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**CONFIDENTIAL**


Prof. Michelo Hansungule  
Centre for Human Rights  
Faculty of Law  
University of Pretoria, South Africa  
E-mail: michelo\_h@yahoo.com

Dear Professor Hansungule,

I have the honour to inform you that during its 17<sup>th</sup> Session held in Addis Ababa, Ethiopia from 22 to 25 March 2011, the African Committee of Experts on the Rights and Welfare of the Child declared the admissibility of the Communication numbered Com/001/2005 which you have submitted on behalf of children in Northern Uganda on the alleged rights violation of these children in the context of armed conflict.

Please find attaché the copy of the Decision, it should be noted that the African Committee of Experts on the Rights and Welfare of the Child plans to consider the merits of this Communication during its 18<sup>th</sup> Session which will be held November 2011.

Please accept, Professor Hansungule, the assurances of my highest consideration.

  
**Mariama Cissé (Mrs.)**  
**Secretary of the African Committee of Experts**  
**on the Rights and Welfare of the Child(ACERWC)**



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**CONFIDENTIAL**

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

**DECISION ON THE ADMISSIBILITY OF THE COMMUNICATION SUBMITTED BY  
Mr. MICHELO HANSUNGULE AND OTHERS (ON BEHALF OF CHILDREN IN  
NORTHERN UGANDA) ON THE ALLEGED VIOLATIONS OF THE RIGHTS OF  
CHILDREN IN THE CONTEXT OF ARMED CONFLICT**

**Authors:** Mr. Michelo Hansungule and others (on behalf of children of Northern Uganda) Centre for Human Rights, Faculty of Law  
University of Pretoria, South Africa

**Against:** Government of the Republic of Uganda

**Reference:** Decision 001/Com/001/2005

Mr. Michelo Hansungule and others (on behalf of children in Northern Uganda) submitted a Communication to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the alleged right violations of children affected by armed conflict in Northern Uganda in violation of a number of Articles of the African Charter on the rights and welfare of the child including Article 22.

In accordance with the 44 of the Charter and its Guidelines on Communications, the African Committee of Experts on the Rights and Welfare of the Child has considered this Communication and makes the following decision on Admissibility:

**I. On the Form:**

According to the Guidelines on Communications, no communication shall be considered if it is anonymous, not written and concerns a State non-Signatory to the Charter.

The Communication at hand is not anonymous, is written, the assessment of the record that the Committee's secretariat received the Communication date on June 13, 2005 and registered at the ACERWC secretariat under number **Com/001/2005**.

**On ratification of the Charter by the concerned State:** The authors have stated that the Communication is against the Republic of Uganda, which has ratified the Charter on August 17, 1994, so it is clear that this Communication is against a signatory state.

As a result, the Committee declares the Communication admissible in the form.

**II. On the content**

According to the conditions of the admissibility of the Guidelines on Communications, in order to take a decision on the admissibility of a Communication, the Committee shall ensure that:

- The Communication is compatible with the provisions of the Constitutive Act of the African Union or with the African Charter on the Rights and Welfare of the Child;



- The Communication is not exclusively based on information circulated by the media;
- The same issue has not been considered according to another investigation, procedure or international regulation;
- The author has exhausted all the available appeal channels at the national level or when the author of the Communication is not satisfied with the solution provided;
- The Communication is presented within a reasonable period after appeal channels at the national level have been exhausted;
- The wording of the Communication shall not be offensive.

Following the consideration of the Communication in accordance with the Guidelines, the Committee has decided:

**On the condition on the compatibility of the communication with the Charter:** It is clear from the record that the Communication is related to the alleged violation of a number of rights of children that are affected in the context of armed conflict in Northern Uganda. It should be noted that these rights include protection of children from being involved in armed conflict in Article 22; the right to education in Article 11; the right to life, survival and development in Article 5; and the right to enjoy the best attainable state of physical, mental and spiritual health. Therefore, the Committee confirms that this Communication is compatible with the provisions of the Charter.

**Regarding the requirement that the Communication is not exclusively based on information circulated by the media:** While the Communication refers to information circulated by the media, it uses such information in a supplementary manner to support some of the arguments, and does not exclusively rely on such information. As a result, the Committee is of the view that the Communication is not based exclusively on information disseminated by the media.

**Regarding the condition requiring that the same issue has not been considered according to another investigation, procedure or international regulation:** After preliminary investigations conducted by the Committee, it has become apparent that the case has not been the subject matter of another investigation, procedure or international regulation/adjudication. As a result, the Committee finds that this Communication complies with this requirement.

**Concerning the condition requiring that the author has exhausted all the available appeal channels at the national level or when the author of the Communication is not satisfied with the solution provided:** The two conditions are not cumulative. First, the Communication is admissible if all national remedies are exhausted and secondly, the solution provided must not have satisfied the author.

While the rationale behind the rule that local remedies must be exhausted is mainly to respect state sovereignty and also give the State concerned the opportunity to address alleged violations, it is not without exceptions, especially in order to promote and protect children's best interests. It is a well-established principle within the African human rights law system, especially through the jurisprudence of the African Commission on Human and Peoples' Rights that, in order to exhaust local remedies, such remedies should be available, effective, and adequate. According to Article 46 of the African Charter, the African Committee has the mandate to draw inspiration,

***Amongst others, from the African Charter on Human and Peoples' rights and the African Commission.***

The Authors have argued, by relying on jurisprudence from the African Commission, that a remedy "can only be said to be 'available' if it can be utilized as a matter of fact 'without impediment', is 'effective' if it 'offers a prospect of success', and is 'sufficient' where it is capable of 'redressing the wrong' complained of". As a result, the Authors argue that while it might have been possible to exhaust local remedies theoretically, the practical application is impossible as a result of the fact that security is a serious concern,

The Authors have also indicated that, despite their skepticism about the availability, effectiveness and adequacy of remedies in Uganda, they have attempted (in collaboration with CSOs) to approach national courts, but the prospect of success of doing so were reportedly impossible due to the impact of the conflict on relevant state institutions in the region, as well as security concerns which also would make evidence gathering extremely risky and difficult.

The Authors have also argued that the fact that the alleged violations can be categorized as massive/large scales of violations of children's rights and involve thousands of children, should also make the case benefit from the exception to the rule that requires exhaustion of local remedies. There is jurisprudence from the African Commission that violations of rights on a large scale that were well documented over a long period of time in the international community need not necessarily exhaust local remedies as the state has presumed awareness of the serious human rights violations in the country/region.

In the presence of these facts and arguments, and jurisprudence supporting the arguments, and in the absence of any concrete counter arguments on the part of the Government, the Committee is of the view that the case should benefit from an exception to the rule of exhaustion of local remedies.

**On the condition requiring that the Communication is presented within a reasonable period after appeal channels at the national level have been exhausted:** It is the view of the Committee that the Communication, which was initially submitted in September 2005, and further consolidated/updated in 2010 (with a French translation and a submission on admissibility) was brought *with* a reasonable period of time after the Authors decided that the exhaustion of local remedies in the Communication at hand would not be available, effective and adequate.



**Regarding the condition requiring that the wording of the Communication shall not be offensive:** The Committee has gone through the Communication in detail, and is of the view that the wording of this Communication is not offensive.

### **III. Decision**

The African Committee of Experts on the Rights and Welfare of the Child notes that the Communication submitted by Michelo Hansungule and others (on behalf of children in Northern Uganda) that alleges the violation of the rights of children affected in the context of armed conflict in Northern Uganda, having fulfilled all conditions on form and content, has complied with the Guidelines of the Committee on Communications and it is declared admissible accordingly.

**Done in Addis Ababa, Ethiopia, on March 23, 2011**



**Agnès KABORE / OUATTARA**  
The Chairperson of the ACERWC