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African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

Communication 731/19

Dorah Namasiku Likukela

v

The Republic of Zambia

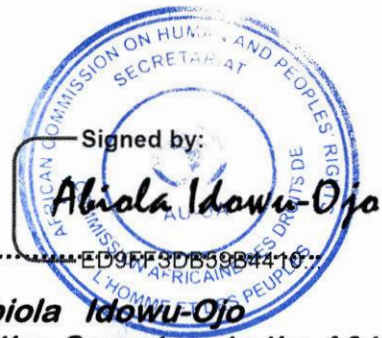
Adopted by the:

African Commission on Human and Peoples' Rights

During the 73rd Ordinary Session, held in Banjul, from 20 October to 09 November 2024.



Hon. Commissioner Remy Ngoy Lumbu
Chairperson to the African Commission
on Human and Peoples' Rights



Signed by:

Abiola Idowu-Ojo

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Ms. Abiola Idowu-Ojo
Executive Secretary to the African
Commission on Human and Peoples' Rights



DECISION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS ON ADMISSIBILITY

Communication 731/19: Dorah Namasiku Likukela v The Republic of Zambia

SUMMARY OF THE COMPLAINT

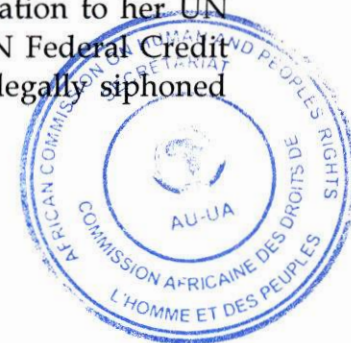
1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 10 August 2019 from Dorah Namasiku Likukela (the Complainant) against the Republic of Zambia¹ (Respondent State), and the United States of America (USA). The Republic of Zambia became party to the African Charter on Human and Peoples' Rights (the African Charter) on 10 January 1987.
2. The Complainant, a citizen of the Republic of Zambia, avers that she has been subjected to harassment and discrimination as well as attempted assassinations in 2016 and 2018 because of her previous work investigating fraud and corruption in Zambia, as well as on the basis of her gender, education and working for the United Nations (UN). She submits that her daughter and husband had been killed by poisoning in 2007 and 2008 respectively, by agents of the Zambia Police Service and Intelligence, whom she names in the Complaint. The Complainant states that the suspects include the Chairman of the Task Force on Corruption (TFC) and her former subordinates at the TFC and Zambia Police Service Anti-Fraud Unit (AFU).
3. The Complainant further avers that her two (2) sons were "forced out of school due to the attempted kidnappings and assassination attempts," and have not attended university and school since 2015 and 2016 respectively. She submits that she and her sons suffer emotional and physical torture as they are presently confined to the house and are subjected to starvation and threats to their lives if they do not leave the country. She submits that when they leave the house they are harassed and attacked by unknown persons and that both her sons have suffered mental breakdowns.
4. The Complainant states that the harassment was started by former colleagues of her late husband and herself at the Zambia Police Service and Zambian Army, whom she names in the Complaint, in 1995/96. She states that because of envy of her progressing with a master's degree in the United Kingdom (UK) in 2001 to 2002, there was a conspiracy to kill her. She however submits that she was tipped off

¹ Zambia ratified the African Charter on Human and Peoples' Rights on 10 January 1984.



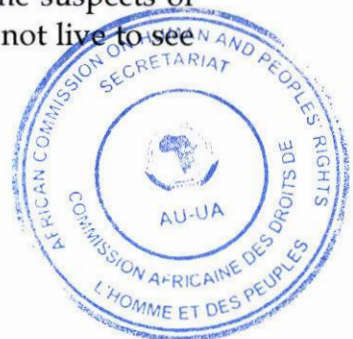
about the intended kidnapping and murder and sought asylum in the UK, where she remained until 2005.

5. The Complainant states that after her return to Zambia, in May 2005 the Inspector General of Police recommended that she be paid all her held salaries and rental refund and be elevated to the appropriate rank, which was denied by the Director of Legal and Professional Standards. She alleges that she received a job offer from the International Criminal Tribunal for the former Yugoslavia (ICTY), on condition that she be seconded by the Zambia Police, but the Chief of Administration declined the request and the offer was withdrawn. She submits that there were also continual sexual advances from the Director of Legal and Professional Standards, which she refused. The Complainant avers that her benefits from the time when she worked for the Zambia Police, including pension, leave days, repatriation grant and rental refunds have been deliberately withheld by the Attorney General and the Zambia Police Command.
6. The Complainant submits that in 2007 she was given a UN job offer in Sudan, and that her former colleagues in the Zambia Police Service were envious when she presented her application for leave to take up the UN job pending her early retirement on 30 August 2008. She avers that these colleagues conspired to obstruct her from joining the UN, as they had never held such positions. She submits that these colleagues tried to force her to resign her job, which she reported to the Permanent Secretary at the Cabinet office, who allowed her leave of absence pending early retirement, on condition that she continues to help the TFC to process cases during her leave.
7. The Complainant submits that while she was in Sudan, her daughter fell ill, and died on 11 May 2007. The Complainant states that she was denied a post-mortem by the Commissioner of Police, who according to the Complainant informed her that she had committed an "indiscipline act" by joining the UN, leaving men uneducated and without such jobs. She submits that she was informed by one Elizabeth Mulale Mbewe, a former colleague from the AFU, that the Complainant herself had been the target of the assassination, and that the aim was to make her daughter ill so that she would return from Sudan. She submits that she reported the murder to Woodlands Police Station on 12 May 2007, but that the investigation had been frustrated and was not concluded.
8. The Complainant submits that in May 2008 she was reassigned to the United Nations Mission in Timor-Leste (UNMIT). The Complainant avers that three (3) United Nations staff members (UN employees) who are Zambian citizens and named in the Complaint, conspired and committed fraud in relation to her UN Benefit entitlements. She submits that in September 2013 her UN Federal Credit Union (UNFCU) accounts were blocked and US \$200 000 was illegally siphoned



from her accounts, from money that had been paid to her as UN benefit entitlements upon completion of her assignment with UNMIT. She submits that she was informed that it was because she had been paid US \$587 000 in error.

9. The Complainant states that the UN employees thereafter through fraudulent suits, the first of which was **2014/HPC/0057**, arranged through a judge that they were related to, to extort money and belongings from her. She submits that when she sued them for the illegal seizures and for return of her property title deed, payment of her police benefits and lost job opportunities in July 2015, they illegally removed her suit from the cause list and continued harassing her with assassination attempts. The Complainant states that the UN employees since 2014 when she returned from her UN assignment have been trying to steal her house by having her evicted. She states that they, with the assistance of a company called Brafuss Limited, committed manipulation and fraud to illegally dispossess her of her property deed.
10. She submits that vexatious suits were instituted against her and that the judges of the High Court of Zambia and the Commercial Court have been induced into extorting substantial amounts of money from her.
11. The Complainant submits that on 19 May 2016 her car was stolen as well as household goods which cost her US \$17 000 to buy and ship from East Timor. She states that on 8 July 2016 she was "bashed" with a car and on the same day she tried to flee to Zimbabwe, but was captured and detained at two Church Refuge Homes for a total period of eight (8) months, during which she was poisoned, until she fled back home on 30 March 2017. She submits that she was again poisoned on 16 March 2018 and on 1 January 2019.
12. The Complainant avers that she and her children have been dispossessed of all their belongings, including three (3) cars and four (4) plots and now she is under threat of being evicted from her house. She submits that she requires medical assessment and treatment as a result of what she believes is cancer caused by the poisoning attacks, but that she would be at risk of being killed in Zambian hospitals. She therefore submits that she and her children need urgent relocation from Zambia.
13. The Complainant submits that she has exhausted all internal judicial avenues, including petitioning the Zambian Constitutional Court on 18 September 2018, but the appeal was dismissed on 22 February 2019. She submits that the decision for dismissal was procured by fraud.
14. She states that in August 2019, Advocate Willis Muhanga, whom she suspects of having intercepted her correspondences, threatened that she would not live to see the end of the Complaint before the Commission.

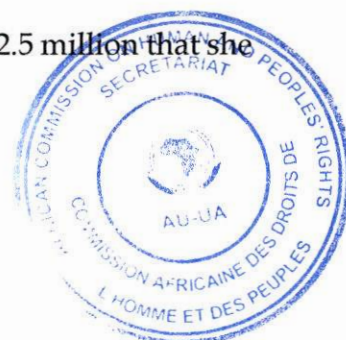


ARTICLES ALLEGED TO HAVE BEEN VIOLATED

15. The Complainant submits that the Respondent State has violated Articles 1 to 19 and 21 of the African Charter on Human and Peoples' Rights.
16. In addition, the Complainant submits that Articles 97 to 105 of the Charter of the United Nations (UN), Articles 1 to 18, 22 to 26 and 28 to 30 of the UN Declaration of Human Rights, Sections 1, 2, 3, 29 and 30 of the Convention of Privileges and Immunities of the UN and Sections 3 to 6 of the UN Convention on Persons with Disabilities have been violated.

PRAYERS

17. The Complainant requests the African Commission on Human and Peoples' Rights (the African Commission) to:
 - a. Grant an order for complete restoration, reparations and restitution for all rights infringements, including those of her murdered daughter, the inquest into the deaths of her daughter and late husband, for all the loss, ruin, emotional anguish, as well as her evacuation outside Zambia for specialist medical evaluation and treatment and return of her belongings;
 - b. Relocate and resettle her elsewhere as a stateless person where she and her children can start a new life, including return of her children to school and herself to deployment within the UN, pending acknowledgement and provision by Zambia of the reparations and guarantees of cessation of the attacks, harassment and persecution;
 - c. Request that the decision of the Constitutional Court to dismiss her petition be reviewed and declared null and void;
 - d. Declare that all suits in causes **2014/HPC/0057; 2014/SCCL/1250; 2015/HP/0735; 2015/HP/1825** and **2016/HP/0415** are the product of the fraud, racketeering and money laundering activities in relation to the Complainant's UN benefit entitlements, and that the proceedings were biased, unprocedural and as such all such rulings, orders and judgements should be declared null and void;
 - e. Declare that the Claimants under the causes in (d) cannot scavenge US \$587 000 from the money that the Complainant had earned at the UN as part of such money was commingled with the rest of her projects, and that while it is not the responsibility of the Claimants to correct the purported mistaken payment, if any, and that they have after four years failed to prove such a claim and instead illegally deprived the Complainant of her belongings under false pretext;
 - f. Order the Claimants under the causes in (d) to pay the US \$2.5 million that she has earned at the UN, back to the Complainant, forthwith;



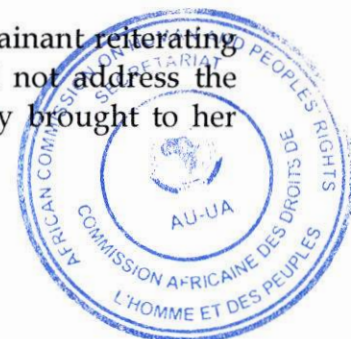
- g. That Members of the Bench, identified in the Complaint, be subpoenaed to respond to the alleged contraventions;
- h. Declare that the **Zambian High Court** cases in causes **2014/HP/0057; 2014/SCCL1250; 2015/HP/0735; 2015/HP/1825** and **2016/HP/0415** were a method of concealing criminal acts inflicted on the Complainant and the fraud on her UN benefit entitlements. Further that these causes are illegal and an infringement of the Complainant's rights to dignity, work, life, legal representation, fairness and equality before the law, privacy of the home, not to be deprived of belongings illegally, due process, legal representation and equal treatment before the courts, as well as the rights to her children's lives, education and future;
- i. Declaration that the UNFCU through the dereliction of their duty to protect the Complainant's accounts from fraud, and by their reckless and negligent acts of commencing a fraudulent vexatious suit in cause **2015/HPC/0057** in Zambia, a state which lacks jurisdiction on the subject matter, led to gross violation of the Complainant's rights and must ensure that the relief of US \$ 110 million is paid to her;
- j. Grant an order to the **Zambian Attorney General** and the **Judiciary** to immediately replace her hearing aid, by sponsoring her trip to South Africa on a business class ticket and per diem for 30 days, or that modalities for determining the merits of petitions be on paper only, or the use of a microphone during proceedings; and Interim remedial action in relation to:
 - (i) Her request to be relocated with her family, as she is in imminent danger of getting killed from the assassination plot, or starvation from malnutrition and hunger, or killed by disease, as well as the danger of being sent into internal displacement;
 - (ii) Provision of free legal aid for the handling of her Complaint by a qualified human rights lawyer to proceed with her grievances even if she dies; and
 - (iii) Payment of her salaries, pension and benefits by the **Zambian Government** for the time she worked with the **Zambian Police Service**, as she can no longer work in Zambia due to sabotage and she presently has no other support.

PROCEDURE

- 18. The Secretariat of the Commission received the Complaint on 10 August 2019 and requested for additional information on 22 August 2019.
- 19. On 28 August, 1 September and 2 September 2019 the Secretariat received the additional information. A further update on the developments since the submission of the Complaint was received from the Complainant on 22 October 2019.



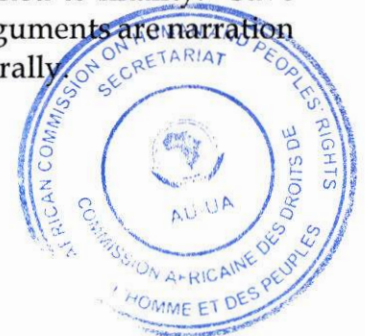
20. The Commission was seized of the matter in at the 66th Ordinary Session done virtually from 13 July to 7 August 2020.
21. The secretariat requested the complainant to make submissions on admissibility within two months in terms of Rule 105(1) on the 29th of September 2020.
22. On the 5th and 6th of November in 2020 the secretariat received the complainant's submissions on admissibility.
23. The Secretariat wrote to the Complainant on the 9th of November 2020 informing her that her submissions did not address admissibility and advising her to request legal assistance from the NGOs with observer status.
24. The complainant wrote back on the 11th of November 2020 introducing a new complaint to be joined to the present communication.
25. The Secretariat wrote back to the complainant on the 20th of November 2020 advising her that she could not join a matter that has not been submitted to the Commission as per Article 56 of the Charter via Rule 93 of the 2010 Rules of Procedure.
26. On the 26th of November the complainant wrote to the secretariat submitting what she considered observations on admissibility.
27. The complainant wrote back on the 27th of November 2020 submitting further evidence on her claim. In that correspondence she attached pictures and a schedule of property that was seized from her in execution of a judicial order 2018/HP/1859 which she described as fraudulent. In a separate email, she submitted copies of the court order in suit 2014/HPC/0057 which she also described as fraudulent.
28. On the 29th of November 2020, the complainant wrote to the secretariat submitting witness statements from one Jerry Naimbo and one Mavias Gerald Mukwato.
29. On the 7th of January 2021, the Complainant once again wrote to the secretariat submitting more evidence to support her case. She attached her new contract of employment with the United Nations. This she argued was evidence to rebut Commercial Suit 2014/HPC/0057 in which she was accused of defrauding the United Nations. The same email was again resent on the 14th of January 2021.
30. On the 20th of January 2021, the Secretariat wrote to the Complainant reiterating that her observations submitted on the 29th of November did not address the criteria on admissibility Article 56 despite this being previously brought to her attention in the correspondence dated 9 November 2020.



31. On the 8th of March 2021, the secretariat subsequently wrote to the Complainant again regarding the substance of her observations. The letter reiterated the absence of observations on admissibility per Article 56 of the Charter. Furthermore, the complainant was informed that failure to make admissibility arguments would compel the Commission to strike out her communication for lack of diligent prosecution.
32. On the 17th of March 2021, the complainant wrote to the secretariat requesting an extension of 30 days to file adequate admissibility observations.
33. By letter dated 8 June 2021, the secretariat granted the complainant an extension of 30 days. She was also informed that per Rule 113 of the 2010 rules, this would be the sole extension of time and was not renewable. This decision of the secretariat was also transmitted to the Respondent state in a Note Verbale dated 8 June 2021.
34. On the 4th of July 2021, the complaint submitted what she considered observations on admissibility following her extension of time.
35. On the 26th of July 2021, those submissions were transmitted to the Republic of Zambia.

THE SUBMISSIONS FROM THE COMPLAINANT

36. The bulk of the complainant's submissions are factual averments on the situations giving rise to the complaint. Rarely does the complainant make a legal argument, and in those instances all the arguments relate to the merits of the case and not admissibility. There is only one remote and ineffectual reference to admissibility per Article 56, both of which were in letters and not in the submissions. In her letter of the 11th of November 2020, the complainant said "I have read the rules of procedure in Articles 56 and 58 of the African Charter on human and people's rights and I believe that my fresh complainant meets the requirements of those articles. I will be re-submitting the facts stated in documents I sent on 5 and 6 November 2020 to ensure that they are compatible." In a subsequent paragraph in the letter she further avers that "I have exhausted all possible avenues in recourse to justice in Zambia and the ruling is based on facts on a communication in which the commission already took a decision and currently seized with, and prolonging submission of this complainant may lead to further rights infringements and may leave room for further litigation in the matter already under seizure if the Commission. I have also submitted the information so that all matters can be determined to finality." Save for these miniscule references, the rest of the complainant's arguments are narration of her account of the facts of the present communication generally.



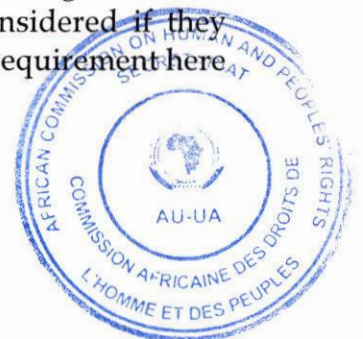
THE COMMISSION'S ANALYSIS ON ADMISSIBILITY

37. Admissibility is governed by Article 56 of the Charter which has a criterion for which every communication ought to comply with. Rule 105 to 107 also regulate the procedure for communications at admissibility stage.
38. The preamble to Article 56 provides that "Communications relating to human and peoples' rights referred to in article 55 received by the Commission shall be considered if they:" comply with the requirements elaborated in the sub-sections. The Commission considers submissions on admissibility and decides based on the complainant's compliance with sub-articles 1 to 7. As such Rule 105(1) of the 2010 rules provides that once the commission is seized with a communication they shall "request the complainant to present evidence and arguments on admissibility within two months." What is clear from this rule is the sheer necessity of cogent admissibility arguments as they are the only way by which the Commission may perform its duty to decide per Rule 107 as read with 106.
39. In the present case following seizure of the Communication, the secretariat requested the complainant to make submissions on admissibility within two months in terms of Rule 105(1) on the 29th of September 2020. On the 5th and 6th of November in 2020 the secretariat received the complainants submissions on admissibility. In those submissions there were no observations on admissibility per Article 56.
40. The Secretariat wrote to the Complainant on the 9th of November 2020 informing her that her submissions did not address admissibility and advising her to request legal assistance from the NGOs with observer status. She was once again reminded of this in letters dated 20 November 2020; 20 January 2021 and 8 March 2021. Despite repeated appeals from the secretariat, the complainant neither sought legal assistance from the organizations with observer status nor amended her observations on admissibility. As a consequence, the final submissions which were subsequently sent to the Secretariat on the 4th of July 2021 still did not contain any arguments on how her case complies with Article 56 of the Charter.

Article 56

56(1)

41. Article 56(1) of the African Charter states that "Communication relating to Human and Peoples' Rights... received by the Commission shall be considered if they indicate their authors even if the latter request anonymity..." The requirement here



is that complainants or authors of complaints proffer their identity² and contact details³ to enable the Commission to adequately process the communication through assurances of continued interest in the matter.⁴ In the present case, the Communication is brought by Dorah Likukela Namasiku. This communication thus complies with this element.

56(2)

42. Article 56(2) of the African Charter states that “Communications...received by the Commission shall be considered if they are compatible with the Charter of the Organization of African Unity or with the present Charter.” The Commission in **Kevin Mgwanga Gunme et al v Cameroon** previously interpreted this provision to require that the Communication: be brought against a State party to the African Charter; allege prima facie violations of rights protected by the African Charter; be brought in respect of violations that occurred after [the] State’s ratification of the African Charter, or where violations began before the State Party ratified the African Charter, have continued even after such ratification.⁵ In the present case, the communication is against Zambia which a state party to the Charter;⁶ alleges Articles 1-26 of the Charter and alleges violations that occurred after 1984 when Zambia ratified the Charter. The Communication therefore complies with this requirement.

56(3)

43. Article 56(3) of the African Charter states that “Communications ...received by the Commission shall be considered if they are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity (AU)”. In **Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe**, the Commission held that “in determining whether a certain remark is disparaging or insulting and whether it has dampened the integrity of the judiciary, the Commission has to satisfy itself whether the said remark or language is aimed at unlawfully and intentionally violating the dignity, reputation or integrity of a judicial officer or body and whether it is used in a manner calculated to pollute the minds of the public or any reasonable man to cast aspersions on and weaken public confidence on the

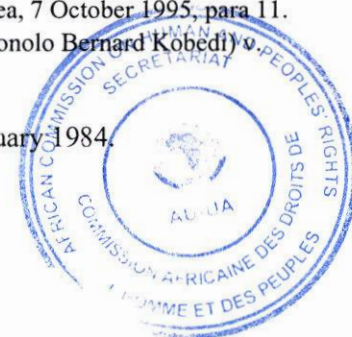
² Communication 308/05: Michael Majuru v Zimbabwe, 24 November 2008, para 71.

³ Communication 70/92 9: Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba v Guinea, 7 October 1995, para 11.

⁴ Communication 277/2003-Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v Botswana, 12 October 2013, para 97.

⁵ Communication 266/03, 27 May 2009, para 71

⁶ Zambia ratified the African Charter on Human and Peoples’ Rights on 10 January 1984.



administration of justice.”⁷ In the present Communication, no disparaging language has been used and thus complies with the provisions of Article.

56(4)

44. Article 56(4) of the African Charter states that “Communications relating to human and Peoples’ Rights... shall be considered if they are not based exclusively on news disseminated through the mass media”. In shedding more light to this provision, the Commission averred that “the issue therefore should not be whether the information was gotten from the media, but whether the information is correct’ and whether the complainant tried to verify the truth”⁸ This interpretation from **Jawara** was adopted with approval in **Ahmed Ismael and 528 Others v. the Arab Republic of Egypt**.⁹ The Complainant has submitted different forms of evidence including eyewitness accounts, witness statements and photographs. The Communication does not rely on the media but also includes evidence as required by the Commissions’ jurisprudence, it thus complies with 56(4).

56(5)

45. Article 56(5) of the African Charter states that “Communications relating to human and Peoples’ Rights... shall be considered if they are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.” The Commission requires exhaustion of local remedies where they are ‘available, effective and sufficient to redress the alleged violation.’¹⁰ An available remedy is one where ‘the petitioner can pursue it without impediment’¹¹ An effective remedy will be one that ‘offers a prospect of success.’¹² A remedy will be sufficient ‘if it is capable of redressing the complaint.’¹³
46. In the present case, the complainant did not make any submissions on admissibility but more specifically on compliance with Article 56(5). In every subsequent submission made, the complainant did not demonstrate exhaustion of local remedies. Moreover, further to the absence of any cogent averments to that effect, there is evidence to suggest that the complainant did not exhaust local remedies. There are several domestic court cases that were pending at the time of the submission of the complainant. These domestic cases were all in the High Court and Commercial Court, these matters are 2019/HP/1859, 2014/HP/0057;

⁷ Communication 284/03, 3 April 2009, para 91.

⁸ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 25 and 26.

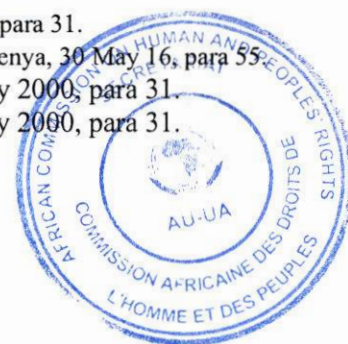
⁹ Communication 467/14, 27 May 2016.

¹⁰ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

¹¹ Communication 317 / 2006 – The Nubian Community in Kenya vs The Republic of Kenya, 30 May 16, para 55.

¹² Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

¹³ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.



2015/HP/0735; 2018/CC/Z0011; 2014/SCCL/1250 AND 2015/HP/1859. Some of these cases are believed to be pending to date. It has also not been averred whether the matters before the High Court and Commercial Court were appealed as there are superior courts to take these matters upwards. And despite the secretariat requesting the complainant to provide information about these suits, no response or submission to this effect was ever received. This leaves the Commission with reason to believe that the complainant did not exhaust local remedies as the complainant has not provided any information to prove otherwise. This is especially exacerbated by the lingering questions on the status of the aforementioned court cases at the time of filing. The Communication therefore did not exhaust local remedies, which remedies were adequate, available and effective. The Communication does not comply with Article 56(5).

56(6)

47. Article 56(6) of the African Charter states that Communications relating to human and Peoples' Rights... shall be considered if they: are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter". The Commission has previously held in **Promoting Justice for Women and Children (PROJUST NGO) vs. Democratic Republic of Congo**,¹⁴ that where Article 56(5) has not been complied with, there is no reason to proceed to consider Article 56(6) as it will be concluded that the latter has not been complied with. As such, the Commission concludes that this communication has failed to meet the requirements of Article 56(6).

56(7)

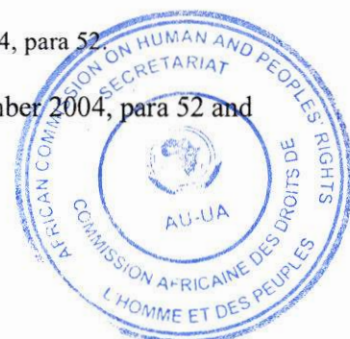
48. Article 56(7) of the African Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they: do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the 25 Organization of African Unity or the provisions of the present Charter." The rule is based on the non bis in idem and res judicata rules.¹⁵ The Commission has previously found in **Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others** that the provision requires that a case "no longer be under consideration under an international dispute-settlement procedure"¹⁶ Further, that the other international body must have decided the case on the merits and there is a 'final settlement' by that body.¹⁷ The settlement must, as the Commission has

¹⁴ Communication 278/2003, 12 October 2013, para 75.

¹⁵ Communication 260/02: Bakweri Land Claims Committee v Cameroon, 4 December 2004, para 52.

¹⁶ Communication 409/12, 30 April 2014, para 112.

¹⁷ Communication 260/02: Bakweri Land Claims Committee v Cameroon, 4 December 2004, para 52 and 53.



previously stated, a human-right adjudicatory body.¹⁸ In the present case, there is no evidence to suggest that this matter was settled by another international adjudicatory body. It thus complies with sub-Article 7.

49. The Commission notes that the communication fails to align with Article 56 [5] and [6].
50. The Commission therefore declares the Communication inadmissible.

**Done at the 73rd Ordinary Session of the Commission held in Banjul, the Gambia
from 20 October to 09 November 2022**

¹⁸ Communication 279/03-296/05: Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, 27 May 2009, para 103.

