AFRICAN UNION

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

UNION AFRICAINE

Comité Africain d'Experts sur les Droits et le Bien-être de l'Enfant (CAEDBE)

الاتحاد الأفريقي

"An Africa Fit for Children"

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

Ruling on Admissibility
Communication N°: 009/Com/001/201
Decision on Admissibility N°:002/2017

AUTHOR: Ahmed Bassiouny represented by advocate Dalia Lotfy and Amal

AGAINST: Government of Arab Republic of Egypt

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 31 March 2016 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 Ahmed Bassiouny represented by advocate Dalia Lotfy and Amal, mother of the child (hereinafter "the Complainants"). According to Section IX (2) (l) of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Communications Guidelines), the Committee transmitted a copy of the Communication to the respondent State Party.

II. Summary of Alleged Facts

2. Ahmed Bassiouny is an Egyptian citizen born on 16th April 1998 and resides in Al Raml Area in Alexandria. At the time of his arrest, he was aged 15 and was attending primary school at Al Raml School in Alexandria.

3. According to the Complainants, Ahmed was born with partial paralysis in his right arm (known as Erg's palsy) and regularly attended physiotherapy and occupational therapy sessions to improve his sensation and motor abilities. He further suffers from very poor immune system, Favism and G6PD and poor vision and wear spectacles at all times.

4. The complainants allege that on 1st January 2014, Ahmed was on his way to his friend's house in Jankleez Area in Alexandria, to borrow some notes, when the police forces threw tear gas on a protest nearby his friend's house; Ahmed covered his face with his clothes and ran away from the tear gas; and fifteen minutes later, after his arrival to his friend's house, the state security police came to the building calling on the family to hand the child who just entered the building. They allegedly threatened to break the door of his friend's flat if the "the terrorist was not handed to them" as stated by the forces.

5. Upon entering the flat, the police allegedly grabbed Ahmed by his clothes, slapped him on his face, breaking his glasses before covering his face with his shirt while dragging him to the floor and pushing him to a police van. The Complainants allege that Ahmed was being verbally and physically assaulted at the time of arrest and continued during the journey to the police station.

6. Ahmed was allegedly then taken to Ramal 1 Police Station in a room with adult criminals. The following day he allegedly faced prosecution and was accused of killing a police officer and two aides, possessing Molotov and disturbing the public peace. The lawyer attending the prosecution avers that he saw injuries to the arms of the child. Furthermore, the child complained of being beaten at different parts of his body, subjected to electricity in his paralyzed arm despite informing the officers of his disability and cold water was poured on him to confess to the killing the officer and the aides. His lawyer alleges that the child's clothes were torn and smelt drugs and that he looked lethargic. His lawyer's request of medical referral to the forensic doctor for examination was allegedly denied.

7. On January 26, the child was transferred to Kom Al Dekka Correctional Facility until 16th March 2014 when he was transferred to Merg Youth Centre. The Complainants allege that he was held with adult common criminals who smoked drugs all the time. The adult criminals also allegedly took the money and the food provided to the child by their families during visitation.

8. The Complainant allege that immediately before Ahmed's transfer to the Youth Detention, the news of ill treatment and torture of child prisoners held in the Centre, aged between the age of 12 and 17, came to light. The prisoners were initially held in the Youth Detention Centre and due to the overcrowdings of the center; the authorities transferred them from to Kom Al Dekka Correctional Facility. Upon return, they allege about the inhumane treatment and the sexual abuse they faced in the Detention Youth Centre. As a result, the Children in Kom Al Dekka, including Ahmed, allegedly felt terrified of the transfer and entered into a hunger strike to protest their transfer and refused to leave their rooms.

9. The news of abuses in the Youth Centre was leaked to the media and the authorities postponed the transfer to avoid further media coverage. According to the Complainants, at the same time the common criminals started assaulting the children and threatening to cut their parts with razors to force them out of the room.

10. According to the complainants, on 2nd September 2015, Alexandria Criminal Court sentenced the child to 5 years imprisonment and 5 years under surveillance. No dates or evidences were provided by the prosecution to prove the child's involvement in killing the officer and his aides or possession of firearms. Despite many requests made to the judge by defense team, the child was denied to call families of the deceased officers who were to attest in his favor. Contrary to the Egyptian Child Act, the child was sentenced in an adult court rather than Court of Juvenile. The family allege that the other 3 defendants were acquitted and that Ahmed suffered from psychological shock after the sentence, refusing to eat and confined himself to his room.

11. The child alleges that after his sentencing he was transferred to Section C, where convicted children are held. In section C, children are allegedly kept in the same rooms with adult criminals convicted of murder, rape and sale of body part. According to the child, these criminals keep razors in their rooms and continually threaten the child with the razorblades with knowledge of the officers. The child alleges that a criminal convicted of sale of bodies used a razorblade against another child badly injuring him. In response to the shocking incident, Ahmed told the head of the Centre that he will inform his parents who will file complaints and reach the media and international community to expose the violations committed against the children in both the Centre and Correctional Facilities.

12. The head of the Centre allegedly offered to transfer Ahmed to Section A, where he will be held in more humane conditions and separate from adult

criminals, if he remains silent about the incident and does not report it to his parents, which Ahmed did at the time.

13. According to the Complainants, since birth, the child suffers from partial paralysis to his right arm affecting his motor skills. Before detention, he attended weekly physiotherapy and occupational therapy to improve his motor skills. It is alleged that he was deprived of the sessions throughout his detention due to the absence of a specialist in the Correctional Facility and the Youth Centre and the refusal of the authorities to transfer him weekly to the hospital for sessions.

14. The Complainants further allege that Ahmed missed 3 final exams at school and had to retake eight subjects as a result. The Centre allegedly made it difficult for the child to pursue his studies as he has to be transferred from Cairo to Alexandria for his exams which resulted in him missing the 3 final exams.

III. The African Committee's Analysis and Decision on Admissibility

15. The current Communication is submitted pursuant to Article 44 of the African Children's Charter which allows the Committee 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". The Complainants, therefore, have submitted that they have the competence to submit the communication on the basis of this provision. The Complainants also stated that the Communication is directed against a State Party to the African Children's Charter, as the respondent State ratified the ACRWC on the 9th of may 2001, and within whose jurisdictions the alleged violations of the rights enshrined in the Charter have allegedly been committed.

16. As provided under Section II and Section IX of the Revised Communication Guidelines, the admissibility of a communication submitted pursuant to Article 44 is subject to conditions relating to authorship, form and content as considered below.

i. Requirement as to Authorship

15. The Committee notes that the Communication explicitly states the names of the authors. Therefore, this communication satisfies the requirement as to authorship.

ii. Requirements as to Form

17. The Complainants submitted that the present communication satisfies the requirement as to form as set out in Section 2 (2) of the Revised Communication Guidelines, which states that a Communication can only be considered by the Committee if it is not anonymous, it is written in one of the official languages of the Committee, it concerns a State signatory to the Charter and it is duly signed by the complainant or her/his representatives. In this

regard, the Committee is of the view that the Author of the Communication has been identified and relevant details of the Communication have been provided to the Committee. The Communication is written in English which is one of the Official languages of the Committee and it is made against a State Party to the Charter. Therefore, the Committee concludes that the Complainants have complied with the requirement as to form as laid down in the Communication Guidelines.

iii. Requirements as to Content

18. Section IX (1) (a) of the Revised Communications Guidelines prescribes that a Communication has to be compatible with the provisions of the Constitutive Act of the African Union or with the African Children's Charter. The Complainants submitted that this condition is satisfied since the Communication is presented pursuant to Article 44 of the African Children's Charter in order to strengthen the observance of the ACRWC's provisions in Egypt. The Committee notes that the Communication is compatible with the Constitutive Act of the AU and the Charter as it concerns allegations of violations of the provisions of the Charter. The Committee recognises the African Commission on Human and Peoples' Rights' approach that for a communication to be compatible with African Charter on Human and Peoples' Right, a communication must allege prima facie violations of the Charter.[1] Drawing inspiration from the jurisprudence of the Commission, the Committee also requires communications to show *prima facie* violation of provisions of the African Children's Charter in order to be accepted by the Committee. Therefore, it is the Committee's position that the Communication meets the requirements under Section IX (1) (a) of the Revised Communications Guidelines.

19. The Committee also notes that the Communication is presented in a professional, polite and respectful language, making it compatible with Section IX (1) (F) of the Revised Communication Guidelines.

20. Pursuant to Section IX (1) (b) of the Revised Communication Guidelines, the Communication should not be exclusively based on information circulated by the media. The Committee learns that the factual basis of the present Communication rests on the information gathered from the child and his parent . Hence the Committee is satisfied that this criterion is met by the Communication.

21. In compliance with Section IX Article 1(C) of the Communication Guidelines, the Complainants submitted that this 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. As far as the investigation of Committee goes, the Communication under consideration 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. Consequently, the Committee holds

[1] See African Commission on Human and Peoples' Rights, Frederick Korvah v. Liberia, Communication No. 1/88 (1988) para 6 and Ligue Camerounaise des Droits de l'Homme V. Cameroon communication no. 65/92

that the Communication has complied with the requirement in Section IX Article 1(C) of the Revised Communication Guidelines.

22. Section IX Article 1(d) of the Revised Communication Guidelines provides that the author of a communication should exhaust all available and accessible local remedies before it brings the matter to the Committee, unless it is obvious that this procedure is unduly prolonged or ineffective. The issue of exhaustion of local remedies requires detailed consideration. At the outset, under international law a local remedy is understood to be "any domestic legal action that may lead to the resolution of the complaint at the local or national level."[2] As this Committee in the children of Nubian descent case noted, "one of the main purposes of exhaustion of local remedies, which is also linked to the notion of state sovereignty, is to allow the Respondent State be the first port of call to address alleged violations at the domestic level."[3]

22. In general, international human rights law obliges a person whose rights have been violated to rely on domestic remedies to rectify the wrong before he/she takes the issue to an international tribunal. The idea behind this rule is that the full and effective implementation of international obligations in the field of human rights is intended to boost the enjoyment of human rights and fundamental freedoms at the national level. As the Commission in the case Free Legal Assistance Group, Lawyers Committee for Human Right, Union Interafricaine Des Droits De L'Hommes, Les Témoins De Jehova V. DRC noted, "A government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body."[4] The same stand was reflected by the Commission in the case *Rencontre africaine pour la défence des droits De L'Hommes (RADDHO) V Zambia*.[5]

23. The rule of exhaustion of local remedies is also of a paramount importance since it reinforces the subsidiary and complementary relationship of the international system to domestic system. In principle, neither international tribunal nor regional tribunal (like the ACERWC) should assume place of first instance court. The fact that regional forums like ACERWC should be accessible is undisputable. However, such kind of forums should come in to picture not as a first resort but after the domestic remedies have been exhausted.

24. In their submission, the Complainants argued that the State is well aware of the series of serious and massive Human Rights violations occurring in it and

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[2] See Anuak Justice Council V Ethiopia Communication no. 299/2005, para 50.
[3] *See Institute for Human Right and Development in Africa (IHRDA and other on behalf of Children of Nubian descent v. Kenya*Communication No. Com/002/2009, para 26.
[4] See African Commission, Free Legal Assistance Group, Lawyers Committee for Human Right, Union Interafricaine Des Droits De L'Hommes, Les Témoins De Jehova V. DRC Communication no. 25/89, 47/90, 56/91, 100/93 (Joined) para 36.
[5] See African Commission, Rencontre africaine pour la défence des droits De L'Hommes (RADDHO) V Zambia Communication no. 71/92 para 10.

has taken little or no steps to remedy those violations. According to the complainants, these impediments render local remedies unavailable to the victims.

25. The Complainants further submitted that the Egyptian judiciary has in general been used by the regime as a tool of repression against many citizens including the vulnerable. Noting that recently a Court has sentenced a four years old child to life imprisonment for allegedly committing a crime 2 years ago and there are other reported incidents, the Complainant argued that there is no functioning judicial system in the respondent State. From the submission of the complainants, it can be discerned that they did not approach any court to expose the fact that the victim faced torture and to rectify the wrong done to the victim.

26. From Section IX Article 1(d) of the Revised Communication Guideline, it can be understood that there are exceptional circumstances in which the requirement of exhaustion of local remedies can be left aside. In applying the rule of exhaustion of local remedies, this Committee takes into account the circumstances of each case, including the general context in which the formal remedies operate and the personal circumstances of the complainant.

27. In the present case, there is no indication that the Complainants approached the judicial system with a view to attempt to exhaust local remedies. The complainants are arguing that there are no local remedies to be exhausted.

28. As the ACERWC indicated in its previous decisions, the requirement to exhaust domestic remedies is only with regard to remedies that are 'available, effective and sufficient'.[6] The main question that begs a detailed look in the present communication is whether it can be concluded that local remedies in the Respondent State are not available, ineffective or insufficient based on the allegations made by the complainant.

29. Although the Complainants argued that the State is well aware of the series of serious and massive human rights violations occurring in the respondent State, they did not adduce any evidence to prove this allegation. For any allegation to be considered by the Committee, it should be backed by the evidence that can prove it. A mere allegation cannot hold responsible the respondent State. From the submission of the Complainants, it cannot be concluded that the state is well aware about the wrongs done to the victim. In this regard, the Committee is not convinced by the submission of the complainants.

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[6] *See IHRDA and other on behalf of Children of Nubian descent v. Kenya (n 3 above)* para 28.

30. On the other hand, the Complainants alleged that there is no functioning judiciary in the respondent State as it has been used by the regime as a tool of repression. Apart from casting vilification on the function of judiciary, the Complainants have not buttressed their argument by concrete evidence. In other words, they could not prove sufficiently that this allegation is well-founded. In the view of the Committee, the Complainants are simply casting doubts about the effectiveness/existence of the domestic remedies. In the case *A V Australia*, the Human Right Committee noted that "mere doubts about the effectiveness of local remedies or the prospect of financial costs involved did not absolve an author from pursuing such remedies."[7]

31. In the case *Anuak Justice V Ethiopia*, the African Commission held that "it is incumbent on every complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies."[8] The Commission further underscored that it is not enough for the Complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated or past incidences.[9] For instance, the indication that a Court has sentenced a four years old child to life imprisonment for allegedly committing a crime as the Complainants mentioned in their submission, cannot be read to render and characterize the whole judiciary dysfunctional. In other words, the fact that one court gives such kind of decision does not mean all courts in the respondent State will have the same stand on the same issue. In any case the functionality of judiciary of a given state cannot be judged by an isolated incidence or the error or violation committed by one court.

32. In their submission, the Complainants mentioned that on 2nd September 2015 Alexandria Criminal Court sentenced the victim to 5 years imprisonment and 5 years under surveillance. Following this sentence, the Complainants have not attempted to use the appellate channel to change the sentence. As the African Commission noted, "If a remedy has the slightest likelihood to be effective, the applicant must pursue it." The Complainants are arguing that local remedies are not likely to be successful, without exerting an effort to test them. Looking at the situation in perspective, it is difficult to conclude, before trying the appellate channel, and/or on the basis of a seemingly one case, that the respondent State's judiciary is not functioning in the case at hand.

33. In general, the Complainants have not presented conclusive evidence that demonstrates the judiciary of the respondent State is not functioning, and that local remedies are not available, effective, and sufficient. Hence the Committee is not convinced that this communication should benefit from exceptions of rule of exhaustion of local remedies.

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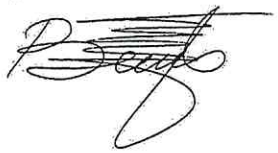
[7] See the UN Human Right Committee A v. Australia, Communication No. 560/1993, para 6.4.
[8] See Anuak Justice V Ethiopia (n 2 above) para 58.
[9] See Anuak Justice V Ethiopia (n 7 above).

IV. Decision on Admissibility

34. On the basis of the above arguments and analysis, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the authors has not fulfilled all the admissibility conditions as laid down in the Committee's Revised Guidelines on Consideration of Communication; and it is accordingly declared inadmissible.

Done in May 2017

Benyam Dawit Mezmur



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