



Comité Africain d'Experts sur les Droits et le Bien-être de l'Enfant
Comit  Africano de Peritos os Direitos e Bem-Estar da Crian a
لجنة الخبراء الإفريقية المعنية بحقوق الطفل ورفاهه



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

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

Admissibility Ruling
Communication No: 0023/Com/005/2022
Decision on Admissibility No 006/23

**The Incorporated Trustees of ISH-61 Human Rights and Social Justice Initiative
(ISH-61), the Institute for Human Rights and Development in Africa (IHRDA), and
the Centre for Human Rights (CHR) (*on behalf of children in Nigeria*)**

v

The Federal Republic of Nigeria

November 2023

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 dated 24 November 2022 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 Incorporated Trustees of ISH-61 Human Rights and Social Justice Initiative (ISH-61), the Institute for Human Rights and Development in Africa (IHRDA), and the Centre for Human Rights (CHR) (the Complainants), on behalf of the children in Nigeria, against the Government of the Federal Republic of Nigeria (the Respondent State).
2. The Secretariat conducted a preliminary review after receiving the Communication and duly registered the submission as Communication No: 0023/Com/005/2022 in accordance with Section III of the Revised Communication Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions (Revised Communication Guidelines). The Secretariat then transmitted the Communication to the Respondent State through a Note Verbale dated 16 December 2022, requesting the Respondent State to submit its arguments on the admissibility of the Communication within 60 days, as stipulated in Section IX (2) of the Revised Communication Guidelines. Following the expiry of the 60 days, the Committee sent a reminder Note Verbale dated 16 February 2023, extending the deadline for the submission of arguments on admissibility by an additional 30 days. The Respondent State did not submit a response on admissibility despite the extension. As a result, the Committee, during its 41st Ordinary Session, decided to proceed with assessing the Communication's admissibility, notwithstanding the absence of arguments from the Respondent State. This determination was made taking into consideration the principle of ensuring the best interests of the children.

II. Summary of the Alleged Facts

3. The Communication alleges that despite the Respondent State's enactment of the Child Right's Act (CRA) in 2003 as a means to domesticate the Charter, this legislation does not apply uniformly to all children across the Federation. This disparity arises from the principle of federalism enshrined in the Constitution of the Federal Republic of Nigeria 1999 (Constitution). Upon enactment in 2003, the CRA only applied to children in the Federal Capital Territory, Abuja.
4. The Complainants allege that the issue of children, which the CRA covers, is regarded as a residual matter and is thus within the exclusive legislative competence of the states. The Complainants refer to the constitutional framework, which distinguishes between the Exclusive Legislative List (ELL) and Concurrent Legislative List (CLL). The ELL, outlined in Part I of the Constitution, grants exclusive legislative authority to the National Assembly over listed items. In contrast, the CLL, detailed in Part II of the Constitution, permits the federal and

state legislature to enact laws on the listed matters. The Complainants emphasize that matters not covered by the ELL or the CLL, and for which the Constitution does not confer legislative authority on the National Assembly, are considered residual matters. According to the interpretation of the Constitution, particularly sections 4(1), (2), (3), (4), (6), and (7), and an examination of the ELL and the CLL, the Complainants submit that child rights are classified as a residual matter, hence, the mandate to legislate on child rights rests with the individual states. Subsequently, for the CRA to be applicable in all states of the Federation, it must be domesticated by each state.

5. The Communication provides that even though the Respondent State ratified the Charter 22 years ago (23 July 2001) and enacted the CRA 20 years ago, seven out of the 36 states have continuously resisted or failed to domesticate the CRA into their legal frameworks. These states are Adamawa, Borno, Bauchi, Gombe, Yobe, Kano and Zamfara. The primary justification for resisting the domestication of the CRA relates to the specific provisions of the CRA that are counter to cultural norms and the Sharia law. The Complainants argue that the failure to domesticate the CRA in some states has resulted in potential and actual violations of children's rights including child marriage and the denial of free and compulsory basic education.
6. The Complainants submit that 48 per cent of Hausa-Fulani girls are married before the age 15, and 78 per cent are married by the age of 18. In addition, the Communication cites the public statement made by Alhaji Ahmed Sani Yerima, a former governor of Zamfara state who garnered attention for marrying a 13-year-old girl in 2009. The Communication indicates that Yerima asserted that the Respondent State has no legal framework specifying the age and criteria for marriage. He contended that neither his society nor the Constitution prescribes an age for marriage.
7. The Communication further alleges that the provisions regarding 18 years as the minimum age of marriage have been watered down in certain states where the CRA has been domesticated. Notably, the Child Protection Law in Katsina and Jigawa state fail to prescribe the minimum age of marriage as 18 years. Additionally, the Complainants submit that the Constitution under Section 29 (4) (b) emancipates a girl married below 18 years to be regarded as an adult.
8. Based on the above facts, the Complainants submit that the Respondent State violates the following provisions of the Charter:
 - Article 1 (1 and 3) Obligation of States Parties
 - Article 3 Non-discrimination

III. Consideration of Admissibility

a) The Complainants' Submission of Admissibility

9. The Complainants argue that they have met all the prerequisites of admissibility outlined in Section IX (1) (a) to (f) of the Revised Communication Guidelines. They assert that the Communication aligns with the provisions in the Constitutive Act of the African Union and the Charter. Furthermore, they contend that the Communication does not rely solely on information disseminated by the media and is not meritless. The Complainants submit that the facts presented are supported by legal provisions in the Respondent State, and reports by reputable NGOs and UN entities. The Complainants also maintain that the Communication has not been submitted to any other international dispute settlement procedure.
10. Regarding the admissibility criteria outlined in Section IX (1) (d) of the Revised Communication Guidelines, which requires the exhaustion of local remedies before filing a communication, the Complainants submit that this Communication meets the criteria for an exception to this requirement. In their arguments, the Complainants submit that local remedies are not available as the Constitution holds the highest legal authority in the Respondent State, and thus challenging it through judicial means is not permissible, as national courts are obligated to adhere to its provisions without alteration. While recognizing the existence of a parliamentary constitutional amendment procedure under the Constitution, the Complainants assert that this process is time-consuming at its initiation demands the approval of four-fifths of the National Assembly. The Complainants further argue that this avenue of Constitutional amendment qualifies as an extraordinary non-judicial remedy due to its inherently political nature and difficulty in achieving a consensus. Therefore, the Complainants submit that the local remedies are unavailable.
11. Moreover, considering that the various violence against children is resulting from lack of legal protection, judicial remedies for such cases become ineffective. In addition, the Complainants refer to the Committee's decision in the Talibé case,¹ which recognizes exceptions to the requirement of exhausting local remedies if the nature of a violation is massive. The Complainants contend that the current Communication pertains to many affected children, alleging that it affects approximately 44 per cent of children in the Respondent State. Therefore, the Complainants submit that the Communication warrants an exception from the requirement of the exhaustion of local remedies.
12. Furthermore, the Complainants assert that the violations persist at the time of submitting the Communication. Consequently, they argue that Section IX (1) (e) of the Revised Communication Guidelines, which mandates timely submission after exhausting local remedies, does not apply in this case. Additionally, the

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 another v Senegal* (herein referred to as *Talibé case*), para 19. See also African Commission on Human and Peoples' Rights (ACHPR), Communication No 71/92, *Recontre Africaine pour la Defense des Droits de l'Homme v Zambia*, para 15.

Complainants submit that the Communication is devoid of any disparaging or insulting language and is written in respectful, professional language.

b) The Committee's Analysis of Admissibility

13. The Committee relies on Article 44 of the Charter and the Revised Communication Guidelines to assess the admissibility of this Communication. Article 44 of the Charter and Section I (1) of the Revised Communication Guidelines specify that non-governmental organizations recognized by African Union Member States, State Parties to the Charter, or the UN, among others, are eligible to submit a Communication to the Committee. The Committee notes that the three Complainants, ISH-61, IHRDA, and the CHR, are registered in Nigeria, the Gambia and South Africa, respectively and that the Communication is filed on behalf of children in Nigeria. Hence, the Committee accepts the standing of the Complainants to submit the case.
14. The Committee, in analyzing the admissibility of the Communication, assesses whether the criteria provided under Section IX (1) of the Revised Communication Guidelines are fulfilled. In the absence of an argument from the Respondent State concerning admissibility, the Committee will evaluate whether each of the six admissibility conditions outlined under Section IX (1) are met in this Communication.
15. The first condition of admissibility set forth under Section IX (1) (a) necessitates 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.² In the present Communication, the Complainants allege and establish prima facie violations of articles 1 and 3 of the Charter by the Respondent State in their submissions of the facts of the case. Thus, the Committee concludes that the Communication is compatible with the Charter.
16. Section IX (1) (b) stipulates the second condition of admissibility, which requires that a Communication should not be exclusively based on information disseminated through the media. In the matter at hand, the Complainants submit that the alleged facts presented are not solely reliant on information from media reports. Instead, they are supported by legal provisions in the Respondent State, reports from UN bodies and NGOs. Consequently, the Committee is of the view that Communication meets the criteria outlined in Section IX (1) (b) of the Revised Communication Guidelines.

² *Talibé case (n 2) para 18; See also 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.*

17. In accordance with the third condition of admissibility outlined in Section IX (1) (c) of the Revised Communication Guidelines, which prohibits a Communication from being under consideration by other mechanisms, the Committee undertook an inquiry due to the absence of a response from the Respondent State. This inquiry aimed to ascertain whether a similar issue against the Respondent State was pending before other mechanisms. During the investigation, the Committee formally reached out to the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, and the Economic Community of West African States (ECOWAS) Community Court of Justice to inquire whether they had any record of the issue raised in the current Communication. From its inquiry, the Committee notes that no similar matter is pending before other jurisdictions. Consequently, the Committee holds the view that the Communication complies with the requirement in Section IX (1) (c) of the Revised Communication Guidelines.
18. 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. A local remedy refers to any domestic legal action that may resolve the complaint at the local or national level.³ The principle of exhausting local remedies serves the purpose of affording domestic courts the opportunity to adjudicate cases before they are brought to an international forum, thereby preventing conflicting legal judgments at both the national and international levels.⁴ The Committee also notes that only available, effective, and sufficient remedies need to be exhausted. An available remedy is one that the Complainant can pursue without hindrance, an effective one holds the prospect of success, and a sufficient remedy addresses the complaint adequately.⁵ The Committee holds the view that exemptions to exhaustion of local remedies are assessed on a case-by-case basis.⁶ In the present Communication, there are two issues concerning exhaustion of local remedies that will be analyzed, first, the availability of the local remedy, and second, the sufficiency and effectiveness of the remedy.
19. The evaluation of the availability of a local remedy is contingent upon the Complainants' ability to use the remedy in their case.⁷ In the current Communication, the Complainants submit that the Constitution, which is at the

³ ACERWC, Communication No 002/Com/002/2009, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v The Government of Kenya* case (herein referred to as *Nubian case*), para 26.

⁴ As above; See also ACHPR, Communication No 155/96, *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v Nigeria*, para 37.

⁵ ACHPR, Communication 147/95 and 149/96, *Sir Dawda K. Jawara v The Gambia*, paras 31 and 32.

⁶ ACERWC, Communication No 0012/Com/001/2019, *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v The United Republic of Tanzania*, para 21; See also ACHPR, Communication 299/05, *Anuak Justice Council v Ethiopia*, para 49.

⁷ ACHPR (n 4) para 31.

core of the issue being challenged, holds the highest legal authority in the Respondent State and cannot be contested through the judicial system, as national courts are obligated to apply its provisions as they stand. The Committee stresses that in the context of the Revised Communication Guidelines the concept of local remedies refers to only remedies of a 'judicial nature'.⁸ Hence, remedies of a non-judicial nature are not encompassed within the concept of exhaustion of local remedies. Accordingly, it is not necessary to exhaust remedies of non-judicial nature for a Communication to be deemed admissible.⁹ The Committee, in the present case notes that the available remedy is a change of law, which is not of a judicial nature, hence, does not fit in the ambit of available local remedy under the Revised Communications Guidelines. Therefore, the Committee finds that there is no available local remedy to be exhausted by the Complainants.

20. In relation to effectiveness of local remedies, the Complainants allege that the issue in question affects approximately 44 per cent of children in the Respondent State which makes it difficult to exhaust local remedies for such cases. Furthermore, local remedies that might be sought for children affected are ineffective due to gap in the legislation. The Committee reiterates that in cases involving a significant number of potential victims of human rights violations, it is not feasible to exhaust local remedies.¹⁰ The Committee also notes that cases that might be taken to courts regarding the violence that results due to legislative gap do not offer prospect of success due to lack of legislative framework on which these cases can rely on, rendering local remedies ineffective. Furthermore, as argued above, there is no practical avenue available to these victims to challenge a change of law, rendering it an impossible path to pursue. Thus, the Committee concludes that the Complainants are exempt from the requirement of the exhaustion of local remedies in the present Communication due to the unavailability and ineffectiveness of local remedies.
21. The fifth condition of admissibility outlined in Section IX (1) (e) of the Revised Communication Guidelines stipulates that a Communication must be submitted within a reasonable time after exhausting local remedies. The Committee observes that it was not possible for the Complainants to exhaust local remedies and the Communication asserts that ongoing violations continue to impact children in the Respondent State. Consequently, the Committee finds that the Communication complies with the 'reasonable time' requirement.
22. The sixth condition outlined under Section IX (1) (f) of the Revised Communication Guidelines is that a Communication should refrain from using disparaging or insulting language. The Committee notes that the Communication adheres to this requirement; it does not contain disparaging or insulting language and is presented in decent language.

⁸ *Talibé case* (n 2) para 23.

⁹ *Nubian case* (n 5) para 30.

¹⁰ As above.

23. Based on the analysis above, the Committee concludes that the Communication submitted by the Complainants fulfils the admissibility criteria outlined under Article 44 of the Charter and Section IX (1) of the Revised Communication Guidelines, therefore, declares it admissible.

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



**Honorable Wilson Almeida Adão
Chairperson**

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

