



AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

DECISION 002/COM/002/09 IHRDA & OSJI (ON BEHALF OF CHILDREN OF NUBIAN DESCENT IN KENYA) V KENYA

In its first ever decision, 002/Com/002/09 IHRDA and OSJI (on behalf of children of Nubian descent in Kenya) v Kenya, the African Committee of Experts on the Rights and Welfare of the Child has found Kenya to have violated the rights of Nubian children to non-discrimination, nationality and protection against statelessness.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is the only child rights treaty monitoring body with the mandate to hear and determine cases of violations of children's rights in the world. This pamphlet summarises its first decision taken under this mandate. The ACERWC monitors the African Union's child rights treaty, the African Charter on the Rights and Welfare of the Child, which itself celebrates in 2011, 21 years of existence.

Nubian children in Kenya are systematically denied Kenyan nationality, a practise that constitutes discrimination, prohibited by Article 3 of the African Charter on the Rights and Welfare of the Child (the Charter) and a violation of their right to a nationality at birth as guaranteed by Article 6 (3). It also represented the State's failure to fulfil its obligation to avoid the statelessness of children under Article 6 (4).

This practice of denying nationality also contravenes Kenya's Children's Act which provides that "Every child has a right to a name and nationality. Where a child is deprived of his identity, the Government shall provide assistance and protection with a view to establishing his or her identity".

The failure to recognise nationality also means that the government does

"The Committee wishes to emphasise that national solidarity and African unity are best achieved in an environment which eschews discrimination and denial of rights."
para. 68

not recognise Nubian property rights and treats them as squatters on their own land and fails to provide adequate public utilities such as water in Kibera, which houses a large population of Nubians.

Furthermore, it fails to provide equal access to education and healthcare, condemning Nubian children to a life of poverty. All housing in Kibera is, technically "temporary" and residents are not permitted to extend or even repair their houses.

Many Nubian parents have difficulty registering the birth of their children as public hospital officials refuse to issue birth certificates to Nubian children a problem worsened by the Nubian parents own lack of ID cards as a result of the same practise in their childhood.

Nubian children grow up knowing that they may not have equal access to employment, to the right to vote and work in the formal sector, and may not be able to travel abroad.

"The implications of the multi-generational impact of the denial of right of nationality are manifest and of far wider effect than may at first blush appear in the case. Systemic under-development of an entire community has been alleged to be the result."

para. 68

Decision of the ACERWC

The African Committee has found “multiple violations” by Kenya, of the following provisions of the African Charter on the Rights and Welfare of the Child (ACRWC):

Articles 6(2) “Every child shall be registered immediately after birth.”

Article 6(3) “Every child has the right to acquire a nationality.”

Article 6(4) “State Parties to the present Charter shall undertake to ensure that their constitutional legislation recognise the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth he is not granted nationality by any other State in accordance with its laws.”

Article 3 “Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”

Article 14(2)(b), (c), (g) “State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

(b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(g) to integrate basic health service programmes in national development plans;

Article 11(3) “State Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right [to education] and shall in particular:

(a) provide free and compulsory basic education:

(b) encourage the development of secondary education in its different forms and progressively make it free and accessible to all;

(c) make higher education accessible to all on the basis of capacity and ability by every appropriate means;

(d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;

(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.”

Recommendations of the ACERWC

The Committee has made the following recommendations to redress the violations:

That Kenya take all necessary legislative, administrative, and other measures to ensure that children of Nubian descent in Kenya that are stateless, acquire Kenyan nationality and the proof of such a nationality at birth.

That Kenya take measures to ensure that existing children of Nubian descent whose Kenyan nationality is not recognised are systematically afforded the benefit of these new measures as a matter of priority;

That Kenya implement its birth registration system in a non-discriminatory manner and take all necessary legislative, administrative and other measures to ensure that children of Nubian descent are registered immediately after birth;

“... in addressing the consequences of the non-recognition of the nationality of children of Nubian descent, actions which address the long-term effects of past practice must be formulated. [...] such measures must be formulated with the participation of the impacted community.”

para. 68

That Kenya to adopt a short, medium and long term plan, including legislative, administrative and other measures to ensure the fulfilment of the right to the highest attainable standard of health and of the right to education, preferably in consultation with the affected beneficiary communities;

That Kenya report on the implementation of these recommendations within six months from the date of notification of this decision.

The Committee also decided to appoint one of its members to follow up on the implementation of the decision.

This historical decision, the first one ever by the Committee, makes it the first time that a State has been found in violation of children’s rights treaty by an international body. The Committee is the only child rights treaty monitoring body with the power to determine cases.



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