

Decision of the African Commission on Human and Peoples' Rights on Admissibility

Communication 589/15 - Johannes Jurie Botha v. The Republic of Mauritius

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat), received a Complaint on 12 November 2015 from Mr Johannes Jurie Botha (the Complainant), against the Republic of Mauritius (the Respondent State), State Party to the African Charter on Human and Peoples' Rights (the African Charter).¹
2. The Complainant submits that he is 42 years old and is a citizen of the Republic of South Africa. He states that his Complaint is against the Mauritius Police Force, more specifically the Anti-Drug and Smuggling Unit (ADSU); the Police Commissioner; the Public Prosecutors Office of Mauritius; and the Government of Mauritius in general for violating his rights.
3. The Complainant alleges that he was apprehended by ADSU on 5 March 2009 at a hotel reception because he was suspected of taking delivery of heroin from a South African woman who smuggled 471.7 grams of the substance by swallowing 41 sachets.
4. The Complainant states that he was not informed of his rights by the arresting officer, and that his hotel room was searched without a warrant and he was also arrested without a warrant. He adds that no drugs were found during the search, but the officer confiscated 2,000 US Dollars and 12,925 Mauritian Rupees. He states that he was then accused of money laundering.
5. The Complainant alleges that he was deceived into signing an incriminating document. He states that he did not read the entry he signed, nor was it read to him.
6. The Complainant avers that 20 days following his arrest, on 25 March 2009, he was for the first time informed of the drug charges against him, in addition to the money laundering charges.
7. The Complainant submits that he had access to a Lawyer only during his first court session in the High Court of Mauritius, 4 years after his arrest. The Complainant states that the Lawyer refused to assist him further because he could not afford to pay him for his services. He adds that he had requested for Legal Aid on 3 different occasions, but to no avail. He avers that his first court appearance was in March 2013, and that his trial started on 7 May 2013, over 4 years after his arrest.

¹ The Republic of Mauritius ratified the African Charter on 19 June 1992.



8. The Complainant alleges that the Public Prosecutor's Office offered to reduce his sentencing on 2 occasions, if he pled guilty to the charges. He states that he rejected the offer because he is not guilty. The Complainant submits that in addition to Case Number SCS 13/2012, a fresh case SCS 09/2013 was lodged against him, for attempting to possess dangerous drugs and drug trafficking.
9. The Complainant contends that the Judge presiding over his case was biased towards the prosecution. He also states that police statements were fabricated, placing the police at certain places at certain times, as well as referring to alleged informants who do not exist. He adds that the police lied about watching and following his moves even before his arrest and him outrunning the police.
10. The Complainant avers that his version of events was not properly investigated by the police and that the police committed perjury. He adds that on 13 June 2013, he was found guilty of both charges and was sentenced to 33 years imprisonment and a fine of 300, 000 Mauritian Rupees, equivalent to 2 years additional imprisonment if not paid.
11. The Complainant avers that following the guilty verdict, he applied for Legal Aid, which he finally got, and appealed the conviction and sentencing in the Court of Appeal of Mauritius. He states that his appeal was discussed on 8 May 2015 in his absence, behind closed doors, and on 23 July 2015, the decision was reversed and he was set free. He states that the Honours Chief of Justice of Mauritius in the judgment held that "*...we hold that the evidence on record was not sufficient to establish the offence of attempt to possess an illegal and dangerous drug. We accordingly allow the appeal and squash the conviction and the sentence.*"
12. The Complainant alleges that he was released on 23 July 2015, 6 years and 4 months after his arrest. He states that he now lives in the Republic of South Africa. He states that his unlawful arrest, remand without a formal charge for more than 4 years and conviction amounts to cruel, inhuman and degrading treatment.
13. The Complainant submits that he and his family underwent severe trauma as a result of the sentencing, false accusation and unlawful conviction. He adds that he still suffers from insomnia and depression but is unable to receive treatment because he cannot afford it. He further states that he has not found work and does not have any source of income.
14. The Complainant states that Mauritian law provides that the Complainant was supposed to enter a claim for damages two years after his arrest, but he was unable to observe the timeline because he did not have a Lawyer to assist him on the case and no formal charges had been brought against him at the time.



Articles alleged to have been violated

15. The Complainant alleges violation of Articles 1, 3, 5, 6 and 7 of the African Charter.

Prayers

16. The Complainant requests the African Commission on Human and Peoples' Rights (the African Commission or the Commission) to:
 - a. Declare a violation of his rights under Articles 1, 3, 5, 6 and 7 of the African Charter;
 - b. Request the Respondent State to allow the Complainant to enter a claim for damages; and
 - c. Request the Respondent State to generally stop the abuse of suspects and treat them as innocent until proven guilty.

Procedure

17. The Secretariat received the Complaint on 12 November 2015 and acknowledged receipt of the same on 27 November 2015.
18. The Communication was seized during the 19th Extra-Ordinary Session held from 16 to 25 February 2016.
19. By letter and Note Verbale of 2 March 2016, the Secretariat informed the Parties of the Communication and requested the Complainant to submit arguments on Admissibility, within two (2) months in accordance with Rule 105(1) of the Rules of Procedure of the Commission.
20. In March 2016, the Complainant informed the Secretariat that he was indigent and requested for Legal Aid to assist with submissions on Admissibility.
21. On 15 April 2016, the Complainant requested for extension of time to make submissions on Admissibility. The Secretariat acknowledged receipt on 23 April 2016 and informed the Complainant that the Commission considered the request for extension of time and decided to grant it, in accordance with Rule 113 (2) of the Rules of Procedure of the Commission.
22. By correspondence dated 27 May 2016, and received on 2 June 2016, the Secretariat was informed about the Legal Representative for the Complainant.
23. On 3 June 2016, the Secretariat acknowledged receipt of the correspondence regarding the Legal Representative of the Complainant and requested a copy of the power of representation.



24. On 16 June 2016, the Secretariat received documents transmitted by the Legal Representative of the Complainant as arguments on Admissibility.
25. On 24 June 2016, the Secretariat acknowledged receipt of the documents and informed the Complainant that extracts from court rulings, reports, affidavits, testimonies, and the likes, could be annexed to submissions/arguments on admissibility, but do not in and of themselves constitute submissions/arguments.
26. The Complainant re-submitted arguments on Admissibility on 30 August 2016, of which the Secretariat acknowledged receipt and forwarded to the Respondent State on 1 September 2016. In accordance with Rule 105 (2) of the Rules of Procedure 2010, the Respondent State was requested to forward its observations on the Complainant's submissions within two (2) months.
27. The Respondent State made its submissions on Admissibility on 10 May 2017, of which the Secretariat acknowledged receipt on 31 May 2017. The submissions were forwarded to the Complainant to make observations on the submissions in accordance with Rule 105 (3) of the Rules of Procedure of the Commission, within one (1) month.
28. The Complainant requested a one (1) month extension to submit observations on the submissions of the Respondent State, which was granted by letter dated 29 June 2017, pursuant to Rule 113 of the Rules of Procedure.
29. The Complainant later requested the Commission to issue a summons to the National Human Rights Commission of Mauritius for the release of documents which the Complainant claims supports his case.
30. During its 25th Extra-Ordinary held from 19 February to 5 March 2019, in Banjul, The Gambia, the Commission declined the request. The Commission advised the Secretariat to request the Complainant to submit his observations, if any, on the Admissibility Submissions of the Respondent State within one (1) month of notification. The Complainant was further requested to indicate gaps occasioned by missing evidence in his written observations.
31. On 8 September 2019, the Complainant contacted the Secretariat indicating that he is unable to reach his Legal Representative and requested for additional time to make observations on the State's submissions. By letter dated 16 September 2019, the Secretariat informed the Complainant that the request for additional time cannot be granted because a party may not be granted more than one extension to make submissions.
32. Consideration on Admissibility of the Communication was deferred from the 65th to 72nd Ordinary Sessions of the Commission



33. The Commission decided on the Admissibility of the Communication at its 73rd Ordinary Session.

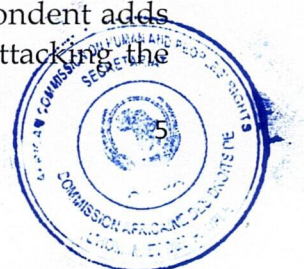
The Law on Admissibility

Submissions of the Complainant on Admissibility

34. The Complainant submits that the Communication is admissible because he has exhausted local remedies, in accordance with Article 56 (5) of the African Charter.
35. The Complainant submits that he was apprehended on 5 March 2009 by ADSU, and that on 13 June 2013 he was found guilty on two charges and sentenced to 33 years imprisonment plus a fine of Mauritian rupees 300, 000, which is equal to another two years, if unable to pay.
36. The Complainant avers that he appealed against the conviction and the sentence. He states that the appeal was heard on 8 May 2015, on 23 July 2015, the appeal was successful, and the conviction and sentence were overturned.
37. The Complainant submits that he was remanded in Central Prison Beau Bassin for six (6) years and four (4) months.
38. The Complainant submits that he can no longer submit claims against the State agents involved in his illegal arrest and detention as Section 4 (i) of the Public Officers Protection Act (POPA) 1957 allows only two years for any person to enter a claim against a public officer. He alleges that he could not engage proceedings within the two-year mandatory period under the POPA 1957 because he could not afford the facilities of a lawyer, and therefore local remedies are not available to him.
39. The Complainant avers that he complied with Article 56 (6) of the African Charter, having submitted the Communication within a reasonable period of time after being released from prison.

Submissions of the Respondent State on Admissibility

40. The Respondent State submits that the Complainant has failed to comply with the admissibility conditions under Articles 56 (2), 56 (3), and 56 (5) of the African Charter.
41. With regards to Article 56 (2) of the African Charter, the Respondent State argues that the Complainant has not identified nor specified which Articles of the Charter have been violated in relation to his rights. The Respondent adds that the Complaint is instead made up of allegations aimed at attacking the

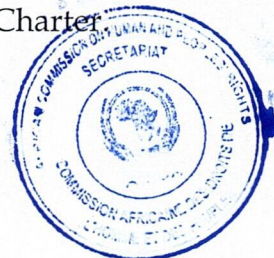


intellectual and moral integrity of the Mauritius Police Force, the Judge presiding over the trial case and the Office of the Director of Public Prosecutions in Mauritius.

42. In relation to Article 56 (3), the Respondent State submits that the Complainant has made use of disparaging language against the Judge presiding over the trial case. The State avers that the Complainant attacks the integrity of the Judge in such a way as to cast aspersions on the impartiality of the latter and the public confidence in the judicial system. The Respondent State argues that there is a fine balance that needs to be drawn between the language used and the need to facilitate free expression. The Respondent State submits that the Complainant was legally represented at both the trial and appeal stages, and that no ground in relation to the conduct of the Judge was taken before the Appeal Court.
43. As regards Article 56 (5) of the African Charter, the Respondent State submits that Mauritius has enacted the Protection of Human Rights Act in 1998, thereby establishing a National Human Rights Commission (NHRC), having as its main objective the promotion of human rights. The State submits that the Complainant does not indicate whether he filed a formal complaint with the NHRC and whether he was legally assisted.
44. The Respondent State avers that the Complainant has not engaged any proceedings in relation to his claim in Mauritius even though as per the documents and judgments he was legally represented. [He] cannot now claim that he has no avenue to seek redress following his own failure to lodge any claim against the State for damages of wrongful arrest and detention.
45. In view of the foregoing, the Respondent State submits that the Communication has failed to satisfy Articles 56 (2), (3), and (5) of the African Charter.

Analysis of the Commission on Admissibility

46. The Admissibility of Communications submitted to the Commission is governed by the seven requirements set out in Article 56 of the African Charter which apply conjunctively and cumulatively. According to the Respondent State, the Communication is inadmissible because the Complainant has failed to comply with Articles 56(2); 56(3) and 56(5) of the African Charter. The Complainant on the other hand maintains that Communication meets all the admissibility requirements and should be declared admissible.
47. Although the Admissibility of the Communication is only contested for the three referenced sub Articles under Article 56 of the African Charter, the Commission will proceed to analyse the conformity of the Communication with all the requirements of Article 56 of the African Charter.



48. Article 56(1) requires that Communications submitted to the Commission be considered if they “*indicate their authors even if the latter requests anonymity*”. The Author of this Communication has been disclosed as **Johannes Jurie Botha** who is also the Victim of the Communication. The address and contact information of the Complainant has also been disclosed. These facts remain uncontested by the Respondent State. The Commission is satisfied that the author of the Communication is indicated and accordingly holds that the requirement of Article 56(1) has been complied with.
49. According to Article 56(2) of the African Charter, Communications, in order to be admissible must be compatible with the Charter of the Organization of African Unity (now Constitutive Act of the African Union) or with the African Charter. The compatibility requirement is in four (4) folds: A Communication must allege a right set out in the African Charter (*substantive requirement*); A Communication must be directed against a State Party to the African Charter and must be submitted by someone competent or legally permitted to do so (*personal requirement*); The events complained of must have occurred within the Charter’s period of application (*temporal requirement*); and the events must have occurred within the territory of the Respondent State (*territorial requirement*).
50. The Respondent State has contested compliance with Article 56(2) of the African Charter on the grounds that the Complainant has not identified nor specified which Articles of the Charter have been violated in relation to his rights (*the substantive requirement*). The State adds that the Complaint is instead made up of allegations aimed at attacking the intellectual and moral integrity of the Mauritius Police Force, the Judge presiding over the trial case and the Office of the Director of Public Prosecutions in Mauritius.
51. In *Southern Africa Human Rights NGO Network and Others v Tanzania*, the Commission established that one of its primary considerations under Article 56 (2) of the African Charter, is whether there has been *prima facie* violation of human rights guaranteed by the African Charter,² and only concerned about preliminary proof that a violation occurred. It is therefore not mandatory for the Complainant to mention specific provisions of the African Charter that have been violated. In relation to the present Communication, the Commission notes that facts presented by the Complainant from **paragraphs 2 to 14** of the summary of facts above are related to **Articles 1, 3, 5, 6 and 7** of the African Charter. Consequently, at this stage of the proceedings, the Commission is only determining *prima facie* violation of the rights alleged and not attempting to determine if the violations as alleged actually occurred.
52. The second leg of the Respondent State’s contention suggests that the Complainant’s allegations are aimed at attacking the intellectual and moral integrity of the Mauritius Police Force, the Judge that presided over the trial

² Communication 333/06- Southern Africa Human Rights NGO Network and Others v Tanzania
Para 51



case and the Office of the Director of Public Prosecutions in Mauritius. Relying on its jurisprudence in *Digbeejaye Koonjul v Mauritius*,³ where the Respondent State made the same argument, the Commission opines that the State has not substantiated its contention and according to the Commission, the Complainant's submissions do not suggest such attacks.

53. Furthermore, the Commission notes that the Complaint does reveal any request which is incompatible with the Constitutive Act of the African Union. The Complainant only requests the protection of his rights under the Charter, which is in line with one of the objectives of the Constitutive Act of the African Union as set out in its Article 3(h), that is, the promotion and protection of human and peoples' rights.
54. From the above, the Commission does not therefore find incompatibility in the Communication with the African Charter and the AU Constitutive Act and is thus satisfied that the requirement of Article 56(2) has been complied with.
55. Article 56(3) of the African Charter states that Communications shall be considered if they are not written in disparaging or insulting language directed against the state concerned and its institutions or to the African Union.
56. In respect of Article 56 (3), the Respondent State submits that the Communication should be dismissed because it has been written in disparaging or insulting language. The Respondent State specifically cites a paragraph in the Complaint and alleges that the Complainant in the referenced paragraph *"attacks the integrity of the Judge in such a way as to cast aspersions on the impartiality of the latter and the public confidence in the judicial system"*. In addition, the State argues that the Complainant was legally represented at both the trial and appeal stages, and further that no ground in relation to the conduct of the Judge was taken before the Appeal Court.
57. It is important at this point to highlight the paragraph alluded by the Respondent State to be disparaging and insulting: The Complainant states that during his trial, the Judge presiding over his case was biased towards the prosecution and acted as if he was a Prosecutor himself. He said *"under my cross-examination, a total of 18% of the questions put to me, was by the Judge himself and at times he was even leading the prosecution..."* He said the Judge used his answers against him in an attempt to prove he was lying about certain things and that the acts of the Judge are unacceptable, should be investigated and action should be taken.
58. In *Kevin Mgwanga Gunme et al v Cameroon*, the Commission acknowledged that determining what constitutes an insulting or disparaging language is

³ Communication 569/15- Digbeejaye Koonjul v Mauritius, para 46



subjective because statements that could be disparaging or insulting to one person may not be seen in the same light by another person.⁴

59. In *Ilesanmi v Nigeria*, the Commission defined disparaging as “to speak slightly of...or belittle” and insulting as “to abuse scornfully or to offend the self-respect or modesty of someone or an institution”.⁵ Furthermore, in *Zimbabwe Lawyers for Human Rights v Zimbabwe*, the Commission stated that “in determining whether a certain remark is disparaging or insulting and whether it has dampened the integrity of the judiciary or any other state institution, the Commission has to satisfy itself whether the remark of 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 in the institution. The language must be aimed at undermining the integrity and status of the institution and bring in into disrepute.”⁶
60. In terms of specific language used, in *Ligue camerounaise des droits de l'Homme v. Cameroon*, the Commission declared the use of expressions such as “regime of torturers” and “barbaric government,” as insulting language.⁷
61. Based on the jurisprudence of the Commission, and perusing the submissions of the Complainant, can one effectively say that the Complainant’s submissions were wilful, with a purpose of insulting, offending or disparaging, with an intent to jeopardize the integrity or reputation of the Judge...?
62. In the present Communication, the Commission considers that the assertions by the Complainant that the Judge was biased was formulated in a conditional manner and in context to his experience during the cross-examination process. Thus, a wilful intention to undermine the integrity of the Judge cannot be inferred from his submissions. To this end, the Complainant described and demonstrated the context of the trial and the judge's behaviour which he believes showed bias and criticizes the Judge's behaviour, without referring to the judicial system as a whole. In addition, the fact that the Complainant did not raise the issue of the Judge's bias before the Appeal Court does not prevent him from invoking the same before the Commission.
63. The Commission opines that the language used by the Complainant cannot be considered insulting or disparaging within the context of Article 56(3) of the African Charter, and therefore holds that the Respondent State’s allegation that the Communication be declared inadmissible for non-compliance with Article 56 (3) is untenable.

⁴ Communication 266/03- Kevin Ngumne v Cameroon, para 75

⁵ Communication 268/03-Ilesanmi v Nigeria, paras 37-40

⁶ Communication 293/04- Zimbabwe Lawyers for Human Rights v Zimbabwe, para 51

⁷ Communication 65/92- Ligue Camerounaise des Droits de l’Homme v Cameroon, para 13



64. Article 56(4) of the Charter provides that communications should not be '*...based exclusively on news disseminated through the mass media.*' The Commission has ascertained that the Communication is not exclusively based on news disseminated through the mass media but on factual evidence submitted by the Complainant through his personal experience, in accordance with Article 56 (4) of the African Charter.
65. Article 56(5) of the Charter, stipulates that: "*Communications shall be considered if they "are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged..."*"
66. The Complainant submits that he has exhausted all local remedies, and that he couldn't file for claims against the Respondent State for his unfair/wrongful arrest and detention due to his indigent status, no income to afford a Lawyer and therefore remedies are not available to him. The State on the other hand, refutes the Complainant's arguments, arguing that (1) the Complainant should have approached the NHRC for redress, and (2), the Complainant did not engage any proceedings in relation to his claim in Mauritius even though he had the opportunity to do so under the POPA.
67. Regarding the first contention by the Respondent State about taking the matter to the NHRC, the Commission has repeatedly stated that Article 56(5) refers to remedies that are of a judicial nature, thus a Complainant is not required to pursue remedies that are non-judicial in nature.⁸
68. Judicial remedies include remedies that a court of law may enforce and therefore, utilising non-judicial remedies are not considered exhausting local remedies. Specifically, in *Alfred B Cudjoe v. Ghana*,⁹ while the Complainant was granted a decision in his favour by the Ghanaian Human Rights Commission, the Commission found that "*the internal remedy to which Article 56(5) refers entails remedy sought from courts of a judicial nature, which the Ghanaian Human Rights Commission is clearly not,*" thus declaring the Communication inadmissible.
69. Relying on its previous jurisprudence, including *Digbeejaye Koonjul v Mauritius*¹⁰ where the Respondent State made a similar argument, the Commission holds that in exhausting ordinary domestic remedies there is no duty on the Complainant to submit cases to national commissions such as a National Human Rights Institution, even if they can grant remedies, as they are non-judicial institutions, and Complainants only have to exhaust judicial

⁸ See Communication 375/09- Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya, paras. 53-55; Communication 221/98-Alfred B. Cudjoe v. Ghana, paras. 12-14

⁹ Communication 221/98-Alfred B Cudjoe v. Ghana para 13

¹⁰ n 3 above-Communication 569/15-Digbeejaye Koonjul v Mauritius, para 5



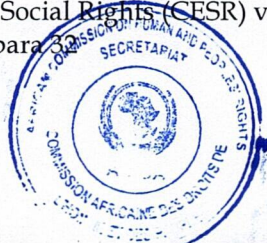
remedies. For this reason, the Commission objects to this contention by the Respondent State.

70. Furthermore, the rationale behind the requirement to exhaust local remedies is set out in *Jawara v Gambia* which spelled out that “...before proceedings are brought before an international body, the State concerned must have had the opportunity to remedy the matter through its own local system. This prevents the Commission from acting as a court of first instance rather than a body of last resort.”¹¹. Another rationale is that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called to account by an international tribunal.¹² In the same case, the Commission established that a remedy is considered available if the petitioner can pursue it without impediment.¹³
71. The test for availability underlines the prospect of success, and also requires that the system operates in a manner that would enable an effective, impartial adjudication of the matter. However, without attempting to utilise mechanisms that exists, or justifying why they could not be utilised makes ascertaining the outcome challenging.
72. In the present Communication, after the Complainant was released following the decision of the Court of Appeal, he had the opportunity, within a period of two years from the time of his release (July 2015 to July 2017) to claim for damages/reparation under the POPA 1957.
73. The Commission has examined the POPA 1957, and according to Section 4(i) of the same:
- (1) Every civil or criminal action, suit, or proceeding, by a person, other than the State, for any fact, act or omission, against a (a) public officer in the execution of his duty; (b) person engaged or employed in the performance of any public duty; or (c) person acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b), shall, under pain of nullity, be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding.
74. According to the Complainant, he couldn't pursue this avenue because he could not afford a Lawyer. The Commission however notes that the Complainant does not demonstrate in the Complaint, steps he had taken towards securing a Lawyer to assist with filing the claims against the State. Merely stating that he could not afford a Lawyer and that remedies were, therefore, not available in that regard, does not sway this Commission,

¹¹ Communications 147/95, 149/96-Jawara v Gambia, para 31

¹² Communication 55/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, para 38.

¹³ n 11 above, para 32.



particularly because the avenue is clearly provided in the national law of the Respondent State.

75. In addition, following his sentence at the High Court of 33 years imprisonment, the Complainant was able to secure a Lawyer through Legal Aid who appealed his case at the Court of Appeal that led to the squashing of the conviction and sentence, as well as to his subsequent release.
76. Furthermore, the Commission has been reticent in making pronouncements on cases relating to the indigent status of Complainants as it could open floodgates of cases brought to the Commission on account of indigence, unless the indigence is proven and unavailability of Legal Aid schemes in the Respondent State is sufficiently demonstrated. In *Africa Legal Aid v Gambia* for instance, the Commission rejected the claim that the victims' lack of financial means should be a basis for exempting the Complainants from exhausting local remedies.¹⁴
77. Meanwhile, in *Purohit and Moore v. The Gambia*, the Commission concluded that the remedies that existed were neither realistic nor available to the victims since these were only accessible to wealthy individuals and the victims were typically "*picked up from the streets or from poor backgrounds*" and were indigent¹⁵ The Commission determined that the remedies that existed were only available and effective to those who could afford them but, in this particular case, the victims could not.¹⁶ The Communication was deemed admissible given that the victims belonged to a category of people for whom remedies were not realistic.¹⁷
78. Thus, the Commission's position regarding whether a remedy should be considered unavailable simply because a person is indigent, depends on various circumstances and therefore the Commission decides on a case-by-case basis.
79. In the present Communication, the Commission is not convinced about the Complainant's excuse for not filing a claim for reparations within the period required by POPA, compounded by the fact that the Complainant does not provide any justification relating to his indigence. Additionally, he filed the Communication before the Commission about 4 months after his release and also moved to South Africa around the same period without exploring the avenues that were available to him to seek reparation for the same claims he brought before the Commission.

¹⁴ Communication 207/97- *Africa Legal Aid v Gambia*, para 33

¹⁵ Communication 241/01- *Purohit and Moore v. The Gambia*, para. 37

¹⁶ *Id.* at para. 36

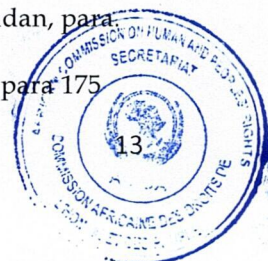
¹⁷ *Id.* at para. 35-38.



80. Based on the above, the Commission aligns itself with the Respondent State's argument that the Complainant has not engaged any proceedings in relation to his claim in Mauritius even though he had the opportunity to do so and the avenue to do so is available. The Commission also holds that the Complainant has not demonstrated that the available avenues are inaccessible, ineffective and insufficient. The Commission, therefore, concludes that the Complainant has not complied with Article 56(5) of the African Charter.
81. With regards to reasonable time factor, Article 56(6) requires that Communications be submitted within a reasonable period of time after local remedies have been exhausted or from the date the Commission is seized with the matter. However, the African Charter does not define the time frame considered as "*reasonable*." From its practice, the Commission has been flexible in determining what constitutes a "*reasonable period*" and will make the determination on a case-by-case basis. In making such determination, the Commission focuses on when domestic remedies were exhausted or when the Complainant realized that domestic remedies were not available, sufficient, or effective.¹⁸ The Respondent State and the Complainant did not make any submissions regarding Article 56(6).
82. In the present Communication, the Commission notes that the Complainant brought the matter to the Commission 4 months after the decision of the Court of Appeal and release from prison. However, considering the Commission's ruling that local remedies were not exhausted, can the Commission effectively establish that the Communication was brought within reasonable time?
83. In *Ahmed Ismael and 528 Others v. the Arab Republic of Egypt*, the Commission found that the period within which the matter was brought to the Commission was unreasonable as the Complainant did not make a proper assessment of local procedures before bringing the case to the Commission. In that Communication, the Commission noted that "*At the very least, the Complainant should have waited to see the outcomes of the review procedure guaranteed in Article 224 before bringing this matter before the Commission*".¹⁹
84. Similarly, in the present Communication before the Commission, the Complainant should have exhausted all local remedies, including filing a claim for damages from the Respondent State within the specified two years and waiting for the outcome before bringing the matter to the Commission. As a matter of fact, the Communication was submitted to the Commission before the time prescribed by POPA to file for damages at the domestic level elapsed and no compelling reasons or justifications were provided by the Complainant.

¹⁸ Communication 386/10-Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan, para 71

¹⁹ Communication 467/14 – Ahmed Ismael and 528 Others v. the Arab Republic of Egypt, para 175



85. For the above reasons, the Commission holds that the Communication does not fulfil the proviso of Article 56(6) of the African Charter.

86. On Article 56(7) of the African Charter, the Commission does not find evidence to indicate that the matter is before any international forum, and accordingly, the Commission finds that the Article 56(7) of the Charter has been met.

Decision of the African Commission on Admissibility

87. In view of the above, the African Commission on Human and Peoples' Rights:

- i. Declares the Communication inadmissible for failure to comply with Articles 56(5) and 56(6) of the African Charter;
- ii. Notifies the decision to the Parties in accordance with Rule 107(3) of the Rules of Procedure.

Done virtually during the 73rd Ordinary Session of the African Commission on Human and Peoples' Rights held from 20 October to 9 November 2022

