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

COMMUNICATION 788/22

**TIBEILA INSTITUTE (REPRESENTED BY MR.
SHADRACK TEBEILE)**

V

REPUBLIC OF SOUTH AFRICA

*Adopted by the
African Commission on Human and Peoples' Rights
During the 84th Ordinary Session, held virtually from 21 to 30 July 2025*



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 the Complaint on 16 February 2022 from the Complainant.
2. The Complainant is a non-profit organization based in South Africa that focuses on educating communities, particularly underprivileged groups, on their constitutional rights as outlined in the Constitution of the Republic of South Africa. Additionally, the organization engages in public interest litigation in constitutional matters.
3. The Complaint arises from a call for submissions made by the Municipality of Polokwane on 6 September 2021, inviting artists to submit a work of art. Among the eleven eligibility conditions, one criterion required that applicants hold South African nationality.
4. On 7 September 2021, the Complainant filed an urgent application before the High Court, Limpopo Division, Polokwane, seeking a declaration that the nationality requirement was inconsistent with Section 16(1)(c) of the Constitution of the Respondent State, which guarantees freedom of expression, including freedom of artistic creativity.
5. On 16 September 2021, the High Court dismissed the application for lack of urgency. On the same day, the Complainant directly and urgently referred the matter to the Constitutional Court of South Africa.
6. On 22 September 2021, the Constitutional Court dismissed the application, stating that the Complainant had not established sufficient grounds for direct access.





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7. The Complainant submitted the present Communication to the African Commission on Human and Peoples' Rights on 16 February 2022.

ARTICLES ALLEGED TO BEEN VIOLATED

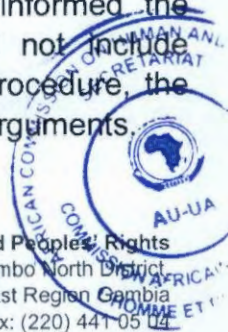
8. The Complainant alleges the violation of Articles 1, 2, 3, 4, 5, 6, 7(1), 9(1) and 19 of the Charter.

PRAYERS

9. The Complainant prays the Commission to: -
- (i) Declare that the Respondent violated the Complainant's rights under Articles 1, 2, 3, 4, 5, 6, 7(1), 9(1), and 19 of the African Charter;
 - (ii) Order the Respondent to pay him the amount of R100,000,000.00 to the Complainant within three (3) months from the date of the order, which includes the legal costs of the Complainant in the High Court of South Africa; and
 - (iii) Further orders as the Commission deems fit to grant in the circumstances.

PROCEDURE

10. The Secretariat of the African Commission on Human Rights (the Secretariat) received the Complaint on 16 February 2022 and acknowledged its receipt in a letter dated 3 March 2022.
11. The Secretariat considered and seized itself with the Complaint, pursuant to Rule 115(5) of the Commission's Rules of Procedure. It thereafter informed the parties by letter dated 13 June 2022 and Note Verbale dated 15 June 2022, requiring the Complainant to submit on Admissibility and Merits.
12. By the letter dated 1 March 2023, the Secretariat acknowledged receipt of the Complainant's Submissions on Admissibility and Merits and, in accordance with Rule 116(2) of the Rules of Procedure, forwarded it to the Respondent State for observations.
13. By the Note Verbale dated 26 April 2023, the Respondent State requested an extension of time to submit its reply. The request was granted and confirmed by a Note Verbale dated the same date. The Complainant was duly informed as well.
14. By the Note Verbale dated 26 May 2023, the Secretariat informed the Respondent State that its submissions on Admissibility did not include arguments on Merits. In light of Rule 116(1) of the Rules of Procedure, the Secretariat granted an additional 30 days to submit the missing arguments.





15. By the Note Verbale dated 16 April 2024, the Secretariat reminded the Respondent State to rectify the anomaly in its submission and further extended the deadline.
16. The Secretariat received the Respondent State's letter dated 16 May 2024, in which it challenged the admissibility of the Communication and requested an oral hearing to present its complete arguments and evidence regarding Admissibility and Merits, in accordance with Rule 102(1) of the Rules of Procedure of the Commission.
17. By the Note Verbale dated 19 June 2024, the Secretariat acknowledged receipt of the Respondent State's request. It further advised that the request for an oral hearing on Admissibility and Merits had been transmitted to the Bureau of the Commission as per Rule 102(3) of the Commission's Rules of Procedure. At the same time, it informed the Respondent State that its observations on Admissibility had been forwarded to the Complainant for a response within thirty days, following Rule 116(2) of the Rules of Procedure.
18. By letter dated 19 June 2024, the Secretariat transmitted the Respondent State's observations on Admissibility and Merits to the Complainant, advising it to submit a rejoinder within 30 days, which it has not done to date.

ADMISSIBILITY OF THE COMMUNICATION

The Complainant's Submissions

19. The Complainant identifies itself as a non-profit organization based in South Africa. The Complainant states that its objectives include educating communities, particularly those in marginalized areas, about their constitutional rights and litigating public-interest matters.¹ It added that the Respondent State is the Republic of South Africa, which ratified the African Charter on Human and Peoples' Rights on 9 July 1996 and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on 3 July 2002.²
20. The Complainant alleges that the Respondent has violated articles 1, 2, 3, 4, 5, 7(1), 9(2), and 19 of the African Charter. According to the Complainant, these violations occurred within the respondent's territorial jurisdiction.³ Furthermore, the Complainant stated that this communication complies with the constitutive

¹ See the Complainant's written submissions on admissibility and merits, para. 15; also, complainant's affidavit submitted for evidence on admissibility and the merits, para. 12

² Ibid, para. 16; also, ibid, para. 11

³ See the Complainant's written submissions on admissibility and merits, para. 17; also, Complainant's affidavit submitted for evidence on admissibility and the merits, para. 16





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act of the African Union and the African Charter, as it pertains to alleged human rights violations that fall within the mandate of the African Commission.⁴

21. The Complainant also stated that the communication does not contain any disparaging or insulting language, thereby satisfying the requirements under Article 56(3) of the African Charter.⁵ It affirmed that the allegations are not based exclusively on mass media reports but rather on official decisions by governmental authorities, institutions, and courts of the respondent state.⁶
22. The Complainant asserted that it had exhausted local remedies, as required under Article 56(5) of the Charter, having litigated the matter before the High Court of South Africa, Limpopo Division, Polokwane, and subsequently before the Constitutional Court of South Africa.⁷ The Complainant further submitted that they filed an urgent application in the High Court of South Africa, Limpopo Division, Polokwane, on 7 September 2021, challenging the nationality requirement imposed by the Polokwane Municipality for participation in an art competition.⁸
23. They submitted that on 16 September 2021, the High Court struck the application from the roll for lack of urgency.⁹ The Complainant submits that they then approached the Constitutional Court of South Africa, seeking direct access and urgent relief to challenge the High Court's ruling.¹⁰ However, on 22 September 2021, the Constitutional Court dismissed the Complainant's application, thereby concluding the domestic litigation process.¹¹ The Complainant submitted that the constitutional court's decision, as it is the highest judicial authority in South Africa, represented the exhaustion of local remedies.¹²
24. It further added that the present communication was submitted to the African Commission on 16 February 2022, within six (6) months of the constitutional court's decision, thereby satisfying the requirement under article 56(6) of the Charter that it be filed within a reasonable time after the exhaustion of local remedies.¹³ The Complainant stated that the issues raised in this

⁴ See, respectively, *ibid* para. 18-19, para. 17-18

⁵ *Ibid*, para. 20-21; also, para. 19-20

⁶ *ibid*, para. 22-23; also, para. 21-22

⁷ *ibid*, para. 24-25; also, para. 23-24

⁸ *ibid*, para. 27; also, para. 25

⁹ *ibid*, para. 28; also, para. 27

¹⁰ *ibid*, para. 29; also, para. 28.

¹¹ *Ibid*, para. 30; also, para. 29.

¹² *ibid*, para. 31; also para. 30

¹³ *ibid*, para. 32-33; also, para. 32-33





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communication have not been previously settled by the parties under any international or regional legal mechanism.¹⁴

25. The Complainant concluded that the communication satisfies all admissibility requirements under Article 56 of the African Charter and should be declared admissible by the African Commission on Human and Peoples' Rights.¹⁵

The Respondent State's Submission

26. The Respondent State submitted that the communication does not meet the admissibility requirements under Article 56 of the African Charter.¹⁶ It never contested the Complainant's identity and acknowledges that the Complainant has been disclosed in accordance with Article 56(1) of the African Charter.¹⁷
27. The Respondent State submitted that the communication is incompatible with the African Charter and, therefore, fails to satisfy the requirement under Article 56(2). It argued that the issues raised in the communication fall outside the scope of the African Charter as they pertain to domestic administrative requirements rather than fundamental rights violations.¹⁸ The Respondent State asserted that the communication contains unsubstantiated claims and political overtones, which, in its view, render it incompatible with the objectives of the African Charter and further challenge the requirement under Article 56(2) of the African Charter.¹⁹
28. The Respondent State contended that the Complainant used disparaging and insulting language in its submissions, violating Article 56(3) of the Charter. It argues that the Complainant's allegations against state institutions and the judiciary amount to an unsubstantiated attack on South Africa's legal framework and are therefore disparaging in terms of Article 56(3) of the African Charter.²⁰
29. It further submitted that the Complainant's allegations are based on media reports and opinionated narratives rather than factual evidence, failing to meet the requirement under article 56(4) that communications must not be based exclusively on news disseminated through mass media.²¹
30. The Respondent State argued that the Complainant had not exhausted local remedies, as required under Article 56(5) of the Charter. It notably submitted that the Complainant's case was struck off the roll by the High Court for lack of urgency, meaning the merits were never considered further, that the Complainant failed to pursue alternative remedies such as re-filing the matter on a non-urgent basis before the High Court or seeking redress through the

¹⁴ Ibid, para. 34-35; also, para. 34-35

¹⁵ Ibid,

¹⁶ See respondent States' Submission on admissibility, para. 1

¹⁷ Ibid, para. 3

¹⁸ Ibid, para. 5

¹⁹ Ibid, para. 6

²⁰ Ibid, para. 8

²¹ Ibid, para. 10





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South African Human Rights Commission. The Respondent stated that the Constitutional Court's decision was based on procedural grounds rather than substantive legal claims, and therefore, local remedies were not exhausted.²²

31. The Respondent State contended that the communication was not submitted within a reasonable time, as required by Article 56(6) of the African Charter. It argued that the Constitutional Court issued its decision on 22 September 2021, and the communication was submitted to the African Commission on 16 February 2022, six months later. Furthermore, the respondent reiterated its submission regarding the exhaustion of local remedies above.²³

32. The Respondent State argued that the communication raises issues that have already been settled by domestic courts, in violation of Article 56(7) of the African Charter. It, in particular, submitted that the South African courts have already ruled on the matter, and the Complainant has not demonstrated why the Commission should re-examine an issue that has been addressed under domestic law. It further argued that the nationality requirement in the art competition is an administrative decision that falls within South Africa's legal framework, and the Complainant failed to challenge it adequately through the available domestic remedies.²⁴ The Respondent State concluded that the communication fails to meet several admissibility criteria under Article 56 of the African Charter, particularly regarding compatibility, exhaustion of local remedies, reasonable time, and prior settlement of the matter. It requests the Commission to declare it inadmissible.²⁵

THE COMMISSION'S ANALYSIS ON ADMISSIBILITY

33. The Commission notes that this Communication is submitted in terms of Article 55 of the African Charter on Human and Peoples' Rights (the African Charter). Accordingly, it must satisfy the seven requirements outlined in Article 56 of the Charter to be declared admissible.

34. The Commission further recalls that the conditions outlined in Article 56 of the Charter are cumulative and all should be adequately fulfilled for a communication submitted in conformity with the terms of Article 55 to be admissible. It explicitly recalls its position in *FIDH & Others v Senegal*²⁶ that, essentially, non-fulfilment of any one of these conditions is liable to render a communication inadmissible.

35. The Commission will thus consider the parties' submissions in light of these requirements *seriatim*.

²² *ibid*, paras 9-12.

²³ *Ibid*, paras. 13-14

²⁴ *Ibid*, para. 16-17

²⁵ *ibid*, para. 21

²⁶ Communication 304/2005 para 38





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Article 56(1): Identity of the Complainant

36. Article 56(1) of the charter requires that a Communication indicate its author's identity, even if anonymity is requested.

37. The Commission recalls that the rationale behind this requirement is to ensure that the Commission can establish contact with the complainant and verify their ongoing interest in the matter. The Commission has affirmed this position in *Michael Majuru v. Zimbabwe*²⁷ and *Ibrahima Diuresis and Others v. Guinea*,²⁸ where it held that complainants must disclose their identities to enable the Commission to process communications adequately.

38. In the Communication at hand, while no victim is indicated expressly of the alleged violation of human rights arising from the Respondent State's acts, the Commission notes that the Complainant, Tebeila Institute, as represented by Mr Shedrak Tebaile,²⁹ has clearly identified itself as a non-profit organization based in South Africa, dedicated to public interest litigation and the promotion of constitutional rights.³⁰ The Respondent State does not dispute the Complainant's identity and acknowledges that the requirement under Article 56(1) has been met.³¹

39. The Commission agrees with the parties' submission and, therefore, finds that the requirement under Article 56(1) has been satisfied.

Article 56(2): Compatibility with the Charter

40. Article 56(2) of the Charter requires that communications be compatible with the Charter of the African Union or the African Charter itself. The Commission interprets this condition as encompassing compatibility with the objectives of the African Charter and the Constitutive Act of the African Union and compliance with the four aspects of the Commission's jurisdiction, namely *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*.³²

41. As regards compatibility with the Constitutive Act and the Charter, the Commission observes that the complainant seeks the protection of rights guaranteed under the African Charter, specifically articles 1, 2, 3, 4, 5, 7(1), 9(2), and 19. The communication thus falls within the scope of article 3(b) of the Constitutive Act, which affirms the objective of promoting and protecting human and peoples' rights.

²⁷ Communication 308/05, para. 66

²⁸ Communication 340/07, para. 55

²⁹ See the Complainant's written submissions on admissibility and merits, para. 19

³⁰ *ibid*

³¹ See Respondent's State Reply Submission on Admissibility and Merit, para. 25

³² This position was clarified in *Senator Jean-Pierre Bemba Gombo v. Democratic Republic Of Congo* (communication 709/19, para 26-28)





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42. The communication is brought against the Republic of South Africa, a state party to the African Charter, thus fulfilling the requirement of *ratione personae*. It alleges violations of provisions protected by the Charter, notably non-discrimination, freedom of expression, and equality before the law, thereby satisfying *ratione materiae*. The alleged violations occurred between 6 and 22 September 2021, well after the respondent State ratified the Charter on 9 July 1996 and thus fall within the temporal jurisdiction of the Commission (*ratione temporis*). Finally, the acts complained about took place within the territory of the respondent State, specifically within the Polokwane Municipality, fulfilling the requirement of *ratione loci*.
43. The respondent State challenges compatibility, arguing that the impugned acts amount to internal administrative decisions and do not engage human rights protections under the Charter.³³ However, the Commission has consistently held that administrative decisions affecting the enjoyment of Charter rights, particularly those concerning access to expression, participation, or non-discrimination, may be subject to review under the Charter.³⁴
44. The Commission finds that the nationality requirement in a publicly sponsored art competition, which restricts eligibility on grounds of citizenship, *prima facie* implicates the right to equal protection, non-discrimination and freedom of artistic expression under Articles 2, 9(2), and 19 of the African Charter. Consequently, the communication is not incompatible with the African Charter.
45. The Commission, therefore, concludes that the communication satisfies the requirements of Article 56(2) of the Charter.

Article 56(3): Disparaging or Insulting Language

46. Article 56(3) stipulates that a Communication must not contain disparaging or insulting language directed at the state concerned. The Commission recalls its position in *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*,³⁵ that determining whether a remark is disparaging depends on whether it unlawfully impairs the dignity or reputation of the state.
47. Interrogating the Communication at hand, the Complainant asserted that its submissions do not contain offensive or disparaging language.³⁶ The Respondent State, however, argues that the Complainant's allegations against state institutions and the judiciary amount to an unsubstantiated attack on South

³³ sub adm state reply comm 788-22, para. 26

³⁴ *Purohit and Moore v. The Gambia*, Communication 241/01, Para. 32; *Serac And Others v. The Gambia*, Communication 155/96, Para. 50

³⁵ Communication 284/03, para. 88

³⁶ Complainant's written submissions cite above, para. 21





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Africa's legal framework and therefore disparaging in terms of Article 56(3) of the African Charter.³⁷

48. Upon reviewing the Communication, the Commission does not find that it contains any language that qualifies as insulting or disparaging. The Commission finds that the requirement under Article 56(3) has been satisfied.

Article 56(4): Based on Evidence and Not Solely on Media Reports

49. Article 56(4) provides that communication should not be based exclusively on news disseminated by the media. In *Sir Dawda K. Jawara v. The Gambia*,³⁸ the Commission clarified this provision, stating that the key issue is whether information is verified and credible.

50. In this regard, the Complainant submitted that its allegations are based on official decisions from South African courts and administrative bodies rather than media reports.³⁹ The Respondent State countered that the Complainant relies on media narratives rather than substantive evidence.⁴⁰

51. The Commission reviewed the submitted documents, including judicial decisions and administrative records, and found that legal documents rather than journalistic reports primarily support the allegations presented. It, in particular, refers to the decision in *Sir Dawda K. Jawara v. The Gambia*,⁴¹ that communication must be supported by official documentation and not rely solely on media sources.

52. That the Complainant has provided court rulings and official correspondence from authorities, in support of the communication filled with the Commission, which the Respondent State never contested; therefore, the Commission finds that the Communication satisfies Article 56(4).

Article 56(5): Exhaustion of Local Remedies

53. Article 56(5) requires that communications be considered only after exhausting local remedies unless such remedies are unduly prolonged.

54. Interrogating the parties' submissions, the Complainant contended that it exhausted all available domestic remedies by approaching the High Court of South Africa, which struck the case off the roll for lack of urgency, and subsequently seeking direct access to the Constitutional Court, which dismissed

³⁷ Respondent's State Reply Submission on Admissibility and Merit, para. 27

³⁸ Communication 147/95, para. 34

³⁹ The Complainant's written submissions on admissibility and merits, para. 22

⁴⁰ Respondent's State Reply Submission, para. 28

⁴¹ Communication 147/95, para. 34





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the application.⁴² The Respondent state argues that the Complainant failed to re-enroll the case on the ordinary roll after it was struck off for lack of urgency and that alternative remedies, including administrative complaint mechanisms, remained available.⁴³

55. The Commission reiterates and remains guided by its position that remedies must be available, effective, and sufficient.⁴⁴ Reading the submissions, it is noted that the Constitutional Court's dismissal of the Complainant's case was procedural rather than substantive. Additionally, the Complainant had failed to pursue normal proceedings that might have provided an effective remedy. The Complainants have not addressed this argument, and in the absence of any submission, the Commission remains guided by its previous holding in *Human Rights Council and Others v. Ethiopia*, which holds⁴⁵ that failure to exhaust available remedies, particularly where a communication is dismissed on procedural grounds, renders a communication inadmissible. Based on the foregoing, the Commission finds that the Complainant has not exhausted all available local remedies.

56. Consequently, the communication does not meet the requirement under Article 56(5) of the Charter.

Article 56(6): Reasonable Timeframe

57. Article 56(6) requires that a Communication be submitted within a reasonable time after the exhaustion of local remedies.

58. Given that Article 56(6) speaks of 'after the exhaustion of local remedies' and is accordingly predicated on exhaustion of local remedies, the finding of the Commission in respect of Article 56(5) that local remedies are not exhausted makes consideration or analysis of whether the communication was submitted within a reasonable time unnecessary. If local remedies have not been exhausted, there is no basis for determining a reasonable period under Article 56(6) of the African Charter. In the present Communication, the Commission has established in the foregoing part that local remedies were not exhausted, thereby rendering it unnecessary to consider Article 56(6), which is contingent on Article 56(5) of the African Charter.

⁴² See the Complainant's written submissions on admissibility and merits, Para 22-23.

⁴³ Respondent's State Reply Submission, cited above, para. 29

⁴⁴ Communication 147/95, *Jawara v. The gambia*, para. 31

⁴⁵ Communication 482/14, para. 67





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Article 56(7): Matters Previously Settled

59. Article 56(7) of the Charter requires that a Communication must not deal with cases that have been settled in accordance with the principles of the United Nations, the African Union, or the African Charter.
60. The Complainant asserts that the present matter has not been submitted or adjudicated by any other international human rights body.⁴⁶ The Respondent's state does not contest this assertion but argues that the matter was settled domestically, which should preclude further review.⁴⁷
61. The Commission recalls its positions in *Jean-Claude Roger Gbago v. Côte d'Ivoire*,⁴⁸ where it held that a case is considered settled if another international tribunal has rendered a final decision on the merits, and in its clarification in *Amnesty International V. Sudan*⁴⁹ that national judicial determinations do not qualify as prior settlements envisaged under Article 56(7) of the African Charter.
62. Since the Respondent State has not provided evidence that this case has been decided by an international or regional human rights mechanism, the Commission finds that the requirement under Article 56(7) of the African Charter has been satisfied.

DECISION

63. The Commission finds that the communication satisfies the requirements under Articles 56(1), (2), (3), (4), and (7) of the African Charter but fails to satisfy the requirements under Article 56(5) and (6) of the same.
64. Consequently: -
- (i) The African Commission declares the communication inadmissible under Article 56 of the African Charter.
 - (ii) Decided to notify the Parties of this decision in accordance with Rule 118(4) of its 2020 Rules of Procedure.

**Done at the 84th Ordinary Session of the Commission held virtually
from the 21st Day of July to the 30th Day of July 2025.**



⁴⁶ See, the Complainant's written submissions cited above, para. 24

⁴⁷ Respondent State Submission, cited above, para. 31

⁴⁸ Communication 397/10, para. 78

⁴⁹ Communication 48/90, para. 19