



ACHPR
African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

Communication 803/22

Abdulrashid Abshir Warsame

V

The Federal Republic of Somalia

Adopted by the:

African Commission on Human and Peoples' Rights

*During the 79th Ordinary Session held in Banjul from 14 May to 03rd June 2024,
Banjul, The Gambia*



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

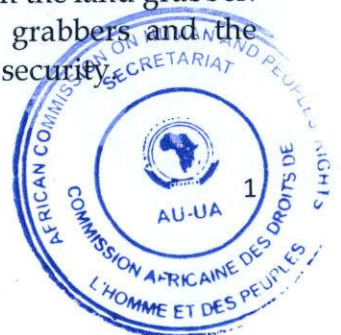


Ms. Abiola Idowu-Ojo
Executive Secretary to the African
Commission on Human and Peoples' Rights

Communication 803/22: Abdulrashid Abshir Warsame v. The Federal Republic of Somalia

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the Complaint on 19 September 2022 from Abdulrashid Abshir Warsame (the Complainant) against The Federal Republic of Somalia (the Respondent State).
2. The Complainant submits that he is a Somali national and a diaspora member living in Galkayo City, Mudug Region, Somalia. He further submits that he has legal ownership of urban land in Galkacyo, which 'land grabbers' have seized and have initiated illegal construction, allegedly depriving him of his right to property.
3. The Complainant asserts that he has received no positive response despite his efforts to seek assistance from domestic channels to halt the alleged illegal construction on his land and protect his property rights. He further submits that despite the constitutional recognition of the right to a fair trial and the international agreements to which the Respondent State is a party, certain groups, and clan leaders appear to operate above the law, enjoying impunity for violations of laws and human rights abuses.
4. He submits that in his case before the court, an individual (land grabber) has been admitted as a witness against him even though there is a criminal case registered against this individual by the Complainant, rendering him ineligible to testify in the complainant's case. He further submits that despite this, the "land grabber's" testimony has been deemed admissible in the court of law, contesting that this decision violates his right to a fair trial.
5. The Complainant avers that he was not treated with respect and honor in pursuing his case as the court had reached out to clan members, whom the Complainant described as his land grabbers, to verify the credibility of the information presented by his lawyer. He indicated that this has been affecting his mental health and putting him under immense stress.
6. The Complainant submits that, in addition to being subjected to discrimination and having his legal ownership deprived, he is also facing threats from the land grabber. He asserts that the considerable power wielded by the land grabbers and the apparent impunity by state institutions pose a serious risk to his security.



7. Furthermore, he states that the land grabbers have even issued threats against him within the premises of the courts and in the presence of Honorable Judges, yet no action has been taken by the court to address this issue.

Alleged violated Articles

8. The Complainants allege the violation of Articles 2, 3, 4, 14, 19, and 21 of the African Charter on Human and Peoples' Rights (the Charter).

Prayers

9. The Complainant requests the African Commission on Human and Peoples' Rights (the Commission) to:
- i. Find the violations of Articles 2, 3, 4, 14, 19, and 21 of the Charter by the Respondent State.
 - ii. Urge the Respondent State to employ various means to ensure the security of life and property of the Complainant.
 - iii. Urge the Respondent State to protect and promote human rights in Somalia.
 - iv. Conduct an inquiry into the land disputes in Somalia.

Procedure

10. The Secretariat received the Complaint on 19 September 2022 and acknowledged receipt on 22 September 2022.
11. The Secretariat considered and seized the Complaint and transferred the decision thereof to the parties on 13 June 2023.
12. On 13 June 2023, the Secretariat requested the Complainant to submit his arguments and evidence on Admissibility and merit within two (2) months.
13. On 26 July 2023, the Complainant requested an extension of 30 days to submit arguments and evidence on the admissibility and merits of the communication.
14. On 9 August 2023, the Commission duly granted an extension of thirty days to submit his arguments and evidence on admissibility and merit in accordance with Rule 98 of the Rules of Procedure of the Commission (2020).
15. On 11 September 2023, the Complainant submitted arguments on admissibility and merit, which the Secretariat acknowledged receipt of the submissions on 13 September 2023.



16. By Note Verbale dated 14 October 2023, the Secretariat transmitted the Complainant's submission to the Respondent State and requested the latter submit its admissibility arguments within 60 days.
17. On 19 February 2024, the Complainant wrote to the Secretariat inquiring about the status of the Communication.
18. On 20 February 2024, the Secretariat wrote back to the Complainant informing him that the Respondent States didn't submit its reply on admissibility, and that the Commission would proceed to consider the Communication in default.
19. By Note Verbale dated 20 February 2024, the Secretariat informed the Respondent State that due to its failure to submit its reply to the submission of the Complainant, the Commission will proceed to adopt a decision by default, based on the information before it, in accordance with Rules 118(2) and 120(2) of its Rules of Procedure (2020).

Admissibility of the Communication

A. The Complainants' Submissions on Admissibility of this Communication

20. The Complainant's submission was prompted by the Secretariat's request for arguments and evidence regarding the admissibility and merit of the Communication. However, it is important to note that most of the Complainant's submissions primarily consist of factual statements. It is also worth highlighting that the Complainant does not explicitly assert that the Communication meets the admissibility requirements outlined in Article 56 of the African Charter. The submissions focus primarily on demonstrating the violation of the Complainant's property rights, with sporadic arguments and evidence concerning the exhaustion of domestic remedies. These arguments and evidence do not explicitly address the rule of exhaustion of local remedies or its exceptions as provided in Article 56(5) of the African Charter.
21. The Complainant alleges that on 24 March 2021, he initiated legal proceedings at the Mudgu Regional Court, to regain possession of property that the land grabbers had unlawfully taken. He states that the case is currently pending before the Court.
22. The Complainants submits that on 20 January 2022, he filed a lawsuit in the Mudug Regional Court of Somalia to reclaim a farm, which he describes as resulting in a "50/50 decision" by the court. Subsequently, the defendant appealed the revision of this decision before the Mudug Regional Court of Appeal.



23. The Complainant asserts that during the Regional Court of Appeal proceedings, he experienced various instances of illegal manipulation, unfair treatment, and violations of his rights by the presiding Judge. As a result, the Complainant filed a motion seeking the replacement of the Judge, which was disregarded according to his submission.
24. Furthermore, the Complainant states that on 22 June 2022, he submitted a motion to the Chairman of the Court of Appeal of Mudug, seeking the case transfer. However, on 25 June 2022, his request was denied. The Complainant asserts that following the Chairman's denial, he pursued the matter at the Supreme Court of Galmudug. However, the Supreme Court dismissed his request and upheld the Chairman's decision, citing a lack of legal grounds for the complaint.
25. Following the rejection of the Complainant's requests, he was presented with two options: to initiate a new lawsuit or to continue with the case in the Court of Appeal. The Complainant elected to proceed with the case in the Court of Appeal.
26. The Complainant contends that, during the proceedings in the Court of Appeal, the Judge admitted as evidence the testimony of an individual that the Court had previously convicted, for engaging in fraudulent activities involving the sale of the Complainant's house. Additionally, another individual with a pending case related to looting and falsely claiming power of attorney to retain control over the Complainant's farm was also involved. The Complainant asserts that despite this procedural irregularity, the Court of Appeal overturned the "50/50 decision" of the Regional Court of Mudug and ruled in favor of the Appellant.
27. The Complainant submits that upon discovering that an individual named "Abdidahir Warsam" had an ongoing case before the Regional Court of Mudug, claiming ownership of a portion of the Complainant's farm, he intervened in the case on 29 February 2022, to contest the validity of the claim. On 23 May 2022, the judge ruled in favor of Mr. Abdidahir and closed the case. The Complainant further asserts that the presiding judge informed him that the Chief Judge and the Chief Judge of the Court of Appeal had instructed him to rule in favour of Mr. Abdidahir.
28. Additionally, the Complainant maintains that individuals affected by property rights violations and land disputes in Somalia often encounter significant obstacles when seeking effective remedies. He further asserts that the Somali judicial system, marred by corruption and administrative inefficiencies, imposes burdensome barriers that impede individuals from pursuing redress and obtaining justice.

B. The Respondent States observation on Admissibility



29. The Respondent State failed to provide any arguments or evidence, despite being notified of such requests. As a result, in line with its established jurisprudence, the Commission will proceed with its analysis based on the information presented by the Complainant and its examination, ultimately rendering a decision by default.
30. **Analysis of the African Commission**
31. In accordance with Article 56 of the African Charter, a Communication must meet the seven admissibility requirements outlined in the Article, before it can be considered by the Commission as admissible. The Commission emphasizes in its jurisprudence that these conditions listed in Article 56 are cumulative and must all be satisfactorily fulfilled, for a communication submitted in accordance with Article 55 to be considered admissible.
32. The Commission will deliberate on the Complaint, considering the aforementioned requirements and the available information. It is important to note that the Complainant did not explicitly address each requirement individually. Therefore, the Commission will evaluate whether the complaint satisfies the requirements by considering the various submissions.

Article 56(1)

33. Article 56(1) of the African Charter provides that Communications must indicate their authors, even when the latter requests anonymity. As was held by the Commission in *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) vs. the Republic of Botswana* case, this requirement enables the Commission to effectively process communications by ensuring a sustained interest in the subject matter under its jurisdiction.¹ In the present case, the Communication is brought by Abdurashid Abshir Warsame, (the Victim), on his behalf. The Complainant, Mr. Warsame, has indicated his name in the communication and did not request anonymity. Hence, the Commission notes that the Communication duly complies with Article 56(1) of the African Charter.

Article 56(2)

34. Pursuant to Article 56(2) of the African Charter, a Communication must align with the Charter of the Organization of African Unity and the African Charter. Regarding the compatibility of the Communication with the Constitutive Act of the African Union, the Commission acknowledges that the Complainant has claimed violations of human rights guaranteed by the African Charter, which explicitly includes the protection of these rights as one of its objectives under Article 3 (h) of the

¹Communication 277/2003, *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana* (ACHPR) para 97.



Constitutive Act. Furthermore, the Commission concludes that no aspect of the Communication can be considered contradictory to the objectives or principles of the Act.

35. In relation to the criterion of compatibility with the African Charter, the Commission has determined that a Communication submitted to the Commission will be considered if certain conditions are met.² These conditions include the State being a party to the African Charter, the alleged violations of rights falling within the scope of rights protected by the African Charter, and the alleged violations occurring within the territory or jurisdiction of the concerned State after the Charter's entry into force for that specific State.
36. In the present case, the Communication is submitted against the Federal Republic of Somalia, a State Party to the African Charter. The alleged violations occurred within the territory of the Federal Republic of Somalia, and after its ratification of the African Charter, as the alleged violations are indicated to have occurred from 2017, while the State ratified the Charter on 31 July 1985. The Communication alleges the violation of rights guaranteed in Articles 2, 3, 4, 14, 19, and 21 of the African Charter. In view of the above, the Commission considers that the admissibility requirement of Article 56(2) of the African Charter is satisfied.

Article 56(3)

37. Article 56(3) of the African Charter stipulates that Communications must not be written in disparaging or insulting language directed against the State concerned, its institutions, or the Organization of African Unity to be considered. As noted by the Commission in the case between *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe vs. the Republic of Zimbabwe*, in determining whether a certain remark is disparaging or insulting, the Commission must ascertain the intent behind the remark and whether it is aimed at unlawfully and intentionally violating the dignity, reputation, or integrity of a judicial officer or body. Moreover, the Commission must evaluate whether the language is used in a manner calculated to pollute the minds of the public or any reasonable person and cast aspersions on and weaken public confidence in the administration of justice.
38. After carefully reviewing the Complainant's submissions, the Commission has found no language that could be deemed excessively offensive or insulting towards the Respondent State, its institutions, or the African Union. Based on this analysis, the Commission concludes that the requirements of Article 56(3) have been satisfied.

Article 56(4)

² Communication 266/03, Kevin Mgwanga Gunme et al v. Cameroon (ACHPR) para 70.



39. Article 56(4) of the African Charter prohibits Complaints brought before the Commission pursuant to Article 55 from being based exclusively on news disseminated through the mass media. In the present Communication, the Complainant, in addition to his arguments, has annexed substantial volumes of information and evidence in various documents, including letters, legal documents, photos, videos, etc. Upon analysis of the submitted evidence, the Commission found that the factual information is not exclusively based on news disseminated through the mass media. The Commission is, therefore, satisfied that the Communication complies with Article 56(4).

Article 56(5)

40. Article 56 (5) requires that Complaints be submitted after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged. It is an established principle of the jurisprudence of the Commission that the requirement for the exhaustion of remedies applies only where such remedies are "available, effective, and sufficient to redress the alleged violation."³
41. In the present case, the Complainant did not specifically address the exhaustion of local remedies or their unavailability, ineffectiveness, and insufficiency. Instead, in a separate document, he broadly outlines the cases he brought before domestic courts, the procedure, and the decisions rendered without specifically addressing how these actions meet the criteria provided under Article 56(5).
42. The Complainant submits that he filed a case in the Regional Court of Mudug concerning the unlawful seizure of his property, including a farm. The Court issued a "50/50 decision," leading the defendant to appeal to the Appellate Regional Court of the Galmudug Region.
43. The Complainant indicates that during the proceedings in the Court of Appeal, he experienced various illegal manipulations, unfair proceedings, and violations of his rights by the Judge of the Court of Appeal. The Complainant further indicates that the judge accepted witnesses against him from individuals involved in fraudulent activities related to his property, contributing to his unfair treatment during the legal proceedings.
44. The Complainant submits that despite unfair trial and procedural irregularities, the Appellate Regional Court of Galmudug Region ruled against him and closed the case. He also mentioned being involved in a case filed by an individual named

³ Communication 147/95-149/96, Sir Dawda K. Jawara v. Gambia, (ACHPR), para 31; Communication 71/92: Rencontre africaine pour la défense des droits de l'homme (RADDHO) v. Zambia (ACHPR) para 6; Communication 318/06 Open Society Justice Initiative v. Côte d'Ivoire (ACHPR) para 40.



"Abdidahir Warsam," who claimed ownership of part of the Complainant's farm, and that the ruling also went against him.

45. From his submissions, the Commission notes that the Complainant has made some efforts to bring the case to the attention of the relevant authorities of the Respondent State, including the Police, the Regional Court of Mudug, and the Appellate Regional Court of Galmudug Region, but has not succeeded in recovering his property. However, the Commission observes that despite the availability of higher courts for the Complainant to contest the decision of the Galmudug Appellate Regional Court, such as the Supreme Court of Galmudug, he chose not to pursue this avenue.
46. As per Article 5 of the Law on the Organization of the Judiciary,⁴ the Supreme Court maintains jurisdiction across the entire Republic of Somali, with seats in "each Mogadishu." This same provision states that the Supreme Court holds authority over appeals from any courts within its appellate jurisdiction and appeals directly addressed to it. Additionally, Article 10 of the Law specifies that appeals to the Supreme Court in civil and criminal matters are centered on questions of law, such as nullity of judgment or procedure, misapplication of legal provisions, lack of jurisdiction, and insufficiency or contradiction in the grounds on which the decision is based.
47. In light of these legal provisions, the Commission acknowledges the existence of a recourse for individuals dissatisfied with the Regional Appellate Court's ruling. However, the Complainant has not indicated, in any of his submissions, that he had taken any steps to approach the Supreme Court, nor has he claimed that it was impossible. The only instance in which he approached the Supreme Court was to request the transfer of the case and replacement of the judge, not to challenge the final decision of the Regional Appellate Court.
48. The Commission notes that the reasons presented by the Complainant regarding alleged procedural irregularities in the Regional Appellate Court fall within the purview of legal questions over which the Supreme Court holds jurisdiction. Thus, the Commission believes that the Complainant could have appealed to the Supreme Court, thereby fulfilling the requirement of exhausting local remedies. The Commission underscored in the case of *Patrick Okiring and Agupio Samson v Uganda* that the local remedies of States should be utilised, to provide them with an opportunity to address alleged wrongs within their domestic legal frameworks, before international accountability is pursued.⁵

⁴ Law on the Organization of the Judiciary Law No. 3 OF 12 Jun 1962 <https://clra.so/wp-content/uploads/2021/01/Judiciary-Organization-Law-Law-No.-3-of-12-June-1962-Final.pdf>

⁵ Communication 339/2007, *Patrick Okiring and Agupio Samson* (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda (ACHPR) para 58.



49. Additionally, the Complainant did not demonstrate the unavailability, ineffectiveness, or inefficiency of such remedies, but instead, he described the lack of an effective remedy in general terms, stating that... *"Individuals aggrieved by the trespasses upon their property rights and land disputes are habitually confronted with insurmountable impediments in their endeavor to access efficacious redress. The Somali judicature, tainted by the specter of venality and administrative inefficiency, engenders onerous impediments, militating against individuals' pursuit of remedial justice."* The Commission believes that this particular submission of the Complainant does not adequately demonstrate or satisfy the Commission that remedies at the domestic level are genuinely unavailable, ineffective, or inefficient, lacking significant attempts and evidence to support such claims. The Commission in the *Anuak Justice Council v Ethiopia*⁶ Case highlighted that "it is incumbent on every complainant to take all the necessary steps to exhaust or at least attempt the exhaustion of local remedies. It is not enough for the complainant to cast aspersions on the ability of the domestic remedies of the state, due to isolated or past incidences."
50. Furthermore, the Commission notes that the Complainant has a lawsuit pending with the Mudug Regional Court, to reclaim property that he has not yet recovered from the land grabbers, as he indicated that the case is still pending before the Court. The Commission emphasised in the *SOS Esclaves v Mauritania* case that the presence of ongoing internal procedures, lacking clear indication of their status, signifies that domestic remedies have not been fully exhausted.⁷ Although the Commission acknowledges the State's duty to investigate and administer justice for human rights violations, it is also essential for the Commission to ensure that the Complainants have exhausted all available local remedies through national judicial processes, to vindicate their rights. Mere knowledge or awareness of the violation by the State is insufficient to exempt the Complainants from meeting this requirement. Instead, the Complainants should actively pursue all domestic remedies to provide the State with the opportunity to address the alleged violations, through its national mechanisms, and thereby fulfill the complementary role of the Commission.
51. For these reasons, the Commission concludes that the Complainant did not exhaust domestic remedies, and none of the exceptions apply. Consequently, the Communication fails to meet the requirements stipulated in Article 56(5) of the Charter.

Article 56(6)

52. According to the wording of Article 56(6) of the African Charter, the Commission should only admit Complaints that are submitted within a reasonable period from

⁶ Communication 299/05 *Anuak Justice Council v Ethiopia* (ACHPR) para 58.

⁷ Communication 198/97 *S.O.S. Esclaves / Mauritania* (ACHPR) para 15.



the time local remedies are exhausted or from the date the Commission is seized with the matter.

53. The Commission, in its jurisprudences, such as in *Promoting Justice for Women and Children (PROJUST NGO) vs. Democratic Republic of Congo* has established that what constitutes a “reasonable period” will be determined on a case-by-case basis,⁸ while generally finding six months to be a reasonable period within which to submit a Communication.⁹ In same vein, the Commission has established jurisprudence, such as in the case of *Promoting Justice for Women and Children (PROJUST NGO) vs. the Democratic Republic of Congo*, 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) of the Charter.

Article 56(7)

54. Article 56(7) of the Charter prohibits the Commission from declaring admissible any Communication concerning cases settled by the involved States in accordance with the principles of the Charter of the United Nations, the Charter of the Organization of African Unity, or the provisions of the present Charter. In the present case, the Commission found no evidence that the Complaint is one of the cases settled in accordance with either the principles of the United Nations Charter, the Charter of the Organization of African Unity, or the provisions of the African Charter. Therefore, the Commission considers that the Communication complies with Article 56(7) of the Charter.

Decision of the African Commission

55. Given the above, the African Commission on Human and Peoples' Rights declares the Communication **inadmissible** for failure to comply with Articles 56(5) and 56(6) of the African Charter.

Done in Banjul, The Gambia, at the 79th Ordinary Session of the African Commission on Human and Peoples' Rights held from 14 May to 03 June 2024.

⁸ Communication 278/2003, *Promoting Justice for Women and Children (PROJUST NGO) vs. Democratic Republic of Congo* (ACHPR) para 76; Communication 340/07 - *Nixon Nyikadzino (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe* (ACHPR) paras 100 and 101; Communication 351/2007- *Givemore Chari (represented by Gabriel Shumba) v Republic of Zimbabwe* (ACHPR) para 83.

⁹ Communication 308/05, *Michael Majuru v Zimbabwe* (ACHPR) para 109.

