

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"

UNIÃO AFRICANA

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia
Telephone: (+ 251 1) 551 3522 Internet : <http://acerwc.org> Fax: (+ 251 1) 553 5716

Original: English

DECISION ON 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)**

Versus

GOVERNMENT OF SENEGAL

DECISION: N° 003/Com/001/2012

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

Versus

GOVERNMENT OF SENEGAL

DECISION: No 003/Com/001/2012

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 Complainants are alleging that children as many as 100,000 (known as *talibés*), 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 the situation depicts the difficulties that such children are facing in attaining government schooling.
3. The Complainants, moreover, allege that the *talibés* 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 Penal Code² outlawing the practice of 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 2005⁴, 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 these legislations, the Respondent State has made little efforts to enforce these provisions with a view to penalizing the *marabouts* who force *talibés* to beg, consequent to which as of 2011

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

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

⁴ 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.

⁵ Law No. 2005-06 of Senegal.

only 10 cases were brought to court resulting in nine convictions of *marabouts*. The Complainants 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. 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 interest et qualite pour agir*'.
6. According to the Complainants, where a non-state agency wants to represent victims of violations of human rights, like the *talibés* 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 and that it does not conduct inspections of the *daaras* to check if there are violations of the rights of the *talibés* attending schooling and living therein.
8. The Complainant allege further that the conditions in many *daaras* are deplorable; usually housed in unsafe and unhygienic structures where children sleep in overcrowded rooms or outside, with little or no access to clean water or sanitation. *Talibés* living in *daaras* rarely obtain enough food resulting in chronic malnourishment and frequently contract diseases where the *marabouts* do not provide the *talibés* with medical care or assistance. In some instances, according to the Complainants, the *talibés* are injured by speeding motor vehicles in the course of begging on the streets
9. The Complainants also allege that the *talibés* are required to bring a daily quota (in the form of rice, sugar or money) that they collected from begging in the streets to the *daaras*, failure to attain which results in beatings and punishments to defaulting *talibés*. On average, *talibés* 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 on attaining their daily quotas, many *talibés* do not learn the *Qur'an* as it is contemplated.
10. Furthermore, the Complainants allege that the *talibés* are normally separated from living with their parents and are deprived of any contact with their families. The

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

talibés are also physically assaulted and harshly punished when they attempt to leave the *daaras*.

The Complaints

11. The Complainants allege that, as a result of the foregoing situation and due to the failure by the Respondent State to protect the *talibés*, there are continuous violations of numerous rights and freedoms of such children, to 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.

Admissibility

Complainants' submission on admissibility

12. 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. The Complainants are of the view that they can submit the Communication even if the consent of the victims was not obtained since they are acting in the 'overall best interest of the child'. The Complainants further argue that the consent of the victims is not a requirement when there is evidence of serious, massive and systematic violations of the rights of *talibes* as it was indicated in Commission's decision in *Amnesty International v Sudan*⁶.

13. Concerning the form of the Communication, 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 a communication should not be anonymous; should be written; and should concern a State signatory to the Charter.

14. In relation to the content of the Communication, the Complainants submit that the communication has satisfied the requirements as to content as per Chapter 2 Article 1(III)(1)(a)(b)&(c) of the Communication Guidelines since the communication concerns violations of the provisions of the African Children's Charter; it is not solely

⁶ *Amnesty International, Comite Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* ACHPR 1999.

based on information circulated by the media; it has not been considered according to another investigation, procedure or international regulation.

15. The Complainants submit that exhaustion of local remedy in this matter is 'unnecessary considering the best interests of the number of children whose rights are being violated' relying on a decision of the African Commission on Human and Peoples' Rights (ACHPR/the Commission) in *African Institute for Human Rights and Development v Guinea*.⁷ 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. 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. And the Complainants argue that there is no effective judicial remedy for the *talibes* insofar as *actio popularis* in the Respondent State's courts is not in favour of the *talibes* as they do not have standing to do so. 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.⁸ In this case, 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".

ACERWC's analysis and decision on admissibility

16. The Committee notes that the Complainants 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 and therefore can be the authors of the Communication.
17. The Committee also 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, i.e. the communication explicitly states the name of the authors, is well written and concerns a State Party to the Charter.
18. In the matter of content of the Communication, the Committee agrees 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

⁷ (2004) ACHRLR 57 (ACHPR 2004) para 34.

⁸ See for instance *Organisation Mondiale contre la Torture, Association Internationale des Juristes Democrates, Commission Internationale de Juristes, Union Inter africaine des droits de l'Homme v Rwanda* (1996) (No's. 27/89-46/91-99/93) para 18.

⁹ Communication No. 245/2002 ACHPR.

invoke provisions of the law which are presumed to have been violated.¹⁰ The Committee in this matter also agrees with the Complainant that the Communication is not solely based on information circulated by media; rather it is based on information provided, *inter alia*, by the alleged victims primarily through personal interviews of the *talibes* made by the complaining NGOs and information obtained from reports made by credible organisations. In addition, the Committee has undertaken investigation and confirmed that the issue at hand has not been considered in another international procedure.

19. 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 *Children of Nubian Descents Case*.¹¹ In that communication, the Committee held that Article 46 of the Charter mandates it to draw inspiration from International Law on Human Rights. Basing this explicit legislative mandate, the Committee made 'reference to laws, and jurisprudence from other countries or treaty bodies in Africa and elsewhere'.¹²
20. The Committee would also like to draw inspiration from the ACHPR in considering the requirement to exhaust local remedy. In *Sir Dawda Jawara v The Gambia*¹³ the Commission held that a remedy is considered "available" if the complainant can pursue it *without impediment*¹⁴; it is deemed "effective" if it offers a prospect of success; and it is found "sufficient" if it is capable of redressing the complaint.¹⁵ 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'.¹⁶ As such, the Commission has recognized that the exhaustion of prior domestic remedies implies and assumes the *availability, effectiveness and sufficiency* of domestic adjudication procedures. If local remedies are *unduly*

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 The decision on communication 002/2009 IHRDA and OSJI (on behalf of children of Nubian descent in Kenya) v Kenya, adopted by the ACERWC on 22 March 2011, during its 17th Ordinary Session held in Addis Ababa. Ethiopia from 22-29 March 2011.

¹² *Nubian case*, para 25.

¹³ *Dawda Jawara v. The Gambia*, African Commission on Human and Peoples' Rights, Comm. Nos. 147/95 and 149/96 (2000).

¹⁴ 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].

¹⁵ *Sir Dawda K. Jawara v The Gambia*, *ibid*, paras 31 and 32.

¹⁶ *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.

prolonged, unavailable, ineffective or insufficient, the exhaustion rule will not bar consideration of the case by the Commission.¹⁷

21. 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 are a large number of potential victims of violations of human rights.
22. The Complainants have amply demonstrated that the Respondent State’s penal laws (Penal Code¹⁸ and Law to Combat Trafficking in Persons and Related Practices and to Protect Victims adopted by the Respondent State in 2005¹⁹) proscribe forcing a child to beg.²⁰ However, the Respondent State has made little efforts to enforce these provisions with a view to penalizing the *marabouts* who force *talibes* to beg. It is in record that, as of 2011 only 10 cases were brought to court resulting in nine convictions on *marabouts*. The Complainants have submitted that the highest actual duration of imprisonment for all conventions under the foregoing laws was one month imprisonment and the Committee is of the view that this avenue inefficient.
23. 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* to be 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. 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 own claim in courts. The Committee concurs with Complainants’ submission that this avenue is “so impractical as to be virtually impossible”. Therefore, the Committee is of the view that the Complainants should avail from the exceptions of the requirement of exhaustion of local remedies as there is no effective and sufficient remedy for the *talibes*.
24. In view of the forgoing reasons, during its 21st Ordinary Session, which was held 15 to 19 April 2013, the Committee found the Communication to have fulfilled all the admissibility conditions as laid down in the Committee’s Guidelines on the Consideration of Communications and as such, the Committee declared the Complaint admissible.

¹⁷ *Sir Dawda K. Jawara*, op. cit, paras. 31-32.

¹⁸ Law 65-60 of 21 July 1965.

¹⁹ Law No. 2005-06 of Senegal.

²⁰ 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.

Procedure

25. After the decision on admissibility, the Committee transmitted the complaint to the Respondent State, which duly filed its written reply, after which the matter was scheduled for a public hearing. During its 23rd Ordinary Session, from 9 – 16 April 2014 in Addis Ababa, Ethiopia, a public hearing was held where representatives of the Complainants and the Respondent State made their oral submissions.

The Respondent State's Arguments

26. Both in its written reply to the Complaints and oral submissions, the Respondent State has not specifically rejected the allegations. It has actually admitted that the alleged violations of the various Charter provisions exist, and continue to take place.

27. In recognition of the existence of the alleged violations, the Respondent State submitted that it has adopted various constitutional, policy, legislative and administrative measures aimed at, *inter alia*, protecting all children, particularly those forced to beg. In particular, the Respondent State contended that as a result of a workshop that was held early 2013 to formulate strategic plans of action for the eradication of child begging, an inter-ministerial council on the managing of child begging was convened on Friday, 8 February 2013, under the auspices of the Honourable Prime Minister. Consequent to this event, an *ad-hoc* Committee was set up and it has adopted a number of recommendations which revolve around three strategic options:

- (a) The withdrawal of all child beggars from the street and their temporary placement in public institutions, community centres and voluntary families, as well their integration with their family or country of origin. This would also involve the implementation of measures relative to the educational aspects and to economic support for the family;
- (b) Social Policy Communication for a positive and lasting behavioural change that occurs through effective application of the law and with the strong will of political, religious, social, and cultural actors aimed at eradicating child begging; and
- (c) The prevention aspect; that is, while particularly emphasising policy and law enforcement, there is a need for utilising existing initiatives by the communities to assist children in their villages of origin and the strengthening of public and community social services.

28. In respect of eliminating worst forms of child labour, the Respondent State submitted that it has undertaken various measures; including establishing the Project for the Fight against the Worst Forms of Child Labour within the Ministry of Labour. Regarding the improvement of the quality of education in the *daaras*, the Respondent State contended that it has set up the Trilingual Project of the Direction of Alphabetisation and of National

Languages within the Ministry of National Education (i.e. *Le Projet Trilinguisme de la Direction de l'Alphabétisation et des Langues Nationales*). This project strives to intervene in the *daaras* in order to offer the opportunity to the *talibés* of learning and mastering three (3) languages (i.e. French, Arabic and a national language translated in Arabic characters), in addition to vocational skills training.

29. With reference to the protection of *talibés* and other children on the street from physical abuses, the Respondent State submitted that its Ministry of Interior has a specialised police force, the *Minors Brigade*, whose mission is to protect morally threatened children, to identify them and to ensure their reintegration, in collaboration with the other structures. In addition, the Ministry of Health is developing numerous initiatives for the development of the welfare of children, including *l'Ecole Nationale des Travailleurs Sociaux Spécialisés* (ENTSS), which has, since 2005, introduced a training module on the rights of the child. There is also the Support Cell to the Protection of the Child, which is located at the Presidency to support different initiatives from state and civil society structures.
30. The Respondent State also submitted that it has been striving to involve non-state actors, particularly local and international NGOs (including Community-based organisations) to provide *assistance*, *advocacy* and *prevention* interventions. Moreover, communities and families play a primary role in the protection of children, in order to develop a common understanding of the existing structures, to create a public consensus and to guide the taking of decisions at the national level.
31. Furthermore, the Respondent State pointed out that it has ratified various international human rights treaties, particularly the African Charter on the Rights and Welfare of the Child, and ILO Conventions on the Elimination of the Worst Forms of Child Labour and the Minimum Age Convention, namely the Conventions 138 and 182. These international treaties have been domesticated in the State Party's legislation in the context of the 2001 Constitution, particularly through the enactment of the Code of Criminal Procedures, which entrenches the best interests of the child. Other pieces of legislations include the Penal Code²¹; the 79-1165 Decree of 20 December 1975, which prohibit punishment and physical abuse in schools and education centres which are not conventional; the 2004-38 law of 28 December 2004, which has abolished death penalty and applies to all children without exception, even to foreign and migrant children; and the 2005-06 law of 10 May 2005, which criminalizes trafficking in persons, including children, and similar practices, as well as prohibiting forced begging.

²¹ In particular, Articles 245-247 criminalize child begging; Articles 298 and 299, criminalize wounds and blows/assault on a child who is below 15 years; Article 339 criminalizes the non-declaration to the civil status office; and Article 350 criminalizes neglect. In addition, Decree No 64-088 of 6 February 1964 (JO No3664, page 283) prohibits child begging in all its forms; the law of July 1975, inserted in the Penal Code in articles 245 and *et seq.* prohibits begging; and the 2005-06 law of 29 April 2005 criminalises trafficking of vulnerable people and prohibits forced begging .

32. The Respondent concluded its submission by indicating that the eradication of child begging has always been a source of constant problem for the Senegalese authorities, despite the enactment of several provisions of the law, decrees, policies, and various administrative measures.

Consideration on Merits

A. Alleged Violation of Article 4 (best interest of the child)

33. The Complainants allege that the Respondent State has violated Article 4 of the African Children's Charter, which provides for the best interest of the child, as the State has failed to protect *talibés* from violations in the *daaras*. They also allege that the Respondent State is duty bound to assert the best interest of children by regulating the conduct of non-state actors and ensuring that they do not violate children's rights.
34. The Committee notes that Article 4 of the African Children Charter requires the best interest of the child, one of the four general principles, to be the primary consideration in all actions to be taken by any person or authority. The principle of the best interest of the child aims at safeguarding the realization of children's rights effectively and contributing to their holistic development.²²
35. In guaranteeing the best interest of the child, a State Party has the obligation to ensure the consideration of the best interest of the child in all actions taken by "any person" or authority affecting the life of the child. In this context, "any person" is broadly interpreted and entails that the principle of the best interest of the child must be applied in all actions concerning children, regardless whether those actions are undertaken by private or public entities. The Committee also notes that 'action' includes omissions and commissions that are manifested in decisions, proposals, services, procedures and other measures.²³
36. Applying the principle of the best interest of the child to the case at hand, the Committee notes that apart from the interest of parents to send their children to receive religious education, *Talibés* children in the Respondent State go to the *daaras* mainly because of the difficulties of attaining government schooling in their precincts. In the *daaras*, the children are forced to beg by their teachers (*marabouts*), where on average, they spend six to eight hours begging with five hours or less left to spend on Qur'anic studies per day.
37. The Respondent State, being a State Party to the Charter, accepts the explicit prohibition of child begging under Article 29 (b) and it has complied with this obligation through its prohibition of child begging as provided for under Article 245 to 247(b) of its Penal Code. However, the Respondent State has failed to discharge its obligation to enforce these provisions by not taking the necessary administrative measures, including

²² Committee on the Rights of the Child (CRC), General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, para. 4

²³ Ibid, para 17.

supervision of the *daaras* and bringing to justice the *marabouts* who force *talibés* into begging. The State Party has the obligation to protect the rights enshrined in the Charter, which requires measures by the State to ensure that third parties (individuals, institutions, etc.) do not deprive of children's rights. In this regard the Committee refers to the jurisprudence as established by the African commission on Humans and Peoples' Rights. In *Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso*, the African Commission on Human and Peoples Rights (henceforth, "the Commission") has set the jurisprudence to the effect that a State Party is responsible for violation of human rights committed by non-state actors as its obligation to ensure the respect for human rights demands it to take all the necessary measures to ensure that non-state actors also respect the rights of children.²⁴ The Commission has also stipulated that failure to prevent violation against children's rights by non-state actors makes the State internationally responsible.²⁵ An obligation of this type is called an obligation to protect the human rights standard, or, in short, the 'obligation to protect'. Building on the Commission's jurisprudence, the Committee states that the individual responsibility of non-State actors to respect the rights of children does not relieve the concerned State of its obligations under human rights law to respect, protect and fulfill human rights.

38. In the case at hand, despite the obligation set under the principle of the best interests of the child, the Committee notes that the Government of Senegal has failed to enforce current national, regional, and international laws and agreements already in place by taking measures, including prosecuting, against perpetrators and abusive religious leaders; and hence the Respondent State has failed its responsibility to protect.
39. Therefore, the Respondent State is responsible under Article 4 of the Charter for not taking necessary administrative and other measures against the *daaras*, *marabouts* as well as parents who send their children to the *daaras*.

B. Alleged violation of Article 5 (survival and development)

40. The Complainants in this communication allege that the Respondent State has violated the right to survival and development of the *talibés* as enshrined in the Charter by not taking any action against the forced begging. The Complainants further state that the forced begging of the *talibés* causes the disregard of their rights to health care, education, clean and safe environment, and clean water, which in effect are fundamental components of the right to survival and development. Furthermore, the fixed quota imposed on *talibés* for begging subjects them to an extensive, institutionalized child labour.
41. Considering the allegation made by the Complainants, the Committee carefully analysed the situation of the children in light of the elements of the right to survival and development. Article 5 (1) of the African Children's Charter provides that every child has

²⁴ *Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso* para 42. See also *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995).

²⁵ *Zimbabwe Human Rights NGO Forum v Zimbabwe* Communication 245/2002.

an inherent right to life and this right must be protected by law. Article 5(2) complements the recognition of this right by obliging states to ensure to the maximum extent possible the survival, protection and development of the child. The Committee notes the complementary nature of the right to survival and development as essential preconditions to the enjoyment of the rights protected in the African Children's Charter. In other words, the Committee supports the conceptualization of the right to life survival and development as a general principle that serves to reinforce the *raison d'être* of each of the rights enshrined in the Charter.²⁶

42. Survival and development encapsulates the right to life and imposes an obligation on states to ensure an adequate standard of living for children including the right to life and their physical, mental, spiritual, moral, psychological and social development. The obligations of the State Party under this principle also encompass protection of children's rights to access healthcare and education services, access to clean water, the right to live in safe and clean environment, and protection from any form of abuse and degrading treatment, including child labour.
43. In the case at hand, the Committee notes that most *talibés* are suffering from extreme hunger on a daily basis, often eating at best one or two small meals a day, usually consisting of bread and rice. Reports and studies reveal that the majority of begging children in Dakar, including *talibés*, were observed to be malnourished, often severely. The Committee also note that deprived of food by their guardians, many *talibés* are forced to beg in markets or door-to-door in neighborhoods to try to fulfill their daily nutritional needs. As a result of the long hours *talibés* spend on the street, the malnutrition they suffer from inadequate food, and the deplorable conditions in many *daaras*, resulted in suffering of the children from frequent illnesses.
44. The Committee also notes that there is a reported case where nine *Talibés* in the dense Medina neighborhood died after a *daara* burned down on 03 March 2013. Cases of *talibés* being crushed in traffic while begging are also frequently reported.
45. Despite the gravity of the problem, the Respondent State has not taken adequate measures to curb the situation. The Committee strongly believe that in the face of this tragedy, the Senegalese Government must finally tackle the country's widespread abuse and exploitation of young boys through forced begging. Tens of thousands of boys continue to live and beg in extremely precarious conditions, enriching teachers who have twisted the country's tradition of religious education. The Committee, therefore, found the situation unacceptable and it contradicts the principles enshrined in the African Children's Charter and other international child rights instruments. Hence, the Government of Senegal has failed to ensure to the maximum extent possible, the survival, protection, and development of the *talibés* children, As such, the Respondent State is in violation of Article 5 of the African Children's Charter.

²⁶ T Kaime 'the African Charter on the Rights and Welfare of the Child: A socio-legal perspective' 2009, 119.

C. Alleged violation of Article 11 (education)

46. Article 11 of the Charter posits that States Parties have the obligation to provide free and compulsory basic education without any discrimination.²⁷ In realizing the right to education, the State must ensure, *inter alia*, the availability, accessibility and acceptability of the education provided to children. Availability is assessed in terms of quality; accessibility is determined in terms of equal opportunity, economic and physical accessibility and acceptability is inferred from the quality of education provided.²⁸ A State Party is not only obliged to provide education but also to ensure that the education so provided is of acceptable quality. In the context of Article 11(2)(a) of the Charter, education should be directed towards the development of child's personality, talents and mental and physical abilities to their fullest potential. The Committee has noted the importance of education in relation to the responsibility of the child in its decision of the *Children of Nubian Descents Case*.²⁹ Children have responsibility to their family, society and country under Article 31 of the Charter; and, as such, they can discharge these obligations only when they get the necessary education. Furthermore, education is a tool to enhance the protection of children from dangerous and hazardous labour.³⁰ As the Commission has accentuated that the failure to provide access to institutions of learning would amount to a violation of the right to education under the African Charter on Human and Peoples' Rights.³¹

47. The responsibility of a State in realizing the right to education includes the obligation to protect, fulfill, respect and promote. The protection mandate entails a responsibility up on the State to protect children's right to education from being violated by third parties. To this end the State Party should set minimum standards for all educational institutions³² including the *daaras*. Article 11(5) of the Charter moreover states that:

States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

48. The Respondent State, however, has failed to provide free and compulsory education to all children in accordance with the Charter. Consequently, the *talibés*

²⁷ See also Article 28 of the United Nations Convention on the Rights of the Child (CRC).

²⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13: The Right to Education, 1999, para 6.

²⁹ *The Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian Descent in Kenya) v the Government of Kenya*, ACERWC, Com/002/2009, 22 March 2011, para. 66.

³⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13: The Right to Education, 1999, para 1

³¹ *Free Legal Assistance Group and Others v Zaire*, Communications No 25/89, 47/90, 56/91, 100/93, para 11.

³² Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13 The Right to Education, 1999, Para 54

are forced to attend in the *daaras* where they are not subjected to school fees except for the daily quota they should bring by begging. Nevertheless, the children do not get the necessary education they are entitled to in the *daaras*. The *talibés* do not get education in *daaras* as they spend more time in begging to fulfill their daily quota. In addition, the government failed to provide the necessary curriculum and facilities in which the *daaras* function in delivering education.

49. The Committee refers to the General Comment of the UN Committee on the Rights of the Child on the aims of education, which states that education should be designed to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.³³ Moreover, the Committee also refers to Article 9(b) of the Cairo Declaration on Human Rights in Islam which states that 'every human being has a right to receive both religious and worldly education'. Therefore, the Committee holds a view that while many *marabouts* in Senegal continue the traditional practice of teaching their students the Quran, others have twisted the practice into a form of economic exploitation, as a result a significant number of *talibés* in Senegal are failing to receive either a religious education or an education in other basic skills. It is in consideration of this fact that the International Labour Organization (ILO)'s Committee of Experts criticized Senegal on March 2, 2012, for its failure to protect *talibés* from abusive conditions and demanded that Senegal do more to prosecute those responsible for forced begging and to carry out '*daara* modernization' - ensuring that the schools meet basic international standards of education and child protection.

50. The government must enforce its own laws to protect *talibés* from this abuse and ensure that the education received in *daaras* equips these children with a rounded education, and does not allow forced begging. The Senegalese government enacted legislation in 2005 that criminalized forcing others into begging for personal financial gain. But the authorities have largely failed to take concrete steps to enforce the law and end the exploitation and abuse of the *talibés*. Therefore, the Government of Senegal has violated the right to education of the *talibés* by failing to ensure the availability, accessibility and acceptability of the education and supervising the *daaras*.

D. Alleged violation of Article 14 (health and health services)

51. The Charter under Article 14 provides that State Parties should take measures to ensure 'the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; and to ensure the provision of adequate nutrition and safe drinking water'. In *Purohit & Moore V The Gambia* the Commission stated that:

³³ UN Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, 2, U.N. Doc. CRC/GC/2001/1 (2001).

*Enjoyment of human right to health as it is widely known is vital to all aspects of a person's life and wellbeing and is crucial to the realization of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind.*³⁴

52. The efforts undertaken by the State Party in realizing this right should be directed towards the prevention of diseases and health problems, and the provision of the necessary health care services. In ensuring adequate nutrition and safe drinking water to all children, the CRC committee emphasized that school feeding programmes, and the provision of safe and clean drinking water are essential to combat disease and malnutrition.³⁵ Failure to provide safe drinking water amounts to a violation of the right to the best attainable health under the Charter.³⁶
53. Looking at the case under consideration, the poor conditions in the *daara*, combined with a lack of clothes and shoes for the long days on the street, increase the vulnerability of the *talibés* to different forms of health challenges. Forced to beg for food, many are also extremely malnourished. The Committee notes that when the *talibés* get sick their *marabout* rarely provides medicines, in some instances requiring them to beg even greater hours in order to pay for their own treatment. More often, despite their ill health the *talibés* continue begging to satisfy the quota.
54. The Respondent State has the obligation to assure that children are not deprived of access to health care services. It should further take all the necessary steps to avert any kind of institutional, cultural and financial obstacle to accessing health care services.³⁷ The State should not tolerate any practice which violates the right to health of children.³⁸ It must assert that third parties do not deprive children of their right to access medical service.
55. As submitted by the complainants, the *talibés* are not practically entitled to adequate sanitation and nutrition which in effect endangers their health. The Committee notes that the *marabouts* as caregivers have failed to ensure that the *talibés* get medical service.
56. Hence the Committee concluded that the Respondent State has failed to provide the necessary sanitation and nutrition to the *talibés* and it has also failed to take measures against the *marabouts*, who accommodate *talibés* in squalid health conditions. The Respondent State has not taken appropriate steps within its available resource to prevent disease and malnutrition, as well as to avoid barriers to access the health

³⁴ Communication 241/2001, *Purohit & Moore v The Gambia*, Decision at the 33rd Ordinary Session of the African Commission, May 2003, 16th Annual Activity Report, Para 80

³⁵ Committee on the Rights of the Child, General Comment No. 15, Article 24 on the right of the child to the enjoyment of the highest attainable standard of health, 2013, Para 2(c)

³⁶ Communications 25/89, 47/90, 56/91, 100/93, *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter-africaine des Droits de l'Homme, Les Témoins de Jehovah v Zaire*, October 1995, para 47

³⁷ Committee on the Rights of the Child, General Comment No. 15, Article 24 on the right of the child to the enjoyment of the highest attainable standard of health, 2013, Para. 1

³⁸ *SERAC v Nigeria*, Communication No. 155/96, para 52

services of those children in need of medical care. Therefore, the Committee finds the Respondent State in violation of Article 14 of the Charter.

E. Alleged violation of Article 15 (child labour)

57. The Complainants allege that the urban *talibés* are an identifiable group of children vulnerable to be exploited for the worst forms of child labour. Accordingly they submit that the number of hours the children spent per day begging, the beatings for not bringing a sufficient quota of goods per day and the health and safety risks caused by standing in busy streets is contrary to international laws which categorize child begging as a practice of exploitive labour.³⁹
58. Art 15 of the African Children's Charter obliges State Parties to take legislative and administrative measures for the formal and informal employment sector to protect children from all types of economic exploitation and from performing any work that is likely to be hazardous or to interfere with their physical, mental, spiritual, moral or social development. Further the International Labour Organization's (ILO) Convention 182 under Art 1 and 9 requires States to ensure the effective abolition of child labour and implementation of the Convention.
59. In the case at hand, contrary what is prescribed under the regional and international instruments, the Committee notes that many *marabouts* force the *talibés* to beg on the streets for long hours—a practice that meets the ILO definition of a worst form of child labor. The Committee is of the view that the forced begging, physical abuse, and dangerous daily living conditions endured by these *talibés* violate domestic and international law. Despite being party to the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and all major international and regional treaties on child labor and trafficking, which provide clear prohibitions against the worst forms of child labor, physical violence, and trafficking, Senegal has scantily enforced the laws.
60. The Committee notes that in the last decade, the government has notably defined forced begging as a worst form of child labor and criminalized forcing another into begging for economic gain, but this adequate legislation has so far led to little concrete action. No *marabout* was held accountable for forced begging, gross neglect, and severe physical abuse against the *talibés*.
61. In view of this, the Committee believes that forced begging places children in a harmful situation on the street and therefore meets the ILO's definition of a worst form of child labor. Moreover, the Committee notes that the forced begging and gross neglect is done with a view toward exploitation, with the *marabout* receiving the child from his/her parents and profiting from the child's labor, which resulted in continuous suffering of

³⁹ UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted September 7, 1956, 226 U.N.T.S. 3, entered into force April 30, 1957, acceded to by Senegal July 19, 1979, art 1(d)

tens of thousands of talibés in Senegal. Though the Respondent State has ratified international laws and prohibits the act of child begging under its national law, it has failed to take any effective administrative measures against the *marabouts* and to protect the *talibés* from exploitation. Therefore, the Government of Senegal has violated Article 15 (2) of the African Children's Charter which requires the State Party to take appropriate administrative measures to ensure the full protection of children from child labor having regard to the relevant provisions of the ILO's instruments.

F. Alleged violation of Article 16 (protection against child abuse and torture)

62. In this communication the Complainants submit that the fact that the *talibés* are regularly subjected to beatings and fear in cases where they do not reach the minimum daily begging quota, leads to high levels of stress and anxiety which amounts to violation of their right to be protected from abuse and torture under Art 16 of the African Children's Charter.

63. Considering the complaint, the Committee notes that as prescribed under the African Children's Charter, protecting children from abuse and torture requires States to adopt legislative, administrative, social and educational measures through effective establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

64. Taking into consideration the elements of the provision of the law and the acts as alleged by the Complainants, the Committee discusses whether the beatings committed by *marabouts* amounts to child abuse and torture. In this regard the Committee refers to the jurisprudences of the ACHPR. In *Curtis Francis Doeblbler v Sudan* the African Commission found the act of lashing as it constitutes a cruel treatment.⁴⁰ Moreover, in *International Pen and Others v Nigeria*, the ACHPR defines inhumane and degrading treatment to include 'not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience'.⁴¹

65. In the case at hand, the Committee notes that the beating of the *talibés* qualifies as a physical punishment since physical force is used and intended to cause some degree of pain or discomfort for not bringing the required quota. There are also reported cases where *talibés* typically described being taken to a room, stripped of their shirt, and beaten with an electric cable or a club.⁴² In some instances the beatings and physical abuse may rise to the level of torture under the Convention against Torture. According to the Convention 'torture means any act by which severe

⁴⁰ African Commission on Human and Peoples' Rights, *Curtis Francis Doeblbler v. Sudan*, Comm. No. 236/2000 (2003); see para. 42.

⁴¹ *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* (2000) AHRLR 212 (ACHPR 1998)

⁴² Off the backs of children: forced begging and other abuses against talibés in snegal, Human Rights Watch report 2010.

pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.⁴³

66. With regard to the accountability of State actors for acts committed by non-state actors, the Committee refers to the explanation given by the Committee on the Convention against Torture. The Committee on the Convention against Torture states that 'where state authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible act'.⁴⁴
67. Legislative, administrative, social and educational measures are the means through which States can fulfill their obligation to protect children from any form of violence.⁴⁵ Although there are legislative and social initiatives in Senegal to protect the rights of children in general, the government failed to take specific administrative and judicial measures against the *marabouts*. The Respondent State did not deny the fact that since 2010 only 10 cases have been brought against *marabouts* who exploits children resulting in only nine convictions. Apart from the social term orientation for children in the street and destitute families and 24 Department Committees for the Protection of the Child (CDPE),⁴⁶ the Committee notes that there are no educational and sufficient social measures that aim at changing the situation of the *talibés*.
68. As the UN Committee on the Rights of the Child has stated that the prohibition against physical and mental violence also applies to corporal punishment in schools.⁴⁷ The physical abuse likewise places the *marabout* in conflict with Senegal's penal code, which provides particular care to children.⁴⁸ The severe physical abuse that many *marabouts* inflict on the *talibés*, as well as the looming threat of violence, therefore violates the children's right to freedom from physical and mental violence and abuse and torture. The Government of Senegal therefore is in

⁴³ Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁴⁴ General Comment No2 on Article 2 of the Convention on

⁴⁵ General Comment No.8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para 30

⁴⁶ Response from Senegal, pp. 12-13

⁴⁷ UN Committee on the Rights of the Child, General Comment No. 8, The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (arts. 19; 28, para. 2; and 37, inter alia), UN Doc. CRC/C/GC/8 (2006).

⁴⁸ Penal Code of Senegal, art. 298.

clear violation of Article 16 of the African Children's Charter which requires the State Party to protect children from physical, mental, injury, abuse, neglect, maltreatment and torture.

G. Alleged violation of Article 21 (protection against harmful social and cultural practices)

69. According to Article 21(1)(a) of the African Children's Charter, States Parties are under obligation to take measures towards the elimination of harmful social and cultural practices which endanger the health or life of the child. Furthermore, Article 1(3) of the Charter provides that:

Any custom, tradition, culture or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

70. A harmful practice, according to the UN Committee on the Rights of the Child and the Committee on the Convention on Elimination of all forms of Discrimination against Women (CEDAW), should meet the following criteria;

- (a) They constitute a denial of the dignity and/or integrity of the individual and a violation of human rights and fundamental freedoms enshrined in the two Conventions;
- (b) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;
- (c) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, based on sex, gender, age and other intersecting factors;
They are imposed on women and children by family, community members, or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.⁴⁹

71. Therefore, States Parties must take legislative, administrative and other appropriate measures to abolish any practice inconsistent with the Charter. Using children in any form of begging is one form of harmful practice which is clearly prohibited under Article 29 of the African Children's Charter; and the State must take all the necessary steps to restrict such practice.

⁴⁹ Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women, Joint general recommendation/general comment No. 31 on the Rights of the Child on harmful practices, November 2014, para 15

72. Even though the Respondent State has outlawed the practice of forced begging under Article 3 of Law No. 2005-06, the *talibés* are still being forced to beg and bring back to the *daaras* a daily quota the failure of which incurs punishment. The State has not taken any measures against these schools. The *talibés* are required to bring a daily quota, in order to fulfill their quota they have to beg on the street where they will be exposed to exploitation. The forced begging has compromised their right to life and development as they are often injured from traffic accidents. Moreover, this cultural practice by the *marabouts* causes the violation of other provisions of the Charter. The *talibés* are not enjoying their legal right to play, leisure and cultural activities which can advance their mental and psychological developments. This activity of begging is deep rooted in the *Qur'anic* schools and the Committee is of the view that it is a harmful practice.

73. The government of Senegal has failed to take measures against the *marabouts*, to monitor the situation of children in the *Qur'anic* schools, and to ensure that the *talibés* are getting the necessary education to which they are entitled. Even though the *marabouts* are non-state actors, the State of Senegal is responsible for the violation caused by such actors due to its obligation to protect the rights of children. The Committee thus finds a violation of Article 21(1) of the African Children's Charter by the Respondent State.

H. Alleged violation of Article 29 (sale, trafficking and abduction, and using children in the form of begging)

74. Citing Article 29 of the African Children's Charter, the complainants argued that the State Party has violated the Charter which expressly forbids forced begging and States Parties to take appropriate measures to prevent the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child; and the use of children in all forms of begging. The complainants also made reference to the ILO Conventions which make it clear that states are responsible for the prevention of child labour through effective enforcement. Further, they expressly state that work akin to slavery (which includes trafficking of children and compulsory labour) and work that harms the health, safety or morals of children comprises the worst forms of child labour.⁵⁰

75. Considering the alleged fact, the Committee finds it important to expound on what amounts to child sale, trafficking and abduction. The Committee notes that children are one of the most vulnerable groups targeted for the trafficking in human beings. Children are trafficked as they can be easily recruited and quickly replaced. The exploitation of children violates the human rights of children to have a safe childhood in their family setting, to receive education, to have time to play and to be protected from exploitation. Child trafficking involves the recruitment of victims, their transportation, transfer and harbouring of children for the purpose of exploitation. Coercion, violence or threats are not necessary elements in cases of

⁵⁰ Para 58 & 59 of the Complainants' Communication.

child trafficking as children cannot consent.⁵¹ Children are trafficked for the same purposes as adults: for sexual exploitation, for labour exploitation but also for exploitation in a range of criminal activities, including begging.

76. The use of children in all forms of begging is strictly forbidden under Article 29(b) of the Africa Children's Charter. Article 29(a) in addition prohibits trafficking of children for any purpose in any form. In this regard, the Committee refers to the definition provided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (CTOC). Under Article 3 the Protocol defines trafficking as;

'[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'

77. The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children as adopted by the African Union Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006, also conceptualizes trafficking in persons as it happens within and between states, urges States to take measures to eliminate harmful customs and traditional practices, including forced child begging, which can lead to trafficking in human beings, including children.

78. Looking at the case at hand, the Committee realized that the *talibés* are forcibly subjected to economic exploitation through forced labour; and they are used for begging by the *marabouts*. Given the ILO's views on forced begging, the Committee concludes that *marabouts*, when transporting *talibés* with the primary intention of obtaining labour from them, are engaging in child trafficking. Article 3(c) of the Trafficking in Persons Protocol includes in the definition of 'trafficking in persons' the "recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation."

79. Moreover, the Committee learns from reports that only about half the *talibés* in Senegal are Senegalese. The rest are trafficked from neighboring countries, including Guinea Bissau and Mali, where poor families are promised their sons will be remunerated as they will receive 'a proper' Islamic education under the care of a *marabout* at the *daaras*. The boys often have no contact with their families once they

⁵¹ Article 3 (b) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

leave home, and because most do not know anyone in Senegal, they become entirely reliant on *marabout* for food, health care and shelter.

80. These acts, according to the Committee violate the children's rights to be protected from sale, trafficking and abduction. The Respondent State has not contested this allegation of the Complainants. The Committee has observed that the Respondent State has taken legislative measures against begging and trafficking. However, the Committee is of the view that legislative measures alone cannot sufficiently protect the rights of children; and the State Party should also take administrative and other appropriate measures to ensure that children are not subjected to begging or trafficking as stipulated under Article 1 of the Charter. Reaffirming this position in *Zimbabwe Human Rights NGO Forum v Zimbabwe*,⁵² the ACHPR states that 'an act by a private individual or (non-state actor) and therefore not directly imputable to a state, can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence on the part of the state to prevent the violation or for not taking the necessary steps to provide the victims with reparation.'⁵³
81. The Committee, therefore, has found the Respondent State in violation of Article 29 of the African Children's' Charter which with no exception prohibits forced begging and requires States Parties to take appropriate measures to prevent the abduction, the sale of, or trafficking of children.

Decision of the African Committee

82. Because of the foregoing reasons, the Committee finds multiple violations of the African Children's Charter as follows: Article 4 (best interest of the child); Article 5 (survival and development); Article 11 (the right to education); Article 14 (health and health services); Article 15 (child labour); Article 29 (sale, trafficking and abduction); Article 16 (protection against child abuse and torture); and Article 21 (protection against harmful social and cultural practices). Therefore, the Committee recommends that the Respondent State should, in accordance with its obligations under the African Children's Charter, undertake the necessary measures:
- (a) To ensure that all *talibés* are immediately taken back from the streets to their families;
 - (b) Through cooperation with the neighboring countries (from where some of the children are coming), international and national organisations, facilitate the reunion of the *talibés* with their families;
 - (c) To establish functioning and effective institutions and mechanisms to provide the *talibés* with short- and long-term, appropriate psychological, medical and social assistance in order to promote their full recovery;
 - (d) To establish minimum norms and standards for all *daaras* relating to health, safety, hygiene, education content and quality, and accommodation;

⁵² Communication 245/2002 [(2006) AHRLR 128 (ACHPR 2006)].

⁵³ Communication 279/03, *Sudan Human Rights v The Sudan* and 296/05 *Centre on Human Rights and Evictions v The Sudan*, May 2009, para 148.

- (e) To integrate the *daaras* into the formal education system;
- (f) To inspect the *daaras* regularly to ensure that standards set out in the Charter and local legislation are complied with and close all the *daaras* which are not in compliance with the required standards;
- (g) With a view of fighting impunity and preventing forced begging, sale, abduction and trafficking of children, ensure that all the perpetrators are brought to justice and held accountable for their actions with penalties commensurate with the severity of their crimes;
- (h) On the *talibés* right to education:
 - (i) Make sure that education contributes in promoting and developing their personality, talents and their physical and mental abilities to their fullest potential,
 - (ii) The Government's education policy should be reviewed in light of fostering respect for human rights and fundamental freedoms, and
 - (iii) Ensure the provision of free and compulsory basic education.
- (i) To train law enforcement and judicial personnel, social workers, traditional and religious leaders, parents and the community at large on children's rights in general and prohibitions of child begging in particular;
- (j) To conduct joint studies with the concerned neighboring State Parties on the situation of *talibés'* children in Senegal and countries of origin;
- (k) To fully recognize and implement the rights included in the African Children's Charter and in other international instruments;
- (l) While complying with its reporting obligation in accordance with article 43 of the African Children's Charter, the State Party should provide the Committee with sufficient information on the progress of implementation of the current decision
- (m) To cooperate with the African Union, International and National Organisations, the UN Agencies, particularly UNICEF, ILO, World Health organisation (WHO), with a view to fully implement these recommendations and alleviate the challenges of *talibés* in Senegal; and
- (n) As per Section XXI (1) of the Revised Communication Guidelines of the Committee, the Government shall report to the Committee on all measures taken to implement the decision of the Committee within 180 days from the date of receipt of the Committee's decision.

Done at the 23rd Ordinary Session held in Addis Ababa, Ethiopia, on 15 April 2014



Prof Benyam Dawit Mezmur
Chairperson of the African Committee of Experts
on the Rights and Welfare of the Child