

AFRICAN UNION

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



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

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THE AFRICAN COMMITTEE OF EXPERTS

ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)

**DECISION ON THE COMMUNICATION SUBMITTED BY MINORITY
RIGHTS GROUP INTERNATIONAL AND SOS-ESCLAVES ON BEHALF OF
SAID OULD SALEM AND YARG OULD SALEM AGAINST THE
GOVERNMENT OF THE REPUBLIC OF MAURITANIA**

**Communication No: 007/Com/003/2015
Decision No: 003/2017**

Original: English

**Decision on a communication submitted before the African Committee
of Experts on the Rights and Welfare of the Child**

**On the matter between
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

i. Submission of communication

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a communication dated 15 December 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 Minority Rights Group International and SOS-Esclaves (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 through a Note Verbal written on 05 January 2016.
2. 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. The Committee then sent additional Note Verbal on 15 August 2016. As the Committee did not receive a response from the Government, and given the serious nature and time sensitiveness of the allegations by the Complainants, it decided to proceed considering the admissibility of the Communication without a response from the Respondent State.
3. After declaring the Communication admissible Committee conducted a hearing on the 28th Ordinary Session held from 21 October to 1 November 2016 in Banjul, the Gambia. At the hearing, the Complainants and the Respondent State made oral submissions and examined Said Ould Salem and Yarg Ould Salem. The hearing shed light on the arguments of both sides, in addition to giving the children an opportunity to express their views on the matter.
4. Following the hearing, the Committee conducted an on-sight investigation in Mauritania in accordance with article 45 of the Charter and section XV of the Revised Communication Guidelines. The investigation took place from 27 to 30 March 2017. The aim of the investigation was to ascertain fact with regards to the allegations of the practice of slavery in Mauritania.

ii. Summary of Alleged facts

5. The Complainants allege that Said Ould Salem, born in 2000 and his younger brother, Yarg Ould Salem, were born in 2003 to a Haratine mother, part of Mauritania's slave class. It is therefore alleged that

Said and Yarg became automatically slaves to the to the El Hassine family.

6. The Complainants further allege that Said was required to look after the family's herd of camels, spending the majority of his time out in the bush with the animals, sleeping and eating in a make-shift camp. Yarg was also forced to undertake domestic chores including cooking, cleaning, washing clothes and buying goods from the market. Besides, Yarg is required to assist his brother Said in looking after the camels from time to time.
7. The Complainants allege that the two boys worked seven days a week without pay, with no time off (even on Fridays), no time to play; instead they regularly faced corporal punishments. According to the Complainants, both Said and Yarg were not called by their given names in the El Hassine family rather they were called 'slaves'. The children were allowed to eat only leftovers. Furthermore, unlike the other children in the family, the two boys did not attend school nor did they learn the Quran.
8. The Complainants further allege that Said went to the Police Commissioner with his aunt after escaping in April, 2011 and the aunt filed a complaint on 19 April 2011 against Cheik Ould Hassine and his brothers Nedhirou Ould El Hassine, Mohamed Ould El Hassine and Tijani Ould El Hassine for holding her sister's children as slaves. The complaint was reportedly duly investigated, and charges were brought under the 2007 law, which criminalizes slavery. The charges were laid against Ahmed Ould El Hassine and his sister Oumekelthoum Mint El Hassine for practicing slavery over a child and depriving a child of education; against Mohamed Ould Sidi Mohamed, an employee of the El Hassine family, against whom charges have not been pursued, at least for the time being, because of uncertainty over his identity. Charges were also brought against the remaining El Hassine brothers for failing to denounce a crime of which one was aware and the boys' mother for assisting in the deprivation of a person's liberty. The case was then referred to the Criminal Court in Nouakchott.
9. It is the Complainants allegation that in November, 2011 Ahmed Ould El Hassine was found guilty of holding the two brothers in slavery and depriving them of schooling. He was sentenced to two years of imprisonment and fined 500,000 MRO (roughly USD\$1500) while his sister was acquitted of the same charges. The complainants further allege that the other four El Hassine brothers were convicted and each received 2 year suspended sentence and were each fined 100,000 MRO (roughly USD\$300) while the boys' mother received a two years suspended sentence and was fined 500,000 MRO (roughly USD\$1500) awarding a joint compensation of 840,000 MRO (roughly USD\$2500) for Said and 240,000 MRO (roughly USD\$700) for Yarg.
10. Despite the unsatisfactory decision of the Court, the Complainants allege that the State Prosecutor did not appeal the judgment on time. Moreover, according to the Complainants, in less than four months' time

after conviction, the slave-owner was released on bail for the sum of 200,000 MRO (roughly USD\$600) without any prior communication to the lawyer representing the victims.

11. Finally, the Complainants allege that an appeal hearing, initially scheduled for November 2, 2015 was repeatedly postponed due to, initially, the absence of the President of the Criminal Chamber of the Court of Appeal and subsequently due to the inability of the authorities to locate Ahmed Ould El Hassine following his change of address. The Complainants submitted that it is unclear what, if any, steps have actively been taken by the authorities to locate the convicted slave owner who is also presumably in breach of his bail conditions.

iii. The Complaint

12. Based on the above facts, the Complainants allege that the Republic of Mauritania is in violation of Articles 1 (Obligation of State Parties), 3 (Non-Discrimination), 4 (Best Interests of the Child), 5 (Survival and Development), 11(Education), 12 (Leisure, Recreation, and Cultural Activities), 15 (Protection from Economic Exploitation), 16 (Protection Against Harmful Social and Cultural Practices) and 29 (Prevention of Sale, Trafficking and Abduction of Children) of African Charter on the Rights and Welfare of the Child.

iv. The African Committee's Analysis on Decision of Admissibility

13. The ACERWC 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 a recognized Non-Governmental Organisations. 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 21 September 2005, and the alleged violations of the rights enshrined in the Charter have allegedly been committed in the jurisdiction of the Respondent State.
14. The Committee also notes that MRG is an international human rights organization registered in the UK and SOS-Eslaves is a Non-Governmental Organization based in Mauritania. 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.
15. As provided under Section II and Section IX of the Revised Communication Guidelines, the admissibility of a communication

submitted pursuant to Article 44 is subject to conditions relating to authorship, form and content as considered below.

Requirement as to Authorship

16. Section 1 (3) of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Communication Guidelines) provides a communication may be presented on behalf of a child victim without her/his agreement on condition that the complainant is able to show that her/his action is taken in the supreme interest of the child. The Complainants have submitted the communication on behalf of Mauritanian children; Said Ould Salem who is 16 years old and Yarg Ould Salem who is 13 years old, whose rights under the Charter have been violated by the Respondent State.
17. The Committee notes that the communication explicitly states the names of the authors, which are recognised Non-Governmental Organizations; and the complaint is submitted on behalf of Said Ould Salem and Yarg Ould Salem, Mauritanian children in the Respondent State. In addition, the Committee notes that the Complainants have provided arguments that the submission is made in the best interests of the victims. Therefore, the Committee holds the view that the Complainants have complied with Section 1(3) of the Revised Communication Guidelines.

Requirements as to Form

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

Requirements as to Content

19. Laying down requirements as to the content of a communication, 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 Mauritania 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 alleged 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 *Frederick Korvah v. Liberia*¹ which sets the jurisprudence that for the content of the Communications to be considered compatible with the concerned instrument, it suffices to prove that the applicant 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.

20. 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.
21. Pursuant to Section IX (1) (b) of the Revised Communication Guidelines, a communication should not be exclusively based on information circulated by the media. The Committee has learned that the factual basis of the present Communication rests on the information gathered through a direct contact between SOS-Esclaves and a local lawyer with the two boys, as well as from country visits by Minority Rights Group International to Mauritania and meetings with the two boys. Therefore, the Committee is of the view that the alleged facts are not solely based on information circulated by the media; hence it satisfies the requirement under Section IX (1) (b) of the Revised Communication Guidelines.
22. 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 African Union and principles of the United Nations Charter. As far as the inquiry made by the Committee goes, the Communication under consideration does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter. 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 to the Commission. Consequently, the Committee holds the view that the Communication has complied with the requirement in Section IX (1) C) of the Revised Communication Guidelines.

¹ See African Commission on Human and Peoples' Rights, *Frederick Korvah v. Liberia*, Communication No. 1/88 (1988) para 6

23. 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 issue of exhaustion of local remedies requires further explanation. As the ACERWC elucidated in its previous decisions, the requirement to exhaust domestic remedies is only applicable with regards to remedies, which are 'available, effective and sufficient'.² As the Commission clarified in many of its decisions, a remedy is considered to be available if the petitioner can pursue it without impediment or if he/she can make use of it in the circumstances of his/her case. According to the Commission, "*the word 'available' means '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, at one's beck and call'. In other words, remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the Complainant.*"³ The Commission defined the word 'effective' as "adequate to accomplish a purpose; producing the intended or expected) result," or 'functioning, useful, serviceable, operative, in order; practical, current, actual, real, valid'".⁴ As the Commission underscored, a remedy is effective if it offers a prospect of success. If its success is not sufficiently certain, the remedy cannot meet the requirements of availability and effectiveness.⁵ A remedy is considered to be sufficient if it is capable of redressing the complaint.

24. In the matter at hand, the Complainants indicated that the Respondent State has enacted penal laws that criminalise holding persons as slaves. On its face value, Mauritania's legal and institutional framework appears to offer protection against slavery. The adoption, on 3 September 2007, of the Slavery Act criminalizing slavery and punishing slavery-like practices appeared as a significant step in combating against. However, various reports show that there is lack of effective implementation of this law. For instance, in 2014, the UN Special Rapporteur on Contemporary Forms of Slavery noted that "the enforcement of the 2007 anti-slavery law relies solely upon the police and judiciary, who have shown a reluctance to follow up on allegations of slavery-like practices, with most cases being closed without any proper investigation."⁶ Similarly, in its 2014/15 Report, Amnesty International reported that implementation of the anti-slavery law in practice remained poor, stating that "court cases were subject to long delays."⁷ Amnesty International further indicated that between 2010 and the end of 2014, at least six cases of slavery were submitted to the

² See *Institute for Human Right and Development in Africa (IHRDA and other on behalf of Children of Nubian descent v. Kenya*, Communication No. Com/002/2009, para 28.

³ See *Anuak Justice Council V Ethiopia* Communication no. 299/2005, para 51.

⁴ See *Anuak Justice Council v. Ethiopia (n 3 above)* para 52.

⁵ See *Anuak Justice Council v. Ethiopia (n 4 above)*.

⁶ United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Follow-up mission to Mauritania*, 27th Session, A/HRC/27/53/Add.I, 26 August 2014, para 11.

⁷ *Amnesty International Report 2014/15: The State of the World's Human Rights*. London: Amnesty International, 2015 p. 245. Available at: <https://www.amnesty.org/en/documents/poll0/0001/2015/en/>

Public Prosecutor but no ruling on any of them had been made by the end of 2014.⁸

25. This shows that seeking a criminal conviction of one's slave master and obtaining compensation for one's deprivation of liberty, which exists in theory, is not effective in practice. In defining "effective remedy", the Commission emphasized that the remedy should be practical, current, actual, real and valid to be considered as effective remedy.⁹ According to the Commission, the remedy, which exists in theory but not in practice, cannot be considered to be effective. Moreover, as the Council of Europe in its practical guide on admissibility criteria underscored, "*the existence of remedies must be sufficiently certain not only in theory but also in practice.*"¹⁰
26. Dealing on similar issues, the ACERWC, in the *Center for Human Right and other on behalf of Talibes v. Senegal* case, held the view that: '*while it was apparent that penal laws were in existence proscribing the practice of forcing children to beg, Senegal had made little effort to enforce such provisions: as of 2011, only 10 cases had been brought resulting in 9 convictions but with the duration of imprisonment being minimal. In such circumstances, this Committee was of the view that the avenue of pursuing a criminal complaint was inefficient.*'¹¹ Similarly, in the present communication, the Committee concurs with the Complainants submission that 'any remedies that may be available in theory under the 2007 Act, under which there has only been one conviction to date with a sentence not meeting the minimum prescribed by law, are neither effective nor sufficient in practice.'
27. In their submission, the Complainants argued that it is not the obligation of victims but that of the Respondent State's to move criminal process forward. According to the Complainants, victims of human rights violations (where are considered as criminal offences under a State's domestic laws) have little control over the criminal process. In this regard, the ACHPR has consistently ruled that: '*Whenever there is a crime that can be investigated and prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its ultimate conclusion. In such cases, one cannot demand that the complainants or the victims or their family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards.*'¹² Instead, by failing to

⁸ Amnesty International (n 7 above).

⁹ See *Anuak Justice Council v. Ethiopia* (n 4 above).

¹⁰ Council of Europe/European Court of Human Right (2014) Practical Guide on Admissibility Criteria para 72.

¹¹ *Centre for Human Right and other on behalf of Talibes v Senegal* Communication No. Com/001/2012, para 38

¹² African Commission on Human and Peoples' Rights, *Article 19 v Eritrea*, Application No 275/2003, para 72. See also African Commission on Human and Peoples' Rights, *Dr Farouk Mohamed Ibrahim v Sudan*, Communication No.386/10, 19-25 February 2013.

properly investigate a criminal matter of which it has been notified and to move the criminal process forward to its ultimate conclusion within a reasonable time, a State 'forfeit[s] its prerogative to deal with the matter domestically.'¹³

28. In the matter at hand, four years have lapsed since an appeal was lodged by the State Prosecutor against the decision of the Criminal Court of Nouakchott. However, after four years, no decision was given on the file lodged by the prosecutor. This indicates that the Respondent State failed to properly investigate a criminal matter of which it has been notified and to move the criminal process forward to its ultimate conclusion within a reasonable time. Consequently, the Committee believes that the two boys in the present case cannot be expected to assume the task of exhausting domestic criminal remedies but that it is instead for the Respondent State to move the criminal process forward to its ultimate conclusion in a timely manner, which it has failed to do.
29. In the Communication of children of *Nubian descents V Kenya*, the Committee took the view that "the Complainants can be exempted from exhausting local remedies if such an attempt would be or is unduly prolonged, which is an explicitly mentioned exception under Article 56[5] of the African Charter."¹⁴ The Committee further underscored that "an unduly prolonged domestic remedy cannot be considered to fall within the ambit of 'available, effective, and sufficient' local remedy."¹⁵ In the present matter, the Committee has learned that the victims have not caused the delay, and indeed through their lawyer they have repeatedly sought to ensure a hearing of the appeal. The Committee notes that four years have lapsed by the time the Complainants lodged this communication. As it is noted in the Children of Nubian Descendants Communication "a year in the life of a child is almost six percent of his or her childhood... 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."¹⁷ The Committee is of the view that, the delay caused in relation to the present communication is not in the best interest of the child and amounts to undue delay that triggers the exception to the requirement to exhaust any local remedies.
30. Pursuant to Section IX (1) (E) of the Revised Communication Guideline, 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 this requirement is fulfilled since this Communication is brought within a reasonable period of time, after waiting for four years to get remedy from local arena.

¹³ *Article 19 v Eritrea* (n 11 above).

¹⁴ See *IHRDA and other on behalf of children of Nubian descent V Kenya* (n 2 above) para 31.

¹⁵ See *IHRDA and other on behalf of children of Nubian descent V Kenya* (n 2 above) para 32.

v. Decision on Admissibility

31. On the basis of the above arguments and analysis, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the authors has 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

32. The Complainants' allegations are based on the fact that Mauritania has failed to adequately and effectively enforce the 2007 law criminalizing slavery and to ensure that the members of the family who have held the two boys in slavery were charged with offences and received sentences and punishments commensurate to the seriousness of their actions.
33. The Complainants argue that Mauritania has failed to ensure that the appeal against the unduly lenient sentences and the amount of compensation awarded is heard promptly; and has failed to ensure that the absconded slave master is located and brought to justice.
34. The Complainants submit that through its failure to adequately enforce the provisions of the 2007 anti-slavery law in respect of those who held the two boys in slavery, the Government of Mauritania is in breach of its negative and positive obligations in relation to various rights under the Charter. The complainants therefore argue that the Government is necessarily in breach of its duty under article 1 (obligation to take measures) of the Charter.
35. The Applicants submit that the difference in treatment faced by Said and Yarg in respect of their rights amounts to discrimination. In this regard, the Complainants submit that the Respondent State assumes the responsibility of preventing and investigating acts of discrimination, and punishing perpetrators with a view to ensuring redress to the victims. In the same token, the Complainants argue that the treatment of Said and Yarg and the failure of the Government to prevent such treatment and provide effective remedy violated their rights to education, survival and development, leisure, recreation, and cultural activities, protection from economic exploitation, protection against harmful social and cultural practices, and protection from sale, trafficking and abduction of children. The Complainants further argued that the delay in the court proceedings is a violation of the best interest of the child.

The Respondent State's Submission on the Merits

36. The Respondent State submitted that the legislative framework of Mauritania provides a solid basis for the protection of children against

abuse and all forms of exploitation; specific protection measures indicated include act 2003-025 on the Trafficking in Persons and act 2015-031 which strengthened the protection in relation to slavery and slavery-like practices on minors. The Respondent State indicated that in the law of Mauritania no one can be subject to slavery, torture and other cruel, inhuman or degrading treatment or punishment. According to the Respondent State, these practices clearly constitute crimes against humanity and are punishable by the law. It was also the Respondent State's submission that in 2014, the Mauritanian Government, reiterating its commitment towards implementing the recommendations of the Special Rapporteur of the United Nations against contemporary forms of slavery, has adopted a roadmap which outlines a series of concrete measures which are deemed to be taken to address the challenges of slavery and slavery like practices in the Country.

37. The Respondent State further stated that Mauritania is in the process of developing a plan of action against child labor in partnership with the International Labor Organisation to combat the exploitation of children. Among the key activities of this Action Plan was the adoption Act 2015-031 on 10 September 2015, which amended the 2007 Slavery Act, and makes slavery a crime against humanity, imprescriptible and aggravates the penalty. The 2015 Act also established specialized courts, which have been created in each area to support more effectively the claims brought against slavery.
38. The Respondent State also submitted that beyond taking legislative measures, other appropriate measures have been taken to enable the victims of slavery to get civil status, through which Said and his brother Yarg have benefited from ease of enrolment into schools.
39. The Respondent State further informed the ACERWC that the Government of Mauritania undertook the necessary measures to prosecute the El Hussain family without reluctance. The Respondent State argued that the granting of bail to Ahmed Ould Hassine was done after several requests and contrary to opposition by the public prosecutor. On 22 June 2011 and 25 January 2012 Ahmed Ould Hassine requested for bail and was denied because of the seriousness of the alleged offences. After 11 months of detention, bail was granted by the criminal chamber of the Supreme Court despite the constant opposition by the Public Prosecutor owing to the gravity of the offence in question.
40. The Respondent State submitted that, basic education is compulsory and free. Act 2001-054 imposes the schooling of children up to the age of 14 years. Measures are being taken to reduce the disparities in school enrolment in geographic areas where disadvantaged groups exist.
41. The Respondent State evasively denied all the allegations of the violations of the rights of Said and Yarg under the Charter; by submitting that there is no phenomenon of slavery in Mauritania and indicating the due diligence of the Government of Mauritania in responding to the challenges faced by

Said and Yarg by prosecuting El Hassin family and according social protection mechanisms to the children.

vii. Third Party intervention

42. On 7 October 2016, Anti-Slavery International, a London-based INGO that has over 20 years working experience in the Respondent State, applied to be allowed to make third party intervention submissions. The third party intervener submitted that many descendants of slaves in the Respondent State remain in slavery to this day, under the full control of their traditional masters. They are treated as property, and receive no payment for their work. Men primarily herd cattle or work on their masters' farmland, while women are mostly engaged in domestic work, carrying and nursing the master's children and often shepherding animals. Girls and boys start work for their masters a very young age, the domestic duties include fetching water from wells, collecting firewood, cooking washing clothes, cleaning, caring for the children of their master, and setting up and moving tents. It was also submitted that the children of slaves are considered the masters' property and, like other slaves, can be rented out, loaned, given as gifts in marriage or inherited by the masters' children.

43. Anti-Slavery International submitted that the total destitution in which children in Mauritania find themselves leaves them highly vulnerable to further exploitation (including sexual exploitation). Girls in slavery are often subjected to rape and sexual violence, and other men they encounter on leaving slavery may also view them and treat them as sexual property. Additionally, girls may have children themselves, which involves additional economic and care responsibilities and stigma. For those who do find sources of support in the short-term (usually family members who are no longer in slavery, or anti-slavery organizations), the lack of identity documents creates a huge barrier to access State services. In this regard, it was further submitted that to obtain 'civil status', the applicant must provide parents' details, which are often unknown to children who are victims of slavery. As a result, children therefore have difficulty accessing education; they are often years behind other children, so need time to catch up before they can integrate into formal schools, but public schooling beyond the age of 10 is only available to those with identity cards. This perpetuates children's social isolation and disempowerment; it prevents their access to the key opportunity to break the generational cycle of poverty and exploitation.

viii. Issues for investigation by the ACERWC

44. Following the arguments made by all the parties involved in the Communication, the ACERWC has framed the following issues as matters of deliberation and investigation with a view to informing its Decision:

- i. Whether the Respondent State has failed to discharge its obligation, under the principle of the best interest of the child, in

effectively and promptly prosecuting the perpetrators of the individuals involved in the alleged violations of the rights of the two children, Said Ould Salem and Yarg Ould Salem;

- ii. Whether the Respondent State has violated the various rights and obligations as they are prescribed in the African Children's Charter, and as they are related to the two brothers Said Ould Salem and Yarg Ould Salem; the rights and obligations include education, survival and development, leisure, recreation, and cultural activities, protection from economic exploitation, protection against harmful social and cultural practices, and prevention of sale, trafficking and abduction of children; and
- iii. In cases where the Respondent State has not found in compliance with its obligations as they are prescribed in the African Children's Charter, what remedies are the victims entitled for.

ix. The Committee's analysis on the merits of the alleged violations

Alleged violation of article 1 on general measures of implementation

45. Article 1 of the African Children's Charter provides for the obligation of State Parties with respect to the provisions of the Charter. According to Article 1 of the African Children's Charter, State Parties are expected to take legislative and other measures such as administrative or judicial measures to realize the rights of children enumerated under the Charter.
46. As part of the Respondent State's obligation under article 1, the Committee notes that the Government of Mauritania is under legal obligation to take legislative and other measures in protecting children from acts of slavery and its inevitable consequences.
47. The Committee notes that 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. This in turn requires the enactment and continuous review of national legislation and related administrative guidance to ensure their compatibility with relevant international norms and related standards on the rights of the child.

48. It is also the Committee's stance that implementation of the obligation as to 'legislative measure' should be viewed in light of child protection approach. Legislation which underscores the right of children to protection from all forms of abuse, neglect, maltreatment and degradation is a necessary element of the fulfillment of the obligation provided under article 1 of the Charter. The legislations should also contain the entire array of protective measures, which shall include effective procedures for the establishment of special monitoring units to provide 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 in instance of child abuse and neglect.
49. With regard to the obligations of taking 'other measures', the Committee at the outset notes that it is an overarching obligation, which also requires a legislative basis for its implementation. 'Other measures' should therefore not be seen as entirely separate from legislative measures. In this regard, the Committee focuses on administrative and judicial measures that State Parties are obliged to undertake with a view to protect and promote children's rights.
50. The Committee notes that administrative measures are broad as they cover a wide range of actions such as allocating sufficient resource, coordination, and collaboration with other stakeholders. For instance, considering the multi-sectoral nature of children's rights, State Parties should take in to account the fact that it is almost impossible to implement the obligations under the African Children's Charter fully under a single agency. In this regard, the overarching responsibility of governments is therefore to put in place a child rights governance system that ensures the visibility, advancement and realisation of all children's rights across the full implementation processes of all role players. Further, State Parties should also design and implement child sensitive national budgeting by developing and using tools for making children visible in budgetary processes at the national and sub-national levels, including in the context of international cooperation, and in the context of regional economic imperatives.
51. Regarding 'judicial measures' the Committee notes that State Parties should provide for judicially enforceable children's rights with a view to ensuring that children have access to the judicial system, if needs be without parental assistance, to enable them to enforce their rights. The Committee also endorses the need for the establishment of child-friendly procedures as well as appropriate compensation in cases of breach of the rights of children.¹⁶
52. Following the above discussion, the Committee also approaches the implementation of the obligations of State Parties as it is included in article 1 of the Charter in the context of the requirement of 'due diligence'. The Committee notes that while discharging their human rights obligations, States are obliged to show due diligence to ensure the full realization of human rights.¹⁷ States' due diligence is translated in the form of prevention of human rights violations, investigation of violations, prosecution of

¹⁶ UNCRC General Comment no 5 para 24.

¹⁷ *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR) 2006 para 146.

perpetrators, and ensuring punishment of perpetrators.¹⁸ In order to prevent violation of human rights, States must therefore 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.¹⁹ 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.²⁰ 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.²¹ As the Inter American Court of Human Rights alluded, a state is in violation of its duties 'when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention'²² (in this case the African Children's Charter).

53. In the matter at hand, the Committee's decision should hence be based on the assessment of the due diligence of the Respondent State. Put differently, the issue is whether or not the Government of Mauritania acted in due diligence in discharging its obligation towards Said and Yarg in terms of prevention, investigation, prosecution, punishment, and remedy by taking legislative and other measures. This begs the question as to what determines if States have acted in due diligence or not.
54. International human rights jurisprudence including that of the African Commission on Human and Peoples' Rights suggests that human rights obligation of States are that of obligation of result, not obligation of diligence.²³ Therefore, the Committee is of the view that the due diligence of the Respondent State is assessed by the result it has achieved through the legislative and other measures it has taken in relation to the respective issue. Of course, the Respondent State is not always breaching its obligation whenever there is a violation of rights; rather the State is said to be in violation of international duties when it has failed to undertake an objective and government driven investigation towards the violation.²⁴ If a State is found to be in complicity by overlooking or condoning a certain pattern of violence, the State has not shown due diligence to ensure the realization of human rights.²⁵ Moreover, it is the duty of the Respondent State to prove that it has shown due diligence in implementing the laws or redressing the alleged violation. Even though burden of proof lies on the Applicants, jurisprudence suggests that unless the State proves the

¹⁸ *Velasquez Rodriguez v Honduras* July 29, 1988, ICTHR (ser c) No 4/1988 para 166.

¹⁹ *Bousroual V Algeria* Comm No 1588/2007 CCPR/C/99/D/1588/2007 para 11.

²⁰ *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (2001) AHRLR (ACHPR 2001) para 57.

²¹ UNHRC General Comment no 31 para 4.

²² *Velasquez Rodriguez v Honduras* July (n 3 above) para 176.

²³ *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.

²⁴ *Velasquez Rodriguez v Honduras* (n 3 above) 177.

²⁵ *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR) 2006 para 160.

contrary of what has been alleged, the Committee considers the allegation of the Complainants to be true.²⁶

55. The Complainants allege that the Respondent State is in violation of its obligation under article 1 of the African Children's Charter by failing to prevent violation of the rights of Said and Yard through its inaction, and failing to enforce the 2007 Slavery Act to prosecute and punish the former slave masters and mistresses. The Committee notes with appreciation the legislative measures the State Party has adopted including the 2015 Anti-Slavery Act, which criminalizes slavery. Nevertheless, the Respondent State has not indicated the specific measures it has been undertaking to prevent slavery and to free children who are under slavery. The case concerning Said and Yard was brought before the domestic courts after the aunt of the children conveyed an application. The lower court only convicted Ahmed Ould El Hassine for the crime of slavery but left the other family members with impunity. Furthermore, its decision sentenced Ahmed Ould El Hassine to 2 years of imprisonment, which is less than the minimum years of imprisonment provided in the 2007 Slavery Act.
56. The Committee found from its fact-finding mission that the appeal has been considered by the appellate court and a decision in favor of the two victims has been given. Even though the situation of the two children has improved currently, this does not relieve the Respondent State from being accountable for the violation Said and Yard faced during the time of slavery, by lack of appropriate prosecution, and prolonged court proceeding. A change in the status of victims for better does not change the status in relation to the 'accountability of the government in terms of the act of violation committed against human rights'.²⁷
57. Concerning the decision of the lower court and the prolonged appeal, the Respondent State argued that the judiciary has its independence in handling cases and hence other organs may not interfere in proceedings. The Committee views the State apparatus as one entity. All organs of the Government have a duty to respect, protect and fulfill the rights recognized under the Charter. Moreover, States may not invoke their internal Government structures as a justification for their failure to meet their obligations under the Charter. In this regard the Committee shares the view of the UN Human Rights Committee in that "the executive branch that usually represents the State Party internationally... may not point to the fact that an action ... was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility."²⁸
58. As aforementioned, the duty of due diligence is measured by result and requires prevention, investigation, prosecution and punishment. The Committee notes that the Government of Mauritania has taken legislative and other measures to criminalize slavery and prosecute the El Hassin family. However, the measures taken by the Government fall short of preventing the violations of the rights of Said and Yarg, which took place for more than 11 years. The Committee further notes that the investigation

²⁶ *Bousroual V Algeria* (n 4 above) para 9.4.

²⁷ *Law Office of Ghazi Suleiman v Sudan* (2003) AHRLR (ACHPR 2003) para 40.

²⁸ UNHRC General Comment no 31 para 4.

was not State driven as the aunt of the victims took the initiative to bring the case to the attention of the police and the appeal was also initiated by the lawyer of the victims. Moreover, the investigation and court proceeding was unduly prolonged and contrary to the best interest of the child as indicated in the admissibility ruling of this decision. With regards to prosecution and punishment, the Committee finds that the Respondent State has not shown due diligence to prosecute all the perpetrators of the violations, furthermore the one that was prosecuted has been released on bail and the police are not able to locate him. Such failure on the part of the Respondent State reflects ignorance that leaves perpetrators with impunity and does not send a deterring message for other slave masters. Therefore, due to lack of due diligence in preventing the enslavement of Said and Yarg, taking proactive measures to investigate the violation and effectively prosecute and punish all perpetrators, as well as failing to ensure effective remedy to the victims, 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.

Alleged violation of article 3 on non-discrimination

59. Article 3 of the African Children's Charter provides that "Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status." The Complainants alleged that the two brothers were treated differently from other children in their former master's house. They were held as slaves, required to work seven days a week without pay, without rest, were not allowed to attend school and were not afforded time for play. It was further alleged that the discrimination the children has faced resulted in violation of their right to development, education, leisure, their right not to be subjected to child labor as well as their right not to be subjected to inhumane and degrading treatment. The Complainants also stated that while other children in the house were referred to with their names, the two brothers were simply called 'slave'. The Applicants further alleged that the differential treatment to which the two boys were subjected was solely based on the fact that they belonged to the Haratine ethnic group, who are victims of slavery in Mauritania.

60. Moreover, the Committee, from the records of the hearing, learned that Said and Yarg testified that they are subjected to different treatment which amounts to discrimination. Both from the submissions of the Complainants and the testimony of the two brothers, the Committee noted that the two brothers were treated differently than the other children in the household due to their status as slaves.

61. Following the submissions, the Committee deliberated on whether the different treatment that the two brothers have been subjected to amounts to discrimination or not. The Committee shares the view that for a

differential treatment to be justified “the reasons for possible limitations must be founded in a legitimate State interest and limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained”.²⁹ The Committee notes that slavery is clearly prohibited under the national law of Mauritania and various international human rights laws. In the matter at hand the differential treatment that Said and Yarg have been subjected to emanates from the fact that they are considered as slaves of the El Hassin family, and that does not in any way justify the different treatment; hence it amounts to discrimination under the Charter.

62. The Committee then proceeded in analysing the legal responsibility of the Respondent State taking the fact that the act of discrimination was committed by private individuals. It is the Committee’s view that the Respondent State has the duty to protect children from discrimination in the enjoyment of their rights in the Charter. The duty to protect has two limbs. The first is the duty to take preventive measures against occurrences of violations of human rights by private actors; and the second is the duty to take remedial measures once the violations have occurred.³⁰ In line with the preventive aspect of the duty to protect, States ‘must take reasonable steps to prevent human rights violations and carry out investigation to impose the appropriate punishment and to ensure the victim’s adequate compensation’.³¹

63. In the Communication at hand, Said and Yarg were facing discriminatory treatment in the exercise of their rights recognized in the Charter by the members of the El Hassin family for 11 years until they escaped from the house. Even though the Government ratified international treaties and enacted laws that protect children like Yarg and Said from discriminatory treatment, such laws were not effectively implemented to their benefit. The failure by the Government to effectively implement laws and its inability to prevent the discriminatory treatment of Said and Yarg is a violation of the duty to protect under Article 3 of the African Children’s Charter.

64. Moreover, the Committee shares the position that the duty to protect extends to conducting investigation, identifying those responsible for the violation, imposing punishment and providing effective remedy to the victims, when the right is violated.³² The effectiveness of a remedy can be measured by its proportionality to the harm caused and its timeliness. In the Communication at hand, the Government prosecuted only few members of the El Hassin Family and only one of them (Ahmed Ould El Hassine) was convicted for the crime of enslavement that resulted in the discriminatory treatment. However, all the members of the family participated in the discriminatory treatment of the brothers, ended up with impunity. Additionally the judicial remedy was unduly prolonged, placing

²⁹ *Legal resources Foundation v. Zambia*, Communication No. 211/98, para 67.

³⁰ S Manisuli *General International Human Rights Law: Six Decades After the UDHR and Beyond* (2010) 405.

³¹ *Velásquez Rodríguez v Honduras* (n 3 above) para 174.

³² As above.

the victims in a legal limbo. Furthermore, the Government did not provide Said and Yarg with the necessary support to integrate them in to the society to ensure their equal enjoyment of rights under the Charter. Hence, the Committee concludes that the failure of the Government to prevent the discriminatory treatment in the enjoyment of rights recognized under the Charter, as well as the failure to provide effective remedy is a violation of the Respondent State's duty to protect the right to non-discrimination under article 3.

65. The Committee also deliberated on the Applicant's submission regarding Mauritania's breach of its negative obligation to respect, by systematically failing to enforce the 2007 anti-slavery law. The Committee notes that the duty to respect requires states to refrain from interfering with or inhibiting the exercise of a right. In this regard, it is the Committee's view that the Complainants could not provide sufficient evidence which proves that the Respondent State directly interfere in the enjoyment of the rights to non-discrimination of the two brothers. Hence, the Committee is not in a position to pronounce that the Respondent State has breached its duty to respect the right to non-discrimination.

Alleged violation of article 4 on the best interest of the child

66. The best interest of the child, as provided in article 4 of the African Children's Charter, should be the primary consideration in all actions involving and affecting children. The Committee considers the best interest of the child to be one of the general principles which guide the interpretation and implementation of the rights contained in the Charter. The principle of the best interest of the child is applicable in all actions or omissions undertaken by any person including State and non-State actors.³³ In addition, the UN Committee on the Rights of the Child (UNCRC) indicated that the best interest of the child has a procedural content in the sense that the decisions concerning children should be made after assessing the possible implication on the rights and welfare of the child.³⁴ Hence all actions and inactions that concern children must be undertaken only if they are in the best interest of the child.³⁵ The Committee concurs with the UNCRC that the best interest of the child is flexible and adaptable so that it can be applied to the needs of children taking into account their specific circumstances.³⁶

67. In the current Communication, the Complainants alleged that Mauritania has contravened article 4 of the Charter on the best interest of the Child as it failed to implement its anti-slavery law; to bring prompt action against the slave masters of Said and Yarg; to bring charges against all persons involved in the slavery; and to hear the appeal on time.

³³ *The Centre for Human Rights and La Rencontre Africaine Pour La Defense Des Droits De L'homme V Senegal*, ACERWC Communication no. 003/Com/001/2012, 2015 para 35.

³⁴ UNCRC General Comment no 14 para 6(c).

³⁵ As above para 17.

³⁶ As above para 32.

68. In assessing the best interest of Said and Yarg, the Committee pays due regard to factors such as their identity, protection of their rights, and vulnerability as suggested by the UNCRC.³⁷ Said and Yarg are born to a slave mother which automatically placed them in the situation of slavery or slavery like practices. This puts the two children in a vulnerable situation requiring the Respondent State to take special measures of protection. In the present Communication, the Respondent State has taken legislative measures to address the scourge of slavery and slavery like practices, however, it has not taken sufficient administrative measures to prevent slavery or slavery like practices and protect the rights of children affected by slavery or slavery like practices. This is further accompanied by lack of prosecution of all persons who involved in the servitude of Said and Yarg, lenient sentence against the slave master, and a prolonged appeal procedure, which has left Said and Yard with no compensation.

69. The failure of the Respondent State to duly investigate and prosecute all perpetrators of slavery or slavery like practices, and the decision of the lower courts which opted for a lower sentence than the minimum sentence prescribed in the 2007 Slavery Act does not serve the best interest of Said and Yarg as well as other children who are in the situation of slavery or slavery like practices. Moreover, a prolonged decision even if it favors the victims could lead to a violation of substantive rights.³⁸ Ensuring the best interest of the child necessitates that procedural safeguards must be established including prioritizing children's issues and completing decisions in the shortest time possible.³⁹ It follows from this that the failure of the Appellate Court to hear the appeal timely is also not in the best interest of the child.

70. Therefore, the Committee finds that the Respondent State is in violation of article 4 of the African Children's Charter by failing to prioritize the best interest of Said and Yard in the investigation and prosecution of their slave masters as well as in the prolonged appeal.

Alleged violation of article 5 on survival and development

71. The African Children's Charter provides that States Parties shall ensure, to the maximum extent possible, the survival, protection and development of the child. The right to survival and development encompasses all aspects of the development of the child as the physical and psychological wellbeing of the child are interrelated. The right to survival and development can only be realized through the implementation of all of the rights under the Charter including the right to health, education, protection from abuse and torture and child labor. In this regard, the Committee share the view of the UNCRC as it is stated in its General Comment that the physical health and physiological wellbeing of the child that are critical for the child's development, "may be put at risk by adverse living

³⁷ As above para 55, 71, 75.

³⁸ *Mazou v Cameroon* (2001) AHRLR 8 (HRC 2001) para 8.4.

³⁹ UNCRC General Comment no 14 para 93.

conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential.”⁴⁰

72. The Committee notes the crucial link between child labor and child development. Child labor, in all its forms⁴¹, severely impedes the overall development and wellbeing of a child. In the Communication at hand, Said and Yarg have been subjected to one of the worst forms of child labor, which is modern slavery or slavery like practices. They were treated as properties of the El Hassine family and were required to work long hours without pay, suffering physical and physiological abuse and deprived of education and recreation. It is the Committee's view that the situation they were in severely limited their physical and psychological development and deprived them of their childhood.
73. In this regard, the Committee has deliberated on what would be the duty of the Respondent State in ensuring that the rights to survival and development of the two children are upheld. The Committee notes that the Respondent State has a duty to protect the survival and development of the child from encroachment by third parties. The duty to protect this right requires the Respondent State to ensure that the survival and development of the child by ensuring, inter alia, the right to education, health, nutrition, leisure and recreation are realized. The Respondent State has to also ensure that the child is protected from any form of abuse, violence and torture. Said and Yarg were in a situation that severely hindered their development throughout their childhood. The failure of the Respondent State to prevent this and to prosecute and punish all those involved in the enslavement of the children as well as to provide timely and adequate remedy to the children is contrary to the obligation of the Government of Mauritania under the Charter. Therefore, the Committee finds that the Respondent State has failed to holistically realize the rights under the Charter to ensure the survival and development of the Said and Yarg, thereby violating its duty under article 5(2) of the African Children's Charter.

Alleged violation of article 11 on the right to education

74. State Parties' obligation with respect to the right to education entails, among other things, the provision of free and compulsory basic education and undertaking special measures to ensure that disadvantaged children have equal access to education.⁴² The compulsory aspect of education calls upon States to take positive measures to ensure that all children are enrolled in school. The UN Committee on Economic, Social, and Cultural Rights expounded that the right to education entails elements of

⁴⁰ UNCRC General Comment 7 para 10.

⁴¹ ILO Convention 182 article 3 and ILO Convention 190 article 3. According to ILO 182 all forms of slavery and practices similar to slavery are as classified as worst forms of child labor to be eliminated without delay. Other forms of child labor in this category include the sale and trafficking of children, debt bondage and serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict, the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

⁴² ACRWC article 11(3)(a)&(e).

availability, accessibility, acceptability, and adaptability⁴³ The same Committee further specified that the obligation of States to ensure that the right to education is exercised without any discrimination is an immediate obligation and hence States need to take 'deliberate, concrete, and targeted' action to ensure the same.⁴⁴ Particularly, in events where the right holders are not in a position to enjoy the right to education by their own means, States are expected to take positive measures to provide for and fulfill the right to education.⁴⁵ Deprivation of access to education through exclusion is considered to be discrimination in education.⁴⁶ This does not change even when the exclusion is caused by private non-state actors. The right to education, as all other human rights, levies an obligation to respect, protect, promote and fulfill.⁴⁷ The duty of States' to protect the right to education includes the obligation to prevent and redress the exclusion of children from education caused by third parties.

75. The facts in the current Communication clearly demonstrate that Said and Yarg were not enrolled in school during the 11 years of slavery. Neither the Government of the Respondent State nor the El Hassine family took any step to enroll the two children in school. The Respondent State failed to employ the required effort to take special measures with a view to assisting Said and Yarg to attend school during their stay in the El Hassine family or even after they were freed. It took Said and Yarg 4 years after their freedom to be enrolled in school. The Committee further notes from the Complainants' submission that both children are currently attending private school as they were not able to attend public schools due to lack of identity documents. The Respondent State has also failed to appropriately and sufficiently redress the violence that was inflicted by the El Hassine family. The Committee therefore reaches on a conclusion that the Respondent State failed to ensure compulsory education for Said and Yarg, failed to take special measures to assist their vulnerability, and failed to protect their right to education from being violated by private parties. Accordingly, the Committee finds Government of Mauritania in violation of its obligations under article 11 of the African Children's Charter.

Alleged violation of article 12 on leisure, recreation and cultural activities

76. The Committee notes that the role of leisure, recreation and cultural activities in the overall wellbeing of the child should not be underestimated. Considering its importance, article 12 of the African Children's Charter recognizes the right of the child to rest and leisure, engage in play and recreational activities and participate in cultural activities. In this regard,

⁴³ Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13: The Right to Education, 1999, para 6.

⁴⁴ As above para 43.

⁴⁵ As above para 47.

⁴⁶ UNESCO Convention Against Discrimination in Education article 1.

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13: The Right to Education, 1999, para 46.

the Committee joins the view of the UNCRC as it is pronounced in its General Comment. The UNCRC states that play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills⁴⁸ Furthermore, the UNCRC states that ensuring such rights “contribute to all aspects of learning; they are a form of participation in everyday life and are of intrinsic value to the child, purely in terms of the enjoyment and pleasure they afford... Participation in cultural and artistic activities are necessary for building children’s understanding, not only of their own culture, but other cultures, as it provides opportunities to broaden their horizons and learn from other cultural and artistic traditions, thus contributing towards mutual understanding and appreciation of diversity... Rest and leisure are as important to children’s development as the basics of nutrition, housing, health care and education. Without sufficient rest, children will lack the energy, motivation and physical and mental capacity for meaningful participation or learning.”⁴⁹

77. In the Communication at hand, the Applicants submitted that Said and Yarg were not allowed to play and rest adequately or pray. It was therefore argued that the treatment of the boys amounts to the denial of their right to leisure, recreation and cultural activities and this is a breach of the positive obligation of the Respondent State to protect children’s right. The Complainants further argue that the Respondent State has failed in its duty to protect this right by not adequately investigating and punishing those responsible for violating their rights.

78. Deliberating on the submissions, the Committee notes that the Respondent State is required to take the necessary measures to ensure that third parties do not interfere with the enjoyment of the right to leisure, recreation and cultural activities by children. The Committee learns that Said and Yarg were required to engage in domestic work all 7 days of the week without rest. From the testimony of the children during the hearing, the Committee also observed that the children used to be obliged to leave the house of the slave masters 4 O’clock in the morning every day to look after the camel herd and return to the house in the evening to prepare food before they go to bed. This has been the daily routine for the boys. Consequently, for eleven years Said and Yarg were denied of their right to play, rest and participate in cultural activities. This, according to the Committee clearly amounts to a denial of their childhood. The Committee therefore concludes that the Respondent State has violated its duty under article 12 of the Charter by failing to ensure that Said and Yarg are enjoying their right to leisure, recreation and cultural activities, contrary to what is prescribed under article 12 of the African Children’s Charter.

⁴⁸ UNCRC General Comment 17 p2.

⁴⁹ As above.

Alleged violation of article 15 on child labour

79. State Parties to the African Children's Charter are obliged to take all the necessary measures to ensure that children are protected from all forms of economic exploitation and from performing hazardous works or works that affect their physical, mental, spiritual, moral or social development both in the formal and informal sectors.⁵⁰ The Committee also shares the view that all forms of slavery and slavery like practices are considered to be worst forms of child labour pursuant to ILO Convention No 182.⁵¹

80. In the Communication at hand, the Committee notes that Said and Yarg have been placed in the El Hassine family to undertake herding and domestic chores seven days a week with no rest for the exploitation of their labour, which in accordance with the Committee amounts to contemporary form of slavery or slavery like practices.⁵² The Committee stresses that the prohibition of slavery and slavery like practices has attained the status of customary international law and *jus cogens* norms.⁵³ The International Court of Justice has further established that States' obligation to prohibit and eliminate slavery is an *erga omnes* obligation.⁵⁴ It therefore follows that States are not allowed to derogate from their obligation to prohibit slavery in any circumstances, and moreover, no justification is acceptable for the failure of States to prohibit slavery or slavery like practices.

81. It is the Committee's view that exploitative slavery practices against children impair their survival and development physically, intellectually, socially, spiritually, and morally. Furthermore, the Committee gives due regard to the interrelatedness and interdependence of children's rights in considering the violation of article 15 of the Charter. The servitude of Said and Yarg in and by itself is a violation of article 15 of the African Children's Charter and also it leads to other violations of the numerous provisions of the Charter such as the right to birth registration, access to health care and other basic services, family environment and so forth. Additionally, slavery or slavery like practices lead to violation of fundamental freedoms, right to movement, access to fair trial, and subject children to inhuman and degrading treatment.⁵⁵

82. Given the legal status of the prohibition of slavery or slavery like practices and its long lasting impact on the rights and welfare of children, the Government of Mauritania is expected to take concrete and practical steps to prevent and abolish all slavery like practices that persist in its territory. Article 15 of the African Charter provides that children should be protected from economic exploitation and performing work that is hazardous to their

⁵⁰ ACRWC article 15(1)(2).

⁵¹ ILO Worst Forms of Child Labour Convention 1999 (No. 182).

⁵² *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery article 1(d)*.

⁵³ Yearbook of the International Law Commission 1963, vol. II, United Nations sales publication No. 63.V.2, pp. 198-199.

⁵⁴ *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.

development. It further spells out 4 explicit measures States ought to take to protect children from child exploitation, which includes slavery and slavery like practices as discussed above. The measures are to;

- A) provide through legislation, minimum age for admission to every employment;
- B) provide for appropriate regulation of hours and conditions of employment;
- C) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article (article 15); and
- D) promote the dissemination of information on the hazards of child labour to all sectors of the community.

83. It is of course noted that the Government of Mauritania has prohibited slavery by enacting the 2007 Slavery Act and later on an Anti-Slavery Act in 2015. While the Committee appreciates this as one step ahead towards the prohibition of slavery, more effort is required to practically eliminate slavery and slavery like practices as outlined under article 15 of the Charter.

84. In this regard, the Committee finds that the adoption of legislative measures is not a sufficient effort and that the Respondent State has failed to take other necessary measures to implement all components of article 15 of the Charter to free Said and Yarg, to ensure that their slave masters are appropriately penalized, and to ensure that Said and Yarg get a proper compensation. Therefore, the Committee decides that the Respondent State is in violation of its obligations under Article 15 (1) and 15(2)(c) of the Charter by failing to protect Said and Yarg from slavery or slavery like practices and by failing to ensure effective enforcement of prohibition of slavery or slavery like practices.

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

85. Abuse and torture are among the practices strictly prohibited in the child protection systems. The African Children's Charter, under Article 16, stipulates that State Parties shall take measures to protect children from all forms of torture, inhumane and degrading treatment and especially physical and mental injury or abuse, neglect and maltreatment, including sexual abuse. In this regard, State parties should take specific legislative, administrative, social and educational measures to protect the child from abuse and torture. The measures taken by States must include preventive measures as well as intervention and prosecution in instances where child abuse and torture are taking place. The provision further provides that protective measures should include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have care of the child as well as other forms of prevention. The Charter also provides for identification, reporting, referral, investigation, treatment and follow-up of instances of child abuse and neglect.

⁵⁵ OHCHR *Abolishing Slavery and its Contemporary Forms* HR/PUB/02/4 (2002) p 8.

86. The Committee notes that abuse and torture can be both physical and physiological. As stated by the UNCRC, violence against children takes various forms including, neglect, mental violence, physical violence and corporal punishment.⁵⁶ In the case of *International Pen and Others v Nigeria*, the African Commission stated that inhumane and degrading treatment includes 'not only actions which cause serious physical and psychological suffering but which humiliate the individual or force him to act against his will or conscience.'⁵⁷
87. The Committee reiterates that the condition under which Said and Yarg lived for more than 11 years amounts to contemporary slavery or slave like practices as they have been placed in the El Hassine family to undertake herding and domestic chores seven days a week with no rest for the exploitation of their labour.⁵⁸ During this time they were subjected to continuous beatings and mental abuse. They were referred to as slaves as opposed to their actual names and they were not allowed to pray or read the Quran. They were treated differently than other children in the house in every aspect of their lives, including health, education, play and nutrition. The Committee considers this treatment inflicted on them is degrading.
88. The wording of the African Children's Charter is clear in providing that States should take various measures 'to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse...'. Furthermore, the Committee is of the view that all forms of corporal punishment should be abolished, either in the home or any other setting. Contrary to this protection, the Respondent State failed in protecting Said and Yarg from physical and mental injury and abuse that was inflicted upon them and from the degrading treatment that they were subjected to. In addition to failing to prevent such an abuse on the children, the Respondent state has also failed to intervene and stop the violation. Furthermore, the Respondent State has failed to prosecute all those involved in the abuse of the children and render adequate and timely remedies to the children. By failing to prevent, intervene in and adequately prosecute and remedy the physical and mental abuse inflicted on Said and Yarg for 11 years, the Committee concludes that the Respondent State has violated its obligation to protect under article 16 of the Charter.

Alleged violation of article 21 on protection against harmful social and cultural practices

89. Article 21 of the African Children's Charter obliges State Parties to take appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child. State Parties are particularly obliged to eliminate customs and practices prejudicial to the health or life of the child and practices discriminatory to the child on the ground of sex or other status.

⁵⁶ UNCRC General Comment 13 para 19-24.

⁵⁷ *International Pen and Others (on behalf of Saro Wiwa) v Nigeria* (2000) para 79.

⁵⁸ *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery article 1(d)*.

90. As cited in its decision in the Nubian case, the African Committee reiterates that according to the Committee on the Rights of the Child and the Committee on the Elimination of all forms of Discrimination Against Women, a harmful practice should, among other things, 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.⁵⁹
91. As mentioned above child labor negatively affects the welfare, growth, and development of the child. As one of the worst forms of child labor, slavery impedes the overall wellbeing of the child. It is a practice that constitutes a total denial of the dignity and worth of the child. State Parties are under an obligation to take legislative, administrative and any other measure to eliminate harmful practices affecting the welfare, dignity, normal growth and development of the child; this includes eliminating slavery or slavery like practices in all its forms. The obligation of the Respondent State, in this regard, is therefore not that of conduct but of result.
92. The treatment of Said and Yarg affected their welfare, dignity, normal growth and development; it was prejudicial to their health and it was discriminatory. The Committee notes that this is not an isolated incident in Mauritania. In its fact-finding mission in Mauritania, the Committee has observed that the practice of slavery is widespread throughout the country with certain degree of variation. Even though the Respondent State has indicated the measures taken with regards to eliminating slavery in Mauritania, it was not sufficiently implemented to eliminate the practice and prevent the victimization of Said and Yarg. The two brothers were enslaved for 11 years without any intervention by the State; their eventual escape from slavery was through their own effort. The Committee hence finds that the failure of the Respondent State to eliminate the practice of slavery and the failure to protect Said and Yarg from this harmful practice is a violation of article 21 of the Charter.

Alleged violation of article 29 on Sale trafficking and abduction

93. Under Article 29 of the Charter, State Parties are obliged to take appropriate measures to prevent the abduction, the sale of, or the trafficking of children for any purpose or in any form by any person including parent and legal guardians. State Parties are further obliged to take appropriate measures to prevent the use of children in all forms of begging.
94. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children defines trafficking in persons as 'the recruitment, transportation, transfer, harboring 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

⁵⁹ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices November 2014 para 15.

the consent of a person having control over another person, for the purpose of exploitation...'⁶⁰

95. The Complainants in the current Communication submitted that trafficking is recognized as one form of slavery or slavery like practice, and that international human rights law standards applicable to Mauritania prohibit slavery in all its modern and traditional forms, of which trafficking is a particular example. The Complainants further argued that the provisions of article 29 of the Charter should be interpreted to include all forms of traditional and modern slavery or slavery like practices. By expanding article 29, the Complainants alleged that, it puts the Respondent state under an obligation to take appropriate measures to prevent slavery and similar practices. It can be concluded that the argument of the Complainants under this provision invokes sale, trafficking and abduction in as far as they relate to slavery and practices similar to slavery.

96. However, the Committee notes that the issue of slavery for the purpose of this case has been adequately dealt with under the provision of the Charter that prohibits child labor. Article 15 is interpreted to include worst forms of child labor, which includes slavery in all its forms. It is the Committee's view that the Complainants failed to establish the relevance of the provision on sale, trafficking and abduction to the facts of the case. Hence, the Committee concludes that no sufficient legal and factual grounds have been established by the Complainants which put the Respondent State in violation of its obligation under article 29 of the Charter.

x. Decision of the Committee

97. For the aforementioned reasons the African Committee finds the Respondent State in violation of its obligations under article 1 (obligation of states parties), article 3 (non-discrimination), article 4 (best interests of the child), article 5 (survival and development), article 11 (education) article 12 (leisure, recreation and cultural activities), article 15 (child labour), article 16 (protection against child abuse and torture) and article 21 (protection against harmful social and cultural practices).

98. The African Committee of Experts on the Rights and Welfare of the Child therefore recommends for the Government of Mauritania to:

A) Ensure that all members of the El Hassin family are prosecuted for the enslavement of Said and Yarg and the violation of their rights to equality, survival and development, education, leisure, recreation and cultural activities, protection against child abuse and torture, and protection against child labor, and ensure that they receive sentences commensurate to the crimes committed pursuant to the laws of Mauritania;

B) Take measures to ensure that Said and Yarg obtain all the necessary documents including birth registration certificate and

⁶⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) art 3(a).

identity cards; this measure should further be extended to all children who find themselves in slavery or slavery like practices;

- C) Ensure that they enjoy their right to education particularly by facilitating their enrolment in public schools within the shortest possible time;
- D) Take special measures to support Said and Yarg in their education in order to accelerate their learning and development;
- E) Provide psychosocial support to Said and Yarg in order to properly rehabilitate them from the physical and mental abuse they suffered, and reintegrate them in the society and to minimize to the maximum extent possible the negative psychological impact of their enslavement for 11 years;
- F) Ensure that all involved in the servitude of Said and Yarg are prosecuted and that the conviction of the slave masters meets at least the minimum years of imprisonment prescribed in the Slavery Act;
- G) Provide Said and Yarg with adequate compensation that is commensurate with the 11 years of slavery or slavery like practice they endured and all the above-mentioned violations of their rights;
- H) Ensure the effective implementation of the 2015 anti-slavery law by ensuring the prosecution of perpetrators of slavery and slavery like practices; and other national strategies aiming at the elimination of slavery and slavery like practices;
- I) Give due regard to the issue of slavery or slavery like practices and make the elimination of the same one of its priorities in issuing policies, allocating budget, and training human resources;
- J) Undertake baseline survey to know the number children in slavery or slavery like practices and identify their situation to inform State intervention in the elimination of the practice as well as prosecution of perpetrators;
- K) Take special measures to takeout children from slavery and slavery like practices and ensure that all children in such situations receive psychosocial, educational, as well as all forms of support needed to ascertain that they enjoy their rights as enshrined in the Charter;
- L) Ensure that all the Government organs work in collaboration in issues involving slavery or slavery like practices and to this end give training to law makers, police, prosecutors, judges on the seriousness of slavery and the measure they should be taking to protect children from the scourge of modern slavery;

- M) Undertake an accelerated campaign and sensitization to create awareness on the negative impacts of slavery or slavery like practices and its prohibition under national and international law to fast-track the elimination of slavery or slavery like practices in Mauritania within the shortest possible time;
- N) Closely work with and support civil society and other stakeholders working in the eradication of slavery or slavery like practices in all its forms; and
- O) Design child friendly mechanisms for reporting of instances of any form child abuse in the domestic setting and intervention means.

As per Section XXI (1) of the Revised Communication Guidelines of the Committee, the Government of Mauritania 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 30th Ordinary Session held in Khartoum, Sudan on 15
December 2017**



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