Admissibility Ruling

Communication No: 0012/Com/001/2019

Decision on Admissibility No: 001/2020

Legal and Human Rights Center and Center for Reproductive Rights (on behalf of Tanzanian girls)

v

United Republic of Tanzania

Original- English
I. Submission of Communication

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a Communication dated 17 June 2019 pursuant to article 44 of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by Legal and Human Rights Center and Center for Reproductive Rights (on behalf of Tanzanian girls) (the Complainants) against the United Republic of Tanzania (the Respondent State). Receiving the Communication, pursuant to Section III of the Committee’s Revised Guidelines for Consideration of Communication (the Revised Communications Guidelines), the Secretariat of the Committee conducted a preliminary review and registered the submission as Communication No: 0012/Com/001/2019. To facilitate the determination on the admissibility, the Communication was duly transmitted to the Respondent State through a Note Verbal, Ref DSA/ACE/64.2604.19 dated 25 June 2019, pursuant to Section IX (2) of the Revised Communications Guidelines. The Committee received a Note Verbal from the Respondent State, Ref. CHAD/239/738/01/10, dated 01 October 2019, which contains the Respondent State’s submission on the admissibility of the Communication. The response submitted by the Respondent State was not accepted by the Committee as it was signed by one of the Members of the Committee, thus raising conflict of interest contrary to what is prescribed under Rule 4 of the Rules of Procedures of the ACERWC. Hence, the Committee, through a Note Verbal, Ref. DSA/ACE/64/5333.19, dated 09 December 2019, requested the Respondent State to revise and re-submit its response. Accordingly, the Respondent State submitted its revised response on the admissibility of the Communication with a Note Verbal, Ref. No. CHAD 239/780/01/35, dated 27 August 2020 which was also sent to the Complainants on 31 August 2020. Following the Respondent State’s submission, on 01 September 2020, the Complainants, pursuant to Section IX (2) (Vi) of the Revised Communications Guidelines, further submitted their observations on the response of the Respondent State.

II. Summary of alleged facts

2. The Complainants allege that primary and secondary school girls are subjected to forced pregnancy testing and expulsion from schools in events where they are found pregnant or married. While acknowledging that the exact number of children expelled from schools for reasons of pregnancy or marriage is unknown, the Complainants submit that Tanzania’s 2013 Basic Education Statistics provides that 2433 primary schoolgirls and 4705 secondary schoolgirls dropped out of school due to pregnancy in 2012. Moreover, the Complainants allude to reports from Human Rights Watch that over 15,000 girls drop out of school every year due to pregnancy. It is also submitted that the study conducted by one of the Complainants, Center for Reproductive Rights, provides that over 55,000 female students dropped out of school due to pregnancy between 2003 and 2011.
3. The Complainants allege that mandatory pregnancy testing is practiced in almost all public schools subjecting girls as young as 11 years of age to pregnancy testing. It is submitted that the testing does not follow any standard and sometimes painful methods such as poking are applied to check for pregnancy by school personnel. The Complainants allege that pregnancy testing is undertaken without the consent of the girls and most often the results are not communicated to the girls but rather shared with school staff without the consent of the girls. Girls are also required to take pregnancy test when they enroll in schools.

4. The allegation of the Complainants provides that girls who are found to be pregnant before being enrolled will not be accepted to schools and those girls who are found to be pregnant in the school year are expelled from schools. The Applicants allude to the fact that neither pregnancy testing nor expulsion of students due to pregnancy is prescribed by the Education Regulations. The Applicants provide that pregnancy is not included as a ground of expulsion in the Education (Expulsion and Exclusion of Pupils from School) Regulation 2002 G.N. No. 295 of 2002, however, school administrators interpret pregnancy to be an offence against morality which is one of the grounds of expulsion under the Regulation. The Complainants also indicate that some school administrators expel pregnant girls from school claiming that it is government policy. As expulsion is a universal practice in public schools, girls who find out about their pregnancy by themselves dropout of school to escape the humiliation and stigma they will be subjected to if school administers find out about their pregnancy during mandatory testing. Moreover, the Complainants submit that the expulsion and exclusion of pregnant school girls has no exception such as in cases where girls fall pregnant due to sexual abuse or incest even in cases where police report can be produced to that effect.

5. The Communication further alleges that married girls are not allowed to register or remain in school once married and this is vividly provided by the Respondent State’s Regulation on Expulsion and Exclusion of Pupils. The Complainants submit that the Education (Imposition of Penalties to Persons who marry or Impregnate a School Girl) Rules 2003, G.N. No. 265 of 2003 penalizes anyone who marries or impregnates a schoolgirl. The Communication highlights that this is in contradiction with the laws of the Respondent State as the Marriage Act allows girls as young as 14 to get married. The Communication also indicates that there is a court decision which rules that the age of marriage for girls set below 18 has been declared unconstitutional but has not entered into force due to an ongoing appeal on the decision of the High Court.

6. Moreover, the Complainants allege that the expulsion and exclusion policy of the Government is a permanent one as school girls are not readmitted to the public school after delivery. School girls who have been expelled due to pregnancy or marriage can
only be readmitted to private schools or vocational training schools. The Complainants further allege that these options are not always accessible or limit the education path girls wish to pursue. While noting that since 2014 the Education and Training Policy has incorporated a provision which provides that students who left school for any reason should be readmitted, the Complainants submit that this has never been implemented. The Communication also submits that recent statements by high level officials of the Respondent State including the President have alluded to the fact that the Government of the Respondent State will intensify its effort to expel students who fall pregnant and also to ensure their non-readmission to schools. The Complainants also submit affidavits of girls who have been denied to re-enter school after giving birth due to the statements of the officials, mainly the President.

7. The Communication includes facts that school personnel usually report pregnancies as the Child Act and the Ministry of Education Rules prescribe penalty against those who impregnate girls. The Complainants submit that such reports are subjecting girls to unlawful detention or harassment as they are often detained or harassed until they expose the identity of the person who impregnated them. Furthermore, the Communication alleges that girls who fall pregnant due to sexual abuse are exposed to the same risk of detention and harassment subjecting them to secondary victimization. The Complainants refer to the assessment undertaken by the Tanzanian Commission on Human Rights and Good Governance to allege that children are detained in harsh conditions, denied of visits by caregivers, and subjected to delayed case hearings. The Communication therefore alleges that girls are being detained when they refuse or are unable to testify against who impregnated them although being pregnant by itself is not provided as a crime. The Communication cites the statement of the Regional Commissioner who ordered regional and district commissioners of education to arrest pregnant girls who refused to identify the person who impregnated them. Following the order, the Communication alleges that 55 pregnant school girls were arrested in Tandahimba District. Such practices and policies discourage pregnant girls or parents from seeking information or assistance including reporting cases of sexual abuse especially in cases where the perpetrators are unknown. Even when the perpetrators are known, the Complainants allege that proper investigation is not carried out to prosecute them.

8. The Communication finally alleges that girls in the Respondent State are deprived of access to sexual reproductive health information and services to prevent unplanned pregnancies. Girls who are pregnant are not also provided with pregnancy related services such as information on family planning, and transmittable diseases. The Complainants allege that lack of information and services on sexual reproductive health issues has resulted in a high rate of teenage pregnancy and unsafe abortion
as well as disproportionate risk of teenage pregnant girls’ death in the Respondent State. The number of teenage girls who fall pregnant is higher among those with lower education, lower income and girls in rural areas. The Complainants claim that there is lack of comprehensive sexual education in schools as sexuality education mainly focuses on abstinence and is provided in secondary education level where girls are already sexually active. In addition, girls are not provided with any kind of sexual reproductive health services or information during mandatory pregnancy testing such as contraception options or prevention of sexually transmitted diseases. The sexual reproductive health services available in the Respondent State are not youth friendly and hence girls are not encouraged to access such services even when they are available. The Communication submits that lack of information and services on sexual reproductive health result in unwanted and unplanned pregnancy of girls who are then forced to leave their education as a result of pregnancy. It is also increasing the number of unsafe abortions among adolescent girls which is also exacerbated by restrictive abortion law of the Respondent State.

III. Applicants’ submission on admissibility
9. The Complainants argue that the Communication fulfills the requirement of admissibility under Section XI (1) of the Revised Communications Guidelines.
10. The Complainants particularly focus on the requirement of exhaustion of local remedies, where they submit that the communication fulfills the requirement of exhaustion of local remedies. The Communication provides that one of the Complainants, Legal and Human Rights Center (LHRC), along with the National Organization for Legal Assistance filed a case at the High Court of the Respondent State on behalf of school girls against the Minister of Education and Vocational Training and the Attorney General alleging that forced pregnancy testing and the practice of expelling pregnant girls from school violates the Constitution of the Respondent State. The case was filed on 13 September 2012 and after receiving the reply of the Respondents in that case, the High Court rescheduled the case three times the final of which was scheduled for 02 May 2013. The Complainants submit that hearing could not be held on the scheduled day as the assigned judge decided to recuse himself from the case. The High Court announced that the case has been reassigned to another judge on 26 November 2013 and rescheduled the preliminary hearing twice after which it decided to get the preliminary objection in writing. The Communication alleges that after numerous appointments, the Court dismissed the preliminary objection on 13 November 2015, more than three years after the filing of the case. The Communication also provides that the hearing of the merits was withheld by the Court for various reasons until 04 May 2017 when the Court decided to receive arguments on the merit in writing. The Court rendered decision on 04 August 2017 dismissing the case of the petitioners entirely on the basis of lack of
evidence of discrimination and further decided that pregnancy is a matter of discipline that should be left for schools. Following the decision, the Complainants indicate that a notice of appeal was submitted to the Court of Appeal on 14 August 2017, however, the certified judgment and proceedings of the High Court were provided only on 11 April 2018. The Complainants allege that despite all procedures fulfilled, the Court of Appeal has not given a hearing date on their appeal until the day they submitted the current Communication to the Committee.

11. Based on these facts, the Complainants argue that local remedies have been unduly prolonged, hence they should not be required to wait any further for remedy at local level. The Complainants refer to Section IX (1)(d) of the Guidelines for Consideration of Communications which provides that local remedy may not be exhausted if it is unduly prolonged or ineffective. The Communication also makes reference to the Minority Rights Group International v. Mauritania case and IHRDA et.al on behalf of Children of Nubian descent v. Kenya case (Children of Nubian Descent case) Where the Committee ruled that seven and four years of delay respectively fulfill the requirement of unduly prolonged local remedies. Moreover, the Communication alleges that the best interest of the child should be the primary consideration in determining whether a local remedy is unduly prolonged given the irreparable harm the children will suffer. The Communication also reiterates the decision of the Committee in the Children of Nubian Descents Case where the Committee stated that one year delay constitutes 6 percent of childhood and hence it found that over 6 years delay in local court proceeding is not in the best interest of the children.

12. The Complainants further argue that the local remedies are not effective as local authorities are informed about the situation but have failed to act on it. The Complainants cite the Committee from its decision on the Michelo Hunsungule and others (on behalf of children in Northern Uganda) v. The Government of Uganda case (Children of Northern Uganda case) whereby the Committee stated that the purpose of having the requirement of exhaustion local remedies is to prevent international tribunals from serving as appellate courts and also to give States the opportunity to be able to address violations that occur in their territory. The Complainants also support their arguments with the jurisprudence of the African Commission on Human and Peoples’ Rights (African Commission) citing various cases including Article 19 v Eritrea and FIDH and OMCT v Sudan where the African Commission held that local remedies are ineffective and need not be exhausted in cases where the State has been provided with ample notice of the alleged violations and yet the State fails to take measures. The Communication further makes reference to Amnesty International and Others v. Sudan where the African Commission held that in cases of clear human rights violations, domestic and international attention alone may suffice to confirm that the State has received notice. In the current case, the Complainants argue that the
practice of expelling pregnant girls from school is a widespread practice which the Respondent State is aware of and tries to defend and further that international reports as well as appeals including by the Committee, the Commission and the UN Committee on the Rights of the Child have been provided for the Respondent State. Therefore, the Complainants submit that local remedies are ineffective as the Respondent State has failed to act on the violations that have been brought to its attention.

13. Finally, the Complainants argue that local remedies are not available as the violations are massive and serious. The Communication makes reference to the decision of the Committee in the Children of Northern Uganda case in which the Committee granted exemption from exhausting local remedies on the basis that the violation affected thousands of children and the violation occurred on a large scale. The Complainants further support their argument by the jurisprudence of the African Commission where the Commission decided that local remedies need not be exhausted in massive and serious human rights violation cases. The Complainants rely on the definition of massive and serious human rights violation by the Commission in the Open Society Justice Initiative v. Côte d'Ivoire case where the Commission held that ‘a massive violation is one that affects a large number of persons, either in a specific region or all over the territory of a State Party. Concerning the nature, the violation must be the consequence of continual and pre-determined actions having an impact on a right or a group of rights under the African Charter’. The Communication argues that there are a large number of girls who are being affected by the expulsion which makes it massive and it would be impractical to require all these girls to exhaust local remedies.

IV. Respondent’s submission on admissibility

14. In its response to the arguments of the Complainants on the admissibility of the Communication, the Respondent State submits that the Communication is not admissible as it does not fulfill the conditions listed down under the Revised Communication Guidelines.

15. The Respondent State submits that the Communication raises matters pending before another international human rights body, hence does not fulfill the requirement of admissibility under Section IX (1(c) of the Revised Communication Guidelines. The Respondent State submits that a similar joint communication has been submitted to the Special Mechanisms of the Human Rights namely the Working Group on Discrimination of Women in Law and Practice under Reference No. AL TZA 3/2017 dated 14 August 2014 and Special Rapporteur on the Right to Education under Reference No JAL TZA 1/2018 dated 22 February 2018. The Respondent State supports its submission using various decisions of other treaty bodies among others the decision of the African Commission in the Amnesty International v Tunisia, Mpaka-
Nsusu V Zaire, and Interights v Eritrea and Ethiopia cases where it declared the Communications inadmissible as they were pending before the UN Human Rights Commission. The Respondent State argues that the Special Mechanisms are part of the Human Rights Council mechanism and hence fits in the UN Charter Procedure in accordance with Section IX 1(c) of the Guidelines of the ACERWC.

16. Furthermore, the Respondent State argues that the Communication is inadmissible as the Complainants have not exhausted local remedies available in the Respondent State. In its submission, the Respondent State argues that the Complainants should not be granted an exemption from exhausting local remedies as local remedies are available, effective, and sufficient in the domestic system. The Respondent State argues that the fact that one of the Complainants filed a case against the Ministry of Education before the High Court and later filed an appeal at the Court of Appeal reveals that there is a judicial remedy available at domestic level. The Respondent State, making reference to the Decision of the African Commission in the Amnesty International and Other v Sudan, submits that the existence of the right to appeal satisfies the condition of effectiveness of local remedies. The Respondent State further submits that its judiciary is independent and the effectiveness of a local remedy is assessed on the basis of prospect of success, not the awareness of authorities about the violation, hence the judicial and administrative role of the State should not be confused. The Respondent State also relies on the decision of the Committee on Ahmed Bassiouny v Arab Republic of Egypt and Sohaib Emad v Arab Republic of Egypt in submitting that evidence should be produced to show ineffectiveness of local remedies and a mere doubt does not make a remedy ineffective. In providing evidence that a local remedy is effective, the Respondent State cites Rebeca Z. Gyumi v The Attorney General where both the High Court and the Court of Appeal Tanzania declared Section 13 and 17 of the Law of Marriage Act unconstitutional for providing lower age of marriage for girls. The Respondent State submits that the Complainants should follow their appeal up to the end and their decision to abandon the local remedy they started to exhaust is against the principle of subsidiarity and complementarity of international tribunals. In supporting these arguments, the Respondent State among others refers to the decision of the Committee in the Sohaib Emad v Arab Republic of Egypt case that international and regional bodies do not serve as a first instance courts, rather as a last resort after exhausting local remedies.

17. In addition, the Respondent State submits that the Communication does not fulfill the requirement under Section IX 1(e) of the Guidelines on Consideration of Communications as it is premature and not submitted within reasonable time. The Respondent State alludes to the fact that the Court of Appeal is yet to rule on the case and the delay is normal like in other cases. Only cases that require urgency are given priority and the Respondent submits that this case is not urgent, hence the Complainants should wait for the decision of the Court of Appeal.
Highlighting the fact that conditions of admissibility are cumulative, the Respondent State seeks that the Communication is dismissed for lack of fulfilling admissibility requirements.

V. The Committee’s analysis on admissibility of the Communication

18. The Committee’s analysis of the admissibility of a Communication is guided by article 44 of the Charter and the Revised Communication Guidelines. According to article 44 of the Charter and Section I (1) of the Revised Communication Guidelines, non-governmental organizations legally recognized by one or more of the Member States of the African Union or State Party to the Charter or the United Nations, among others can submit a Communication before the Committee. The Committee notes that LHRC is a non-governmental organization registered in Tanzania and holds an observer status before the Committee since March 2019; similarly, the Center for Reproductive Rights is an international non-governmental organization which has a regional office in Nairobi and also has an observer status before the Committee since November 2018. Considering that the Complainants fulfill the requirement to access the Committee as they are registered in Member States of the African Union, and noting that their application is filed on behalf of pregnant and married school girls, the Committee accepts the standing of the Complainants to submit the case.

19. The Committee in analyzing the admissibility of the Communication assesses whether or not the conditions of admissibility provided under Section IX (1) of the Communications Guidelines are fulfilled. After considering the argument of the Complainants and the Respondent State, the Committee has identified three contentious issues that need to be analyzed in line with the requirement listed in the Revised Communication Guidelines; these are:
   i. Whether or not the Communication raises matters pending settlement by another international body;
   ii. Whether the Complainants have exhausted local remedies, and whether they should be exempted from exhausting local remedies;
   iii. Whether the Communication is presented within a reasonable time after exhaustion of local remedies.

   i. Whether or not the Communication raises matters pending settlement by another international body;

20. Section IX (1) (c) of Revised Communication Guidelines states that a Communication is admissible if it ‘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’. The Respondent State submits that the same issue is raised before the Special Mechanisms of the Human Rights Council, hence it falls within the exclusionary requirement of ‘matter pending
before another international procedure’. On the basis of the requirement in Section IX (1) (c) the Revised Communications Guidelines and the submission of the Respondent State, the Committee notes that the key issue of investigation is the nature of the adjudicating body where the current Communication is pending to be settled, which is the procedure within the Special Mechanisms of the Human Rights Council.

21. While examining the matter, the Committee notes that understanding the background importance of having the above-mentioned requirement as a condition for considering admissibility of a case is crucial. The Committee recognizes that States should not be subjected to similar international and regional judicial or quasi-judicial procedures on similar alleged violations. The Committee further recognizes that having various international judicial or quasi-judicial organs should not be used in a way that creates hierarchy among such organs where one can appeal against the other. As stated in the admissibility ruling of the case *Project Expedite Justice and others v The Sudan*, the Committee notes that such requirement under its Guidelines are provided to prevent conflicting decisions and ensure efficiency of transnational tribunals.¹ Such criterion of admissibility has a role to play in ensuring ‘certainty and finality of international adjudications’.² The same has been upheld by the African Commission, from whose jurisprudence the Committee draws inspiration in line with article 46 of the Charter, where the Commission held that the rationale behind having such requirement of admissibility is ‘to desist from faulting Member States twice for the same alleged violations of human rights and ensures that no State may be sued or condemned for the same alleged violation of human rights’.³ The Committee further reiterates the Commission’s elucidation that the requirement is a principle that guarantees the res judicata status of decisions issued by international and regional bodies mandated to adjudicate human rights cases.

22. In line with the above, regarding the current Communication, the Committee notes that the requirement of ‘pending settlement or has been settled by another body’ shall be understood in the sense that the case in question should be pending or already settled by a body that has a mandate to reach at a decision that binds that State concerned. The spirit and wording of Section IX (1)(C) of the Revised Communication Guidelines is clear that it is not referring to all kinds of mechanisms available at international or regional levels, rather it is referring to procedures that are capable of redressing a violation as it uses the term ‘settlement’. In its admissibility ruling on the case of *Project Expedite Justice and others v The Sudan*, where the Respondent State argued that the same matter is pending before another procedure as the issue was

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¹ ACERWC, Communication No 0011/Com/001/2018, Decision on Admissibility No 01/2019, Project Expedite Justice and others v The Sudan, para 33.
being considered by the United Nations Security Council, the Committee held that ‘[f]or the Committee to consider any other procedure as considering or having settled a matter, the body or procedure must be able to address in substance the rights given to the child by the African Children’s Charter. Hence, the organ or body in question must have a mandate comparable to the Committee.’\(^4\) Since, the UN Security Council does not have a mandate comparable to the Committee, the Committee decided that the matter cannot be regarded as pending before another international procedure and therefore dismissed the argument of the Respondent State in the stated case. Drawing inspiration from other jurisdictions, the Committee refers to the decision of the Human Rights Committee (HRC) on the *Celis Laureano v Peru* case, where the HRC held that international settlement for the purpose of admissibility does not include extra-conventional procedures that are tasked with assessing or reporting on certain human rights violations in specific territories.\(^5\) More similar to the case at hand, in the *Madoui v Algeria* case, the HRC declared the case admissible despite the fact that the same issue has been submitted before the UN Working Group on Enforced or Involuntary Disappearances as such mechanisms are not what are meant by international settlement under its Optional Protocol.\(^6\) Likewise the African Commission spelled out that a case is deemed to be settled if it is considered by an international treaty body or adjudication mechanism.\(^7\) The Commission further mentions that consideration by another international procedure entails a procedure that ‘is capable of granting declaratory or compensatory relief to victims, not mere political resolutions and declarations’, hence matters considered by the UN Security Council or Human Rights Council are not precluded from being entertained by the Commission.

23. The Committee also notes that the mandate of the Special Rapporteurs or Working Groups of the Human Rights Council is limited to sending communications to the concerned State in a form of letters or reports and requesting the State to respond on the same.\(^8\) The Special Mechanisms then report their communications and the replies of States to the Human Rights Council. As such, they do not have the mandate to issue any form of relief or decision on the complaints they receive. If the Committee considers the current communication, it cannot be said that the Respondent State is being subjected to an international procedure more than once on the same matter as

\(^4\) ACERWC, Communication No 0011/Com/001/2018, Decision on Admissibility No 01/2019, Project Expedite Justice and others v The Sudan, para 37.


\(^7\) ACHPR, Communication 279/03, *Sudan Human Rights v The Sudan*; ACHPR, Communication No 296/05 *Centre on Human Rights and Evictions v The Sudan*, May 2009, para 104.

no decision or relief was or can be issued to the victims by the above-mentioned special mechanisms.

24. The Respondent State relied on various cases in substantiating its argument that the case is pending before another procedure including the Mpaka-Nsusu V Zaire case and Interights v Eritrea and Ethiopia case of the African Commission among others. However, the Committee notes that the jurisprudences in which the Respondent State relied on are not similar to the case at hand. The Mpaka-Nsusu V Zaire case was declared inadmissible by the African Commission because it was already considered by the Human Rights Committee which is a treaty body with a quasi-judicial human rights mandate similar to the Commission. The Commission in the Interights v Eritrea and Ethiopia case did not declare the case inadmissible; rather admitted the case and suspended the consideration until the Claims Commission make a decision.

25. On the basis of the above, the Committee decides that the complaints that have been submitted to the Special Rapporteur on Education and the Working Groups on Discrimination against Women in Law and Practice do not qualify as matters 'pending settlement or previously settled' under Section IX (1) (c) of the Guidelines, hence the Committee is not prevented from considering the Communication.

ii. Whether the Complainants have exhausted local remedies, and whether they should be exempted from exhausting local remedies

26. The second issue in relation to admissibility in the current Communication is the requirement of exhaustion of local remedies. The Committee notes, Section IX (1) (d) of the Revised Communication Guidelines provides that a Communication is admissible, among others, if submitted ‘after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective’. While the Complainants argue that local remedy has been unduly prolonged and is not available and effective, the Respondent State, referring to the previous cases, argues that local remedies are indeed available and effective. Examining the matter in contestation, the Committee refers to the long established principle that only judicial remedies that are ‘available, effective, and sufficient’ should be exhausted. The availability of a local remedy is assessed in terms of the ability of

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the Complainants to make use of the remedy in their case.\textsuperscript{12} The rationale behind the requirement of exhaustion of local remedies is not to create impediment on access to redress at supranational level, but rather to make sure that States are given the information about the alleged violations and an opportunity to redress such violations within their available means. States should be given ample notice about the violation that is occurring before being called at international or regional level to account for those violations.\textsuperscript{13} Moreover, Complainants are required to exhaust local remedies because local remedies are ‘cheaper, quicker, and more effective’.\textsuperscript{14} However, treaty bodies, like this Committee, may entertain a case without a local remedy being exhausted to the end when such remedy is unduly prolonged\textsuperscript{15} despite the fact that a remedy is available or could be effective if pursued.

27. In the current Communication, it is submitted that one of the Complainants has attempted to exhaust local remedies since 13 September 2012 when the case was initially filed at the High Court of Tanzania and the High Court gave its decision on 04 August 2017, 5 years after the submission of the case. It was further submitted that even though the Complainants filed a notice of Appeal at the domestic level on 14 August 2017, the Court of Appeal has not given them a hearing date until this case was filed before the Committee in 2019. The Committee believes that time is of a crucial essence of local remedy particularly for children as their best interests demands it and also they have a limited period to enjoy the rights accorded to them as such rights are prescribed by time. As the Committee, in the children of \textit{Nubian Descents Case} pronounced, a court proceeding that is pending for over 6 years is not in line with the obligation of States to take proactive action and give immediate attention for the realization of children’s rights.\textsuperscript{16} Likewise in the case \textit{Minority Rights Group International and other v Mauritania}, the Committee found that four years of pending case at an appeal stage without any decision amounts to an unduly prolonged domestic remedy, hence the Committee concluded such instance forms a sufficient ground for exemption from exhaustion of local remedies requirement.\textsuperscript{17} Referring to the practice with other jurisdictions, the Committee notes that a similar approach is followed by various international and regional bodies. The Human Rights Committee

\textsuperscript{12} ACHPR, Communications 147/95 and 149/96, Sir Dawda K Jawara v The Gambia, (May 2000), para 33.
\textsuperscript{14} ACHPR, Communication 299/05, Anuak Justice Council v Ethiopia (May 2006), para 48
\textsuperscript{15} ACERWC, Communication No 002/2009, Institute for Human Rights and Development in Africa (IHRDA) and other v Kenya (March 2011) para 32; Guidelines for Communications, section IX (1)(d).
\textsuperscript{16} ACERWC, Communication No 002/2009, Institute for Human Rights and Development in Africa (IHRDA) and other v Kenya (March 2011) para 33-34.
\textsuperscript{17} ACERWC, Communication no 007/Com/003/2015, Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v Mauritania, (2017), Para 28
has declared that a proceeding that lasted 6 years at domestic level is an unduly prolonged local remedy which makes a case admissible at the Committee without having the need to wait for the final result of the court proceeding. The Inter American Human Rights Court has also held that a case that has taken 5 years or more since the initial process can result in exemption of the requirement of local remedies. The Committee is cognizant of the fact that there is no fixed amount of years to say that a local remedy is unduly prolonged, rather it is decided on a case by case basis giving due regard to the rights of children at stake. The Committee, while drawing inspiration from the above-mentioned cases, is in no way attempting to prescribe a definitive amount of time for what needs to be considered as ‘unduly prolonged local remedy’. It is the view of the Committee that the amount of time and the nature of the right invoked along with the best interests of the child should determine whether a local remedy is unduly prolonged or not.

28. In the current Communication, the Committee notes that the domestic remedy has taken over 7 years in total and the appeal has taken 2 years without the Court fixing a date for a hearing of the case. Given the time that has lapsed during the consideration of the case by the High Court and the rights of children at stake, the Complainants should no more be subjected to wait for the decision of the Court of Appeal whose proceeding so far has not demonstrated to be any faster. The right to education that is being alleged to have been violated is an essential right for children, which has a long-lasting effect on the wellbeing of children. Education determines the future of children and a domestic proceeding that is prolonged on such fundamental right should not be regarded as a remedy that should be sought till the end process. The Committee, therefore, holds the view that the domestic remedy is unduly prolonged.

29. The Committee does not find the argument of the Respondent State acceptable where it relies on previous cases of the Committee namely Ahmed Bassiouny v Arab Republic of Egypt and Sohaib Emad v Arab Republic of Egypt in arguing that local remedies are effective. The Committee would like to differentiate between the case at hand and the abovementioned two cases invoked by the Respondent State. Both in Ahmed Bassiouny v Arab Republic of Egypt and Sohaib Emad v Arab Republic of Egypt cases the Committee declined the communication as the Applicants were anticipating the ineffectiveness of the local remedy by relying on previous cases or

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18 HRC, Communication 1085/2002, Louisa Bousroual (on behalf of Salah Saker) v Algeria (15 March 2006), para 8.3.
19 Inter-American Court of Human Rights (IACtHR), Genie-Lacayo v. Nicaragua, Merits, para 81; IACtHR, Las Palmeras v. Colom-bia, preliminary objections, para 38
merely casting doubts without trying to exhaust any remedy at local level. However, in the present case, the Committee notes that the Complainants have attempted to engage the domestic courts and waited for 5 years to get a decision from the High Court, and appealed to the Court of Appeal which took long time to fix the hearing date. Such practices entail that the domestic remedy is proved to be unduly prolonged while the State has been given ample time to address the violation. Hence, it is the view of the Committee that the Complainants argument is not based on a mere anticipation, rather proven records of unduly prolonged domestic proceedings. The Committee reiterates, one of the reasons for exhaustion of local remedies is to give notice to the concerned State about the alleged violations so that it gets the opportunity to address the allegation. In this regard, the Committee, in addition to the local remedies sought by one of the Complainants, refers to the attempts by various international and regional interventions that have drawn the attention of the Respondent State on the same matter covered in the current Communication. In this regard, the Committee particularly refers to the Committee’s and African Commission’s joint letter of urgent appeal sent to the Respondent State regarding the right to education of pregnant girls on 21 July 2017 with Ref: ACHPR/LPROT/SM/652/17 regarding the school attendance by pregnant girls and young mothers in the Respondent State. In such circumstance, the Committee takes a strong view that it is against the best interests of the girls in the Respondent State to subject them to prolonged domestic proceedings on a matter that the Government of the Respondent State is well aware of. Moreover, the Committee declines the argument of the Respondent State that resorting to international human rights mechanism without finalizing cases at domestic level is against the subsidiarity principle of transnational systems. The Committee is duly cognizant that reginal and international mechanisms are subsidiary to domestic systems and such principle is reflected under its Revised Communications Guidelines as it prescribes exhaustion of local remedies as one criterion for admissibility of any communication. However, as explained earlier this criterion is not without exception and the exceptions in no way compromise the principle of subsidiarity.

30. With regard to the submission of both parties on the availability of domestic remedy, the Committee makes reference to some of the instances where the remedies have been rendered to be unavailable including when the power or competence of the local courts have been ousted by decrees or any form of decisions; when there is fear for life if the case is brought before local courts, and when the remedies available are

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non-judicial or are discretionary.\textsuperscript{22} The Respondent State argues that the attempt of the Complainants to seek remedy is a proof that remedy is available and cited cases where courts ruled favorably in cases that involved systematic issues like child marriage. The Committee takes the view that exemptions to exhaustion of local remedies are assessed on a case by case basis. The African Commission as well as the Inter American Court of Human Rights have both indicated the same, that the availability and effectiveness of a local remedy is assessed on a case by case basis.\textsuperscript{23} A remedy may be available according to the general principle or practice of the Respondent State, however, if the Complainants are not able to use it in their circumstances, it may be regarded as unsuitable for the case.\textsuperscript{24} While the Committee is convinced that a remedy may be available in the Respondent State for cases like the current one, it, however, notes that the remedy is unjustifiably and unduly prolonged which makes it not suitable for the Complainants to pursue.

iii. Whether the Communication is presented within a reasonable time after exhaustion of local remedies.

31. The third issue on admissibility relates to time. The Respondent State submits that the Communication does not satisfy the requirement under Section IX (1) (e) of the Revised Communication Guidelines which requires complaints to be submitted within reasonable time after exhausting local remedies. The notion of this requirement is to ensure that Complainants who allege violations act in due diligence in pursuing their cases. The requirement aims at preventing delays in reaching out to international bodies after exhausting local remedies the main goal being to prevent what is known as ‘abuse of right to submission’ in other jurisdictions.\textsuperscript{25} Even though there is no provided time under the Revised Communication Guidelines on the number of years within which cases should be submitted before the Committee after the period of exhaustion of local remedies, the Committee draws inspiration from the approach of the Human Rights Committee where it says no delay is acceptable without reasonable justification.\textsuperscript{26} Hence, given this rationale of the provision under the Guidelines, the argument of the Respondent State that the case is premature and hence not submitted

\textsuperscript{23} ACHPR, Communication 299/05, Anuak Justice Council v Ethiopia (May 2006), para 49; Inter American Court of Human Rights, Fairén-Garbi and Solís-Corrales v. Honduras, Preliminary Objection, para 89.
\textsuperscript{24} Inter-American Court of Human Rights, Durand and Ugarte v. Peru, Preliminary Objection, 1999.
\textsuperscript{25} Article 3, Optional Protocol of the HRC
\textsuperscript{26} HRC, Communication 767/1997, Mr Vishwadeo Gobin v Mauritius (16 July 2001), para 6.3.
within reasonable time is misguided and out of the context of the requirement under Section IX (1) (e).

32. As to the other conditions of admissibility, the Committee does not observe any irregularity and no contention has been raised by any of the parties to the Communication.

33. For the forgoing reasons, the Committee finds that the present Communication is admissible as per its requirements under article 44 of the Charter and Section IX (1) of the Revised Guidelines for Consideration of Communications.

Adopted in September 2020 during the 35th Ordinary Session of the ACERWC

Honorable Joseph Ndayisenga
Chairperson
The African Committee of Experts on the Rights and Welfare of the Child