MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR

DETENTION[1]

I. IDENTITIES COMPLAINT 1

1. Family name: **Tsolo**

2. First name: **Sello**

3. Sex: (Male)

4. Birth date or age (at the time of detention): 12 April 1961 (62 years)

5. Nationality/Nationalities: **South Africa**

6. (a) Identity document (if any): Passport No: A06463324

7. Profession and/or activity (if believed to be relevant to the arrest/detention): Project Manager

8. Address of usual residence:

Current: South African Embassy in Abu Dhabi

Home: 23 Magnolia Street Riebeeckstad Welkom, Free State, South Africa

I. IDENTITY OF COMPLAINT 2

1. Family name: **Tjoko**

2. First name: **Kambule**

3. Sex: (Male)

4. Birth date or age (at the time of detention): ……

5. Nationality/Nationalities: **South Africa**

6. (a) Identity document (if any): ……

(b) Issued by: ……

(c) On (date): ……

(d) No.: ……

7. Profession and/or activity (if believed to be relevant to the arrest/detention):

[1] *This questionnaire should be addressed to the Working Group on Arbitrary Detention. Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland, fax No.(41) (0) 22 917.90.06, E-mail: wgad@ohchr.org; and, urgent-action@ohchr.org.* A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not necessarily result in inadmissibility of the communication.

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8. Address of usual residence:

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III. Detention

1. **Date of detention**

Complainant 1: (when out of prison): 29 March 2016

Complainant 2: Release Order duly authorized by the Judge President of the Ajman Federal Court of Law on 11 October 2016, and actual date of release from the Ajman Central Jail occurred on 19 October 2016.

2. Duration of detention (if not known, probable duration): in perpetuity

3. Forces holding the detainee under custody: For both complainants—UAE government

4. Places of detention (indicate any transfer and present place of detention): For both complainants:

Ajman Central Jail and the United Arab Emirates

5. Authorities that ordered the detention:

Government of the United Arab Emirates law enforcement agencies, and as per the recommendation of the Ajman Federal Court of Law.

6. Reasons for the detention imputed by the authorities:

The UAE still refuses to release both Mr Tsolo and Mr Kambule's passports. Although both now have new passports, the position of the UAE is that the travel ban for both Messrs Tsolo and Kambule will not be uplifted until their respective debts are paid /settled. The position of the UAE on not lifting the travel ban on the premise of a fraudulent AOD has persisted even though Mr Lamba was also charged with fraud in India for using the same *modus operandi* and the unscrupulous dealings of Mr Lamba have also been officially recognised by the South African Consulate in Dubai.

7. Legal basis for the detention including relevant legislation applied (if known):

According to the UAE's Declaration of Insolvency Article 47

The Court may take the necessary measures against the Debtor if he commits or attempts to commit any of the following acts:

1- Fleeing outside the State to avoid or delay payment of any of its debts, or to avoid, defer or disable proceedings of his Insolvency or liquidation of his funds.[2]

IV. Describe the circumstances of the detention (factual matrix).

This complaint relates to the de facto hostage situation of two South African nationals; Mr. Sello Tsolo and Mr. Tjoko Johannes Kambule, by the United Arab Emirates (UAE) as summarised below:

A) ***Sello Tsolo***

In June 2013, Mr. Sello Tsolo travelled to the United Arab Emirates (UAE) on what was meant to be a two-week government business trip and on behalf of the Setsoto Integrated Dairy Project ("the Project") where he served as the Project Manager. The Setsoto Integrated Diary Project was conceived by the Setsoto Local Municipality (the Municipality) as a community empowerment project with a focus on milk and Dairy cows. The project was run as a separate registered entity to the Municipality, with the mandate to provide a solution to the overgrazing problem in the community by grouping the cows owned by individual community members in a single empowerment project. The Free State Provincial Department of Agriculture (the Department) also approved the Project and was provided with progress reports on an ongoing basis. As a project manager, part of Mr Tsolo's responsibility was to ensure that the Project was funded.

As part of his efforts to obtain funding for the project, Mr Tsolo was introduced by the Department to Mr Amit Lamba, an Indian national resident in the United Arab Emirates (UAE). Mr Tsolo met with him and signed a Memorandum of Understanding (MOU), on behalf of the Project, where Mr Lamba agreed that he would fund the Project to the tune of R675 million on condition that he obtained a 60% shareholding in the Project. Another condition was that a company be set up and registered in Ajman (one of the emirates in the UAE) through which he would channel the funds. The Project also had to transfer USD12000 for the registration of this UAE company.

Following the meeting with Mr Lamba, and the signing of the MOU, Mr Tsolo went to the UAE on 27 June 2013. His flight and accommodation were paid for by Mr Lamba's company, Rahi Developers. A Mr Albert Mokoena was on the same flight as Mr Tsolo, and he also happened to be meeting with Mr Lamba. When Mr Tsolo met with Mr Lamba in the UAE, Mr Lamba expressed an interest in making Mr Tsolo his representative in Africa. Mr Lamba offered to make Mr Tsolo a shareholder in one of his companies as a show of good faith. He offered Mr Tsolo a share issue to the value

[2] Federal Decree Law No. 19, Issued on 2019/8/29 Corresponding to 28 Dhu Al-Hijjah 1440H. ON INSOLVENCY https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_INSOLVENCY/UAE-LC-En_2019-08-29_00019_Markait.html?val=EL1%22%20target=%22naf%22%3EFederal%20Decree-Law%20No.%2019:%20ON%20INSOLVENCY%3C/a%3E

of 480 000 Dirhams. In order to receive these shares, Mr Tsolo went to what he thought to be the UAE equivalent of South Africa's Department of Trade and Industry's offices to sign for and receive his shares in the company. Unknown to Mr Tsolo, those "offices" were actually the Ajman Court. Mr Tsolo had in fact signed an acknowledgement of debt (AOD), in Arabic, to the amount of 480 000 Dirhams, under the fraudulent misapprehension that he was signing for a shares transfer to the same value.

After signing the AOD, Mr Tsolo was then taken to a Free Zone where he was to register the company agreed to in terms of the MOU. When Mr Tsolo arrived he was told that it would be easier to transfer funding from an existing company instead of setting up a new one, as that would take longer. Mr Tsolo was required to handover his passport at the Free Zone for the transfer of Mr Lamba's existing company. Through Mr Lamba's connections at the Free Zone (as was the case in the Ajman Court as well) he was illegally given possession of Mr Tsolo's passport. Mr Lamba immediately instituted legal proceedings against Mr Tsolo through the Ajman Court on the strength of the fraudulent AOD and used the illegally obtained passport to place a travel ban on Mr Tsolo. At the time that Mr Lamba had instituted legal proceedings against Mr Tsolo, the two were still on good terms, so when Mr Tsolo would receive legal documents (being service of the institution of proceedings) in Arabic, Mr Tsolo would contact Mr Lamba thinking that it was documentation that had to do with the transfer of Mr Lamba's company to him. Mr Lamba would then swoop in and collect the documents from Mr Tsolo. Eventually Mr Lamba stopped responding to Mr Tsolo's communication.

After Mr Lamba stopped communicating with Mr Tsolo, the latter approached the South African Consulate in Dubai for an exit permit (on the understanding that his passport was still being held by the Free Zone). It was at this point that Mr Lamba made contact with Mr Tsolo in the form of a copy of a travel ban instituted against him.

Mr Tsolo abandoned the idea of the exit permit as a result of the travel ban. However, Mr Mokoena (whom Mr Tsolo had met on the plane to the UAE and who had also signed a fraudulent acknowledgement of debt) was able to obtain an exit permit and fled the UAE before the travel ban that Mr Lamba had also attempted to institute on him came into effect.

Mr Tsolo consulted lawyers in Dubai referred to him by the South African Embassy/Consulate about his travel ban and the debt claim. The lawyers informed him that the matter was already at execution stage and that the right of reply had passed. During the signing of the AOD that was masked by Mr Lamba as a MOU, no translator was provided, and when Mr Tsolo raised this as a defence later on, an attestation report from the court was produced, to dispute Mr Tsolo's defence. When Mr Tsolo requested that the court's camera footage be made available to prove his contention the request was refused. Mr Tsolo was arrested on 26

December 2013 and spent 27 months in prison in the UAE. After his release from prison, he was still expected to pay the money he went to prison for.

All his efforts trying to gain his freedom from the fraudulent case failed, including requesting the South African government intervention, media, asking for pardon (just to be able to go home) from the UAE government.

B) ***Tjoko Johannes Kambule***

Mr. Tjoko Johannes Kambule is a South African citizen who was involved in a dispute arising from an acknowledgement of debt (AoD) to the value of AED 534,000 that he was misled into signing in the Notary Public Office of the Ajman Federal Court of Law on 04 July 2013 in the United Arab Emirates (UAE).

Mr. Kambule was misled into signing the document, and as a result, he was arrested, detained, and subsequently imprisoned for 38 months at Ajman Central Jail in UAE. A travel ban was imposed on Mr. Kambule following the Civil Claim/Execution Case No 835/2013. However, two verifiable lawful milestones associated with Execution Case No 835/2013 are crucial to understanding the unlawfulness of Mr Kambule's current situation in the UAE. The Presiding Judge in Execution Case No 835/2013 issued a Final Judgment Order on 31 August 2016, declaring Mr. Kambule "Free to go," while the Judge President of the Ajman Federal Court of Law issued a Release Order on 11 October 2016 that resulted in Mr. Kambule's lawful release from Ajman Prison on 19 October 2016. The Final Judgment Order and the Release Order were based on critical matters of law and fact, including an acknowledgement by the Ajman Federal Court of Law that the AoD was 'inconsistent with the framework of the lawful notarization protocols of the Notary Public Office protocols; thereby resulting in the AoD losing its legal standing status in relation to Execution Case No 835/2013.' Furthermore, the same Court of Law acknowledged that even the fraudulent material evidence documents used to substitute the invalidated AoD had no bearing on the Court's legal jurisdiction, as these allegedly happened in India during Mr. Kambule's visit in February 2013.

Despite numerous efforts by the South African Embassy to assist Mr. Kambule in departing from the UAE, he has been unable to do so, and he is currently in distress, lodged in the South African Embassy's precinct in Abu Dhabi. The Ministry of Foreign Affairs of the UAE has informed the South African Embassy that they cannot lift the travel ban due to creditors' rights.

Throughout this ordeal, Mr Kambule was and still is dependent on the goodwill of South Africans working in the UAE for help and financial and moral support, including the unwavering support of own family, siblings, relatives, and friends in South Africa.

1. **Current situation of the complainants**

Mr Tsolo was released from Prison on 29 March 2016. The UAE still refuses to release Mr Tsolo's passport. Although he now has a new passport, the position of the UAE is

that the travel ban on Mr Tsolo will not be uplifted until his debt is paid. The position of the UAE on not lifting the travel ban on the premise of a fraudulent AOD has persisted even though Mr Lamba was also charged with fraud in India for using the same *modus operandi* and the unscrupulous dealings of Mr Lamba have also been officially recognised by the South African Consulate in Dubai. Mr Tsolo has been living on the veranda of the South African Embassy in Abu Dhabi, which has been turned into a makeshift room that he shares with 2 other South Africans, including Mr Kambule, that are being held hostage in the UAE for the same reason, since 24 January 2017. Mr Tsolo too relies on the charity of South African expats to take care of his personal and daily needs. He is not permitted to work in order to be able to pay off his debt (which effectively turns his debt obligation into an impossibility of performance) or to take care of his personal needs. Mr Tsolo leaves behind a family. His mother passed away in 2019, and he was not permitted to return to South Africa to mourn her death.

Mr Kambule was released by the Ajman Court Judge President's authorization on 11 October 2016 in "Execution Case No 835 /2013". This release came with the stipulation that **unless Mr Kambule is wanted in connection with other outstanding legal obligations he is 'free to go.' On the 16th of October 2016, the day of Mr Kambule's** duly Authorized Release from Ajman Central Jail, the Head of the Ajman CID Headquarters confirmed that 'Mr Kambule is not wanted in connection with any outstanding legal obligations in the UAE.' Thereby confirming both the final judgement order and the release order. In spite of the release order, Mr. Kambule is still unable to leave UAE, and has been unable to for over six years since his release. The UAE continues to refuse to lift the travel ban or release Mr Kambule's passport. This effectively means that Mr Kambule has been unlawfully separated from his family, children, siblings, relatives, as well as friends over the past ten years. Mr Kambule continues to be in the custody of and housed by the South African Embassy in Abu Dhabi. Efforts of the South African Embassy in Abu Dhabi through diplomatic channels including engaging the UAE Ministry of Foreign Affairs and International Cooperation to address the legal status of Mr Kambule in the UAE, have not yielded any result.

V. Indicate reasons why you consider the arrest and/or detention to be arbitrary[3]. Specifically provide details on whether:

i) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him).

[3] Copies of documents that prove the arbitrary nature of the arrest or detention, or help to understand the specific circumstances of the case, as well as any other relevant information, may also be attached to this questionnaire.

(ii) Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

The complainants have been arbitrarily detained. This will be proven in three ways. First the deprivation of liberty of the complainants constitutes detention. Second that there is no legal justification for the complainants remaining in the country in terms of the contract and are disproportionate and excessive (pertains to category i). Third the detention in the country UAE was not carried out in accordance with a fair trial (pertains to category iii).

In accordance with deliberation 1 of the 49th session of the Commission of Human Rights the Working Group on Arbitrary Detention may decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character.

The Universal Declaration of Human Right in Article 13.2 states: 'Everyone has the right to leave any country, including his own, and to return to his country.' As explained through the factual matrix, it is clear that the complaints are not allowed to return to their country. Therefore, there is a violation of this right to freedom of movement and thus a deprivation of liberty. According to the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* adopted by the United Nations General Assembly (resolution 43/173) 'detained person' is defined as "any person deprived of personal liberty except as a result of conviction for an offence." As the complainants have served their sentence based on a fraudulent document and still are deprived of their personal liberty by being unable to leave the UAE due to the travel ban and confiscation of passports this is a continuation of detention after the sentence is served. Furthermore, in the European Court on Human Right case, *Guzzandi v Italy*, there was found to deprivation of liberty arising from detention where a person was restricted to the geographical area of an island. In addition, the judgement of *Amuur v. France* reminds us, it doesn't matter what an area of detention is called – whether an 'international zone' or otherwise – human rights continue to apply.[4] In the case of the complainants, they are limited to the geographical area of the UAE. Whether the limit of freedom in terms of a cell or a geographical area it is still a violation of Article 13 of the UDHR and therefore a form of detention. In addition, as per appendix 3, guideline 1 of the UN WGAD guide to practice.[5] The right to challenge the arbitrariness of and unlawfulness of detention is applicable not only to detention under criminal proceedings but also includes detention under other fields of law including administrative, migration detention and detention for extradition among others.

[4] Amuur v. France, para. 52: 'Despite its name, the international zone does not have extraterritorial status.' Here France argued unsuccessfully that because the asylum-seekers had passed via Syria on their way to France, they were free to return there and were therefore not in detention. This was rejected, as the European Court of Human Rights (ECtHR) argued that the ability to leave detention must be a real possibility and not merely theoretical.

[5] UN Working Group on Arbitary Detention Commantary and Guide to Practice Jared Genser Cambrige Law Press

Ultimately the government of the UAE violates the rights of the complainants to freedom of movement. The location of the detention is not as relevant as the evidence of the deprivation of liberty by the state. Thus, as there is no possibility for the complainants to get out of that geographical area and their personal liberty is restricted this deprivation of liberty should constitute detention.

Second, this detention and deprivation of the liberty of the complainants is arbitrary for three main reasons. The firstly is the length of time of the detention is excessive. Secondly there is no legal justification for the continued detention. Thirdly the complainants have not been afforded the right to a fair trial which has lead to detention for an offence that they did not commit. According to the general comment no.35 of the Human Rights Council: 'arbitrariness is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.'[6] The complainants have served their sentences of more than two years and are still not able to leave the UAE. The retention of the passports and the travel ban on the complainants are supposedly to 'prevent flight' and ensure they pay their debt. Although the complaints have now been issued new passports they have spent more than two years in jail and nearly seven years after jail without response or cooperation from the UAE government regarding the travel ban and exercise of their freedom of movement. There is a lack of predictability because due to the lack of cooperation from the government of the UAE the complainants have no set date for the possible release date, at this point it is in perpetuity as the complainants are also not permitted to work to pay off the debt. As such this excessive length of the detainment in the UAE is excessive and disproportionate.

Secondly there is no legal basis justifying the continued detention. As there is no justifiable reason for the imprisonment in the first place, and the continued detention, as the reasoning for the detention is based on a contract that is fraudulent and entered into under misrepresentation and should therefore have no effect. Articles 185-186 of the UAE Civil Code define misrepresentation as follows:

Article 185: Misrepresentation is when one of the two contracting parties deceives the other by fraudulent means by word or act which leads the other to consent to what he would not otherwise have consented to.

Article 186: Deliberate silence concerning a fact or set of circumstances shall be deemed to be a misrepresentation if it is proved that the person misled thereby would not have made the contract had he been aware of that fact or set of circumstances.[7]'

[6] General Comment No. 35 CCPR/C/GC/35, para. 12

[7] https://www.inhouselawyer.co.uk/legal-briefing/contractual-misrepresentation-under-uae-law/

Within the factual matrix it is clear to see that in both cases the complainants were misled into signing an acknowledgement of debt thinking that in fact they were signing a document for shares in Mr Lamaba's company. Both parties therefore would never have entered into the contract if they knew that it was an acknowledgement of debt. Furthermore, the misrepresentation was clearly intentional as Mr Lamba not only insisted throughout all interactions with both parties that the document was for shares in a company or business opportunities, not debt, the contracts were also intentionally deceptive as they were in Arabic. Therefore, as Mr Tsolo and Mr Kambule are unable to understand Arabic they signed a contract for debt unknowingly. Furthermore, the contract that was entered into was also one of *lesion* or gross unfairness. The contract entered into resulted in the imprisonment of both parties for 2 and 3 years as well as the continued restriction of the freedom of movement of both parties for a debt the never actually incurred. It is important to note that no money or services for the debt amount was ever received by either party from Mr Lamba. Therefore, the complainants cannot owe any money or be in debt if they never got money or services in the first place. Therefore, as contract was entered into under misrepresentation concerning the subject on the contract and was excessively unfair. The complainants should have been able to be cancelled or nullified in terms of article 187 of the UAE Civil code.

Furthermore, in the case of Mr Kambule, the Head of the Ajman CID Headquarters confirmed that 'Mr Kambule is not wanted in connection with any outstanding legal obligations in the UAE.' Thereby confirming both the final judgement order and the release order. In spite of the release order, Mr. Kambule is still unable to leave UAE, and has been unable to for over six years since his release. The UAE continues to refuse to lift the travel ban or release Mr Kambule's passport. There is therefore clearly no lawful reason for the continued detention of Mr Kambule in the UAE. Therefore, the detention is arbitrary as there is no legal justification for the continued detention as the sentences have been served and the reason for the detention is based on a contract entered into under fraud and misrepresentation and therefore should have no weight to keep the complainants in the UAE.

Third the detention was not carried out in accordance with a fair trail and no further cases have been able to be opened. As discussed in section VI this information was and is still not able to be heard in a fair trial. Article 10 of the UDHR declares that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. In addition, in line with international norms of a fair trial Article 14 of the ICCPR lays out guidelines for a fair trial. This includes the right to be told the charges laid against you in a language that you can understand.[8] As well as the right for his conviction to be reviewed by a higher tribunal according to the law.[9]

[8] ICCPR Article 14.3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
[9] Article 15 ICCPR

Both of these rights were violated in the signing of the AOD and the trail of Mr Tsolo. During the signing of the AOD that was masked by Mr Lamba as a MOU, no translator was provided for Mr Tsolo or Mr Kambule, and when Mr Tsolo raised this as a defence later on, an attestation report from the court was produced, to dispute Mr Tsolo's defence. When Mr Tsolo requested that the court's camera footage be made available to prove his contention the request was refused. Mr Tsolo was arrested on 26 December 2013 and spent 27 months in prison in the UAE. Therefore, the original trail was unfair as it was not translated for understanding and did not allow for review. As discussed in section VI all attempts to go through the court systems and exhaust local remedies for both have been futile. This as Mr Lamba is imprisoned in India for a similar case of fraud, and therefore a case of fraud cannot be instituted against him and the prosecutor dropped the case. Therefore, there has been no possibility of a fair trail been heard and therefore the detention is a violation of the right to a fair trial and thus arbitrary detention.

The Human Rights Committee, in its General Comment No. 35 (CCPR/C/GC/35) observed that "[t]he fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances." The complaints have therefore had their freedom of movement violated and have been detained in some manner for nearly a decade. After an unfair trail and for signing a document that should be deemed void. Thus, the detention in the UAE is disproportionate and excessive and therefore constitutes a violation of international law.

2. **Imposition of travel ban based on acknowledgment of debt: a consistent pattern of gross human rights violations in the UAE**

It is submitted by the Complainants that their cases are not isolated incidents in the UAE. Specifically, there is another South African (who preferred anonymity) who is in the same de facto hostage situation having been defrauded by the same perpetrator and is also using the South African Embassy as a base due to the travel bans placed on them. There are also non-South Africans who have been victims of human rights violations based on acknowledgment of debt as evinced below.

2.1. **Specific cases of consistent gross violations:**

- ***Mr. Mohammed Reza Bahar (Iran)***

In June 2014, a complaint was filed in Dubai Criminal Court against Mr Mohammed Reza Bahar by a foreign investor for failing to pay his debt. He was sentenced to 3 months in prison. In late June, another criminal complaint was filed by a different foreign investor. He was sentenced again, but this time with a fine of 10 000 dirhams. An automatic travel ban was imposed based on his failure to pay his debts. This would only be lifted if he paid off the debts. On top of this, his passport was also confiscated. According to amendments to the Civil Procedure law in 2019, a judge can lift a travel ban after three years if the creditor does not ask for an extension. In 2019,

he was again placed on the travel ban list at the request of the creditor. The UAE authorities refused the application for granting work and residence permit. This makes it impossible for Mr Bahar to work in order to pay off his debts.

- ***General instances***

While in prison, Mr Tsolo also realised that there were other Indian nationals who had been imprisoned because of Mr Lamba's fraudulent activities as well. The consistent pattern of gross human rights violations occasioned by the debt laws of the UAE is also evidenced by an article published by the Human Rights Watch on 10 May 2021. The article noted that the UAE is notorious for its debt laws which are in violation of international human rights law to the extent that they impose overwhelming limitations on foreign residents who are indebted to UAE based creditors. People like Amit Lamba work with lawyers who know the UAE laws and the fact that once your case is in execution, the judge will never listen to your pleading of innocence when you appear in court.

3. **Human rights violations by the UAE**

The acknowledgement of debt, which the UAE government relies on to legitimize the travel ban is a fraudulent document and is therefore illegitimate. It concerns a document that the persons in question signed thinking it was about a transfer of shares of Lamba's company. This was not questioned by the South Africans in question as it was common practice. It was indicated to them that they had to visit the government offices to sign to receive these shares. The document signed by the persons in question was only available in Arabic and no English translation was provided. The travel ban relies solely on the AODs which are clearly illegal. In 2016, Mr. Lamba was arrested in New Delhi for defrauding many other people in India and is now serving a life sentence in prison. In a decision from the court in New Delhi (exhibit A), it was stated that data available shows that he is involved in many other cases of fraud nationally and internationally. In the light of clarity on the fraudulent activities of Mr. Lamba and the illegality of the AoDs, it is imperative for the UAE to reconsider the imposition of travel ban on the Complainants and they should be allowed to travel.

It is the submission of the Complainants that the current Debt laws in the UAE affect the protection of several human rights, including:

- the right to an adequate standard of living;
- the right to family life and family unity; and
- the enjoyment of the highest attainable standard of physical and mental health.

Specifically, the complainants allege a violation of their human rights as follows:

- a deprivation of liberty contrary to Article 11 of the ICCPR;
- arbitrary deprivation of freedom to leave the UAE contrary to Article 12 of the ICCPR;
- denial of the right to work contrary to Article 6 of the ICESCR, as well as the right to an adequate standard of living under Articles 10 and 11 of the ICESCR.
- furthermore, the prison term served by the complainants is a violation of their right to a fair trial under

Although the UAE is not a signatory to either the ICCPR or the ICESCR, the fact that it is a member of the United Nations means that this complaint can be brought against the member state as contemplated within the ambit of paragraph 85 of the Human Rights Council Resolution 5/1 which provide for the submission of complaint in instances of "*consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances*."

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.[10]

There have been several attempts to utilise national and diplomatic remedies available in the UAE to overturn the travel ban of the complainants and secure their freedom. The Complainants argue that they have exhausted all local remedies available to them in the circumstance.

1. Institution of a case of fraud against Mr Lamba

During his time in prison, Mr Tsolo's lawyers advised him that the only way to fight the debt case was to open up a fraud case against Mr Lamba from prison. After opening up the case of fraud against Mr Lamba, Mr Tsolo was required to appear before the Public Prosecutor and the Court but prison officials would refuse to take him to his appointments. Even though the Public Prosecutor appeared to be persuaded by Mr Tsolo's case and was willing to charge Mr Lamba for fraud, the lack of cooperation by prison officials in arranging for the presence of Mr Tsolo before the Prosecutor thwarted the case. As stated earlier, Mr Lamba is currently serving a jail term in India and it is impossible to institute a new case of fraud against him in the UAE. The situation has also been worsened by the continuous lack of cooperation by the relevant UAE officials.

2. Diplomatic measures employed to repatriate the Complainants

[10] Note that the Methods of Work of the Working Group do not require exhaustion of all available domestic remedies for the communication to be admissible for consideration by the Working Group.

A delegation from the South African Department of International Relations and Cooperation (DIRCO) was sent to meet with both the Complainants and the UAE Ministry of Foreign Affairs on 8 and 9 August 2022, respectively, with a mandate to return the Complainants to South Africa. However, the UAE government failed to cooperate. They offered DIRCO no assistance, insisting that the matter was a civil one between the Complainants and their judgment creditor and that the travel ban would not be lifted until the Complainants' debts were paid or the claim dropped by their creditor. As explained earlier, the current circumstances of the Complainants and the imprisonment of Mr Lamba in India means that the options presented by the UAE Ministry of Foreign Affairs cannot be accessed by the Complainants.

3. Attempted petition delivery to UAE Embassy in Pretoria

On 16 September 2022, Mr Maduna, a friend and former colleague of Mr Tsolo, along with Mr Tsolo's son and friends attempted to deliver a Change.org petition that Mr Maduna had started to the UAE Embassy in Pretoria, with a covering letter. The UAE's response to the petition delivery was to shut down the Embassy for the day and to refuse to accept the petition. The Embassy in fact invested in a security complement that outnumbered the civilians involved in the handover and covered up their signage outside of their building.

4. Local attempts

A travel ban was imposed on Mr. Kambule following the Civil Claim/Execution Case No 835/2013. However, two verifiable lawful milestones associated with Execution Case No 835/2013 are crucial to understanding the unlawfulness of Mr Kambule's current situation in the UAE. The Presiding Judge in Execution Case No 835/2013 issued a Final Judgment Order on 31 August 2016, declaring Mr. Kambule "Free to go," while the Judge President of the Ajman Federal Court of Law issued a Release Order on 11 October 2016 that resulted in Mr. Kambule's lawful release from Ajman Prison on 19 October 2016. The Final Judgment Order and the Release Order were based on critical matters of law and fact, including an acknowledgement by the Ajman Federal Court of Law that the AoD was 'inconsistent with the framework of the lawful notarization protocols of the Notary Public Office protocols; thereby resulting in the AoD losing its legal standing status in relation to Execution Case No 835/2013.' Furthermore, the same Court of Law acknowledged that even the fraudulent material evidence documents used to substitute the invalidated AoD had no bearing on the Court's legal jurisdiction, as these allegedly happened in India during Mr. Kambule's visit in February 2013.

Despite numerous efforts by the South African Embassy to assist Mr. Kambule in departing from the UAE, he has been unable to do so, and he is currently in distress, lodged in the South African Embassy's precinct in Abu Dhabi. The Ministry of Foreign Affairs of the UAE has informed the South African Embassy that they cannot lift the travel ban due to creditors' rights.

Throughout this ordeal, Mr Kambule was and still is dependent on the goodwill of South Africans working in the UAE for help and financial and moral support.

Remedies

The mandate of the Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. Furthermore, section C 17(e) of Fact Sheet No. 26, The Working Group on Arbitrary Detention, if the Group considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.

It is thus the prayers of the Complainants that the Working Group on Arbitrary detention should recommend to the UAE to release the complainants' immigration documents and allow the Complainants to return to South Africa (lift the travel ban on the complainants).

VII. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible).[11]

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Submitting the complaint: The Centre for Human Rights, Faculty of Law, University of Pretoria

On behalf of other persons: ☐ The Complaint is filed on behalf of Mr. Tsolo Sello and Mr. Tjoko Johannes Kambule

[11] If a case is submitted to the Working Group by anyone other than the victim or his family, such a person or organization should indicate authorization by the victim or his family to act on their behalf. If, however the authorization is not readily available, the Working Group reserves the right to proceed without the authorization. All details concerning the person(s) submitting the information to the Working Group, and any authorization provided by the victim or his family, will be kept confidential.



Date: 02/05/2023

Signature:
Prof. Frans Viljoen
Director, Centre for Human Rights,
University of Pretoria