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

COMMUNICATION 784/22

Mashilo Alfred Sako

V

The Republic of South Africa

Adopted by the:

African Commission on Human and Peoples' Rights

*During the 83RD Ordinary Session of the African Commission on Human and Peoples Rights held from 2
to 22 May 2025, Banjul, The Gambia.*



Hon. Commissioner Idrissa Sow
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

The African Commission on Human and Peoples' Rights
31 Bijilo Annex Layout, Kombo North District, West Coast Region
Phone: (220) 230 4361 Fax: (220) 441 05 04
Email: au-banjul@africanunion.org
<https://achpr.au.int/>





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COMMUNICATION 784/22 - Mashilo Alfred Sako v. The Republic of South Africa

Summary of the facts

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received on 25 February 2022 a Communication presented by Mr. Mashilo Sako (the Complainant), a citizen of the Republic of South Africa (Respondent State), represented in this Communication by Mr. Shadrack Tebeile, Advocate at the High Court of South Africa.
2. The complaint is filed against the Republic of South Africa, a State that became a party to the African Charter on Human and Peoples' Rights (the Charter) on 9 July 1996.
3. The Complainant avers that the Respondent's Department of Education appointed him as an educator from 1992 until his dismissal from employment in 2004 for failure to observe examination rules.¹
4. The Complainant alleges that after his dismissal, he made several attempts to appeal against the decision to terminate his employment with the former Member of the Executive Council (MEC) of Education in the Limpopo Province and was unsuccessful.

¹ Complainant's Observations on Admissibility and Merits, para 42.





5. The Complainant further alleges that his dismissal from employment had adverse effects on his personal life as he could no longer provide for his wife and three children, which led to their separation.
6. The Complainant alleges that he attempted to reapply to be admitted as an educator based on information from his former colleagues that it was possible to return to the Department of Education as an educator.
7. This resulted in him being recruited as an educator at Mosikare Secondary School in the North-West Province from March to December 2012. However, he was not remunerated as he was yet to be pardoned by the Limpopo Department of Education. His Persal Number was still blocked due to the dismissal.
8. The Complainant alleges that, between November and December 2015, he was appointed to Gaenthone Secondary School. The Complainant was compelled to abandon this post as he established that his Persal Number² was yet to be unblocked, which meant he still could not get paid.
9. It is further alleged that in 2016, the Complainant applied for his Persal Number to be unblocked by the Limpopo Provincial Treasury, and in 2019, he applied for a Pardon and Clearance Certificate. According to the Complainant, the Pardon and Clearance Certificate was granted in 2020.
10. The Complainant avers that in May 2021, he applied for a temporary teaching post at Mashupye Tladi Primary School and was shortlisted for an interview. Thereafter, he was notified that he had been recommended for appointment to the position.

² A Persal Number is a unique system generated eight-digit number assigned to each employee who is appointed on the persal system. A persal system is a standardized Human Resource and Payroll system for all the Central Government Departments in South Africa.





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11. The Complainant stipulates in his communication that thereafter, he waited for an approval letter, which he did not receive. Upon making a follow-up, he was advised that another candidate had already occupied the position.

12. Eventually, the Complainant filed an application with the High Court, Limpopo Division, for the matter to be heard as urgent, seeking the following orders:

- i. *That the Honourable Court condones noncompliance with the forms of service provided for in the Uniform Rules of Court and that the Honourable Court dispensed with same and the application be heard as urgent in terms of Rule 6(12) of the Uniform Rules of Court.*
- ii. *That the application be enrolled and heard as urgent in terms of Rule 6(12) of the Uniform Rules of Court.*
- iii. *That the first Respondent's decision to appoint the fifth Respondent as a temporary educator at Mashupye Tladi Primary School be declared unlawful and invalid and be reviewed and set aside.*
- iv. *That it be declared that the Complainant is pardoned and cleared as per Pardon and Clearance letter issued by the sixth Respondent dated 16 March 2020 entitled "REQUEST FOR PARDON AND CLEARANCE -AM SAKO."*
- v. *That it be ordered that the Complainant's Persal Number 80449913 be unlocked or unblocked by the first Respondent within five (5) days from the date of this order.*
- vi. *That the first Respondent be ordered to make the appointment of a temporary educator at Mashupye Tladi Primary School as per the recommendations of the fourth Respondent within five (5) days from the date of this order.*
- vii. *That any Respondent opposing the application be ordered to pay the costs of the application, including the cost of two counsel.*





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viii. *Further and/or alternative relief.*

13. On 28 September 2021, the High Court dismissed this application on the basis that it was not urgent.

14. The Complainant filed an application at the Constitutional Court seeking for the court to dispense with the normal rules pertaining to the set down of the application, for the application to be enrolled and heard as urgent, and that if an order for direct access is granted, the same orders sought in the High Court be granted by the Constitutional Court.³ The Constitutional Court dismissed the application on 13 October 2021.

15. On 25 February 2022, the Complainant filed a communication with the Commission.

Alleged violations:

16. The Complainant alleges a violation of Article 1, Article 7(1), Article 7(1)(a), Article 13(2), Article 13(3) and Article 15 of the African Charter.

Prayers:

17. The Complainant requests the Commission to:

- a. *Declare that the Respondent violated the Complainant's rights under Articles 1, 7(1), 7(1)(a), 13(2), 13(3) and 15 of the African Charter on Human and Peoples' Rights;*
- b. *Declare that the Complainant is pardoned and cleared as per the Pardon and Clearance letter issued by the Respondent dated 16 March 2020 entitled "REQUEST FOR A PARDON CLEARANCE – AM SAKO" attached hereto and marked as Annexure "FA1";*

³ Complainant's Communication, p 51.





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- c. *Order the Respondent to unblock or unlock the Complainant's Persal Number 80449913 within five (5) days from the date of this Order;*
- d. *Order the Respondent to pay the Complainant compensation in the amount of R140 019.00 with interest at a rate of 15% per annum calculated from 01 January 2022 and which amount of R140 019.00 is an amount equivalent to a salary of a period from 02 July 2021 to 31 December 2021 for a temporary teaching post at Mashupye Tladi Primary School in Limpopo Province;*
- e. *Order the Respondent to pay the Complainant's legal costs in the High Court of South Africa, Limpopo Division, Polokwane, and in the Constitutional Court of South Africa, including the costs of the two counsel in both courts;*
- f. *Order the Respondent to pay the Complainant's legal costs in this Commission;*
- g. *Order any costs as it deems fit to grant in the circumstances.*

Procedure

- 18. The Secretariat of the Commission received the complaint on 25 February 2022 and acknowledged its receipt on 3 March 2022 through a letter Ref: ACHPR/STC/COMM/183/22.
- 19. The decision to seize the complaint was taken during the 71st Ordinary Session, which took place in Banjul, The Gambia, from 21 April 2022 to 13 May 2022 and was notified to the parties through a letter dated 13 June 2022. The Complainant was requested to submit his arguments and evidence on admissibility within sixty (60) days.
- 20. On 23 June 2022, the Complainant submitted its observations on Admissibility and Merits, which were transmitted on 7 March 2023 to the Respondent State.





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21. On 26 April 2023 and 8 June 2023, the Respondent State requested an additional thirty (30) days to make submissions on admissibility.
22. On 23 June 2023, the Respondent State requested an oral hearing on the admissibility and merits of the Communication to clarify South Africa's legal system. The Commission did not grant this request.
23. The Respondent State submitted its arguments on Admissibility on 7 July 2023 and elected not to include arguments on the merits.
24. On 16 April 2024, the Secretariat, through Note Verbale, wrote to the Respondent State, granting it thirty (30) days to amend its submissions on admissibility to include arguments on the merits. However, the Respondent State opted to dispense with this option, electing to only make submissions on the merits after the Commission had determined the admissibility of the complaint.
25. On 19 June 2024, the Secretariat, via letter, transmitted the Respondent State's submissions on Admissibility to the Complainant and gave him thirty (30) days to submit a rejoinder.
26. The Complainant did not file any submissions in rejoinder.

Complainant's Submissions on Admissibility

27. The Complainant submits that the Communication fulfils the conditions of admissibility provided for in Article 56 of the African Charter as indicated below.
28. The Complainant avers that the Communication complies with the provisions of Article 56(1) of the African Charter as the Complainant is duly identified by his full name. The Complainant further asserts that the Respondent State is the Republic of South Africa and that it is linked to the alleged violations because the





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Respondent State violated the Complainant's rights under Articles 1, 7(1), 7(1)(a), 13(2) and 13(3) of the African Charter.⁴

29. The Complainant submits that the complaint is compatible with the Constitutive Act of the African Union and the African Charter. He argues that the violations in the present complaint are related to the human rights which fall within the ambit of the Charter, which guarantees such rights. Therefore, the Communication satisfies the threshold of Article 56(2) of the African Charter.⁵

30. The Complainant submits that the complaint complies with Article 56(3) of the African Charter as the allegations against the Respondent State are not derogatory, nor are they in a disparaging or insulting language.⁶

31. The Complainant further submits that the alleged violations presented in the complaint are not based exclusively on news disseminated through the mass media but are based on legal and administrative decisions by authorities and institutions within the territorial jurisdiction of the Respondent State. It therefore follows that the complaint meets the requirements provided for in Article 56(4) of the African Charter.⁷

32. The Complainant asserts that the complaint was filed after exhausting local remedies. The Complainant alleges that the case went through the domestic courts in the Respondent State until the highest court, the Constitutional Court. The Complainant reiterates that the matter reached the Constitutional Court, which means that the matter has been adjudicated to the highest court possible in the country, a distinct indicator of the exhaustion of local remedies.

⁴ Complainant's Observations on Admissibility and Merits, para 19 and 20.

⁵ Complainant's Observations on Admissibility and Merits, para 22 and 23.

⁶ Complainant's Observations on Admissibility and Merits, para 24 and 25.

⁷ Complainant's Observations on Admissibility and Merits, para 26.





33. The Complainant avers that he brought an urgent application to the High Court of South Africa, Limpopo Division, on 3 September 2021 under Case Number 6403/2021. On 28 September 2021, the High Court decided that the matter was not urgent. Consequently, the Complainant approached the Constitutional Court on 29 September 2021 under Case Number CCT 302/2021 and sought an order for direct access on an urgent basis. However, on 13 October 2021, the Constitutional Court dismissed the application on the basis that it was not urgent. As a result, the complaint meets the requirements of Article 56(5) of the African Charter on admissibility.⁸

34. The Complainant submits that the Constitutional Court delivered its Order on 13 October 2021, and the complaint was subsequently filed before the end of February 2022, a period of less than five (5) months. The complaint was filed within the permissible threshold for a reasonable time and, therefore, satisfies the requirements in Article 56(6) of the African Charter.⁹

35. Finally, the Complainant argues that the issues raised in his complaint have not been settled by any other entity, in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the African Charter as provided for in Article 56 (7) of the African Charter.¹⁰

Respondent State's Submissions on Admissibility

36. The Respondent State did not delve into detail concerning most of the requirements under Article 56 of the African Charter but primarily focused on the fifth requirement under Article 56(5) of the African Charter on the exhaustion of local remedies.



⁸ Complainant's Observations on Admissibility and Merits, para 28 to 37.

⁹ Complainant's Observations on Admissibility and Merits, para 38 and 39.

¹⁰ Complainant's Observations on Admissibility and Merits, para 40 and 41.



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37. The Respondent State argues that Article 50, as read with Article 56 of the African Charter, provides that the African Commission on Human and Peoples' Rights can only adjudicate a matter submitted to it after ensuring that all domestic remedies (if any) have been exhausted.

38. The Respondent State disputes the arguments by the Complainant that he has exhausted domestic remedies simply because his case has been through the domestic courts in the Republic of South Africa until he reached the Constitutional Court.¹¹

39. The Respondent State submits that Article 56(5) of the African Charter imposes a strict requirement that an individual ought to seek redress for harm allegedly caused by a state within its domestic legal system before pursuing international proceedings.

40. The Respondent State further submits that in terms of the South African legal system, an order striking off a matter from the roll is not final because the merits of the matter have not been adjudicated.¹²

41. The Respondent State further argues and cites jurisprudence from the South African courts, specifically the decision in the case of **Thembane Cleaning Services CC v Johannesburg Road Agency and Another**.¹³ The Gauteng Division of the High Court of South Africa's ruling in this case was to the effect that the Order which was appealed against did not dispose of any issue; neither was it final or definitive of the parties' rights.¹⁴

¹¹ Respondent State's Observations on Admissibility, para 24.

¹² Respondent State's Observations on Admissibility, para 29.

¹³ (38169/2019) [2020] ZAGPJHC 152; Herein, the court adjudicated on an application for leave to appeal following an order which struck a matter off the roll.

¹⁴ Respondent State's Observations on Admissibility, para 30.





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42. In light of this, the Respondent State submits that the Complainant could not successfully appeal against the Order in terms of Section 17(1) of the Superior Court Act, No. 10 of 2013. However, the Respondent State notes that the Complainant still had the option to set the matter down again for hearing, but with stricter compliance with the rules and procedures of the South African courts.¹⁵ If this avenue had failed, he still had the option to appeal a decision on the merits to the Supreme Court of Appeal or the Full Bench of the High Court and, subsequently, the Constitutional Court, if the appeal had been rendered unsuccessful.

43. The Respondent State further argues that the Complainant had the prerogative to enroll his application on the normal court roll in terms of the practice manual of the Polokwane High Court and set his matter down for hearings as the merits were not yet determined.¹⁶

44. The Respondent State submits that in addition to the Complainant having the option to set the matter on the normal court roll, the South Africa Uniform Rules of Court grant a Respondent in a motion proceeding to enroll a matter for hearing on the Roll if the Applicant in a matter fails to apply for the date, before approaching the Constitutional Court on an urgent basis to set aside the order handed down by Polokwane High Court.¹⁷

¹⁵ Respondent State's Observations on Admissibility, Para 31; The Respondent State cited the case of *Johannes Jacobus Roets NO and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* (38515/2021) [2022] ZAGPJHC 720 (6 October 2022) wherein the court held that if a matter is struck from the roll on urgency, an applicant can simply set the matter down again on proper notice in compliance with the rules.

¹⁶ Respondent State's Observations on Admissibility, para 33.

¹⁷ Respondent State's Observations on Admissibility, para 34-36.





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45. Lastly, the Respondent State argues that the Complainant could seek redress from the Labour Court for an order to unblock his Persal Number in terms of the Basic Conditions of Employment Act No. 75 of 1997.¹⁸

46. The Respondent State submits that the Commission needs to be guided by the principle of the primacy of domestic remedies in reaching its decision. The Respondent State also submits that it has adequately demonstrated the availability of judicial remedies that the Complainant could have utilised before filing the complaint.

47. The Respondent State contends that the Commission has sufficient grounds to render the complaint inadmissible as it does not meet the requirements of Article 56(5) of the African Charter.

Law

Analysis of the Commission

48. Article 56 of the African Charter provides that communications submitted under Article 55 of the African Charter shall be considered if they satisfy the seven (7) conditions of admissibility set out therein. The requirements are conjunctive and should be viewed cumulatively, such that a failure to meet any of the requirements renders a communication inadmissible.¹⁹

49. The Commission considers the submissions of the parties in light of these requirements as follows:

¹⁸ Respondent State's Observations on Admissibility, para 42.

¹⁹ Communication 284/03: Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe (2009) ACHPR para 81.





Article 56(1)

50. Article 56(1) of the African Charter requires that a communication 'indicate its authors even if the latter request anonymity.' The practice and jurisprudence of the Commission posits that the provision requires the Complainants to provide their identity²⁰ and contact details²¹ so that the communication is processed adequately. This also provides an avenue for communication with the parties to ensure continued interest in the matter or to request additional information that may be required pertaining to the communication.²² In the present case, Mashilo Alfred Sako is identified as the complainant, represented by Advocate Shadrack Tebeile. Therefore, the parties are sufficiently identified, and the communication duly complies with Article 56 (1) of the African Charter.

Article 56(2)

51. Article 56(2) of the African Charter requires a Communication to be compatible with the Charter of the African Union or the Charter. Furthermore, the Commission has interpreted this provision to include compatibility with the four (4) aspects of its competence, namely competence *ratione personae*, *materiae*, *temporis* and *loci*.²³ The Commission is satisfied that this communication satisfies the four aspects necessary to establish jurisdiction. The Commission notes that the communication was introduced against the Respondent State, a party to the African Charter (competence *ratione personae*)²⁴, alleges the violation of rights provided for in the Charter, in particular Articles 7(1), 7(1)(a), 13(2), 13(3) and 15 (competence *ratione materiae*) of the African Charter, alleges that the violation was committed in the territory of the Respondent State (competence *ratione loci*)

²⁰ Communication 308/05: Michael Majuru v Zimbabwe, 24 November 2008, para 71.

²¹ Communication 70/92: Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba v Guinea, 7 October 1995, para 11.

²² Communication 277/03: Spilg and Mack & Ditshwanelo (on behalf of Lehlohonolo Bernina Kobedi) v Botswana, 12 October 2013, para 97

²³ Communication 467/14 – Ahmed Ismael and 528 others v. the Arab Republic of Egypt (2015) ACHPR para 138.

²⁴ Refer to Paragraph two (2) of these submissions.





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and that the alleged violation occurred after the Respondent State ratified the African Charter (competence *ratione temporis*).²⁵

52. Additionally, the Commission notes that the communication seeks the protection of human rights and is, in turn, compatible with Article 3(h) of the Constitutive Act of the African Union. Therefore, nothing in the Complainant's submissions reveals any incompatibility with the African Union Constitutive Act or the African Charter.²⁶ In view of the foregoing, the Complainant has satisfied Article 56(2) of the African Charter.

Article 56(3)

53. Regarding the language used, Article 56(3) of the African Charter provides that communications shall not contain disparaging or insulting language directed to the Respondent State, its institutions or the African Union. 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 administration of justice.”²⁷ The Commission has satisfied itself that in the present case, the Complainant did not use any language undermining the integrity and status of the institution being complained against and bringing it into disrepute.²⁸ Consequently, this condition of admissibility is fulfilled.

²⁵ Communication 266/03: Kevin Mgwanga Gunme et al / Cameroon, 27 May 2009, para 71.

²⁶ Gozbert Henerico v. Federal Republic of Tanzania, ACtHPR, Case No. 056/2016, Judgment of 20 January 2022 (Merit and Remedies), para 65.

²⁷ Communication 284/03: Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe, 3 April 2009, para 91.

²⁸ As above.





Article 56(4)

54. Article 56(4) of the African Charter provides that communications should not be 'based exclusively on news disseminated through the mass media.' In interpreting this provision, the Commission has acknowledged the importance of mass media as a source of information and reiterated that the issue of concern is whether the information obtained from the media is correct and the veracity of the allegations from it.²⁹ The Complainant produced court documents as evidence and has not relied exclusively on news disseminated through the mass media. Thus, this communication satisfies the provisions of Article 56(4) of the African Charter.

Article 56(5)

55. Concerning the exhaustion of domestic remedies, Article 56(5) of the African Charter provides that communications may only be admitted after 'exhaustion of local remedies if they exist unless it is obvious that this procedure is unduly prolonged.'

56. The rationale behind Article 56(5) of the African Charter is to give state parties the first responsibility to resolve allegations of human rights violations using their domestic remedies and within their domestic legal system.³⁰ This is informed by the principle of the subsidiarity of the international adjudicatory system.³¹ The settled jurisprudence of the Commission shows that this is one of the most important conditions for the admissibility of communications.³²

57. The Commission has further established that these domestic remedies must be available, in that they can be used by the Complainant without impediment;

²⁹ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 26.

³⁰ Communication 292/04 – Institute for Human Rights and Development in Africa / Angola (2008) ACHPR para. 38.

³¹ Guide to the African Human Rights System available at

https://www.chr.up.ac.za/images/publications/2021/Guide_to_the_African_human_rights_system_2021.pdf

³² Communication 147/95 and 149/96 – Sir Dawda K Jawara v. Gambia (2000) ACHPR, para 20.





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effective, because they offer a prospect of success; and sufficient, because it is capable of fully redressing the alleged violations.³³

58. The Complainant argues that he exhausted all available local remedies because he utilised the legal system up to the apex court, that is, the Constitutional Court.

59. On the other hand, the Respondent State submits that while the Complainant filed a case in the Constitutional Court, the matter was dismissed on a technicality. Thus, the Complainant still had the opportunity to file an application on the normal roll from the High Court and appeal, if the outcome was undesirable, up to the Constitutional Court.

60. The Respondent State further submits that according to the domestic legal system of the Republic of South Africa, it is trite law that when a case is struck off the roll, it is unappealable per the ***Thembane Cleaning Services*** judgment referenced above.³⁴ Therefore, the procedure to approach the Constitutional Court of South Africa was misplaced and premature.

61. In this Communication, the Commission concurs with the Respondent State's assertions and notes that after the urgent application was struck off the roll, the Complainant did not take the necessary steps to file the application on the normal court roll and allow the necessary court processes to unfold. This would have allowed for the matter to be adjudicated on the merits, which, if dismissed, could have been appealed against at the Supreme Court of Appeal. However, the Complainant did not do so.

62. In ***Jawara v The Gambia***, the Commission highlighted that in determining the availability of a remedy, it will consider whether the Complainant knows of the

³³ As above, para. 32.

³⁴ Paragraphs 40 and 41 of these submissions.





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remedy and can pursue it without impediment.³⁵ The Complainant is legally represented and should therefore have effectively exhausted all known and available local remedies through the assistance of his representatives.

63. The Commission notes that, indeed, according to the South African legal system, the Complainant had the option of approaching the Labour Court for relief to get his Persal Number unblocked. However, he did not utilise this procedure.

64. Furthermore, the South African Uniform Rules of Court grant a Respondent in a motion proceeding to enroll a matter for hearing on the roll if the Applicant in a matter fails to apply for the date. While this may be an unlikely occurrence on the part of the Respondent, who may not have any direct interest in ensuring the finalisation of this matter, it buttresses the notion that there were other available avenues the Complainant could have benefited from, in exhausting domestic remedies, before approaching the Commission.

65. In any event, the Commission takes cognisance of the fact that the Complainant did not actively prosecute his claim from the beginning to justify his cases being heard on an urgent basis. This situation arose after his dismissal in 2004. However, the Complainant did not actively and urgently prosecute the matter until 2021. Instead, he relied on unofficial information from third parties as opposed to following due process. The Complainant should have followed the proper court proceedings and exhausted all local remedies. There was no apprehension of any injustice in exhausting local remedies, which would warrant an exception to the mandatory rule.

66. In **Obert Chinhamo v Zimbabwe**, the Commission drew inspiration from the UN Human Rights Committee which stated that "the mere fact that a domestic remedy is inconvenient or unattractive, or does not produce a result favourable to the

³⁵ Communication 147/95 and 149/96 – Sir Dawda K Jawara v. Gambia (2000) ACHPR, para 3.





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petitioner does not, in itself, demonstrate the lack or exhaustion of all effective remedies.”³⁶ While the Complainant sought his cases to be heard on an urgent basis, the fact that proceeding on the normal court roll would not have been favourable to him, as this would not be as expeditious as he had hoped, did not render the local remedies unavailable or duly exhausted. The dismissal of both cases in the High Court and the Constitutional Court was done on procedural as opposed to substantive grounds.

67. Finally, the Commission reiterated in *Rencontre Africaine pour la défense des droits de l'homme v Zambia* that when a government ‘argues that the Communication should be declared inadmissible because local remedies have not been exhausted, this government has the responsibility of proving the existence of such remedies.’³⁷ The Commission contends that the Respondent State has successfully proven the existence of remedies at the Complainant’s disposal.

68. In view of the above, the Commission concludes that the Complainant has not exhausted domestic remedies and that this Communication fails to meet the requirements of Article 56 (5) of the African Charter.

Article 56(6)

69. With regards to the time limit for lodging a complaint, Article 56(6) of the African Charter provides that communications are to be admitted if they are submitted within a reasonable time, following the exhaustion of domestic remedies or the date set by the Commission for the counting of the time limit for admissibility before the Commission itself.

³⁶ Communication 307/05: Obert Chinhamo v Zimbabwe, (2007) ACHPR, para 84.

³⁷ Communication 71/92: Rencontre Africaine pour la défense des droits de l’homme v Zambia (1996)

ACHPR, para 12.





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70. In ***Promoting Justice for Women and Children (PROJUST NGO) vs.***

Democratic Republic of Congo, the Commission noted that the requirement in Article 56(6) is tied to the requirement of exhaustion of local remedies so much so that the point of departure of the reasonable time is from the date of exhaustion of local remedies. It is not worthwhile to analyse Article 56(6) of the African Charter when failure to exhaust local remedies has been established.³⁸ In this communication, the Commission has established that the Complainant failed to exhaust local remedies. Consequently, the need to analyse the condition of Article 56(6) of the African Charter in the present Communication also falls away.

Article 56(7)

71. Finally, 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 the states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.' This condition codifies the principle of *non bis in idem* or *res judicata* by requiring that the matter referred to it should not be pending before another body on the merits.³⁹

72. In ***Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others***, the Commission averred that the provision requires that a case "no longer be under consideration under an international dispute-settlement procedure"⁴⁰ Additionally, the case must have been decided on the merits and a 'final settlement' given by that body.⁴¹ The settlement must be from an 'adjudication mechanism with a human rights

³⁸ Communication 278/03: *Promoting Justice for Women and Children (PROJUST NGO) vs. Democratic Republic of Congo* (2012) ACHPR, para 75-76.

³⁹ Communication 260/02: *Bakweri Land Claims Committee v Cameroon*, 4 December 2004, para 52.

⁴⁰ Communication 409/12, 30 April 2014, para 112.

⁴¹ Communication 260/02: *Bakweri Land Claims Committee v Cameroon*, 4 Dec 2004, para 52 and





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mandate.⁴² In the present case, there is no evidence to suggest that this matter was settled by another international adjudicatory body. Thus, the Communication complies with Article 56(7) of the African Charter.

Commission's admissibility decision

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

- i. Declares the Communication inadmissible for lack of compliance with the provisions of Article 56(5) of the African Charter;
- ii. Notifies the Parties of its decision in accordance with the provisions of Rule 118(4) of its Rules of Procedure.

Done at the 83rd Ordinary Session of the Commission held in Banjul, The Gambia, from 2 to 22 May 2025.

⁴² Communication 279/03-296/05: Sudan Human Rights Organisation & Centre for Housing Rights and Evictions (COHRE) v Sudan, 27 May 2009, para 104.

