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

Admissibility Ruling

Communication No: 0019/Com/001/2022

Decision on Admissibility No: 002/2023

**Institute for Human Rights and Development in Africa (IHRDA) and Solomon
Joojo Cobbinah (on behalf of girls who live in villages along the River Offin in
the Ashanti Region of the Republic of Ghana)**

V

The Republic of Ghana

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 (hereinafter 'the Secretariat') received the current communication pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child duly registered by the Committee on 30 March 2022. The Communication was submitted by the Institute for Human Rights and Development in Africa (IHRDA) and Solomon Joojo Cobbinah (the Complainants), on behalf of girls who live in villages along the River Offin in the Ashanti Region of the Republic of Ghana against the Government of the Republic of Ghana (the Respondent State).
2. In accordance with Section III of the Revised Guidelines on Consideration of Communications by the ACERWC, the Secretariat of the ACERWC undertook preliminary review of the Communication. After reviewing the prerequisites regarding its form and content, in accordance with Section IX (2) (I) of the Guidelines, the Secretariat transmitted a copy of the Communication to the Respondent State on 03 May 2022 and requested the same to submit its arguments on the admissibility of the Communication. Subsequently, upon the expiration of the initial deadline, the Secretariat issued a second Note Verbal on 18 July 2022, providing a 30-day extension. Finally, on 06 December 2022, the Secretariat transmitted a final Note Verbal, granting an additional 30-day extension. Despite the reminders, the Respondent State did not submit its arguments on admissibility within the given deadlines.
3. In this regard, the Committee, during its 41st Ordinary Session held on 26 April to 06 May 2023 in Maseru, the Kingdom of Lesotho, examined and ruled upon the admissibility of the Communication.

II. Summary of Alleged Facts

4. The Communications alleges that many girls from the Ashanti Region communities cross the River Offin, which runs along the border of the Central and Ashanti Regions of Ghana, to attend school in Kyekyewere Town, Upper Denkyira East Municipal District, which is in the Central Region. This is because there are no schools in those communities. It is further alleged that the girls cross the river by canoe every morning to attend school and every afternoon to return home after school. According to the Complainants, the canoe ride costs One Cedi (GHC 1) per ride.
5. The Communication alleges that the communities along the River Offin have a custom that is supposedly from the local river gods, which forbids women and girls of adolescent age and above from crossing the river on Tuesdays and when they are on their menstrual periods. The Communication further alleges that it is believed that if a woman or girl attempts to cross the river on Tuesdays or during her menstrual period, she will be carried away by the river or die.
6. The Communication also alleges that the directive from the local river gods is being enforced by the local chiefs, and has adversely affect the education of many girls in the Ashanti Region communities as they have to cross the river on a daily basis to access education in the Central region. The Communication claims that the

average menstrual cycle lasts between 3 and 7 days with each month generally containing approximately 4 or 5 Tuesdays. It is further alleged that out of the total 22 school days within a given month, the girls are forced to miss classes for approximately 7 to 12 days in a month. The Communication alleges that such absences place the girls at a higher risk of academic underperformance, potentially leading to examination failures or even drop out as the educational content covered in class is not typically revisited for their benefit.

7. It is further alleged that crossing the river to attend school is also dangerous for the school girls as some girls have drowned while crossing the river to attend school. It further adds that boys do not face any restrictions in going to school and that they can cross the river at any time.
8. The Communication submits that Section 25 (1) of the Constitution of the Republic of Ghana provides that "[a]ll persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realization of that right- (a) basic education shall be free, compulsory and available to all".
9. It further alleges that as at the time of filing this communication, the Government of Ghana has not taken any measures to ensure that the affected girls receive compulsory basic education on an equal basis with boys, and to remove barriers that might prevent them from attending school on a regular basis.

III. The Complaint

10. On the basis of the above facts, the Communication alleges that the Government of the Republic of Ghana violated the following provisions of the Charter.
 - Article 11 (1) and 11 (3) (e) on the right to education and equal access to education for all
 - Article 3 on non-discrimination
11. The Complainants further allege that the Republic of Ghana has violated:
 - Article 28 of the Convention on the Rights of the Child,
 - Article 13 of the International Convention on Economic, Social and Cultural Rights,
 - Article 17 of the African Charter on Human and Peoples' Rights (hereinafter the African Charter) and
 - Article 26(1) of the Universal Declaration of Human Rights.

IV. Consideration of Admissibility

a) Complainants' Submission on Admissibility

12. The Complainants submit that the Committee has the necessary jurisdiction to consider the Communication in accordance with Article 44 of the Charter and Section II(1) of the Revised Communications Guidelines. In this regard, they assert that the submission is made in the public interest, and concerns the alleged violations of rights recognised in the Charter. Furthermore, 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. This assertion is based on the fact that one of the Complainants is registered in a Member State

of the African Union and has observer status before the Committee. The other Complainant is a journalist and human rights activist in Ghana, with a keen interest in the rights of children in Ghana.

13. Regarding the admissibility criteria, the Complainants contend that they have satisfied all the requirements for admissibility as outlined in Section IX(1) of the Revised Communications Guidelines. The Complainants claim that the Communication is compatible with the provision laid out in the Constitutive Act of the African Union and the African Children's Charter. Additionally, they submit that the Communication is not solely reliant on information circulated by the media and is not manifestly groundless. They further stress that the Communication is supported by sworn witness statements and other corroborating evidence. Additionally, the Complainants contend that the Communication has not been submitted to any other international dispute settlement procedure. In relation to the admissibility criteria stipulated under Section 9 (d) of the Revised Guidelines, which necessitates the exhaustion of local remedies before submitting a communication, the Complainants contend that this Communication qualifies for an exemption from such requirement for two reasons. Firstly, the Complainants contend that exhausting local remedies is unnecessary in cases involving massive or widespread violations. Secondly, they argue since the alleged violations concern large number of victims, it is impracticable and undesirable to seize domestic courts for each violations. Therefore, the Complainants assert that the present Communication concerns violations spanning years, involving hundreds of girls, thus warranting an exception from the local remedies requirement. In addition, they argue that, since the violations endure during Communication submission, Section 9(e) of the Revised Guidelines, which requires timely submission post local remedy exhaustion, is inapplicable. The Complainants further contend that the Communication does not contain any disparaging or insulting language, and is written in respectful, professional language

b) The Committee's Analysis and Decision on Admissibility

14. The present Communication is lodged in accordance with Article 44 of the Charter which empowers the Committee to receive and consider complaints pertaining to matters encompassed by the Charter from "any person, group or non-governmental organization recognised by the Organization of the African Unity, Member States, or the United Nations on matters covered by the Charter". The Committee observes that the current Communication is presented by a non-governmental organization registered in The Gambia and an individual on behalf the purported victims, regarding alleged violations of the right to education and freedom from gender-based discrimination. The Committee further notes that the Communication is directed against a State Party to the Charter. Hence, the Committee affirms that the Complainants hold the necessary standing to bring forth the Communication, and that it has the jurisdiction to consider this Communication.
15. Furthermore, apart from the provisions of the Charter, the assessment of this Communication's admissibility is based on Section IX (1) of its Revised Guidelines for Considerations of Communications, which stipulates six conditions of admissibility. With respect to the requirement of compatibility with the Charter and the AU Constitutive Act, as outlined in Section IX (a) of the Revised Guidelines, the Committee reiterates its previous decisions, and emphasises that if a Communication alleges violations of the African Children's Charter, it fulfils the

requirement of compatibility with both the African Union Constitutive Act and the Charter.¹ In light of the current Communication's claims of violations of the Charter provisions, it fulfils the compatibility criteria.

16. The Revised Guidelines state in Section IX (1) (b) that a Communication shall not be based solely on media information. The Complainants allege that this communication does not rely solely on information disseminated by the media and supported by witness statements. In the present Communication, the Committee notes that the Communication is not solely based on media sources and substantiated by sworn witness statements. Hence, the Committee observes the fulfilment of the admissibility criteria under Section IX (1) (b) of the Revised Communication Guidelines.
17. According to Section IX (1) (C) of the Revised Guidelines, a Communication should not 'raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter' in order to be considered admissible. The Complainants allege that "the Communication has not been submitted to any other international dispute settlement procedure". Barring any information to the contrary, and as far as the Committee's research goes, the Committee found that the matter was neither pending or previously resolved by another international or regional mechanism.
18. According to Section IX (1) (d) of the Revised Guidelines, the author of a communication shall exhaust all available and accessible local remedies before bringing the matter to the Committee, unless it is evident that this process is prolonged or ineffective. In the present Communication, the Committee notes that the Complainants have not exhausted local remedies and argue that the case fulfils the exceptional conditions for the exemption of the requirement of exhaustion of local remedies. Consequently, the Committee finds it necessary to evaluate the potential exemption of the Complainants from the requirement to exhaust local remedies. Regarding the Complainants' first argument that in situations involving "massive or widespread violations," there is no need to exhaust local remedies, the Committee notes that, while the unavailability and ineffectiveness of remedies or that the likelihood that procedures will be unduly prolonged constitute the general exception to the rule of exhaustion of local remedies, the notion of 'serious' or 'massive' violations as an exception to the applicability of the rule has since emerged in the jurisprudence of human rights treaty bodies. In this particular context, the Committee draws inspiration from the jurisprudence of the African Commission, which has recognised that the fulfilment of admissibility requirements, including the exhaustion of local remedies, in a number of cases involving serious or massive of the African Charter on Human and Peoples' Rights.² In these instances, the Commission had concluded that the seriousness of the violations and the large number of victims concerned made the remedies unavailable and their exhaustion practically futile.³ In a similar vein, the Committee

¹ 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 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 18.

² ACHPR, Communications 54/91, 61/91, 98/93, 164/97, 210/98 (2000), *Malawi African Association et al v. Mauritania*, para 85; ACHPR, Communications 279/03 et 296/05 (2009), *Sudan Human Rights Organisation and Another Person v. Sudan* paras 100-101; ACHPR, Communication 245/02 (2006) *Zimbabwean Human Rights NGO Forum v. Zimbabwe*, paras 69-72;

³ *Ibid.*

has previously determined that Complainants may be granted exemption from exhausting local remedies in cases concerning a massive violation that affects a large number of children.⁴

19. Therefore, the Committee finds it imperative to conduct an assessment with the objective of determining whether the present Communication exhibits violations of a magnitude that may be categorised as "serious and massive." In doing so, the Committee utilises the legal precedents set out by the African Commission in relation to this matter. The case of *Open Society Justice Initiative v. Cote D'Ivoire* is of notable importance due to its ability to clarify the specific boundaries that define a "serious and massive" violations of human rights. In this particular context, the Commission engaged in a process of careful consideration of the elements that constitute "serious and massive" violations, taking into account both their scale and nature. In terms of scale, a massive violation was characterised as one that affected a significant number of individuals, either in a particular area or throughout the entire territory of a State Party. As for the nature of violation, it had to result from ongoing and pre-determined actions that had a substantial impact on an individual right or a set of rights outlined in the African Charter.⁵
20. In relation to the present Communication, the Committee acknowledges that the alleged violations pertain to large number of girls in Ghana, particularly those residing in the villages along the River Offin in the Ashanti Region. Furthermore, the Committee recognizes the ongoing persistent nature of these alleged violations, which have continued up until the submission of this Communication in 2022. The Committee also notes that these alleged violations, if verified, have the potential to negatively impact the girls' right to education and freedom from gender-based discrimination, as guaranteed by Articles 11 and 3 of the ACRWC, the violation of which is alleged by the Complainants. Therefore, the Committee concurs with the categorisation of the alleged violations in the present case as being massive or widespread in nature.
21. Furthermore, in support of their primary argument seeking exemption from the requirement to exhaust local remedies, the Complainants have contended that the underlying rationale for the exhaustion of local remedies is to grant the State an opportunity to address the violations. Given that the case involves massive and widespread violations, they argue against the need to exhaust local remedies, as it is presumed that the State is already aware of these violations. In this regard, the Committee reiterates its position established in the *Children of Nubian Descendants* case.⁶ In this case, the Committee emphasises that while underlying principle behind the rule that local remedies is primarily rooted in respecting state sovereignty and granting the State concerned the opportunity to address alleged violations, the principle is not absolute and can be subject to exception, particularly in order to promote and protect children's best interests. Such remedies should be

⁴ 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, paras 27 and 28; ACERWC, Communication No 003/Com/001/2012, *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 21;

⁵ ACHPR, Communication No. 318/06, *Open Society Justice Initiative v Côte d'Ivoire*, para 46.

⁶ ACERWC, Communication No. 002/Com/002/2009, *The Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against The Government of Kenya* (2011), Decision on Communication No. 002/Com/002/2009, para 26.

available, effective, and sufficient.⁷ Nonetheless, the Committee notes that mere allegations that the Respondent State was aware of the violations do not automatically exempt it from the requirement to exhaust local remedies. However, in this instance, considering that the alleged violations involve large number of victims and constitute “serious and massive violations”, the Committee is of the view that the Respondent State has been given ample notice to redress the violations, and it can be presumed that it is aware of the violations.

22. Concerning the second argument that the impracticality and undesirability of involving domestic courts due to the massive and widespread nature of the violations, the Committee recalls its own jurisprudence in *Centre for Human Rights (University of Pretoria) V Senegal*, where it considered the impracticability of 100,000 Talibes bringing individual claims in domestic courts. In that case, the Committee assessed the admissibility of the Communication, acknowledging in situations of serious or massive violations, local remedies need not be exhausted.⁸ The Committee further recalls the African Commission’s position in that the exhaustion of local remedies is not mandatory in cases of serious and massive violations where it may be impracticable or undesirable for the complainants to identify each victim or for victims to seek redress through domestic courts.⁹ The Commission additionally held that due to the scale and nature of the alleged violations, coupled with large number of individual involved, render local remedies unavailable, inefficient, and insufficient.¹⁰ The Commission further noted that ‘given the vast and varied scope of the violations alleged’ exhaustion of local remedies can be exempted.¹¹ The Committee notes that the requirement of exhaustion of local remedies is only applicable if the remedies are available, effective, accessible and not unduly prolonged. The Committee, therefore, concurs with the stance of the African Commission, recognizing that the scale and nature of the violation, render the exhaustion of local remedies impractical or undesirable for the Complainants, and that a higher number of individuals involved increases the likelihood of remedies being unavailable, ineffective, and insufficient. On the basis of the above, the Committee observes that the elements for exemption from the requirement of exhaustion of local remedies are fulfilled based on the fact that the current communication involves a massive and serious violation.

23. Section IX (1) (e) of the Revised Guidelines provides that the Communication must be presented within reasonable time after exhaustion of local remedies. The Complainants argue that their submission is based on violations that are continuing and subsisting as at the time of submitting this communication, hence it is submitted within a reasonable time. Given that the present Communication is granted an exemption from the obligation to exhaust local remedies, the

⁷ Ibid, para 22.

⁸ ACERWC, Communication No 003/Com/001/2012, *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 21.

⁹ ACHPR, *Free Legal Assistance Group, Lawyers Committee for Human Rights, Union interafricaine des droits de l’Homme, Les témoins de Jehovah v. Zaire*, Merits Decision, 18th Ordinary Session (1996), para. 37; *Malawi African Association and others v. Mauritania*, Merits Decision, 27th Ordinary Session (2000), para. 85.

¹⁰ ACHPR, *Sudan Human Rights Organisation & Centre for Housing Right and Evictions (COHRE) v. Sudan*, Communication No. 279/03, 296/05) [2009] ACHPR 100, paras 100.

¹¹ 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. Zaire* (1996), para. 37.

Committee notes that the condition outlined in Section IX (1) (e) concerning timely submission following the exhaustion of local remedies is not applicable in this case.

24. Section IX (1) (e) of the Revised Guidelines provides that a Communication should not contain disparaging or insulting language. The Committee notes that the language of the Communication does not contain any disparaging or insulting language. The Communication is written in respectful, professional language.
25. On the basis of the foregoing, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the authors has fulfilled the admissibility conditions as laid down the Charter and the Committee's Revised Guidelines for Consideration of Communications. The Committee will proceed to consider the merits of the Communication.

Adopted in May 2023, during the 41st Ordinary Session of the ACERWC

Honorable Anne Musiwa



Ag. Chairperson

African Committee of Experts on the Rights and Welfare the Child

