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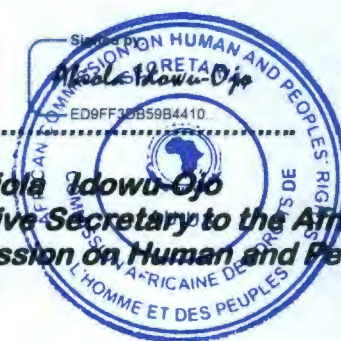
COMMUNICATION 783/22

Johannes Moko(represented V The Republic of South Africa

*Adopted by the
African Commission on Human and Peoples' Rights
During the 83rd Ordinary Session held in Banjul from 2nd to 22nd 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



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

Communication 783/22 Johannes Moko and The Republic of South Africa

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the Complaint on the 16th of February 2022.
2. The Parties in this Communication are as follows: The Complainant is Johannes Moko, a 23-year-old male South African National. The Respondent State is the Republic of South Africa.
3. The Complainant alleges that on 20 November 2020, the Acting Principal of his then school, Malusi Secondary School, prevented him from sitting the Business Study Paper 2 examination on the grounds that he had not attended certain extra classes. He was requested to return to the school accompanied by a parent or guardian to discuss the matter of the alleged truancy.
4. The Complainant alleges that he was unable to locate his grandmother and his sister was far away and unable to attend to his school, he therefore returned alone later that day, finding the Exam already underway. The Acting Principal, he alleges, refused him entry into the examination room thus preventing him from taking his Business Studies Paper 2 examination on the scheduled 25 November 2020.
5. It is alleged that on the 26th of November 2020, the Complainant returned to the school accompanied by his uncle and one Mr. Moshuhla where the Acting Principal informed them that the Complainant would have to sit for the supplementary examination in May 2021.
6. The Complainant alleges that on the 27th of November 2020, he escalated the matter to the Member of the Executive Council for Education in Limpopo Province where he was informed by the District Director that he would only be able to sit for the examination in May 2021.
7. The Complainant approached the High Court for an order that he be allowed to sit for his Business Studies Paper before the examination period ends, but his application was struck off the role for lack of urgency.





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28. On the 16th of May 2024, the Respondent State wrote the Secretariat requesting for an oral hearing to explain their insistence on only submitting on the merits after the Commission has rendered a decision on the merits.
29. The Secretariat wrote back the Complainants informing them that the Commission had decided against an oral hearing for their Communication.

PRAYERS

30. The Complainant has requested the Commission for the following remedies:-

- A. *That it is declared that the Respondent violated the Complainant's rights under Articles 1, 16(1) and 16(2) of the African Charter on Human and People's Rights ("the Charter").*
- B. *That the Respondent is ordered to pay compensation in the amount of \$300 000 (Three Hundred Thousand US Dollars) to the Complainant within six (6) months from the date of this Order.*
- C. *Further orders as the Commission deems fit to grant in the circumstances.*

ADMISSIBILITY

THE SUBMISSIONS FROM THE COMPLAINANT ON ADMISSIBILITY

31. The Complainant submits that this Communication should be declared admissible as it meets all the requirements in Article 56 of the Charter. He argues that the Communication is compliant with Article 56(1) as it discloses the identity of the Complainant.²
32. Regarding Article 56(2) of the Charter, the Complainant avers that the Communication is compliant with the Constitutive Act of the African Union (AU) and the Charter as it raises human rights which fall within the Charter.³
33. The Complainant submits that the violations in the present Communication and the allegations therein do not contain disparaging or insulting language and thus satisfy the requirements of Article 56(3) of the Charter.⁴
34. Regarding conformity with Article 56(4) of the Charter, the Complainant contends that the allegations presented in the present Communication are not based on news

2 Complainant's Observations on Admissibility and Merits, para 6 & 7.

3 Complainant's Observations on Admissibility and Merits, para 8 & 9

4 Complainants Observation on Admissibility and Merits, para 10 & 11





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disseminated on mass media but rather on actual facts and decisions taken by the Respondent State.⁵

35. The Complainant avers that the present Communication has exhausted local remedies as the matter of the counselling services was litigated first in the High Court in the case of **Johannes Moko v Acting Principal of Malusi Secondary School: Mr. Mokgonyana and 4 other, Case No:7515/2020**, all the way to the Constitutional Court, the apex court of the Respondent State, in **Johannes Moko v Acting Principal of Malusi Secondary School: Mr. Mokgonyana and 4 other, CCT 297/20** thus complying with Article 56(5) of the Charter.⁶
36. Concerning compliance with Article 56(6) of the Charter, the Complainant submits that the Communication was filed on 12th April 2021, 4 months after the delivery of the Constitutional Court Judgement on 28th December 2020 despite being received by the Secretariat on the 16th of February 2022.⁷ He insists that the Communication was submitted on the 12th of April 2021 and that even if it was only received by the Secretariat on the 16th of February 2022, the 14-month duration between when he exhausted local remedies and when he filed the Communication is a reasonable time.⁸
37. The Complainant also argues that the Complaint was also transmitted to the Secretariat via Courier, but the proof was misplaced.
38. The Complainant submits that the present Communication meets the requirement of Article 56(7) of the Charter as it has not been settled in accordance with the Charter of the United Nations (UN), the Constitutive Act of the AU, the provisions of the Charter or any legal instrument of the African Union.

THE SUBMISSIONS OF THE RESPONDENT STATE ON ADMISSIBILITY

39. The Respondent State submits that the present Communication is inadmissible as it was filed before exhaustion of local remedies and not filed within a reasonable time.⁹
40. Regarding the former of the two, the Respondent State avers that the Constitutional Court of South of South Africa only decided on the alleged violation of the Complainant's right to education under s29(1)(a) of the South African Constitution and accordingly the matter of the Counselling session has not exhausted local remedies.¹⁰
41. The Respondent State avers that it has available domestic remedies which the Complainant has not used in the present case. The Respondents indicates that the Complainant could have still approached the Registrar of the Constitutional Court and requested that the undertaking of the Respondent State authorities to fund the Complainant's counselling services be made an order of the Court.

5 Complainant's Observations on Admissibility and Merits, para 12

6 Complainant's Observations on Admissibility and Merits, para 13-22

7 Complainant's Observations on Admissibility and Merits, para 23-27

8 Complainant's Observation on Admissibility and Merits, Para 25 -27

9 Respondent State's Observations on Admissibility and Merits, Page 5-21

10 Respondent State's Observations on Admissibility and Merits, para 16 -31

11 Respondent State's Observations on Admissibility and Merits, para 32-39





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42. It is also the contention of the Respondent State that the Complainant's prayer for compensation to the tune of \$300 000.00 is a different substantive claim than that brought before the Courts of South Africa in which no monetary compensation was sought. It is argued by the Respondent that this amounts to a delictual claim which should have been filed in the courts of South Africa.¹²
43. The Respondent State further emphasises that international enforcement mechanisms must be a last resort.¹³ They submit that the remedies in South Africa are available, effective, and sufficient and this they argue is proven by the Bill of rights in the South African Constitution which guarantees access to the courts; an effective judiciary capable of providing a remedy.¹⁴
44. Furthermore, the Respondent State contends that the present Communication does not comply with Article 56(6) of the Charter as it was not sent within a Reasonable time. Relying on the findings in *Majuru v Zimbabwe (2008)*¹⁵ it is submitted that the Commission has found a period of six (6) months to be a reasonable time to submit one's complaint from the time of exhaustion of local remedies.
45. The Respondent State avers that the Complainant has sought to mislead the Commission by on the correct dates for when the Constitutional Court of South Africa handed down its judgment and when the Complaint was filed at the Secretariat. The understanding of the Respondent State is that the Constitutional Court handed down their judgment on the 28th of December 2020 and the Complaint was filed on the 16th of February 2022. The Respondent State also rejects the contention that the Complaint was also couriered to the Secretariat in the absence of evidence, they insist that such evidence is easily accessible from the Courier service. In addition, the Respondent State submits that the computation of the reasonable time period is not concerned with when the Complaint was received but rather when it was seized.
46. The contention of the Respondent State therefore is that the Commission should reject the Communication as it does not conform with Article 56(6).

THE COMMISSION'S ANALYSIS ON ADMISSIBILITY

47. A Communication submitted in terms of Article 55 must satisfy the seven requirements in Article 56 of the Charter in order to be declared admissible.
48. The Commission recalls that the conditions outlined in Article 56 of the Charter are cumulative and should all be adequately fulfilled for a communication submitted in conformity with the terms of Article 55 to be admissible. Consequently, non-fulfilment

12 Respondent State's Observations on Admissibility and Merits, para 32 - 50

13 Respondent State's Observations on Admissibility and Merits, para 51-55

14 Respondent State's Observations on Admissibility and Merits, para 57-62

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of any one of these conditions is liable to render a communication inadmissible.¹⁶ The Commission now considers the submissions of the parties in light of these requirements *seriatim*.

Article 56(1) of the Charter

49. Article 56(1) of the Charter states that "Communications relating to Human and Peoples' Rights... received by the Commission shall be considered if they indicate their authors even if the latter request anonymity..." The requirement here is that complainants or authors of complaints proffer their identity¹⁷ and contact details¹⁸ to enable the Commission to adequately process the communication through assurances of continued interest in the matter.¹⁹ In the present case, the Communication is brought by Johannes Moko, who is represented by one Shadrack Tebeile. The parties are adequately identified, the Communication duly complies with Article 56 (1) of the Charter.

Article 56 (2) of the Charter

50. Article 56(2) of the Charter states that "Communications...received by the Commission shall be considered if they are compatible with the Charter of the Organization of African Unity or with the present Charter." In **Communication 709/19 – Senator Jean-Pierre Bemba Gombo v. Democratic Republic of Congo**, the Commission interpreted Article 56(2) of the Charter to require compatibility with the Constitutive Act of the African Union or the Charter, and with the four (4) aspects of its competence, namely competence *ratione personae*, *materiae*, *temporis* and *loci*.²⁰ Concerning the former, the Commission notes that this Communication seeks the protection of human rights which is one of the objectives of the Constitutive Act of the African Union, provided for in Article 3 (h) thereof. Furthermore, nothing in the Complainants' submissions and Complaint reveals any incompatibility with the Charter. Concerning jurisdiction, the Commission is satisfied that the Respondent State is party to the Charter;²¹ the Complaint alleges *prima facie* violations of rights protected by the Charter; the Complaint is brought in respect of violations that occurred after [the] Respondent State's ratification of the Charter.²² It follows that the Complainants have satisfied Article 56(2) of the Charter.

¹⁶ Communication 304/2005 - FIDH & Others v Senegal (2006) ACHPR para 38

¹⁷ Communication 308/05 : Michael Majuru v Zimbabwe, 24 November 2008, para 71.

¹⁸ Communication 70/92_9: Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba v Guinea, 7 October 1995, para 11.

¹⁹ Communication 277/2003-Spilg and Mack & Ditshwanelo (on behalf of Lehlohonolo Bernard Kobedi) v Botswana, 12 October 2013, para 97.

²⁰ Para 26-29

²¹ The Republic of South Africa ratified the Charter on 9th July 1996

²² Communication 266/03, 27 May 2009, para 71





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Article 56 (3) of the Charter

51. Article 56(3) of the Charter states that "Communications ...received by the Commission shall be considered if they are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity (AU)". In **Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe**, the Commission held that "in determining whether a certain remark is disparaging or insulting and whether it has dampened the integrity of the judiciary, the Commission has to satisfy itself whether the said remark or language is aimed at unlawfully and intentionally violating the dignity, reputation or integrity of a judicial officer or body and whether it is used in a manner calculated to pollute the minds of the public or any reasonable man to cast aspersions on and weaken public confidence on the administration of justice."²³

52. Having analyzed the submissions of the Complainants, the Commission has not come across any language that appears to be aimed at unduly impairing the esteem of either the Respondent State or the African Union. In light of the foregoing the Commission finds that Article 56(3) of the Charter has been complied with.

Article 56 (4) of the Charter

53. Article 56(4) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they are not based exclusively on news disseminated through the mass media". In shedding more light to this provision, the Commission averred that "the issue therefore should not be whether the information was gotten from the media, but whether the information is correct' and whether the complainant tried to verify the truth"²⁴ This interpretation from **Jawara** was adopted with approval in **Ahmed Ismael and 528 Others v. the Arab Republic of Egypt**.²⁵ In the present Communication, the Complainants have presented evidence in the form of court documents. The Commission is of the opinion that the Complainants have not relied exclusively on news disseminated through the mass media and thus this communication satisfies the provision of Article 56(4) of the Charter.

Article 56[5] of the Charter

54. Article 56(5) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they are sent after exhausting local remedies.

²³ Communication 284/03, 3 April 2009, para 91.

²⁴ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 25 and 28.

²⁵ Communication 467/14, 27 May 2016.





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if any, unless it is obvious that this procedure is unduly prolonged.” The Commission requires exhaustion of local remedies where they are ‘available, effective and sufficient to redress the alleged violation.’²⁶ An available remedy is one where ‘the petitioner can pursue it without impediment’.²⁷ An effective remedy will be one that ‘offers a prospect of success.’²⁸ A remedy will be sufficient ‘if it is capable of redressing the complaint.’²⁹

55. The Commission recalls that an effective remedy will be one that ‘offers a prospect of success’,³⁰ and ‘upon success, the appropriate relief is one that is capable of adequately and timely redressing the specific violation suffered’.³¹ It should also be noted that a prospect of success of a remedy need not be ‘certainty or guarantee of a favourable outcome for the complainant’ but simply an assurance of full and fair examination of the legal issues and arguments.³² In determining the propensity of a remedy to offer real prospects of success the Commission will assess the nature of the complaint, the ‘general legal and political context’ of the remedies, and the complainant’s personal circumstances.³³

56. The Complainants argue that they exhausted local remedies when they approached the Constitutional Court which is the highest Court in the Respondent State. The Respondent State contends that the Complainants did exhaust local remedies because the matter of Counselling services for the Complainant and the claim for monetary compensation was never deliberated on by the Courts of the Respondent State. Further, that the Complainant still had to approach the Registry of the Constitutional Court for a court order on the undertaking of the Limpopo Department of Education and Ministry of Education to fund the Complainant’s Counselling services.

57. The Commission will now turn to examine the litigation that happened in High Court case No: 7515/2020 and Constitutional Court case of CCT297/20. The Commission notes that in the Respondent State’s Courts, the Complainant alleged a violation of the right to education due to being prevented from taking his examination and prayed for a timely re-sit, as well as for the Respondent State to carry the costs of his counselling services. In the present Communication, the Complainant alleges a violation of his rights to attain the best possible state of physical and mental health

²⁶ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

²⁷ Communication 317 / 2006 – The Nubian Community in Kenya vs The Republic of Kenya, 30 May 2016, para 55.

²⁸ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

²⁹ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

³⁰ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

³¹ Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016

³² Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016

³³ Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016





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due to the Respondent State not providing him with Counselling services and claims \$300 000.00 as compensation.

58. The Commission notes that while connected, these are two remarkably different cases. The question of whether or not the Respondent State violated the Complainant's right to attain the best physical and mental healthcare for want of undelivered counselling services, as well as the monetary claim is a matter that has not been litigated before the Courts of the Respondent State. The Commission notes and recalls its jurisprudence in *Human Rights Council and Others v Ethiopia*³⁴ that for domestic remedies to be exhausted, the domestic remedy must address all aspects of the individual's claim before the Commission. Therefore, issues pleaded before the Commission must be the same issues pleaded before the Commission. The Commission therefore takes the view that the present case, the alleged violation of the right to health for failure to provide counselling services to the Complainant has not been considered by the Courts of the Respondent State and accordingly has not exhausted any local remedies.
59. The Complainant has also not contested the availability, effectiveness, and adequacy of the domestic remedies of the Respondent State. Furthermore, there has been no evidence of undue prolongation of domestic remedies, in fact the Commission notes the brevity of the processing times for both cases litigated by the Complainant in the High Court and Constitutional Court of the Respondent State. It was therefore incumbent on the Complainant to exhaust local remedies.
60. The Commission takes the opinion that the Complainants have not exhausted local remedies as the present Complaint has been presented to the Commission as a court of first instance.

Article 56(6) of the Charter

61. Article 56(6) of the Charter states that Communications relating to human and Peoples' Rights... shall be considered if they: are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter." The Commission notes that where a Communication has not exhausted local remedies it follows that Article 56(6) is automatically not satisfied. In any event the Commission notes that the Complaint contrary to the averments of the Complainant was filed via email by his counsel on the 16th of February 2022 which was 14 months following the handing down of the Constitutional Court's judgment on the 28th of December 2020. The Complainant has not provided any justification for this significantly lengthy delay, rather the Complainant has sought to misrepresent

34 Communication 445/13, 19 May 2016, para 56-58





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facts by insisting his complaint was received earlier than it was. In the absence of justifiable circumstances explaining the delay, the Commission considers that the present communication was not filed within a reasonable time from the exhaustion of remedies.

Article 56(7) of the Charter

62. Article 56(7) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they: do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the 25 Organization of African Unity or the provisions of the present Charter." The rule is based on the *non bis in idem* and *res judicata* rules.³⁵ The Commission has previously found in **Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others** that the provision requires that a case "no longer be under consideration under an international dispute-settlement procedure"³⁶ Further, that the other international body must have decided the case on the merits and there is a 'final settlement' by that body.³⁷ The settlement must, as the Commission has previously stated, a human-right adjudicatory body.³⁸ In the present case, there is no evidence to suggest that this matter was settled by another international adjudicatory body. It thus complies with sub-Article 7 of the Charter.

COMMISSION'S DECISION ON ADMISSIBILITY

63. In view of the above the Commission decides the following:

- a. The Communication does not satisfy the requirements of Article 56(5);
- b. The Communication does not satisfy the requirements of Article 56(6);
- c. The Communication is declared inadmissible.

Done at the 82nd Ordinary Session of the Commission held in Banjul, The Gambia from the 25th of February to the 11th of March 2025



³⁵ Communication 260/02 : Bakweri Land Claims Committee v Cameroon, 4 December 2004, para 52.

³⁶ Communication 409/12, 30 April 2014, para 112.

³⁷ Communication 260/02 : Bakweri Land Claims Committee v Cameroon, 4 Dec 2004, para 52 and 53.

³⁸ Communication 279/03-296/05 : Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, 27 May 2009, para 103.