers that the available local remedies are insufficient to adequately offer redress to the victim due to the Respondent State's failure to respond to the complaints filed by the victim's family and the lack of prompt investigations into the allegations of ill-treatment of the victim.
72. Finally, the Committee considers whether the domestic proceedings have been unduly prolonged. The Committee notes that the child victim has allegedly been held in pre-trial detention for a period exceeding 500 days, which includes a prolonged period of incommunicado detention (103 days). The Respondent State argues that intervention at this stage is premature given ongoing processes. The Committee refers to *Yrusta v. Argentina* in which the UN Committee on Enforced Disappearances (CED) established that short-term incommunicado isolation places a person outside the protection of the law, cutting off all practical access to remedies.²⁴ Furthermore, the Committee draws guidance from the UN Committee Against Torture (CAT) in *Yrusta v. Argentina*, which held that where domestic criminal investigations into state violence fail to provide prompt, effective resolutions over an extended timeline, the remedies are deemed unreasonably prolonged.²⁵
73. To evaluate the specific temporal progression of the proceedings in the present case, the Committee draws on the benchmarks in the UN Committee on the Rights of the Child (CRC) General Comment No. 24 (2019) on children's rights in the child justice system.²⁶ It notes that every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of the deprivation of liberty or its continuation within 24 hours, and that States Parties

²² ACHPR, Sir Dawda K. Jawara v. The Gambia Communication No 147/95-149/96 paras 31-33.

²³ ACERWC, *Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania* Communication No 0012/Com/001/2022.

²⁴ Committee on Enforced Disappearances, *Yrusta v. Argentina*, Communication No. 1/2013, paras 8.5, 8.7-8.8.

²⁵ Committee Against Torture, *Yrusta v. Argentina*, Communication No. 778/2016.

²⁶ Committee on the Rights of the Child, General Comment No. 24 (201x), replacing General Comment No. 10 (2007) on Children's Rights in Juvenile Justice.

must ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly, preferably on a weekly basis.²⁷ Furthermore, where custodial measures are maintained, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent, and impartial authority or judicial body not later than 30 days after his/her pre-trial detention takes effect.²⁸ The Committee notes that in cases involving children, proceedings must be conducted with due diligence and without delay. As established in *IHRDA v. Botswana*,²⁹ where a State fails to investigate complaints or bring proceedings to a timely conclusion, requirement to exhaust local remedies is waived. Time carries a heightened, irreversible significance in cases involving minors. Prolonged pre-trial detention of a child undermines the protective principles of the African Children's Charter. The Committee considers that failure to bring a child promptly before a judicial authority, together with the extensive delay in the progression of proceedings, renders the domestic process unduly prolonged within the meaning of Section IX(1)(d) of the Revised Communication Guidelines. A 500-day pre-trial delay without a judge finalising the charges means the State has legally forfeited its prerogative to handle the matter locally, rendering the domestic process unduly prolonged as a matter of law, which is an exception to the exhaustion of local remedies requirement.

74. In light of the foregoing, the Committee finds that, although domestic remedies may exist within the statutory framework of the Respondent State, the circumstances of the present case raise serious concerns as to their availability, effectiveness, and sufficiency in practice. The alleged lack of access to legal representation and case materials, the failure of authorities to respond to complaints, the structural *de jure* barrier of Article 8 of the Anti-Terrorism Law and the prolonged duration of the proceedings combine to show that the child victim was denied any realistic opportunity to pursue domestic remedies.
75. Accordingly, the Committee holds that the requirement to exhaust local remedies is inapplicable in the present case, and the Applicants are exempted from exhausting local remedies.

The Communication is presented within a reasonable period after exhaustion of local remedies at the national level

76. Section IX (1) (e) of the Revised Communication Guidelines require that a Communication must be presented within 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

²⁷ As above, para 102.

²⁸ As above, para 102.

²⁹ ACERWC, *IHRDA V Botswana*, Communication No 0024/Com/001/2023, para 28.

while avoiding rights abuse.³⁰ The Committee recalls 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 its previous decisions, the Committee has ruled that the rule requiring submission within a reasonable time does not apply when an exception to the exhaustion of local remedies is applicable.³¹ Given the Committee's decision that the current victim should not be required to exhaust local remedies, the requirement to submit a communication within a reasonable time after the exhaustion of local remedies is therefore, not applicable.

The Communication does not contain any disparaging or insulting language

77. In terms of Section IX (1) (f) of the Revised Communication Guidelines, a Communication should not contain disparaging or insulting language. The Committee notes that the Communication does not contain any disparaging or insulting language. The Communication, therefore, fulfils the requirements of Section IX (1) (f) of the Revised Communication Guidelines.

78. Decision on admissibility

79. In light of the foregoing, the Committee finds that the Communication satisfies all the admissibility conditions outlined in the Revised Guidelines on Consideration of Communications and consequently declares it admissible.

**Done at the 47th Ordinary Session of the ACERWC
held from 17 to 25 April 2026**

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

³⁰ As above, para 31

³¹ As above.