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

COMMUNICATION 786/22

**MASELINA MATHABELA (REPRESENTED BY ADV.
SHADRACK TEBEILE)**

V

REPUBLIC OF SOUTH AFRICA

*Adopted by the
African Commission on Human and Peoples' Rights
During the 83rd Ordinary Session, held in Banjul, 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



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SUMMARY OF THE COMPLAINT

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 16 February 2022 from Maselina Mathabela (the Complainant), represented by Adv. Shadrack Tebeile, against the Republic of South Africa (the Respondent State), a State Party to the African Charter on Human and Peoples' Rights (the African Charter).
2. The Complainant alleges that she was born on 26 April 2000 in Springs, Gauteng Province, South Africa, and has lived in the country her entire life. Even so, she added that she is undocumented due to her parents' Mozambican nationality and their inability to provide the necessary documentation for her to acquire a South African identity card.
3. The Complainant further alleges that despite having a clinic card issued at her birth, she has been unable to obtain an official birth certificate or identity document. Additionally, her immunization card incorrectly lists her name as "Marselina Mathebula" instead of "Maselina Mathabela."
4. It is alleged that in 2017, the Complainant approached the Department of Home Affairs for an identity document but was informed that she would need to provide documentation from her undocumented parents, who had already returned to Mozambique.
5. The Complainant alleges further that this situation has resulted in significant barriers to her accessing education, employment, and other vital services. She alleged that in 2018, after completing Grade 12—the final year of secondary education in South Africa, culminating in the National Senior Certificate ("matric") issued by the Department of Basic Education—she was unable to pursue higher education due to the lack of a valid identity document.



6. The Complainant further alleges that, in November 2021, she filed an urgent application before the High Court of South Africa (Mpumalanga Division) seeking an order compelling the Department of Home Affairs to issue her with an identity document. The application was struck off the roll on the ground of lack of urgency, and the Court did not address the substantive merits of the claim.¹
7. Subsequently, the Complainant filed an application for direct access to the Constitutional Court of South Africa, again raising the urgency of her predicament. On 6 December 2021, the Constitutional Court dismissed the application for direct access, holding that it was not in the interests of justice to hear the case at that time, and expressly indicating that there was no reason the applicant could not pursue her proceedings in the High Court.²
8. The Complainant avers that her inability to obtain identification documents, despite meeting the criteria set forth in South Africa's Citizenship Act, constitutes a violation of several rights guaranteed by the African Charter.

ARTICLES ALLEGED TO HAVE BEEN VIOLATED

9. The Complainant alleges violations of Articles 1, 2, 3, 4, 5, 6, 7(1)(a), 12(2), 13, 17(1), and 22(1) of the African Charter on Human and Peoples' Rights by the Respondent State.

PRAYERS

10. The Complainant prays that the Commission:
 - (a) Declare that the Respondent State has violated the Complainant's rights under Articles 1, 2, 3, 4, 5, 6, 7(1)(a), 12(2), 13, 17(1), and 22(1) of the African Charter on Human and Peoples' Rights.
 - (b) Order that the Complainant be recognized as a South African citizen by birth in terms of Section 2(2)(a) and (b) of the South African Citizenship Act 88 of 1995.
 - (c) Order that the Complainant be granted South African citizenship in terms of Section 4(3)(a) and (b) of the South African Citizenship Act 88 of 1995.
 - (d) Direct the Respondent State to register the Complainant's birth, enter her details into the South African population register, and assign her a South African identity number.

¹ see annexure "FA16," High Court Order; also para. 18, Affidavit

² see annexure "FA17," *ibid*



- (e) Order that the Respondent State issue the Complainant with a birth certificate and identity document within ten (10) days from the date of the order.
- (f) Order the Respondent State to compensate the Complainant for legal costs incurred in the High Court and Constitutional Court of South Africa, including the costs of two counsel in both courts.
- (g) Order the Respondent State to pay the Complainant compensation in the amount of R2,000,000.00 (Two Million South African Rands) within three (3) months from the date of the order.
- (h) Grant any further orders the Commission deems fit in the circumstances.

PROCEDURE

11. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the Complaint from Maselina Mathabela (the Complainant), represented by Advocate Shadrack Tebeile, on 16 February 2022.
12. On 13 June 2022, the Commission considered the Complaint and decided to be seized of the matter in accordance with Rule 115(5) of its Rules of Procedure, 2020. The Secretariat subsequently notified both parties of this decision by letter and Note Verbale.
13. In the same correspondence, the Respondent State was informed of its obligation to submit its arguments and evidence on both admissibility and merits within sixty (60) days of notification, pursuant to Rule 116(1) of the Rules of Procedure, 2020. The Secretariat also communicated the Commission's decision to dismiss the Complainant's request for Provisional Measures, noting that the Complainant had failed to demonstrate a risk of irreparable harm and that granting the measures sought—namely, the issuance of a temporary South African birth certificate and identity number—would pre-empt the outcome of the proceedings on the merits.
14. On 21 June 2022, the Respondent State addressed a Note Verbale to the Secretariat requesting the complete set of annexures, noting that certain attachments to the Complaint were missing. On the same day, the Secretariat acknowledged this request and transmitted the complete set of missing documents to the Respondent.
15. On 26 April 2023, the Respondent State submitted a formal request for an extension of thirty (30) days to file its observations on admissibility and merits citing the need for additional time to compile and prepare the necessary documentation. By letter dated the same day, the Secretariat granted the



requested extension, allowing the Respondent until 6 June 2023 to submit its observations.

16. On 26 May 2023, the Secretariat acknowledged receipt of the Respondent State's submission on admissibility. However, it observed that the submission did not include arguments on the merits. The Secretariat accordingly issued a Note Verbale granting the Respondent a further thirty (30) days to submit its observations on the merits.
17. On 19 June 2023, the Respondent State addressed a communication to the Secretariat requesting an oral hearing on admissibility and merits, or admissibility alone, so as to clarify the applicable domestic legal framework. This request was transmitted to the Bureau of the Commission for consideration in accordance with Rule 102(3) of the Rules of Procedure, 2020, and was never granted.
18. On the same date, 19 June 2023, the Secretariat notified the Respondent State that its observations on admissibility had been transmitted to the Complainant for rejoinder within thirty (30) days, pursuant to Rule 116(2) of the Commission's Rules of Procedure. The Complainant never filed a rejoinder.

PARTIES' SUBMISSIONS ON ADMISSIBILITY

Complainant's Submission

19. The Complainant submits that the present Communication satisfies all the admissibility requirements set out under Article 56 of the African Charter on Human and Peoples' Rights.
20. In compliance with Article 56(1), the Complainant avers that her identity is fully disclosed. She states that she is an adult female, born on 26 April 2000 in Springs, Gauteng Province, Republic of South Africa, and has resided in South Africa her entire life. The Complainant further attaches a clinic card and documentation affirming her place of birth to support her assertion of identity and victim status within the meaning of the Charter.³
21. With respect to Article 56(2), the Complainant contends that the Communication is compatible with the Charter and the Constitutive Act of the African Union. She submits that the rights alleged to have been violated are protected under the African Charter and that the relief sought does not challenge the sovereignty or territorial integrity of the Respondent State. The Complainant maintains that the Communication raises legal claims of a human rights nature and seeks only to vindicate rights secured under the Charter.⁴

³ Complainant's Affidavit for Evidence on Admissibility and Merits, paras 6-7.

⁴ Submissions on Admissibility and Merits, paras 19-21.



22. With regard to Article 56(3), the Complainant affirms that the language of the Communication is respectful and devoid of any disparaging or insulting expressions. She stresses that the pleadings are formulated in the tone and style of a legal petition and do not improperly attack the institutions of the Respondent State or the African Union.⁵
23. In relation to Article 56(4), the Complainant submits that the Communication is not based exclusively on information disseminated through the media. Rather, she relies upon first-hand testimony and verifiable documentation, including a clinic card, official correspondence, and the record of domestic judicial proceedings. The Complainant further states that the facts alleged are supported by her affidavit and by the annexed materials submitted to the Commission.⁶
24. As to the requirement of exhaustion of local remedies under Article 56(5), the Complainant submits that she approached the High Court of South Africa, seeking urgent relief in relation to her lack of identity documentation. The High Court, however, struck out her application on 18 November 2021 for lack of urgency.
25. Subsequently, she applied to the Constitutional Court of South Africa, which dismissed her application on 6 December 2021. The Complainant contends that these steps constituted an exhaustion of available and effective domestic remedies. She appends copies of the relevant High Court and Constitutional Court processes and decisions to her affidavit.⁷
26. The Complainant further argues that, in any event, the domestic remedies available to her were ineffective and incapable of providing adequate redress. She submits that her repeated efforts over a prolonged period to regularize her status with the Department of Home Affairs proved unsuccessful, notwithstanding her eligibility for documentation. The Complainant further contends that the legal avenues she pursued failed to provide timely and effective relief, thereby rendering the available remedies inadequate in the circumstances of her case. She particularly notes that the lack of documentation precluded her from enrolling in university, and that the harm occasioned was of a continuing and urgent nature, which domestic processes were incapable of remedying.⁸
27. Concerning Article 56(6), the Complainant avers that the Communication was submitted within a reasonable time following the Constitutional Court's dismissal

⁵ *ibid*

⁶ See, Complainant's Affidavit for Evidence on Admissibility and Merits, paras 10–13 and supporting annexes.

⁷ *ibid*, paras 17–25; Submissions on Admissibility and Merits, paras 23–28; see annexed High Court Order (18 November 2021) and Constitutional Court application (6 December 2021).

⁸ Submissions on Admissibility and Merits, paras 25–28.



of her application on 6 December 2021. The Communication was filed before the African Commission on 16 February 2022, a period of approximately two months. The Complainant contends that this interval is reasonable in the circumstances and does not amount to undue delay, particularly given the seriousness of the violations alleged.⁹

28. Finally, with regard to Article 56(7), the Complainant affirms that the matter has not been submitted to any other international mechanism of settlement and that no parallel proceedings are pending before any other international or regional forum. The Complainant, therefore, maintains that the present Communication is not inadmissible on grounds of duplication.¹⁰

Respondent's State Submission on Admissibility

29. The Respondent State, in its submissions, argued that the Communication fails to satisfy the admissibility requirements set out under Article 56 of the African Charter. It primarily contests the admissibility of the Communication on the basis of Article 56(5), alleging that the Complainant failed to exhaust domestic remedies, and Article 56(6), contending that the Communication was not submitted within a reasonable time after exhaustion of those remedies.

30. The Respondent did not object Articles 56(1) to (4) of the Charter. It did not contest the disclosure of the Complainant's identity, nor argue that the Communication was incompatible with the African Charter or the Constitutive Act of the African Union. Furthermore, it did not allege that the Communication employed disparaging or insulting language, nor did it assert that the claims were based exclusively on media reports.

31. In regard to Article 56(5) of the Charter, which requires that local remedies be exhausted before a communication may be submitted to the Commission. The Respondent submitted that the Complainant failed to pursue or exhaust available and effective domestic remedies under South African law.¹¹ It emphasized that the High Court's dismissal of the Complainant's application on 18 November 2021 was procedural and did not determine the merits of her claim to documentation or legal status.¹² According to the Respondent, the Complainant voluntarily withdrew her application to the Constitutional Court on 6 December 2021 before that court could render a decision, further interrupting the chain of available judicial remedies.¹³

32. The Respondent also asserted that South African law affords multiple remedies through appeal and judicial review, including the possibility of review under the

⁹ Complainant's Affidavit, para 29; Submissions on Admissibility and Merits, paras 29-31.

¹⁰ Complainant's Affidavit, para 31; Submissions on Admissibility and Merits, para 33.

¹¹ Respondent's Observations on Admissibility, paras 21, 27.

¹² Ibid., paras 22-23.

¹³ Ibid., paras 25-26.



Promotion of Administrative Justice Act (PAJA), which the Complainant never invoked.¹⁴ It argued that failure to pursue these remedies, particularly the failure to file a PAJA review or appeal to the Supreme Court of Appeal or to seek reinstatement of the withdrawn Constitutional Court application, amounts to non-exhaustion.¹⁵ Relying on the jurisprudence of the Commission in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*, the Respondent contended that dissatisfaction with domestic outcomes or premature disengagement does not absolve a party of the obligation to exhaust remedies that remain legally and practically available.¹⁶

33. On Article 56(6), the Respondent State further submitted that the Communication does not comply with the requirement, which mandates that a communication be submitted “within a reasonable period from the time local remedies are exhausted.” It contended that although the Complainant initiated proceedings in the domestic courts, her application to the Constitutional Court was dismissed on 6 December 2021, and thereafter she took no further legal steps before filing the Communication on 16 February 2022.¹⁷ The Respondent acknowledged that the period between the final domestic proceeding and the filing was approximately two months, but argued that no justification was provided for the timing of the submission, particularly given the urgency and long-standing nature of the alleged violation.

34. The Respondent emphasized that the Complainant was legally represented during the domestic proceedings and in the filing of the Communication, and thus was fully capable of acting with diligence.¹⁸ It is submitted that the Commission has consistently held that timeliness must be assessed in light of each case's specific circumstances and that delays in submission should be viewed with greater scrutiny in matters alleging long-term administrative injustices or inaction, such as denial of documentation.¹⁹ The Respondent also cited the Commission's decision in *Aloys Bizimungu v Rwanda* to support the view that delay without explanation or demonstrated impediment may render a communication inadmissible under Article 56(6).²⁰

35. In light of these considerations, the Respondent requested that the Commission find the Communication inadmissible for failure to comply with the time limitation imposed by Article 56(6), arguing that no exceptional or extenuating factors

¹⁴ Ibid., paras 28–30.

¹⁵ Ibid., paras 31, 45–47.

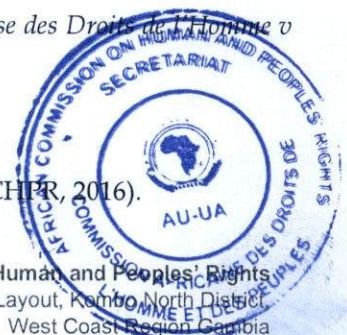
¹⁶ Ibid., para 36, citing *Communication 71/92 – Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR 1995) para 10.

¹⁷ Respondent's Observations on Admissibility, 18 April 2023, paras 52–53.

¹⁸ Ibid., para 56.

¹⁹ Ibid., paras 57–58.

²⁰ Ibid., para 57, citing *Aloys Bizimungu v Rwanda*, Communication 336/07 (ACHPR, 2016).



were provided to justify the Complainant's delay in approaching the Commission.²¹

Commission's Analysis on Admissibility

36. It is a condition that any communication submitted in terms of Article 55 must satisfy the seven requirements in Article 56 to be declared admissible. Regarding this, the Commission reiterates its position in *FIDH & Others vs Senegal*²² and remains guided by the principle that the conditions outlined in Article 56 are cumulative and should all be adequately fulfilled for a communication submitted in conformity with the terms of Article 55. The Commission will, therefore, consider the complaints in accordance with these requirements, taking into account the relevant provisions, the submissions of both parties, the Commission's analysis, and its decisions.

Article 56(1): Identity of the Complainant

37. Article 56(1) of the African Charter requires that a communication indicate the identity of its author, even where anonymity is requested.

38. In *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v Botswana*,²³ the Commission clarified that the identity requirement is intended to ensure the Commission can verify the complainant's standing and interest in the matter and maintain communication throughout the proceedings. This is essential for procedural fairness and administrative coordination, and the Commission does not need to impose an inflexible standard where the complainant is duly represented or publicly identified.

39. In the present Communication, the Complainant has clearly disclosed her identity, date and place of birth, and legal representation.²⁴ The Respondent State has not challenged the identity or standing of the Complainant at any stage. Accordingly, the Commission finds that the requirement under Article 56(1) has been met.

Article 56(2): Compatibility with the Charter and the Constitutive Act

40. Article 56(2) requires that communications be compatible with the African Charter or the Constitutive Act of the African Union. This requirement has been interpreted by the Commission to include a fourfold competence test—*ratione personae*, *ratione materiae*, *ratione loci*, and *ratione temporis*—as clarified in *Jean-Pierre Bemba Gombo v Democratic Republic of Congo*.²⁵

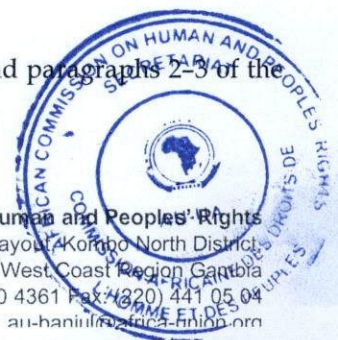
²¹ Ibid., paras 59–60

²² Communication 292/04 para. 34

²³ Communication No. 277/03), para. 88.

²⁴ This information is evident in paragraphs 1 and 2 of the Communication and paragraphs 2–3 of the Complainant's Affidavit on Evidence in Support of Admissibility and Merits.

²⁵ Communication No. 204/97, paras. 24–26.



41. In this communication, the Complainant alleges violations of Articles 1, 2, 3, 5, 6, 12, 14, and 18 of the Charter relating to equality, dignity, liberty, residence, property, and protection of the family. These allegations fall squarely within the material jurisdiction of the Charter (*ratione materiae*). The Respondent State, the Republic of South Africa, is a State Party to the African Charter, having ratified it on 9 July 1996 (*ratione personae*). The alleged violations occurred between 2012 and 2022, after the Charter's ratification (*ratione temporis*), and are alleged to have occurred within the territory of South Africa (*ratione loci*).
42. Moreover, the Commission notes that the nature of the remedies sought, relating to legal recognition, documentation, and access to fundamental services, is compatible with the object and purpose of the African Charter and the Constitutive Act of the African Union. The Commission accordingly finds that the requirement under Article 56(2) is fulfilled.

Article 56(3): Language Requirement

43. Article 56(3) requires that a communication must not contain disparaging or insulting language directed at the State or the African Union.
44. In *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*, the Commission held that this condition is only violated where the language used seeks to impair the dignity or integrity of State institutions intentionally, or is calculated to undermine public confidence in the administration of justice.²⁶
45. Upon reviewing the Complainant's submissions, including the Urgent Communication and the Written Submissions on Admissibility and Merits, the Commission finds no language that can be construed as inflammatory or intentionally disrespectful. The Respondent State has not alleged otherwise. The Commission therefore finds that the requirement under Article 56(3) has been complied with.

Article 56(4): Not Based Exclusively on Media Reports

46. Article 56(4) prohibits communications that rely exclusively on media sources. This does not preclude all media use, but the Commission has emphasized that factual allegations must be substantiated by credible and verifiable evidence.
47. In *Jawara v The Gambia*, the Commission explained that the test is whether a communication is based on substantiated facts, not simply whether it refers to news outlets.²⁷ Similarly, in *Ahmed Ismael and 528 Others v Egypt*, the

²⁶ Communication No. 284/03, paras. 75–77.

²⁷ *Jawara v The Gambia*, Communications Nos. 147/95 and 149/96, paras. 36–37.

Commission held that complainants may refer to media sources if the information is credible and corroborated.²⁸

48. In this case, the Complainant relies on official correspondence with domestic institutions, medical and school records, court pleadings, and judicial decisions.²⁹ The Respondent did not challenge the authenticity or sufficiency of these sources. Thus, the Commission finds that the communication is not based exclusively on media reports and satisfies the requirement of Article 56(4).

Article 56(5): Exhaustion of Local Remedies

49. Article 56(5) of the African Charter stipulates that a communication must be submitted "after the exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged." The Commission has consistently held that this condition requires remedies to be available, effective, and sufficient. A remedy is available if the complainant can pursue it without impediment, effective if it offers a reasonable prospect of success, and sufficient if capable of providing redress.³⁰

50. The Complainant submits that she attempted to exhaust domestic remedies by filing an urgent application before the Mpumalanga Division of the High Court of South Africa, which was struck off the roll on the grounds of lack of urgency.³¹ She then filed an application for direct access to the Constitutional Court, which was also dismissed without consideration of the merits.³² The Complainant maintains that this sequence of events exhausted available domestic remedies or demonstrates that effective remedies were unavailable, as neither court addressed the substance of the complaint.³³

51. In response, the Respondent State argues that the Complainant failed to exhaust local remedies, contending that she could have re-enrolled the matter on the ordinary court roll or sought alternative remedies such as review proceedings or internal administrative redress mechanisms.³⁴ The State further submits that the High Court's dismissal was procedural and did not preclude the Complainant from pursuing a merits-based determination.³⁵

52. The Commission recalls its decision in *Sir Dawda K. Jawara v The Gambia*, where it held that "remedies, the availability of which is not evident, cannot be

²⁸ Communication No. 768/21, para. 103.

²⁹ See paragraphs 17–27 of the Complainant's Affidavit, and in paragraphs 10–24 of the Written Submissions on Admissibility.

³⁰ *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000), Communications Nos 147/95 and 149/96, paras 31–33.

³¹ Complainant's Submissions on Admissibility and Merits, paras 17–21.

³² Complainant's Affidavit on Evidence, paras 18–20

³³ *Ibid*, paras 20–23; see also Complainant's Submissions, paras 28–29.

³⁴ Respondent's Observations on Admissibility, paras 23–27.

³⁵ *Ibid*, paras 29–31



invoked by the State to the detriment of the Complainant.”³⁶ Similarly, in *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan*, the Commission found that remedies that are procedurally obstructed or inaccessible in practice do not satisfy the exhaustion requirement.³⁷

53. In the present case, the Commission notes that the High Court’s striking off of the matter on urgency grounds did not preclude the Complainant from re-enrolling the application through ordinary procedures.³⁸ The Complainant never contended that re-enrolment was legally barred or practically impossible, but rather that she perceived further proceedings to be futile. However, the Commission reiterates that procedural dismissals do not constitute exhaustion of local remedies unless the complainant demonstrates that further steps would have been unavailable or ineffective.
54. Additionally, the Commission observes that the Complainant did not challenge the High Court decision through appeal or review, nor did she pursue relief through the ordinary court roll, notwithstanding the availability of these avenues under South African law.³⁹ The Commission has previously held in *Human Rights Council and Others v Ethiopia* that “where a complaint is dismissed on procedural grounds and the complainant fails to take further steps to access a substantive hearing, local remedies cannot be said to have been exhausted.”⁴⁰
55. In light of the above, and considering that the Complainant failed to pursue the matter substantively following procedural dismissal, the Commission finds that the requirement under Article 56(5) has not been met

Article 56(6): Timeliness of the Communication

56. Article 56(6) requires that communications “are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter.”
57. Now that Article 56(5) has not been met, the Commission remains guided by its position in *The Promoting Justice for Women and Children (PROJUST NGO) vs. the Democratic Republic of Congo*,²⁵ also accepted in the *Human Rights Defenders Network- Sierra Leone (HRDN-SL) and West African Human Rights Defenders Network (WAHRDN) vs. The Republic of Sierra Leone*⁴¹ that where Article 56(5) has not been complied with, the Commission does not need to make a conclusive determination on Article 56(6).

³⁶ *Jawara v The Gambia*, supra note, para 32.

³⁷ *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan*, Communication No 379/09 (2014), paras 88–90

³⁸ Respondent’s Observations, paras 24, 31

³⁹ *ibid*, paras 32–33

⁴⁰ Communication No 428/12, para 90

⁴¹ Communication 648/16, para 53



Art.56(7): The Matter Not Settled by Another International Procedure

58. Article 56(7) stipulates that a communication must not deal with cases which have been settled by those 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.
59. Interrogating the parties' submissions in the present communication, the Complainants submitted that the present Communication has not been considered or settled by any other international human rights body. The Respondent State does not contest this submission. The Commission finds that the requirement under Article 56(7) is met.

DECISION

60. In view of the foregoing, the Commission finds that the communication does not satisfy the admissibility criteria set out under Article 56(5) of the Charter.
61. Consequently,
- (i) declares the communication **NOT ADMISSIBLE**.
 - (ii) Decides to notify the parties of its decision in accordance with Rule 118(4) of its Rules of Procedure.

Done during the 83rd Ordinary Session held in Banjul, the Gambia from 2nd to 22nd May 2025.

