

AFRICAN UNION

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



UNION AFRICAINE

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

الاتحاد الأفريقي

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

DECISION ON THE COMMUNICATION SUBMITTED BY  
THE INSTITUTE FOR HUMAN RIGHT AND DEVELOPMENT IN AFRICA AND FINDERS  
GROUP INITIATIVE ON BEHALF OF TFA (A MINOR) AGAINST THE GOVERNMENT THE  
REPUBLIC OF CAMEROON

Communication N<sup>o</sup>: 006/Com/002/2015  
Decision N<sup>o</sup>: 001/2018

Original: English

## **I. PROCEDURE ON CONSIDERATION OF THE COMMUNICATION**

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a communication dated 16 November 2015 pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by the Institute for Human Rights and Development in Africa and Finders Group Initiative (the Complainants). According to Section IX (2) (i) of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Communication Guidelines), the Committee transmitted a copy of the Communication to the Respondent State Party. Upon receipt of the Communication, the State Party should have submitted its response within 60 days from the date of the request from the Secretariat. As the Committee did not receive a response from the Government, two Note Verbals (Ref: DSA/ACE/64/2495.15 dated on 03 December 2015 and Ref: DSA/ACE/64/1929.16 dated on 21 November 2016) were sent to remind the State Party. Despite these efforts, the Committee has not received a response from the Government; hence, it decided to proceed considering the admissibility of the Communication without the response from the Respondent State. Following the deliberation on the required elements of admissibility, the Committee ruled that the Communication is admissible and forwarded its ruling to the parties in the Communication on 29 February 2017.
2. In April 2017, the Respondent State, pursuant to Section XX of the Revised Guidelines, submitted an application requesting the Committee to consider revising its decision on admissibility and declare the Communication inadmissible. The Respondent State used failure to fulfil the requirement of non-exhaustion of local remedies by the applicants as the basis of its arguments.
3. Deliberating on the Respondent State's submission, the Committee notes that Section XX of the Revised Communication Guidelines stipulates conditions for the review of decisions of the Committee on admissibility rulings. Accordingly, the Revised Guidelines clearly prescribe that in determining whether to review its decision, the Committee shall satisfy itself of any of the following:
  - a. The discovery of some decisive fact or evidence, which was not known to the Committee and the party requesting the review, provided such ignorance was not due to negligence;
  - b. The application for review is made within six months of the discovery of the new fact; unless the best interest of the child or children concerned;
  - c. The Committee erred in its application and interpretation of the African Children's Charter or any other relevant instrument in a manner that undermines fairness, justice and protection of the rights and welfare of the child; or
  - d. The existence of any other compelling reason the Committee may deem appropriate or relevant to justify a review of its decision with a view to ensuring fairness, justice and protection of the rights and welfare of the child.
4. The Committee deliberated on whether the Respondent State's submission meets one or more of the requirements provided in the Revised Guidelines. The Committee then ruled that the requested revision is not warranted under any of the above-mentioned conditions provided in the Revised Communication Guidelines. The Committee particularly notes that it rather admitted the communication considering the legitimate reasons which necessitate the application of the principles of exceptions to the requirement of exhaustion of local remedies as elaborated below.
5. The Committee, pursuant to Section XI of the Revised Guidelines on procedure for hearing on communications, deems it necessary to conduct a hearing on the Communication where the parties are invited to make oral submissions before it. Accordingly, the Committee conducted a hearing on the merits of the Communication on 11 December 2017 during its 30<sup>th</sup> Ordinary Session held in Khartoum, the Sudan, in the presence of the representatives of the Complainants and the Respondent State.

## II. SUMMARY OF ALLEGED FACTS

6. The Complainants, in their submission to the Committee, allege that TFA, aged 10, was raped on 9, 12, 15 and 16 of April, 2012, in Amanda - North-West region of Cameroon. The violation was then reported by Ms. Tebid Ruthda, the aunt of the victim, who officially filed the case before the local police.
7. The Complainants allege that the police requested a medical examination of the victim which included an HIV test. The medical examination confirmed that she had been raped and a medical certificate to that effect was obtained from the hospital by victim's aunt.
8. The Complainants further allege that the victim child was requested to lead the police to the suspect's house, where she was raped. Upon reaching to the house of the suspect, Mr Angwah Jephther Mbah, a prominent and influential figure in the area, the Complainants submitted that, the police did not enter his house with the victim. It was later reported by his office personnel that the suspected has travelled to another area.
9. It is the Complainants' submission that the Judicial Police Commissioner summoned the suspect for an identification parade where the suspect disguised himself in his lawyer's suit and tilted his head down. Moreover, the Complainants state that when the victim was called to identify the suspect, the lawyers of the suspect yelled at her saying "this is the little girl that said she was raped". The girl was scared and coupled with the disguise and tilting of the head by the real suspect the girl was unable to identify him.
10. The Complainants further allege that though Cameroon's Criminal Procedure Code requires, upon a complaint of a felony having been lodged with the police, the suspect was supposed to be remanded in custody while investigations were under way, this did not happen in the matter at hand as the suspect was not remanded in custody.
11. Moreover, the investigating judicial police took three months before submitting a report of the investigation to the Legal Department. The Complainants allege that the State Counsel eventually filed the findings with the Examining Magistrate, who eventually dismissed the evidence for disclosing no case.
12. Following the decision of the Examining Magistrate, on 9 November, 2012, Lawyer, Mr. Egute Kelvin Awanaya wrote to the Examining Magistrate on the Finders Group Initiative headed paper countersigned by Mr. Ambo Gaby, requesting for a copy of the ruling for purposes of an appeal in accordance with the applicable law. The Complainants further allege that the Examining Magistrate refused to hand over copy of the decision on the ground that it is only the State which could appeal against the ruling. The Complainants, disagreeing with the Examining Magistrate's position, submit that the Examining Magistrate failed to comply with Cameroonian law which provides that Complainants in any proceeding may, upon request, be provided with a copy of the record of proceedings for their case. The Complainants indicated that by December, 2013 over a year since a copy of the ruling was requested for, it had not been provided.
13. The Complainants allege that Tebid Ruthda, the victim's aunt, was requested to sign an already drafted statement which she declined and in return wrote her own statement when she visited the Station that summoned her to report at the Bamenda Judicial Police Station on a charge of criminal defamation on December 2012.
14. The Complainants allege that Tebid Ruthda received, in July, 2013, a summons from the State Counsel to appear before the Court to answer for a charge of defamation, a charge that was premised on the allegation that a text message Ms. Ruthda sent to a radio call-in program called 'The Other Side of Midnight' expressing her frustration about the manner the complaint of rape of her niece had been thrown away, which read 'My child was raped, the matter was thrown out of court, I have no money for appeal and with the child's excruciating pain I am asking for advice on what to do', which was considered to mean that the Magistrate is corrupt.
15. The Complainants allege that, though Tebid Ruthda denied the request, the Magistrate had, at one occasion, asked Ms. Ruthda to send another text message to the same radio station

recanting the contents of her earlier statement – i.e., that her niece had not been raped on the pretext of having been confused when sending the earlier text or ‘she will be sent up there’.

16. The Complainants allege that Mr. Gaby also received summons on the charge of aiding and abetting an act of criminal defamation which was based on the suspicion that he was the author of the text message, or that it was sent on his suggestion guiding Tebid Ruthda in seeking justice for the victim, as the advocate for the victim.
17. The Complainants allege that the actions of the Police and the Examining Magistrate coupled with the prosecution of Ms Tebid Ruthda and Mr. Ambo Gaby for defamation manifests a refusal by the agents of the Republic of Cameroon to investigate and prosecute the perpetrator, Mr. Angwah Jephther Mbah, who is suspected of raping TFA.

### **III. THE COMPLAINT**

18. The Complainants allege that, as a result of the above facts, and due to the failure by the Respondent State to investigate the crime of rape committed against TFA, the Republic of Cameroon is in violation of Articles 4 and 37 of the UN Convention on the Rights of the Child; Articles 1, 2, 5, 7 and 18 (3) of the African Charter on Human and Peoples’ Rights; Articles 2 (1), 3, 4 (1), 4 (2), 5, 8, and 25 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; Articles 2, 3 and 5(a) of the Convention on the Elimination of all Forms of Discrimination against Women, Articles 2, 12 and 13 of the Convention Against Torture, Inhuman and Degrading Treatment or Punishment; and Articles 2(1) , 2(3) and 7 of the International Covenant on Civil and Political Rights, articles 2, 5 and 8 of the Universal Declaration of Human Rights. The Complainants also allege that Article 1 (1) State obligation, Article 3 (non-discrimination) and Article 16 (Protection against Child Abuse and Torture) of the African Charter on the Rights and Welfare of the Child have been violated by the Republic of Cameroon.

### **IV. THE AFRICAN COMMITTEE’S ANALYSIS ON DECISION OF ADMISSIBILITY**

19. The Committee notes that the current Communication is submitted pursuant to Article 44 of the ACRWC which allows the Committee to receive and consider complaints from ‘any person, group or non-governmental organization recognized by the Organization of the African Unity, Member States, or the United Nations on matters covered by [the Charter]’. The Complainants, therefore, have submitted that they have the competence to submit the communication as recognized non-governmental organizations. The Complainants also stated that the communication is directed against a State Party to the African Children’s Charter, as the Respondent State ratified the ACRWC on the 5<sup>th</sup> of September of 1997, and within whose jurisdictions the alleged violations of the rights enshrined in the Charter have allegedly been committed.
20. The Committee also notes that The Institute for Human Right and Development in Africa and Finders Group Initiative are duly registered in the Gambia and Cameroon respectively with physical addresses of Institute for Human Rights and Development in Africa, 949 Brusubi Layout, AU Coastal Highway, Banjul, The Gambia; and Finders Group Initiative, Bamenda, Cameroon respectively. Moreover, it is also noted that the Communication is submitted on matters covered under the ACRWC. Therefore, the Committee is of the view that the Complainants have the capacity to submit a communication in accordance with Article 44 of the ACRWC.
21. Moreover, the Committee notes that pursuant to Section II of the Revised Communication Guidelines, the admissibility of a communication submitted pursuant to Article 44 is subject to conditions relating to authorship, form and content. Hence, the Committee analysed whether these requirements are met as discussed below.

#### **i. Requirement as to Authorship**

22. Section II (1) of the Revised Communications Guidelines provides a communication may be presented ‘by any intergovernmental or non-governmental organization legally recognised in either one or more of the Member States of the African Union, a State Party to the African Children’s Charter or the United Nations.’ The Complainants have submitted the

communication on behalf of a Cameroonian child, TFA, whose rights under the Charter has been violated by the Government of Cameroon.

23. The Committee notes that the communication explicitly states the names of the authors as Non-Governmental Organizations recognized by Member States of the African Union; and the complaint is submitted on behalf of a Cameroonian child, TFA who is living in the Respondent State. In addition, the Committee notes that the Complainants have proficiently proved that the submission is made in the best interests of the victim. Therefore, the Committee holds the view that the Complainants have complied with Section 1, (1) of the Revised Communication Guidelines.

**ii. Requirements as to Form**

24. The complainant submitted that the present communication satisfies the requirement of form as set out in Section 2 (2) of the Revised Communication Guidelines, which states that a Communication can only be considered by the Committee if it is not anonymous, it is written in one of the official languages of the Committee, it concerns a State signatory to the Charter and it is duly signed by the complainant or her/his representatives. In this regard, the Committee is of the view that the Author of the Communication has been identified and relevant details of the Communication have been provided to the Committee. The Communication submitted is written in English and French which are the Official languages of the Committee and it is made against a State Party to the Charter. Therefore, the Committee concludes that the Complainants have complied with the requirement as to form as laid down in the Communication Guidelines in this regard.

**iii. Requirements as to Content**

25. Laying down requirements as to content, Section IX (1) (A) of the Revised Communication Guidelines prescribes that a Communication has 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. The Complainants submitted that this condition is satisfied since the Communication is presented pursuant to Article 44 of the African Children's Charter in order to strengthen the observance of the ACRWC's provisions in Cameroon and to contribute to the establishment of a vibrant, legally coherent African children's rights regime. 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. In this regard, the Committee makes reference to the Decision of the African Commission on Human and Peoples' Rights (the Commission/ACHPR) in the case on *Zimbabwe Human Rights NGO Forum v Zimbabwe*<sup>1</sup> which sets the jurisprudence that for the content of the Communications to be considered compatible with the concerned instrument, it is suffice to prove that the Complainant invokes provisions of the particular law which are presumed to have been violated. Therefore, it is the Committee's position that the Communication meets the requirements under Section IX (1) (a) of the Revised Communications Guidelines.

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

27. Pursuant to Section IX (1) (B) of the Revised Communication Guidelines, the communication should not be exclusively based on information circulated by the media. The Committee has learned that the factual basis of the present communication comes from direct testimony of the victim, her guardian and her lawyer who witnessed the events first-hand. Hence, the Committee is of the view that the communication satisfies the requirement under Section IX (1) (B) as information circulated by the media does not play a role in this communication.

28. According to Section IX (1) (C) of the Communication Guidelines, a communication shall not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter. As far as the investigation of Committee goes, the Communication under consideration does not raise matters pending settlement or previously settled by

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<sup>1</sup>Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006)

another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter. In this regard and as part of the investigation, the Committee officially requested the African Court on Human and Peoples' Rights and the ACHPR if the matter in the communication at hand has ever been brought to their attention. In its response, the ACHPR informed the Committee that the matter has never been presented both to the Commission and the Court. Consequently, the Committee holds the view that the Communication has complied with the requirement in Section IX (1) C) of the Revised Communication Guidelines.

- 29.** Section IX (1) (D) of the Revised Communication Guidelines provides that the author of a communication should exhaust all available and accessible local remedies before it brings the matter to the Committee. The Committee takes the view that the issue of exhaustion of local remedies calls for detailed explanation. To start with, a local remedy has been defined as 'any domestic legal action that may lead to the resolution of the complaint at the local or national level.'<sup>2</sup> As the Committee in *Children of Nubian Descent Case* noted, 'one of the main purposes of exhaustion of local remedies, which is also linked to the notion of state sovereignty, is to allow the Respondent State be the first port of call to address alleged violations at the domestic level.' While the requirement of exhaustion of local remedies necessitates that States must be given the opportunity to address the violation first, it also implies that efforts in addressing the violation should not be unduly prolonged. This exception to the principle of exhaustion of local remedies is particularly important when it comes to protection of children's rights as time matters most when it comes to children than other group of human beings. In this regard, the Committee stated that 'The implementation and realization of children's rights in Africa is not a matter to be relegated for tomorrow, but an issue that is in need of proactive, immediate attention and action.'<sup>3</sup>
- 30.** The Committee notes, however, established rules under international human rights law require that only domestic remedies that are available, effective and adequate (sufficient) can be exhausted. The ACHPR clarified the law on exhaustion of domestic remedies presupposes: '(I) the existence of domestic procedures for dealing with the claim; (ii) the domestic justiciability of the subject-matter of the complaint; (iii) the existence under the municipal legal order of provisions for redress of the type of wrong being complained of; and (iv) available effective local remedies, that is, remedies sufficient or capable of redressing the wrong complained of.'<sup>4</sup>
- 31.** According to the Commission, a remedy is available if the petitioner can pursue it without impediments or if he can make use of it in the circumstances of his case.<sup>5</sup> The word 'available' is defined by the Commission as '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.'<sup>6</sup> In other words, remedies the availability of which is not evident and is beyond practical reach of the complainant cannot be raised to the detriment of the Complainant.
- 32.** Although the Committee notes that the right to appeal is recognized under the Cameroonian Constitution and Criminal Procedure Code, the Complainants couldn't exercise this right as the Magistrate Court placed impediments in their way by not releasing the records of the court that are required to appeal the decision. As the African Commission on Human and Peoples' Rights held in the *Law Offices of Ghazi Suleiman v Sudan*, the right of appeal is a right falling under the right to have one's cause heard under Article 7 of the Charter.<sup>7</sup> The right of appeal is also a determinant for the fulfilment of the requirement of exhaustion of local remedies. By denying the victim's representatives the records, the Magistrate Court had denied them the right to initiate any form of private legal action, whether civil or criminal, as all the original evidence required is part of the court records that have been denied to them;

<sup>2</sup>Civil Liberties Organisation and Others v Nigeria (2001) AHRLR 75 (ACHPR 2001)

<sup>3</sup>Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian Descent in Kenya) against the Government of Kenya; Communication: No. 33

<sup>4</sup>Article 19 v. Eritrea (2007) AHRLR 73 (ACHPR 2007), Communication N°275/2003, May 2007, Para. 47

<sup>5</sup>147/95-149/96: Sir K. Jawara / Gambia (The), Para. 32 and 33

<sup>6</sup>See Anuak Justice Council V Ethiopia Communication no. 299/2005, para 51.

<sup>7</sup>See *Law Offices of Ghazi Suleiman v Sudan communication no. 222/98 and 229/99, para 51-53.*

therefore, the Committee concludes the Complainants did not have remedies to exhaust at a local level.

33. Pursuant to Section IX (1) (E), the Communication should be presented within a reasonable period after exhaustion of local remedies at the national level. The Committee is of the view that the Complainants have complied with this requirement since they brought the communication to the Committee after trying to obtain the court records for two years without success.

#### **V. DECISION ON ADMISSIBILITY**

34. On the basis of all the above arguments and analysis, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the author has fulfilled all the admissibility conditions as laid down in the Committee's Guidelines on Consideration of Communication; and it is accordingly declared admissible.

#### **VI. SUBMISSIONS ON THE MERITS OF THE COMMUNICATION**

##### **The Complainants' Submission on the Merits**

35. The Complainants' allegations are based on the fact that the authorities in Cameroon have failed to adequately and effectively investigate the crime of rape perpetrated against a minor. In their submission, the Complainants argued that rape is a violation of article 16 of the Children's Charter. The Complainants submitted that Article 1 and 16 (2) of the African Children's Charter oblige State Parties to effectively investigate all suspected cases of child abuse, including sexual abuse, and provide support for children who have been abused. According to the Complainants, the Government of Cameroon and its agents did not carry out any credible investigations into the sexual abuse and rape which was committed against TFA. Neither was there any form of support provided for her in the aftermath of the rape.
36. The Complainants also argued that the failure on the part of the Republic of Cameroon to discharge the obligation to investigate and prosecute the perpetrator thus amounts to a violation of the rights of TFA to dignity, personal integrity, and a transgression of the prohibition of all forms of exploitation and degradation as provided for under article 16 of the ACRWC and article 5 of the ACHPR, among other relevant provisions of international instruments cited, to which Cameroon is a party to.
37. The Complainants further submitted that rape amounts to torture, cruel, inhuman or degrading treatment. The Complainants argued that the term 'cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental. According to Complainants, rape, especially when committed against a child, has long-lasting and devastating effects that persist for years after the event. Survivors of childhood sexual trauma are at high risk of post-traumatic stress disorder (PTSD), depression, suicide, and other mental health problems. Childhood sexual trauma may also affect certain developmental processes, such as the ability to develop and maintain relationships. For instance, clinical observations have revealed that, some survivors display high-risk sexual behaviours (e.g., promiscuity) that may be attributed, in part, to modelling some of the behaviours shaped earlier in life by the perpetrator. Based on this, the Complainants submitted that the rape of a minor, such as TFA, reaches the threshold to be classified as torture and the State is complicit in this torture as it has failed to effectively investigate the crime and punish the perpetrator.
38. The Complainants also submitted that the failure from the side of the Government of Cameroon to investigate the complaints' applications of rape and sexual assault and the failure to provide protection and redress to the complainant constitute violations of the complainant's right to remedy and the Respondent State's obligations under article 1 of The ACRWC. Moreover, the Complainants submitted that the violence TFA suffered was an act of sexual violence, which targets women disproportionately. And hence the defilement of TFA constitutes gender-based violence which is a form of discrimination that seriously inhibits women's ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men. And this impairs or nullifies the enjoyment by women of

human rights and fundamental freedoms under general international law or under human rights conventions. Lastly, the Complainants submitted that the denial of the right to appeal is a violation of the right to a fair trial in accordance with article 7 of the African Charter on Human and Peoples' Rights.

### **The Respondent State's Submission on the Merits**

39. During the hearing that took place during 30<sup>th</sup> Ordinary Session of the Committee that was held in Khartoum, Sudan, the Respondent State submitted that some developments have been recorded from the time of the submission of the case. These developments include: The National Strategy on sexual violence has been updated in 2016; Sensitization was carried out for more than 50,000 individuals including key actors; an instrumental normative ACT 007/2016 which talks about female genital mutilation (FGM) and Sexual harassment (art 72) and domestic violence has been adopted in January 2017; forced marriage between rapist and the victim has been prohibited; trainings have been organized for judges, magistrates and national police; psychosocial support has been provided for victims.
40. The Respondent State further submitted that an action plan for the elimination of sexual abuse, and trafficking, harmful tradition practices are now in place. Mechanisms are also established with a view to providing shelters for victims of violence in 10 regions in form of orphanages; education centres, training centres, rehabilitation centres. The Respondent State also submitted that psychosocial support was given to the victim child in the current communication as well as her family and the prosecutor have already appealed the case to a higher court, hence, the case is pending before the court of appeal in Bambenda and the hearing was scheduled to take place in January 2018. As the principle of subsidiarity defines the relationship between the State and the ACERWC, it was the Respondent State's submission that the ACERWC waits for the matter to be settled before the local court as it is still pending. The Respondent State also informed the Committee that there have been similar procedures that have been pending in various Courts in Cameroon. For instance in 2016 there were almost 264 judgements on cases that had to do with violence against children, out of which 126 of them are now settled by courts of the required jurisdiction. On this basis, the Respondent State argued that there is a mechanism to protect the child from violence in Cameroon.

### **VII. The Committee's analysis on the merits of the alleged violations**

#### **i. Alleged violation of article 1 on general measures of implementation**

41. Article 1 (1) of the ACRWC provides 'States Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter'.
42. This provision of the ACRWC obliges State Parties to the ACRWC first to recognise all the rights, freedoms and duties enshrined under the Children's Charter. Upon recognition of the rights, freedoms and duties enshrined under the Charter, State Parties to the ACRWC are required to undertake all the necessary steps to adopt such legislative or other measures as may be necessary to ensure implementation of provisions of Children's Charter.
43. As a State Party to the ACRWC, the Respondent State is obliged to take legislative and other measures that enable to protect children from sexual abuses including rape. As the Committee noted in the case *Minority rights group international and Sos-esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Government of the Republic of Mauritania*, the obligation 'to take legislative measures' recognises actions to promote and protect the rights of the child and needs a clear foundation in national legislation, as well as accompanying policies and guidance that support its implementation. In relation to obligation of 'taking other measures', the Committee would like to reiterate that the focus should be on administrative and judicial measures that State Parties are obliged to undertake with a view to protect and promote children's rights.



44. As rightly noted by the African Commission on Human and Peoples' Rights, internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, civil and political rights as well as social and economic rights, generate at least four levels of duties for a state that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote and fulfill these rights.<sup>8</sup> According to the Commission, 'obligation to protect requires States to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the States to prevent human rights violations, investigate human rights violations, prosecute and ensure punishment of perpetrators.'<sup>9</sup>
45. As part of obligation to protect, States have a duty to conduct an effective investigation into all cases of violations of human rights such as rape. The African Commission, in affirming this stand, has held that 'Failure to investigate effectively, with an outcome that will bring the perpetrators to justice, shows lack of commitment to take appropriate action by the State, especially when this lack of commitment is buttressed by excuses such as lack of sufficient information to carry out a proper investigation. Furthermore, failure to investigate compromises an international responsibility on the part of the Respondent State, both in the case of crimes committed by agents of the State and those committed by private individuals.'<sup>10</sup>
46. On this note, as it did in considering the case of *Minority rights group international and Sos-esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Government of the Republic of Mauritania*, the Committee would also like to address the implementation of the obligations of State Parties envisaged by article 1 of the Children's Charter in the context of the requirement of 'due diligence'. In this regard, the Committee reiterates that while discharging their human rights obligations, States are obliged to show due diligence to ensure the full realization of human rights.<sup>11</sup> In the aforementioned case, the Committee noted that States' due diligence should be shown in prevention of human rights violations, investigation of violations, prosecution of perpetrators, and ensuring punishment of perpetrators.<sup>12</sup>
47. In order to prevent violation of human rights, States must identify vulnerable groups prone to abuse and take special measures to prevent violence from occurring. In cases where the violence has already occurred, Governments are required to undertake exhaustive investigation and ensure that commensurate compensation is rewarded to the victims. In the event where the State fails to show due diligence to prevent or investigate violence perpetrated by third parties, it assumes responsibility under international law for non-state actors. In this regard, all organs of the State are required to act in due diligence and a breach caused by any of the organs of the Government in preventing and investigating a violation makes the State responsible under its international human rights obligations.
48. In the case under discussion, the Complainants allege that the Republic of Cameroon and its agents did not carry out any credible investigations into the sexual abuse and rape committed against TFA. Neither was there any form of support provided for her in the aftermath of the rape. On the other hand, the Respondent State alleges that appeal is underway and psychosocial support was given to the child and her family. From the submission of both parties, the Committee understood that five years after commission of crime of rape against TFA, the act of the perpetrator of this crime has not been properly investigated, the person has not been convicted. With regard to provision of psychosocial support to the victim, the Committee notes that, despite the Respondent State's submission that TFA has been provided with the necessary psycho-social support, it has not adduced any credible evidence to prove its claims.

<sup>8</sup> *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR (ACHPR 2001) para 44.

<sup>9</sup> SERAC and other v the Government of Nigeria (n10 above) para 46.

<sup>10</sup> *Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt*, Communication No 323/06, ACHPR, para 163.

<sup>11</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR) 2006 para 146.

<sup>12</sup> *Minority rights group international and Sos-esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Government of the Republic of Mauritania*, Communication No: 007/Com/003/2015, ACERWC para 52.

49. The Committee takes the view that, human rights obligation of States is that of obligation of result, not obligation of diligence.<sup>13</sup> Therefore, the Committee is of the view that the due diligence of the Respondent State in relation to the current communication should be assessed by the result it has achieved.
50. The Committee also upheld the duty of States to conduct effective investigations into alleged cases of sexual abuse, including those involving children as it is reflected in the various decisions that the European Court of Human Rights (ECtHR) has pronounced. Particularly, the Committee notes the ECtHR's decision in *P. M. v Bulgaria* where the ECtHR held that investigations into alleged cases of sexual abuse 'should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible.'<sup>14</sup> Moreover, in the case *M. C. v Bulgaria*, the European Court held that 'States have a positive obligation ... to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.'<sup>15</sup>
51. As the facts presented before the Committee indicate, complaint of rape has been lodged with the authorities; the rape was confirmed by a medical certificate obtained at the police's own request; the victim has testified by narrating the violations she had suffered; and the locus of the rape committed on the victim has been identified. In the view of the Committee, given the above facts, believes that the Respondent State should have carried out an effective investigation to substantiate the available evidence and prosecute the perpetrator of rape committed against the victim. The Committee notes that the State Counsel has filed the findings before the Investigating Magistrate. However, upon the submissions of the State Counsel, the Investigating Magistrate dismissed the evidence for disclosing no case and acquitted the suspect without hearing from the victim or her representatives.
52. At this juncture, the Committee would like to emphasise on two points. First, the Respondent State through its agents (in this case the police and the state council) should have organised conclusive evidence and present it to the Investigating Magistrate by substantiating available evidences that lead to prosecution of the perpetrator. In cases where the Investigating Magistrate failed to give reasonable decision even with the presence of conclusive evidence, the state council should have appealed the case within the reasonable time. Although the Respondent State alleged that the appeal of the case is underway, the Committee, first, is of the view that the appeal is unduly prolonged since the judgment was handed in 2012. Second, if the available evidence indicates that the suspect did not commit rape against the TFA, the Respondent State owes a duty to TFA to conduct effective investigation and find out the person who violated her right, and to prosecute the perpetrator. In this regard, the Respondent State failed to discharge its duty as it did not carry out effective investigation that results in punishment of the perpetrator of rape committed against TFA.
53. As aforementioned, states must exercise due diligence in investigating and prosecuting human rights violations. The due diligence standard imposes upon states the obligation to 'organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.'<sup>16</sup>
54. In this regard, the Committee would like to accentuate that the obligation to carry out an effective investigation is required not only if the violation is committed by state agents, but also if it is committed by a non-state actors. In the event where the State fails to show due diligence to investigate violence perpetrated by non-state actors, the state assumes responsibility under international law for not exercising due diligence in investigating the violation and ensuring punishment of the perpetrator as well as for not taking measures to

<sup>13</sup> *Association of Victims of Post Electoral Violence and Another v Cameroon* (2009) AHRLR 47 (ACHPR 2009) para 110, 111; *De Cubber v Belgium*, application 9186/80, European Court of Human Rights, judgment, 26 October 1984 para 35.

<sup>14</sup> *P.M. V Bulgaria*, *Application no. 49669/07*, European Court of Human Right, Judgment, 24 January 2012, paragraph 64.

<sup>15</sup> *M.C. V Bulgaria*, *Application no. 39272/98*, European Court of Human Right, Judgment, 4 December 2003, paragraph 153.

<sup>16</sup> *Velasquez Rodriguez Case*, Judgment of July 29, 1988, IACHR (Ser C) No 4 (1988), para 166.

provide the victims with reparation. In this regard, the ACHPR in one of its decisions held that 'an act by a private individual 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 to prevent the violence or for not taking the necessary steps to provide the victims with reparation.'<sup>17</sup> The Commission has also held that: '... the negligence of a State to guarantee the protection of the rights of the Charter having given rise to a violation of the said rights constitutes a violation of the rights of the Charter which would be attributable to this State, even where it is established that the State itself or its officials are not directly responsible for such violations but have been perpetrated by private individuals.'<sup>18</sup>

55. As it is discerned from the facts presented before the Committee, five years have passed since the aunt of the victim reported the rape case to the police. However, after five years of the report, the perpetrator of the rape has not been punished. The victim was not also provided with remedy.
56. As aforementioned, human rights obligation of States are that of obligation of result, not obligation of diligence. The Committee, in many of the cases before it, has underscored how time matters most when it comes to protection of children's right. In this regard, the Committee would like to restate the fact that the implementation and realization of children's rights in Africa is not a matter to be relegated for tomorrow, but an issue that is in need of proactive immediate attention and action. Time is of essence especially in cases involving rape. Delayed response in cases of rape may render the entire investigation ineffective. On this basis, the Committee believes that five years should have been enough not only to bring the perpetrator of the rape before the law but also to effectively convict him and provide the necessary support to the victim. As it stands now, this did not happen. In the Committee's view, this is attributed to failure of the Respondent State to carry out exhaustive investigation and to expedite the appeal proceeding. In other words, the Respondent State has not exercised due diligence in investigating and ensuring prosecution and punishment of the perpetrator within reasonable time. The appeal proceeding which is underway is also unduly prolonged and is not in line with the best interest of the child.
57. Consequently, as a result of lack of due diligence to investigate the violation and effectively prosecute and punish the perpetrator, as well as failing to ensure effective remedy to the victim, the Committee finds the Respondent State in violation of its obligation under article 1 of the African Children's Charter which requires it to take all the necessary measures possible to respect, protect, promote, and fulfill the rights enumerated in the Charter.

**ii. Alleged violation of article 3 on non-discrimination**

58. The Complainants allege that the failure of the Respondent State to investigate the sexual violence TFA suffered breaches the protection from gender based discrimination. In substantiating their allegation, the Complainants argued that gender based violence which TFA suffered is a form of gender based discrimination and hence violates the principle of non-discrimination enshrined under article 3 of the African Children's Charter and other various international and regional human rights instruments.
59. The Committee notes that the principle of non-discrimination is a cardinal principle of the African Children's Charter. Article 3 of the Charter stipulates that all children are entitled to the enjoyment of the rights provided therein irrespective of all grounds including sex. This provision is clear that any form of gender based discrimination against girls is prohibited, however, it does not vividly portray that sexual violence is a form of gender based discrimination as argued by the Applicants. To address the issue whether the rape that TFA has suffered from amounts to gender based discrimination, the Committee finds that it would be paramount to draw inspiration from other international human rights instruments and organs pursuant to article 46 of the Charter.

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<sup>17</sup>*Zimbabwe Human Rights NGO Forum v Zimbabwe* (n 13 above), para 143.

<sup>18</sup>*Mouvement Ivoirien des droits humains (MIDH) v Cote d'Ivoire*, [2002] ACHPR, Communication No 246/02 and *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, [2003] ACHPR, Communication No 272/03 at para 88.

- 60.** In view of the above, the Committee would like to make reference to Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) outlaws all forms of discrimination, which denies women the enjoyment of their human rights. CEDAW does not have clear provision which defines gender based violence as gender based discrimination as well. But the UN Committee on the Elimination of All Forms of Discrimination against Women adopted a General Recommendation on Violence against Women expounding the definition and scope of violence against women under CEDAW. General Recommendation No 19 defines gender based violence as a 'violence that is directed against a woman because she is a woman or that affects women disproportionately'. It is a clearly established norm that sexual abuse such as rape occurring within the general public is one form of gender based violence as clearly stipulated under the UN Declaration on the Elimination of Violence against Women. This shows that the sexual abuse which TFA was subjected to is a gender based violence which affects her disproportionately and which nullifies the enjoyment of the right to freedom from degrading treatment.
- 61.** The Committee proceeds to assess if there is nexus between gender based violence and gender based discrimination as asserted by the Complainants. General Recommendation 19 clearly states that article 1 of CEDAW on the definition of discrimination against women includes gender based violence as such violence disproportionately affects women. Furthermore, the General Recommendation provides that 'gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'. In the updated General Recommendation No 35, the Committee on the Elimination of All Forms of Discrimination against Women endorsed the explanation that gender based violence is gender based discrimination. Such conclusion is reached because gender based violence is caused by a deep rooted ideology and stereotype that men have privilege over women as well as the cultural urge to ensure men's power and control over women. In addition, violence against women perpetuates the relegated status women have been socially given for a long period of time. In addition, the Inter-American Court of Human Rights concurs with CEDAW and endorsed that gender based violence is a form of gender based discrimination.
- 62.** The Committee is of the view that the social subordination of women that is causing and sustaining gender based violence is by itself a gender based discrimination of women. The Committee notes that it is the deep rooted discriminatory beliefs and attitudes that persist in societies that continue to ascertain men dominancy and women's inferiority, leading to gender based violence. Violence becomes gender based violence when it is inflicted against women just because they are women and rape is one of the forms of gender based violence. Women suffer from gender-based violence because of the unequal distribution of power between men and women. Discrimination is a differential treatment based on a prohibited ground and that results in nullifying the enjoyment of rights. When gender based violence disproportionately affects women, it becomes a treatment that differentiates women from men and that nullifies the enjoyment of their various rights. Hence gender based violence that disproportionately affects women is a gender-based discrimination. Therefore, the Committee believes that gender based violence is caused by discriminatory attitudes and it is on its own gender-based discrimination, hence it violates the principle of non-discrimination.
- 63.** The UN Committee on the Elimination of All Forms of Discrimination against Women found a violation of article 1 of CEDAW on non-discrimination when adjudicating a case involving rape and physical abuse of a victim perpetrated by her husband despite the victim's continuous report to the police about the abuse she is facing. In *X and Y v Georgia*, the Committee found that there is violation of the principle of non-discrimination because the Respondent State in the case failed to take legislative measures to protect the victim from domestic violence. The UN Committee asserted that States are responsible for private actors if they fail to protect women from violence caused by private actors or if they fail to investigate and prosecute perpetrators. It stated 'that the State party's authorities have failed in their duty to adopt appropriate legislative and other measures, including sanctions, prohibiting violence against women as a form of discrimination against women' and therefore found that the Respondent State was in violation of article 1 of CEDAW. Likewise, in the case at hand, even if the Respondent State is not the actor which caused the gender based violence which amounts to gender based discrimination, the State Party has failed to show due diligence to investigate and prosecute the perpetrators of the sexual abuse. Such

failure of the Respondent State makes it accountable under international human rights norms as portrayed above.

- 64.** The Committee further finds it imperative to see if the abovementioned explanation leads to violation of article 3 of the African Children's Charter, which the Committee can find violation on. Article 3 of the Charter states that every child is entitled to enjoy the rights provided therein irrespective of various factors including sex. The implication of this provision is that if a child is not able to avail from the protection of the Charter just because that child is of a certain sex, there is a violation of the principle of discrimination. In the case at hand, TFA was sexually abused which is an abuse that is perpetrated due to her sex as rape has been observed as gender based violence. The sexual abuse committed against TFA has disabled her from enjoying the protection provided in the Charter, namely protection against abuse and torture. Rape has been recognized as a form of torture despite the fact that it takes place outside of state facilities and it is committed only once.
- 65.** Even though the discriminatory act was not perpetrated by State actors, the State has failed to deliver its obligation to protect TFA from such act through its failure to investigate the alleged violation. The European Court of Human Rights has clearly established that States' failure to protect women from gender based violence violates their right to equal protection of the law albeit the fact that the failure was not intentional. The Inter American Court of Human Rights in *Cf. González et al. ("Cotton Field") v. Mexico* case also adopted a similar view when it found violation of the principle of discrimination due to State's failure to investigate alleged violence against women. The Inter American Court decided that impunity on cases of violence against women perpetuates similar violence and constitutes discrimination. It is also this Committee's view that impunity entrenches the discriminatory act and hence makes the Respondent State accountable.
- 66.** Therefore, Since gender based discrimination is prohibited under article 3 of the African Children's Charter; since, according to international standards, gender based discrimination includes gender based violence; and since the sexual abuse excluded TFA from enjoying her right under the Charter and other international human rights instruments, the Committee finds that the Respondent State is in breach of article 3 of the African Children's Charter due to its failure to thoroughly investigate the discriminatory act, in this case the sexual abuse, TFA suffered.

**iii. Alleged violation of article 16 on protection against child abuse and torture**

- 67.** Article 16 (1) of the ACRWC provides that 'States Parties to the Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.' Sub-article 2 of the same article further explicates that 'protective measures under this Article shall include effective procedures for the 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 for identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.' The Complainants submitted that the failure of the State to investigate the Complainant's complaint of rape and sexual assault, and to prosecute the perpetrator is a violation of TFA's right to freedom from torture, cruel, inhuman or degrading treatment in accordance with article 16 of the ACRWC.
- 68.** Article 16 of the ACRWC is aimed at the protection of both the dignity as well as physical and mental integrity of the children. The ACRWC does not define the terms 'torture or degrading treatment or punishment.' The term 'cruel, inhuman or degrading treatment or punishment' is however to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.<sup>19</sup> While interpreting article 7 of Convention on Civil and Political Rights (CCPR) which deals with torture, cruel, inhuman, or degrading punishment or treatment, the Human Right Committee also noted that 'the prohibition in

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<sup>19</sup> Media Rights Agenda/Nigeria, Communication 224/1998, paragraph 71

article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim'.<sup>20</sup> In its General Comment No. 28 on equality of men and women, the Human Rights Committee has also interpreted compliance with Article 7 of the ICCPR (torture, cruel, inhuman, or degrading punishment or Treatment) to require States to have laws on 'domestic and other types of violence against women, including rape'.<sup>21</sup>

- 69.** In its General Recommendation No. 19, the CEDAW Committee also underscored that gender based violence impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, including the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.<sup>22</sup> The Committee notes that rape constitutes degradation of women. Further, rape amounts to violence against women. The UN Declaration on the Elimination of Violence against Women sets out the definition of violence against women in article 2, to include physical, sexual and psychological violence occurring within the general community, including rape.<sup>23</sup>
- 70.** Rape, especially for a child, has long-lasting and devastating effects that persist for years after the event.<sup>24</sup> Survivors of childhood sexual trauma are at high risk of post-traumatic stress disorder (PTSD), depression, suicide, and other mental health problems.<sup>25</sup> Childhood sexual trauma may also affect certain developmental processes, such as the ability to develop and maintain relationships. For instance, clinical observations have revealed that some adult survivors of childhood sexual abuse report problems with low sexual interest and few close relationships. In other cases, some survivors display high-risk sexual behaviours (e.g., promiscuity) that may be attributed, in part, to modelling some of the behaviours shaped earlier in life by the perpetrator.<sup>26</sup> In many cases, childhood sexual abuses including rape have been correlated with higher levels of depression, guilt, shame, self-blame, eating disorders, somatic concerns, anxiety, dissociative patterns, repression, denial, sexual problems, and relationship problems.<sup>27</sup>
- 71.** Article 16 of the ACRWC is clear in protecting children against all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. The Committee notes that rape is the worst form of sexual abuse which has serious physical as well as psychological effects and that constitutes inhuman or degrading treatment as envisaged by article 16 (1) of the ACRWC. Article 16 (2) of the Charter lists protective measures that State Parties should take to protect children from acts of torture, inhuman or degrading treatment.
- 72.** One of the protective measures listed under Article 16 (2) is the establishment of special monitoring units to provide necessary support for the child who is victim of torture, inhuman or degrading treatment and for those who have the care of the child. The Committee notes that States are required to provide necessary support for the victims of torture, inhuman or degrading treatment. The support envisaged by Article 16 (2) includes psycho-social as well as other supports that can heal physical and psychological harms sustained by the victim.
- 73.** Article 16 (2) of the ACRWC also require States to devise means of prevention, identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect. In order to prevent children from acts of torture, inhuman and degrading treatment, first States must identify vulnerable groups prone to child abuse and neglect and take special measures to prevent them from such kind of abuse. In cases where the children

<sup>20</sup> See Human Rights Committee, General Comment no. 20, para 5.

<sup>21</sup> See Human Right Committee, General Comment No. 28, para 11.

<sup>22</sup> CEDAW Committee (n 21 above) para 7.

<sup>23</sup> UN Declaration on the Elimination of Violence against Women (n 22 above).

<sup>24</sup> M Rosen, 'Dealing with the Effects of Rape and Incest', 2002, Chelsea House Publishers, p 15.

<sup>25</sup> N Yuan, M Koss, et al, 'The Psychological Consequences of Sexual Trauma', 2011, National Resource Center on Domestic Violence, available at [http://www.vawnet.org/applied-researchpapers/print-document.php?doc\\_id=349](http://www.vawnet.org/applied-researchpapers/print-document.php?doc_id=349), accessed on 17 February 2018.

<sup>26</sup> Yuan, Koss, et al, (n 31 above).

<sup>27</sup> M hall and J Hall 'The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications' available at <https://www.counseling.org/...sexual-abuse/long-term-effects-of-childhood-sexual-abu...> (accessed on 15 January 2018).

become victim of torture, inhuman and degrading treatment as well as other forms of child abuse, States are required to undertake exhaustive investigation and ensure that commensurate compensation is rewarded to the victims.

- 74.** States therefore have a positive obligation to effectively protect the human dignity and integrity of children as well as children's right to freedom from cruel and inhuman treatment. This obligation and responsibility of States arises even if the violation is caused by non-state actors. In this regard, the Committee against Torture in its General Comment no. 2 noted that

'The Committee has made it clear 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 acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.'<sup>28</sup>

- 75.** State responsibility arising from article 16 is therefore not only based on acts perpetrated by agents of the State but also on acts perpetrated by non-state actors. As stated by the African Commission:

Human rights standards do not contain merely limitations on State's authority or organs of State. They also impose positive obligations on States to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on States to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual 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 to prevent the violation or for not taking the necessary steps to provide the victims with reparation.<sup>29</sup>

- 76.** In the Communication under consideration, TFA, a minor was raped and defiled by non-State actor. Despite the overwhelming evidence that TFA was raped, the Respondent State has not ensured prosecution of the perpetrator by carrying out effective investigation. It did not also ensure remedy for the victim for the violation she suffered.

- 77.** Consequently, as a result of lack of due diligence to investigate the rape committed against TFA and effectively prosecute and punish perpetrator, as well as failing to ensure effective remedy to the victims, the Committee finds the Respondent State in violation of its obligation under article 16 of the ACRWC which requires it to take all the necessary measures possible to respect, protect, promote, and fulfill the right of TFA to be free from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse.

#### **iv. Alleged violations of other instruments**

- 78.** The Committee notes that the applicants alleged violations under Articles 4 and 37 of the Convention on the Rights of the Child; Articles 1, 2, 5, 7 and 18 (3) of the African Charter on Human and Peoples' Rights, Articles 2 (1), 3, 4 (1), 4 (2), 5, 8, and 25 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Articles 2,

<sup>28</sup> Committee against Torture, General Comment 2, para 18.

<sup>29</sup> Zimbabwe Human Rights NGO Forum v. Zimbabwe (n 19 above).

3 and 5(a) of the Convention on the Elimination of all Forms of Discrimination against Women, Articles 2, 12 and 13 of the Convention Against Torture, Inhuman and Degrading Treatment or Punishment, and Articles 2(1) , 2(3) and 7 of the International Covenant on Civil and Political Rights, articles 2, 5 and 8 of the Universal Declaration of Human Rights.

79. Pursuant to article 46 of the African Children's Charter, the Committee underscores that it has a mandate to draw inspiration from other international human rights treaties and instruments adopted by the United Nations and by African Countries. According to this mandate the Committee draws inspiration for the above-mentioned instruments in interpreting the Charter in considering Communications including the case at hand. However, the Committee does not have a mandate to find violations of other instruments aside from the Charter.

80. Alleged violations of the right to fair trial and the right to remedy have been merged and dealt with under article 1 of the Charter, as part of the duty of the State to undertake the necessary steps, in accordance with its Constitutional processes to implement the provisions of the Charter.

#### **VIII. The Committee's analysis on request for Compensation**

81. The Applicants in their submissions requested the Committee to order the Respondent State to pay monetary compensation for TFA in the sum of 50 million CFA for the pain, suffering and harm to her dignity, including physical, mental and emotional trauma. The Committee draws inspiration from and recognizes the positive trend of ordering a determined amount of monetary reparation to victims of human rights violations by various treaty bodies.<sup>30</sup> In this regard the Committee shares the view of the African Court on Human and Peoples' Rights in that 'Any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation'.<sup>31</sup> The Committee further notes that rape causes a deep and long lasting psychological, mental and physical damage, that attracts reparation in the form of monetary compensation, among others.

82. The Committee notes that monetary compensation for non-pecuniary damage is assessed by looking in to the various circumstances of a given violation and not through a 'mathematical formula'.<sup>32</sup> In the present case, TFA was only 10 years old when she was raped multiple times. She will be impacted by the physical and mental trauma of being raped at such a tender age for the rest of her life. TFA did not get justice for the harm she sustained and the painstaking process of seeking domestic remedy added to her suffering. Taking in to account these circumstances, the Committee deems the sum of 50 million CFA to be a fair amount of compensation for the non-pecuniary harm suffered by TFA.

#### **IX. Decision of the African Committee of Experts on the Rights and Welfare of the Child**

83. For the reasons given above, the ACERWC finds the Respondent State in violation of its obligations under article 1 (obligation of states parties), article 3 (non-discrimination) and Article 16 (protection against child abuse and torture) of the ACRWC.

84. The African Committee of Experts on the Rights and Welfare of the Child therefore recommends for the Government of Republic of Cameroon to:

- a) Immediately ensure that the perpetrator of rape against TFA is prosecuted and punished for violating TFA's right to be free from inhuman and degrading treatment and ensure effective remedy for TFA;
- b) Pay a sum of 50 million CFA to TFA as a compensation for the non-pecuniary damage she suffered as a result of the above-mentioned violations;
- c) Enact and implement a legislation eliminating all forms of violence, including sexual violence against children;

<sup>30</sup> See; ACHPR decisions on *Equality now and EWLA against Ethiopia, Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt, and the IACtHR case of Garcia Lucero et al. v. Chile.*

<sup>31</sup> *Rev Christofer R. Mitikila v United Republic of Tanzania African Court on Human and Peoples' Rights para 27*

<sup>32</sup> *Equality now and EWLA against Ethiopia Para 158 ACHPR.*



- d) Train the police, prosecutors, judges and other responsible Government agencies on how to protect and advance children's right;
- e) Create specialized police units and courts handling cases of violence against children;
- f) Establish effective special monitoring units to provide necessary support for a child who is victim of torture, inhuman or degrading treatment and for those who have the care of the child; and
- g) Develop and widely implement awareness raising as well as educational and communication strategies aimed at the eradication of beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against children.

**X. Reporting on implementation**

**85.** As per Section XXI (1) of the Revised Communication Guidelines of the Committee, the Government of Cameroon 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 31st Ordinary Session of the ACERWC  
Bamako, Mali  
May 2018



**Mrs Goitseone Nanikie Nkwe**  
**Chairperson of the African Committee of Experts**  
**on the Rights and Welfare of the Child**