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

DECISION ON THE ADMINISSIBILITY OF THE COMMUNICATION SUBMITTED BY THE CENTRE FOR HUMAN RIGHTS (UNIVERSITY OF PRETORIA) AND LA RENCONTRE AFRICAINE POUR LA DEFENSE DES DROITS DE L'HOMME (SENEGAL) AGAINST THE GOVERNMENT OF SENEGAL

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Communication: No. Com/001/2012

THE CENTRE FOR HUMAN RIGHTS (UNIVERSITY OF PRETORIA) AND LA RENCONTRE AFRICAINE POUR LA DEFENSE DES DROITS DE L'HOMME (SENEGAL) AGAINST

VS.

GOVERNMENT OF SENEGAL

DECISION ON ADMISSIBILITY: No 001/Com/001/2012

AUTHORS:

THE CENTRE FOR HUMAN RIGHTS (UNIVERSITY OF PRETORIA) AND LA RENCONTRE AFRICAINE POUR LA DEFENSE DES DROITS DE L'HOMME (SENEGAL)

AGAINST:

GOVERNMENT OF SENEGAL

Summary of Alleged Facts

1. On 27 July 2012 the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (henceforth, "the Committee") received a communication, pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (herein after, "the Charter"), submitted by the Centre for Human Rights, University of Pretoria (South Africa) and La Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) of Senegal (all of which shall be referred later as "the Complainants").

2. The Complainant are alleging that up to 100,000 children (known as *talibes*) aged between 4 and 12 years are sent away by their parents to live in *Qur'anic* schools known as *daaras* in the urban centres of the Republic of Senegal (henceforth, referred to as "the Respondent State") allegedly to receive religious education. The Complainants allege that this is because of the difficulties in attaining government schooling by such children.

3. The Complainant allege, however, that the *talibes* are forced by their instructors (known as *marabouts*[1]) to work on the streets as beggars. According to the Complainants, such forced child begging has been an on-going practice in the Respondent State since the 1980s, despite the existence of provisions in the

[1] According to the Complainants, the *marabouts* are not generally trained as school teachers.

Penal Code[2] outlawing forcing a child to beg.[3] These penal provisions have been reinforced by the Law to Combat Trafficking in Persons and Related Practices and to Protect Victims adopted by the Respondent State in 2005[4], which prescribes 5-10 years' imprisonment and a fine of five to twenty million CFA francs for a person found guilty of forcing a child to beg.

4. According to the Complaints, despite the existence of this legislation, the Respondent State has made little efforts to enforce these provisions with a view to penalizing the *marabouts* who force *talibes* to beg, consequent to which as of 2011 only 10 cases were brought to court resulting in nine convictions on *marabouts*. Allegedly, the Complaints submit that the highest actual duration of imprisonment for all convictions under the foregoing laws was one month imprisonment; which, according to them, represents a decrease in the severity of penalties imposed on the marabouts as compared to past years.

5. The Complainants also allege that the Respondent State's Constitution (2001)[5] allows only specific individuals under specific mandates to bring cases and only to challenge the constitutionality of certain provisions of any law. And, as such, there is no *actio popularis* in the Respondent State's legal system; as cases for vindication of human rights violations may only be brought to court by individuals who have been directly affected by a violation and any decision will provide remedy only for those litigants, or for those who are directly connected to the case or have '*un intérêt et qualité pour agir*'.

6. According to the Complainants, where a non-state agency wants to represent victims of violations of human rights, like the *talibes* in this matter, the consent of parents must first be obtained. The only other avenue to bring such a claim to court is to petition the Chief Prosecutor, whose decision is made discretionary and in consultation with the Minister responsible for justice.

7. In addition, the Complainants allege that the Respondent State has not provided minimum standards to regulate non-state schools as well as it does not conduct inspections of the *daaras* to check if there are violations of the rights of the *talibes* attending schooling and living therein.

8. The Complainants allege further that the conditions in many *daaras* are deplorable; usually housed in unsafe and unhygienic structures where children sleep in over-crowded rooms or outside, with little or no access to clean water or sanitation. *Talibes* living in *daaras* rarely obtain enough food resulting in chronic malnourishment and frequently contract diseases where the *marabouts* do not provide the *talibes* with medical care or assistance. In some instances, according to the Complainants, the *talibes* are injured by speeding motor vehicles in the course of begging on the streets.

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[2] Law 65-60 of 21 July 1965.

[3] Articles 245 to 247(b) of the Penal Code prescribe a 3-6 month term of imprisonment for any person who allows a child to beg on his or her behalf.

[4] Law No. 2005-06 of Senegal.

[5] Articles 77 and 92 of the Constitution of Senegal (2001).

9. The Complainants also allege that the *talibes* are required to bring from begging in the streets a daily quota (in the form of rice, sugar or money) to the *daaras*, failure to attain which results in beatings and punishments to defaulting *talibes*. On average, *talibes* spend between six and eight hours begging, which leaves them with less than five hours to spend on *Qur'anic* education per day. As result of their concentration to attaining their daily quotas, many talibes do not learn the *Qur'an* as originally contemplated.

10. Furthermore, the Complainants allege that the *talibes* are normally separated from living with their parents and are deprived of any contact with their families. The *talibes* are also physically assaulted and harshly punished when they attempt to leave the *daaras*.

The Complaint

11. The Complainants allege that, as a result of the foregoing situation and due to the failure by the Respondent State to protect the *talibes*, there are continuous violations of numerous rights and freedoms of such children, which they are entitled under the Charter. It is the Complainants' allegation that the Respondent State has violated, and continues to violate, the provisions of Article 4 (best interests of the child); Article 5 (the right to survival and development); Article 11 (the right to education); Article 12 (the right to leisure, recreation and cultural activities); Article 14 (the right to health and health services); Article 15 (prohibition of child labour); Article 16 (protection against child abuse and torture); Article 21 (protection against harmful social and cultural practices); and Article 29 (prohibition of sale, trafficking and abduction of children) of the Charter.

The African Committee's Analysis and Decision on Admissibility

Analysis

12. The current communication is submitted pursuant to Article 44 of the African Charter on the Rights and Welfare of the Child which allows the African Committee to receive and consider communications from "any person, group or nongovernmental organization…" The Complainants, therefore, have submitted that they have the competence to submit this communication on the basis of this provision and in the context that they all have observer status before the African Commission on Human and Peoples' Rights (henceforth, "the Commission").

13. The Complainants also state that the communication is brought against the Respondent State which is a party to the Charter, having ratified it on 29 September 1998; and within whose jurisdictions the alleged violations of the rights enshrined in the Charter have purportedly taken place.

14. As the Committee held in *Nubian* case, the Guidelines for the Consideration of Communications provides, under Chapter II Article 1, that the admissibility of a

communication submitted pursuant to Article 44 'is subject to around seven conditions relating to form and content'[6] as considered below.

Authorship

15. The Complainants have indicated that they have submitted the present Communication on behalf of the *talibes* in the Respondent State, whose rights under the Charter have been violated by the Respondent State. And, as such, they have the competence to do so under Chapter 2 Article 1(I)(2) of the Committee's Communication Guidelines. In addition, the Complainants have submitted that under Chapter 2 Article 1(I)(3) of the Communications Guidelines, a communication can be submitted without the consent of the victims if it can be proved that the action taken is in the "overall best interests" of the child. Given the circumstances of this matter, the Complainants have not been able to obtain the consents of the talibes. However, lack of the same does not render this communication fatal as, according to the Complainants, 'the action taken is in the "overall best interests" of the *talibes'*. To them, the communication 'is aimed at ensuring the government takes steps to eliminate the practice of child begging, to ensure proper regulation of *daaras* and operative punishment of *marabouts*.'

16. The Complainants also contend that given the availability of evidence of serious, massive and systematic violations of the rights of talibes and on the basis of the Commission's decision in *Amnesty International v Sudan*[7], the necessity of compliance with the requirement of consent is rendered immaterial in this matter. They also contend that given this situation, where the violations involve several thousands of victims (*talibes*), obtaining the consents of the *talibes* if not practical; and, therefore, it is their submission that this communication satisfies the requirement of authorship and should be admitted by the Committee.

17. The Committee notes that the Complainants have satisfied the conditions and requirement as to form as laid down in Chapter 2 Article 1(I) of the Committee's Communication Guidelines. The Committee also notes that the communication explicitly states the name of the authors, who are non-governmental organizations recognized by the African Union through the Commission; and are doing so on behalf of victim *talibes* in the Respondent State. In addition, the Committee notes that the Complainants have ably proved that their action is taken in the best interests of the *talibes*. Therefore, the Committee holds the view that the Complainants have complied with Chapter 2 Article 1(1) of the Communication Guidelines.

Form

18. The Complainant submit that the present communication satisfies the requirement as to form as set out in Chapter 2 Article 1(II)(1) of the Communication Guidelines, which requires that the communication may only

[6] Nubian case, para 15.

[7] *Amnesty International, Comite Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* ACHPR 1999.

consider a communication if it is not anonymous; it is written; and it concerns a State non-signatory to the Charter. In this regard, the Complainants point out that the communication explicitly sets out details of the names and contact details of the authors (as was in the *Nubian* case[8]); it is in writing; and the Respondent State, against which this communication is brought and where the massive violations of the rights of talibes, has ratified the Charter.

19. The Committee is of the view that the authors of the Communication have been identified and relevant details of the Communication have been provided to the Committee, it is written and it is against the Respondent State, which is a State Party to the Charter. Therefore, the Complainants have complied with the requirement as to form as laid down in the Communication Guidelines.

Content

20. The Complainants submit that the communication has satisfied the requirements as to content as per Chapter 2 Article 1(III)(1)(a) of the Communication Guidelines, which requires the communication to be compatible with the provisions of the Constitutive Act of the African Union or with the Charter on the Rights and Welfare of the Child. In this context, they submit that this condition is fulfilled 'since the communication concerns violations of the provisions of the African Children's Charter.' The Committee notes that the communication is compatible with the Constitutive Act of the AU and the Charter as it concerns violations of the provisions of the Charter. The Committee notes the Commission's Decision in *Zimbabwe Human Rights NGO Forum v Zimbabwe*[9] to the effect that to be compatible with the Charter, the communication has only got to invoke provisions of the law which are presumed to have been violated.[10]

21. Also the Committee notes that the communication is presented in a professional, polite and respectful language[11], making it compliant with Chapter 2 Article 1(III)(1)(a) of the Communication Guidelines.

22. Chapter 2 Article 1(III)(1)(b) of the Communication Guidelines also requires the communication not to be exclusively based on information circulated by the media. In compliance with this requirement, the Complainants point out that the information 'which forms the basis of this communication was primarily obtained from personal interviews of the *talibes*, and reports from credible organisations researching global trends in human rights and the child begging phenomenon such as UNICEF, Human Rights Watch, the International Labour Organisation, the World Bank and the United States Department of State.' As such, they argue that the information is accurate and reliable. The Committee is of the considered

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[8] *Institute for Human Rights and Development in Africa (Banjul) and Open Society Justice Initiative (New York) (behalf of children with Nubian background in Kenya) v The Government of Kenya* Communication No. Com/002/2009 (ACERWC).

[9] Communication No. 245/2002 ACHPR.

[10] *See* also *FIDH, Organisation nationale de droits de l"Homme (ONDH) and Rencontre africaine pour la défense des droits de l'Homme (RADDHO) v Senegal* Communication No. 304/2005 ACHPR.

[11] *See* particularly *Nubian* case, para. 23.

view that the Communication is based on information provided, *inter alia*, by the alleged victims primarily through personal interviews of the *talibes* made by the complaining NGOs. In addition, the Committee notes the fact that the information contained in the communication was also corroborated by information obtained from reports made by credible organisations (mentioned in the foregoing para) researching global trends in human rights and the child begging phenomenon. As such, the communication is not solely based on media reports; thus, complies with Chapter 2 Article 1(III)(1)(b) of the Communication Guidelines.

23. In compliance with Chapter 2 Article 1(III)(1)(c) of the Communication Guidelines, the Complainants submit that this communication is has fulfilled the requirement a Communication not to have been considered according to another investigation, procedure or international regulation. The Committee has undertaken investigation to confirm that the issue at hand has not been considered in another international procedure. Therefore, the Committee holds that the Communication has complied with the requirement in Chapter 2 Article 1(III)(1)(c) of the Communication Guidelines.

Exhaustion of Local Remedies

24. Chapter 2 Article 1(III)(1)(d) of the Communication Guidelines also requires the author of a communication to exhaust all the available appeal channels at the national level (i.e. exhaustion of local remedy) or when the author of the Communication is not satisfied with the solution provided. The Complainants have relied on the definition of "a local remedy" expounded by the Commission in a number of cases, including *Constitutional Rights Project (CRP) v Nigeria*[12] where it described it as 'any domestic legal action that may lead to the resolution of complaint at the local or national level.' Relying on another decision of the Commission in *African Institute for Human Rights and Development v Guinea*[13], the Complainants submit that the exhaustion of local remedy in this matter 'is unnecessary considering the best interests of the number of children whose rights are being violated.' In the cited Decision, the Commission held that a local remedy could not be exhausted given the number of potential victims who were in the region since it would be impractical for them to approach the courts.

25. In this matter, the Complainants argue that the Committee should admit the communication on the strength of its Decision in the *Nubian* case, where the Committee was of the view that the Respondent State in that case had not 'proactively taken the necessary legislative, administrative and other appropriate measures in order to bring to an end the current situation children of Nubian descent in Kenya find themselves in'. The Complainants are of the view that international law requires that the exhaustion of domestic remedies should only be in respect of those that are available, effective and adequate.

[12] Communication No. 60/1991 (ACHPR).
[13] (2004) ACHRLR 57 (ACHPR 2004) para 34.

26. This necessarily renders the avenue to petition the Chief Prosecutor to bring a claim to court on behalf of the *talibes* ineffective because the Chief Prosecutor's Decision is made discretionary and in consultation with the Minister responsible for justice, which does not amount to a remedy that is judicial in nature. According to the Complainants, the prospect for *actio popularis* in the Respondent State's courts is not in favour of the *talibes* as they do not have standing to do so.

27. The Complainants also contend that the requirement that only the victim *talibes* or someone directly affected by the alleged violations can bring cases in domestic courts, would entail each of the estimated 100,000 talibes would bring their won claim in courts, which is "so impractical as to be virtually impossible". In the Complainants' view, "someone directly affected by" the violations of the rights of *talibes* implies those duty bearers (including parents) who are responsible for placing children in the *daaras.* To the Complainants: 'This would require an action to be brought by the very parties most responsible for their current neglect and violation of their rights.' Therefore, the Complainants submit that such local remedies cannot be considered "effective".

28. In addition, the Complainants have invoked the jurisprudence of the Commission which reveals that in cases of "serious and massive violations", local remedies need not be exhausted.[14] It is the Complainants' submission that the failure by the Respondent State to protect "so many" children on the streets in the State's major cities where they suffer "egregious violations" of their rights enshrined in the Charter for so many years amount to "serious and massive violations". As such, the Complainants urge the Committee to consider this communication as falling within the exceptions to the requirement to exhaust local remedies and thus declare it admissible.

29. In considering whether or not the Complainants have exhausted local remedies available in the Respondent State, the Committee would like to reiterate its position that is stated in the *Nubian* case. In that communication, the Committee held that Article 46 of the Charter mandates it to 'draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.' Basing this explicit legislative mandate, the Committee made 'reference to laws, and jurisprudence from other countries or treaty bodies in Africa and elsewhere.'[15]

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[14] *See* for instance *Organisation Mondiale contre la Torture, Association Internationale des Juristes Democrates, Commission Internationale de Juristes, Union Interafricaine des droits de l'Homme v Rwanda* (1996) (No's. 27/89-46/91-99/93) para 18.

[15] *Nubian* case, para 25.

30. The Committee would also like to draw inspiration from the Commission in considering the requirement to exhaust local remedy. As the jurisprudence of the Commission indicates, the rule of prior exhaustion of domestic remedies is one of the issues most frequently invoked by respondent States and contested by the parties before the Commission; and, as the African Commission held in *Constitutional Rights Project, Civil Liberties Organisation, and Media Rights Agenda v Nigeria*[16], the rule 'usually requires the most attention.' In terms of the jurisprudence of the Commission, it is well-established that the local remedies rule is not rigid. This is because Article 56(5) of the African Charter on Human and Peoples' Rights (the ACHPR) states that the Commission shall consider a communication after the applicant has exhausted local remedies, 'if any, unless it is obvious that this procedure is unduly prolonged'.

31. According to the Commission, the African Charter on Human and Peoples' Rights (The Banjul Charter), thus, 'recognises that, although the requirement of exhaustion of local remedies is a conventional provision, it should not constitute an unjustifiable impediment to access to international remedies.'[17] In *Sir Dawda Jawara v The Gambia*[18] the Commission held that a remedy is considered "available" if the complainant can pursue it *without impediment*[19]; it is deemed "effective" if it offers a prospect of success; and it is found "sufficient" if it is capable of redressing the complaint.[20]

32. Therefore, it is a well established jurisprudence of the Commission that 'only domestic remedies that are *available*, *effective*, and adequate (sufficient) that need to be exhausted'.[21] As such, the Commission has recognised that the exhaustion of prior domestic remedies implies and assumes the *availability, effectiveness* and *sufficiency* of domestic adjudication procedures. If local remedies are *unduly prolonged*, *unavailable, ineffective* or insufficient, the exhaustion rule will not bar consideration of the case by the Commission.[22]

33. The word "available" has been defined by the Commission to mean 'readily obtainable; accessible'; or 'attainable, reachable; on call, on hand, ready, present; . . . convenient, at one's service, at one's command, at one's disposal,

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[16] Comm. Nos. 140/94, 141/94, 145/95, para. 26, 1999–2000 Annual Activity Report [Afr. Ann. Act. Rep.

[17] *Anuak Justice Council v Ethiopia,* op. cit, para. 49.

[18] Communication Nos. 147/95 and 149/96.

[19] Similarly, the decision of the Commission in *Anuak Justice Council v Ethiopia* [op. cit, para. 51] requires that 'three major criteria could be deduced in determining the rule on the exhaustion of local remedies, namely: that the remedy must be *available, effective* and *sufficient*.' [*Ceesay v The Gambia* Communication 86/93]. According to the Commission, a remedy is considered to be available 'if the petitioner can pursue it without impediments or if he can make use of it in the circumstances of his case.' [*Sir Dawda K. Jawara v The Gambia*, op. cit, para. 31].

[20] *Sir Dawda K. Jawara v The Gambia*, ibid, paras 31 and 32.

[21] *Constitutional Rights Project [CRP] v Nigeria* Communication No. 60/91. *See* too citations therein pertaining to the jurisprudence of the African Commission in this regard and *Dawda Jawara v The Gambia* Communication Nos. 147/95 and 149/96, para.32.

[22] *Sir Dawda K. Jawara*, op. cit, paras. 31-32.

at one's beck and call'.[23] In other words, 'remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the Complainant,'[24] according to the Commission in *Anuak Justice Council v Ethiopia*,

34. A remedy will be deemed to be effective if it offers a prospect of success.[25] If its success is not sufficiently certain, it will not meet the requirements of availability and effectiveness. The word 'effective' has been defined to mean "adequate to accomplish a purpose; producing the intended or expected result," or "functioning, useful, serviceable, operative, in order; practical, current, actual, real, valid".[26] Lastly, a remedy will be found to be sufficient if it is capable of redressing the complaint.[27] It will be deemed insufficient if, for example, the applicant cannot turn to the judiciary of his country because of a generalized fear for his life "or even those of his relatives."[28] The Commission has also declared a remedy to be insufficient because its pursuit depended on extrajudicial considerations, such as discretion or some extraordinary power vested in an executive state official. The word "sufficient" literally means "adequate for the purpose; enough"; or "ample, abundant; . . . satisfactory."[29]

35. From this analysis of the jurisprudence of the Commission, the following exceptions to the rule of prior exhaustion of local remedy are remarkable. First, domestic remedies must be of "judicial nature"; second, domestic remedies must not be "unduly prolonged"; third, where there are "ouster" clauses domestic remedies are rendered unavailable; and, fourth, local remedies cannot be exhausted where there is a large number of potential victims of violations of human rights. In addition, the Commission has held that the need to exhaust local remedies is not necessarily required where the complainant is in a life-threatening situation that makes such remedies unavailable

36. In their communication, the Complainants have urge the Committee to consider the present communication as falling within the exceptions to the requirement to exhaust local remedies and thus declare it admissible. In its analysis and consideration below, the Committee gives this plea the audacity it deserves.

37. The Complainants have amply demonstrated that there are in existence of the Respondent State penal laws (Penal Code[30] and Law to Combat Trafficking in Persons and Related Practices and to Protect Victims adopted by the Respondent State in 2005[31]) which proscribe forcing a child to beg.[32] However,

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[23] *Anuak Justice Council v Ethiopia,* op. cit.
[24] *Sir Dawda K. Jawara v The Gambia,* op. cit, para. 33.
[25] Ibid, para. 32.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] *Anuak Justice Council v Ethiopia,* op. cit, para. 52.
[30] Law 65-60 of 21 July 1965.

[31] Law No. 2005-06 of Senegal.

according to the Complainants, such forced child begging has been an on-going practice in the Respondent State since the 1980s. In addition, the Respondent State has made little efforts to enforce these provisions with a view to penalizing the *marabouts* who force *talibes* to beg.

38. It is in record that, as of 2011 only 10 cases were brought to court resulting in nine convictions on *marabouts*. The Complaints have submitted that the highest actual duration of imprisonment for all conventions under the foregoing laws was one month imprisonment; which, according to them, represents a decrease in the severity of penalties imposed on the marabouts as compared to past years. These facts just indicate how ineffective are the penal laws and criminal procedures to warrant the victim *talibes* to get an effective redress locally. Therefore, the Committee holds the view that although the Respondent State have enacted penal laws to prohibit forcing a child to beg, the Respondent State has not honoured its obligation to effectively prosecute and take to account all marabouts who force *talibes* to beg.

39. Under Article 74 of the Respondent State's Constitution, the Constitutional Council 'may be seized of an action to declare a law unconstitutional.' However, in Articles 74, 77 and 92 of the Respondent State's Constitution (2001)[33], it is provided that only specific individuals have specific mandates to bring cases and only to challenge the constitutionality of certain provisions of any law. In particular, only the President of the Republic of Senegal, one-tenth of the Members of the National Assembly, the National Council or the Court of Appeal are empowered, where an exception of unconstitutionality is brought before them, to seize the Constitutional Council.[34] However, this avenue is highly discretionary and prone to political manouvres; and, as such, the Committee finds this avenue as ineffective in redressing the violations of the rights of the *talibes* by the *marabouts* in the *daaras*.

40. The Committee also finds the avenue to petition the Chief Prosecutor to bring a claim to court on behalf of the *talibes* victims of violations of their rights by *marabouts* in the *daaras* ineffective because the Chief Prosecutor's decision is made discretionary and in consultation with the Minister responsible for justice, which does not amount to a remedy that is judicial in nature. Besides, this avenue is not of judicial nature and thus not subject to judicial standards of justice and there are no appeal mechanism against such discretionary powers.

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[32] Articles 245 to 247(b) of the Penal Code prescribe a 3-6 month term of imprisonment for any person who allows a child to beg on his or her behalf. The Law to Combat Trafficking in Persons and Related Practices and to Protect Victims prescribes 5-10 years' imprisonment and a fine of five to twenty million CFA francs for a person found guilty of forcing a child to beg.

[33] Constitution of Senegal (2001).

[34] *FIDH, Organisation nationale de droits de l"Homme (ONDH) and Rencondre africaine pour la defence des droits de l'Homme (RADDHO) v Senegal* Communication No. 304/2005 ACHPR, para 33. However, under Article 92 of the Constitution of Senegal the decisions of the Constitutional Council are not subject to any appeal. They are binding on governments and all administrative and judicial authorities.

Therefore, the Committee considers this not to be an effective or sufficient remedy for the *talibes* to be able to tail in pursuit of their rights this matter.

41. Another avenue that the Complainants also have indicated to be in place in the Respondent State is the requirement that only the victim *talibes* or someone directly affected by the alleged violations can bring cases in domestic courts. In practice, this would entail each of the estimated 100,000 *talibes* would bring their won claim in courts. The Committee concurs with Complainants' submission that this avenue is "so impractical as to be virtually impossible". The Committee also concurs with the Complainants' view that, "someone directly affected by" the violations of the rights of *talibes* implies those duty bearers (including parents) who are responsible for placing children in the *daaras.* The Committee agrees with the Complainants that: 'This would require an action to be brought by the very parties most responsible for their current neglect and violation of their rights.' Therefore, the Committee holds that such avenue cannot be considered to be an effective remedy for the *talibes* who are victims of abuses of their rights by the *marabouts*.

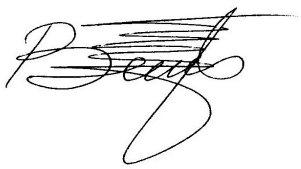
Decision on Admissibility

42. On the basis of all the arguments and analysis above, 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 all the admissibility conditions as laid down in the Committee's Guidelines on Consideration of Communication; and it is accordingly declared admissible.

Decision on Admissibility

43. On the question of provisional measures which the Complainants urge the Committee to make under Chapter 2 Article 2(IV)(1) of the Communication Guidelines, the Committee shall determine this matter upon it seizes matter and before the Respondent State makes its specific responses to the allegations in the present communication.

Done in Addis Ababa, Ethiopia, 18th April 2013



Dr Benyam Dawit Mezmur,
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Experts on the Rights and Welfare of the Child