

Communication 299/05--Anuak Justice Council/ Ethiopia

Rapporteur:

37th Ordinary Session: Commissioner EVO Dankwa

38th Ordinary Session: Commissioner Nyanduga/Malila

39th Ordinary Session: Commissioner Malila

Summary of facts

1. The communication is submitted by the Anuak Justice Council, through Obang Metho the Director for International Advocacy, Anuak Justice Council which was prepared by the International Human Rights Clinic, Washington College of Law in Washington, D.C in the United States of America against the Federal Democratic Republic of Ethiopia, the Respondent State, a party to the African Charter on Human and Peoples' Rights since 1998

2. The complainant avers that the respondent through its agents, the Ethiopian Defence Forces has been engaged in massive discrimination resulting in serious human rights abuses and violations of the people of Anuak ethnicity. They claim that the abuses by the Ethiopian Defence Forces include the massacre of over four hundred and twenty-four civilians, the wounding of over two hundred civilians and the disappearance of over eighty-five civilians in the Gambella region in the three day period of December 13 -15, 2003. The complainant states that the abuses have continued against the Anuak since that period including extrajudicial killing, torture, detention, rape and property destruction throughout the Gambella region resulting in 1000 Anuak deaths and that, over 51,000 Anuak have been displaced within the Gambella region.

3. The complainant adds, that the Republic of Ethiopia has violated its legal obligations to uphold the rights and principles of all Ethiopian citizens, and has violated its obligation to uphold the rights and protections enshrined in the African Charter under Articles 4,5,6,12,14,18.

4. The Anuak Justice Council requests the African Commission on Human and People's Rights to grant provisional measures and declare them binding on the Ethiopian government.

5. The complainant states that the Anuak are an indigenous minority group living in south-western Gambella region of Ethiopia and that despite their dominance in the region, the Ethiopian government has a long history of marginalizing, excluding and discriminating against them. The complainant claims that due to Gambella's natural resources, the Ethiopian government has resettled over sixty thousand Highlanders', who had almost completely destroyed the Anuak way of life within Gambella.

6. The complainant avers that the Anuak believe that oil in the region should belong to them, while the Federal Government argues that under the federal

constitution all mineral resources belong to the Ethiopian State. The complainant adds that the Ethiopian Defence Forces are stationed throughout the Gambella in order to identify and destroy disparate groups of armed Anuak known collectively as 'shifita' that have attacked Highlander civilians.

7. The complainant submits that the December 2003 massacre was sparked by the killing of eight Highlander refugee camp officials and propelled the Ethiopian Defence Forces into a broad-based assault on Gambella's Anuak community. The complainant states that despite the fact that nobody was immediately found responsible for the death of the eight people, there is no indication that the Ethiopian government had undertaken an official investigation into the ambush of the refugee camp officials thus blaming the Anuak community for the attacks.

8. The complainant avers that the violence in the Gambella region has continued since December 2003 and remains a serious threat to Anuak citizens as well as other ethnic groups in the region. The complainant allege that the Ethiopian Defence Forces search for 'shifita' has become the pretext for bloody and destructive raids on numerous Anuak villages since the December 2003 massacre on the Gambella town. The complainant further allege that unarmed Anuak within Gambella are currently being killed by Ethiopian Defence Forces without due process or the use of judicial proceedings without even making an effort to distinguish Anuak civilians from the 'shifita' they claim to be looking for.

9. The complainant further allege that many Anuak have been detained in prison without charge both in Gambella and Addis Ababa which accounts to about 1000 detained to this day. The complainant also adds that a substantial group of Gambella's educated Anuak have been imprisoned or forced into exile and that many have been charged with offences relating to alleged collaboration with Anuak insurgents and put on trial but none of the leaders are yet to be convicted.

10. The complainant further alleged that in rural areas the Ethiopian military continues to burn homes, destroy crops, burn food stores, disrupt planting cycles, and destroy agricultural equipment of the Anuak to prevent them from sustaining themselves. The complainant asserts that as recently as January 2005, the Ethiopian government threatened Anuak elders in Gambella that anyone attempting to tarnish the reputation of the Ethiopian government over the massacres would be dealt with.

11. The complainant claims that the Ethiopian government's response to the December massacre has been grossly inadequate and disingenuous. The complainant states that the government's initial position that no soldiers had taken part in the massacre had become impossible to defend and adds that the Commission's of Inquiry set up by the Government was biased and ineffectual and did not investigate the behaviour of the Ethiopian Defence Forces as an organization despite numerous reports.

The Complaint

12. The complainant states that crimes against humanity, such as extrajudicial killing, torture, and rape, crimes that take place against the Anuak civilians is in violation of international law as well as a violation of Articles 4, 5, 6, 12, 14 and 18 of the African Charter. The Anuak Justice Council urges the African Commission on Human and Peoples Rights to intervene to prevent further human rights abuses of the Anuak by the Ethiopian government.

13. The Compalaint further makes an urgent request for provisional measures under Rule 111 of the Rules of Procedures of the African Charter that the African Commission may intervene to “avoid irreparable damage being caused to the victim of the alleged violation.”

Request for provisional measures – summary

14. The complainant, requests for provisional measures to the African Commission on Human and Peoples’ Rights pursuant to Rule 111 of the Rules of Procedures of the Commission. The complaint relates to the alleged actions of the Defence Forces of the Federal Democratic Republic of Ethiopia. These actions according to the complainant reveal a pattern of serious and massive human and peoples’ rights violations by the Ethiopian Defence Forces. That, bound by the African Charter on Human and Peoples’ Rights, the Federal Democratic Republic of Ethiopia, has and continues to violate Articles 4, 5, 6, 12, 14, and 18 of the African Charter.

15. The Anuak Justice Council therefore seeks the Commission’s intervention and issuance of Provisional Measures requesting that the Ethiopian government stops the human rights abuses of the Anuak pending a decision of the African Commission on the concurrent communication and is also seeking an in-depth study of the treatment of the Anuak by the African Commission pursuant to Article 58 of the Charter.

16. The Anuak Justice Council notes that it does not request the Commission to evaluate the merits of this case rather, in this provisional measures submission, the Anuak Justice Council merely asks that the Commission request that the Ethiopian government immediately stops the series of serious and massive violations of human and peoples’ rights of the Anuak people prior to the issuance of a decision by the African Commission on the merits.

17. That the Commission has jurisdiction to issue provisional measures under Article 111 of the rules of procedure of the African Charter of Human and Peoples’ Rights. *See Registered Trustees of the Constitutional Rights Project v. the President of the Federal Republic of Nigeria and Five Others.* Similar to the Nigeria case, many Anuak have also been and continue to be sentenced to death. The Commission should therefore find the Anuak situation as even more sever and compelling than the Nigeria case and grant provisional measures.

18. The complainant notes further that while the African Commission on Human and Peoples’ Rights has not decided whether grants of Provisional Measures should be binding on State Parties, other international and regional human rights bodies have declared that Provisional Measures be binding on States including the European Court of Human Rights, Inter-American

Commission, the International Court of Justice and the UN Human Rights Committee. Due to the severity of the situation that the Anuak find themselves subject to in the Gambella, in prisons throughout Ethiopia and as refugees in Sudan and Kenya, petitioners plead that the African Commission grant provisional measures and declare them binding on the Ethiopian government.

19. The complainant seeks the Commission's intervention and issuance of Provisional Measures requesting that the Ethiopian government stop human rights abuses of the Anuak, pending the decision of this Commission on the Anuak Justice Council's concurrent communication to the African Commission on Human and Peoples' Rights on the merits of this claim and further urges the Commission to find that its order of Provisional Measures in this case be binding upon the Ethiopian government.

Procedure

20. The communication was received at the Secretariat of the African Commission on 4 April 2005

21. By letter of 20 April 2005 the Secretariat acknowledged receipt thereof informing the complainant that the communication has been registered as **communication 299/05 - Anuak Justice Council/Ethiopia** and that the communication will be considered on seizure at the 37th ordinary session of the African Commission.

22. At its 37th ordinary session held in Banjul, The Gambia from 27 April to 11 May 2005, the African commission considered the communication and decided to be seized thereof.

23. By note Verbale of 24 May 2005 the Secretariat of the African Commission notified the State of the Commission's decision and forwarded the complaint to the State with a request for the latter to make its submission on the merits within three months of the notification. By letter of 24 May 2005, the Secretariat of the African Commission informed the complainant of the Commission's decision.

24. On 23 August 2005, the Secretariat received the Respondent State's submissions on admissibility.

25. On 25 August 2005, the Secretariat transmitted the Respondent State's submission on admissibility to the complainant, requesting the latter to respond thereto before 25 September.

26. On 21 complainant wrote to the Secretariat informing the latter that the legal representative of the Anuak Justice Council had changed adding that they received the Secretariat's letter of 25 August only on 9 September and would like the deadline for the submission of their arguments on admissibility to be moved to 9 October 2005. The Complainant also requested for provisional measures to be taken by the Commission.

27. On 10 October 2005, The Secretariat received the complainant's response on the Respondent State submissions on admissibility.

28. On 19 October 2005, the Secretariat transmitted the complainant's response to the Respondent State with a request to the latter to make its comments, if any, before 31 October 2005.

29. At its 38th Ordinary Session, the African Commission deferred consideration on the admissibility of the communication and to enable the Secretariat get additional information from the parties.

30. By Note Verbale of 19th January 2006 and by letter of the same date, the Secretariat of the African Commission notified the parties of the African Commission's decision.

31. At its 39th ordinary session held in Banjul, The Gambia from 11 – 25 May 2006, the African Commission considered the communication and decided to declare it inadmissible.

32. By Note Verbale of 29 May 2006 and by letter of the same date, both parties were notified of the African Commission's decision.

Complainant's submission on admissibility

33. The complainant submits that article 56 (5) of the African Charter requires that complainants exhaust domestic remedies before a case is considered by the African Commission. The complainant notes further that if the potential domestic remedies are unavailable or unduly prolonged, the commission may nevertheless consider a communication, adding that this is especially true when the country against which the complaint is lodged has committed vast and varied scope of violations and the general situation in the country is such that domestic exhaustion would be futile.

34. The complainant argue that in the *Anuak Justice Council Case*, pursuing domestic remedies would be futile due to the lack of an independent and impartial judiciary, a lack of an efficient remedy, the significant likelihood of an unduly prolonged domestic remedy, and most importantly, the potential for violence against the Annuak or those supporting them within the legal system.

35. Anuak Justice Council alleges that it cannot seek exhaustion of domestic remedies because of its inability to receive an independent and fair hearing, as a direct consequence of the fact that the aggressor is the government of Ethiopia. The complainant notes that in spite the protection in Article 78 of the Respondent State's Constitution guaranteeing the independence of the Judiciary, it is perceived by individuals both at home and abroad that the Executive has considerable and even undue influence on the judiciary.

36. The complainant quoted a World Bank Report entitled "Ethiopia: Legal and Judicial Sector Assessment" (2004) which concluded that "... of the three branches of government, the judiciary has the least history and experience of independence and therefore requires significant strengthening to obtain true

independence". According to the complainant, the Report notes that the interference in the judiciary is more flagrant at State level where there are reports of Administrative officers interfering with court decisions, firing judges, dictating decisions to judges, reducing salaries of judges and deliberately refusing to enforce certain decisions of the courts.

37. The complainant also alleges that bringing the case before Ethiopian courts would unduly prolonging the process as the Ethiopian judiciary suffer from a complex system of multiple courts that lack coordination and resources, including "dismal conditions of service, staff shortages, lack of adequate training, debilitating infrastructure and logistical problems". The complainant claims court proceedings take years to yield results, and concluded that the Respondent State's judicial system is so under resourced that prosecutions would be nearly impossible, noting that to date, no action had been taken to prosecute any of the Ethiopian Defence Forces or government officials for the atrocities they committed against the Anuak.

38. The complainant also alleges that the Anuak fear for their safety in bringing the case in Ethiopia adding that there are no Anuak trained as lawyers who could bring the case before Ethiopian courts. The complainant notes that the overwhelming sentiment in the Gambella Region and of the Anuak who have fled the country is that non - Anuak lawyers within Ethiopia would be unwilling to take the case due to the potential persecution they would face, as well as the insurmountable odds of achieving a just remedy. The complainant added that Anuak who remain in the Gambella Region continue to suffer from extra-judicial executions, torture, rape and arbitrary detention from the authorities of the Respondent State adding that several of them have been threatened and warned specifically against pursuing a case against the Respondent State. The complainant noted that as recently as January 2005, the Respondent State threatened Anuak leaders, declaring that anyone attempting to tarnish the reputation of the Respondent State would be dealt with. The complainant concluded by stating that to bring the case within the Respondent State would only further endanger the lives of the remaining Anuak in the Ethiopia.

39. The complainant added that the Respondent State had been given notice and adequate time to remedy the human rights violations against the Anuak but has utterly failed to do so. That the Respondent State received notice of the violations but chose not to take action to halt the atrocities or to make its forces accountable. The complainant added that the Respondent State's response to the massacres in December 2003 in the Gambella Region was inadequate and disingenuous. That under international pressure, the Respondent State established a Commission of Inquiry to investigate the killings, however, according to the complainant, the inquiry was biased and ineffectual and did not meet international standards of an independent investigation.

Respondent State's submissions of admissibility

40. The Respondent State claims that the cases of those involved in the alleged violations that took place in the Gambella Region are currently pending before the Federal Circuiting Court and the respondent, therefore, argued that domestic remedies have not yet been exhausted. The State provided a list of

about 9 such cases including their file numbers and previous and future dates of adjournments.

41. The respondent State argues that the rule that local remedies be exhausted is not limited to individuals and also applies to organisations, including those in no way subject to the jurisdiction of the respondent State. According to the respondent, the complainant could have sought redress from the domestic courts, the Judicial Administration Office, the Commission of Inquiry or the Human Rights Commission but did not. The complainant has not, argued the State, shown the existence of any impediment to the use of these remedial processes or that such were unduly long.

42. Without indicating the status of the proceedings, the State argued that all those alleged of human rights offences associated with the Gambella incident of December 2003 were brought before the Federal Circuit Court. The State indicated that three domestic remedies were available to the complainants – the competent Courts, the Judicial Administration Officer and the Human Rights Commission but the complainants failed to approach any of them.

Provisional Measures:

43. The Republic of Ethiopia argues that the complainant has sought only to present what it claims is *prima facie* evidence of violations and has not shown that if such alleged violations continue there will be “irreparable injury”, as required. Finally, the respondent submits that the Government has presented sufficient evidence that it has taken adequate measures to rectify the situation and that the situation in general has stabilised and does not warrant any provisional measures from the Commission. The Respondent State submits as follows:

- In February 2004, the Office of the Prime Minister issued instructions to Federal institutions to assist the Regional Administration in safeguarding the security of the people and institutions and preventing further violence; soliciting the support of elders, the youth and civil servants in the effort towards sustainable peace, democracy and development; rehabilitating victims of the violence and internally displaced people; and bringing to justice those responsible for committing the violence and the destruction of property.
- The Defence Forces, once deployed, protected the civilian population and allowed humanitarian assistance and rehabilitation.
- The Federal Government, in cooperation with international agencies, coordinated humanitarian assistance to alleviate the suffering of the victims of violence and the displaced.
- A Commission of Inquiry has been established to investigate the circumstances surrounding the crisis, charges have been filed against several individuals as a result.

- The Government has organised various consultations and workshops with the participation of the local population which have proposed concrete solutions aimed at resolving the problems facing the region and have identified the root causes of the crisis.
- The Federal Police have recently graduated more than three hundred police officers from the Gambella region to aid in maintaining law and order in the region once the situation has stabilised.

The law Admissibility

44. The current communication is submitted pursuant to Article 55 of the African Charter which allows the African Commission to receive and consider communications, other than from States Parties. Article 56 of the African Charter provides that the admissibility of a communication submitted pursuant to Article 55 is subject to seven conditions. The African Commission has stressed that the conditions laid down in Article 56 are conjunctive, meaning that if any one of them is absent, the communication will be declared inadmissible.

45. The complainant in the present communication argued that it has satisfied the admissibility conditions set out in Article 56 of the Charter and as such, the communication should be declared admissible. The Respondent State on the other hand submitted that the communication should be declared inadmissible because, according to the State, the complainant has not complied with Article 56 (5) of the African Charter. As there seems to be agreement by both parties as to the fulfillment of the other requirements under Article 56, this Commission will not make any pronouncements thereof.

46. Article 56 (5) of the African Charter provides that communications relating to human and peoples' rights shall be considered if they: "[a]re sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".

47. Human rights law regards it as supremely important for a person whose rights have been violated to make use of domestic remedies to right the wrong, rather than address the issue to an international tribunal. The rule is founded on the premise that the full and effective implementation of international obligations in the field of human rights is designed to enhance the enjoyment of human rights and fundamental freedoms at the national level. In *Free Legal Assistance Group v. Zaire and Rencontre Africaine pour la Défense de Droits de l'Homme [RADDHO] v. Zambia*, this Commission held that "a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body."¹ Such an

¹ See Comm. Nos. 25/89, 47/90, 56/91, 100/93, para. 36, 1995 and Comm. No. 71/92, para. 11.

opportunity will enable the accused state to save its reputation, which would be inevitably tarnished if it were brought before an international jurisdiction.

48. The rule also reinforces the subsidiary and complementary relationship of the international system to systems of internal protection. To the extent possible, an international tribunal, including this Commission, should be prevented from playing the role of a court of first instance, a role that it cannot under any circumstances arrogate to itself. Access to an international organ should be available, but only as a last resort - after the domestic remedies have been exhausted and have failed. Moreover, local remedies are normally quicker, cheaper, and more effective than international ones. They can be more effective in the sense that an appellate court can reverse the decision of a lower court, whereas the decision of an international organ does not have that effect, although it will engage the international responsibility of the state concerned.

49. The African Charter states that this African Commission shall consider a communication after the applicant has exhausted local remedies, “*if any, unless it is obvious that this procedure is unduly prolonged.*” The Charter thus recognizes that, though the requirement of exhaustion of local remedies is a conventional provision, it should not constitute an unjustifiable impediment to access to international remedies. This Commission has also held that Article 56(5) “must be applied concomitantly with article 7, which establishes and protects the right to fair trial.”² In interpreting the rule, the Commission appears to take into consideration the circumstances of each case, including the general context in which the formal remedies operate and the personal circumstances of the applicant. Its interpretation of the local remedies criteria can therefore not be understood without some knowledge of that general context.

50. A local remedy has been defined as “any domestic legal action that may lead to the resolution of the complaint at the local or national level.”³ The Rules of Procedure of the African Commission provide that “[t]he Commission shall determine questions of admissibility pursuant to Article 56 of the Charter.”⁴ Generally, the rules require applicants to set out in their applications the steps taken to exhaust domestic remedies. They must provide some *prima facie* evidence of an attempt to exhaust local remedies.⁵ According to the Commission’s guidelines on the submission of communications, applicants are expected to indicate, for instance, the courts where they sought domestic remedies. Applicants must indicate that they have had recourse to all domestic remedies to no avail and must supply evidence to that effect. If they were unable to use such remedies, they must explain why. They could do so by submitting evidence derived from analogous situations or testifying to a state policy of denying such recourse.

² Amnesty International v. Sudan, para. 31.

³ See Constitutional Rights Project [CRP] v. Nigeria, Comm. No. 60/91.

⁴ Rule 116 of the Commission’s Rules of Procedures.

⁵ Ceesay v. The Gambia,

51. In the jurisprudence of this Commission, three major criteria could be deduced in determining the rule on the exhaustion of local remedies, namely: that the remedy must be available, effective and sufficient.”⁶ According to this Commission, a remedy is considered to be available if the petitioner can pursue it without impediments⁷ or if he can make use of it in the circumstances of his case.⁸ The word “available” means “readily obtainable; accessible”; or “attainable, reachable; on call, on hand, ready, present; . . . convenient, at one’s service, at one’s command, at one’s disposal, at one’s beck and call.”⁹ In other words, “remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the complainant.”¹⁰

52. A remedy will be deemed to be effective if it offers a prospect of success.¹¹ If its success is not sufficiently certain, it will not meet the requirements of availability and effectiveness. The word “effective” has been defined to mean “adequate to accomplish a purpose; producing the intended or expected result,” or “functioning, useful, serviceable, operative, in order; practical, current, actual, real, valid.”¹² Lastly, a remedy will be found to be sufficient if it is capable of redressing the complaint.¹³ It will be deemed insufficient if, for example, the applicant cannot turn to the judiciary of his country because of a generalized fear for his life “or even those of his relatives.”¹⁴ This Commission has also declared a remedy to be insufficient because its pursuit depended on extrajudicial considerations, such as discretion or some extraordinary power vested in an executive state official. The word “sufficient” literally means “adequate for the purpose; enough”; or “ample, abundant; . . . satisfactory.”¹⁵

53. In the present communication, the author of the communication is based in Canada, alleging human rights violations in the respondent State following an incident that occurred in the country. The complainant does not hide the fact that local remedies were not attempted but argued that pursuing domestic remedies in the respondent State would be futile “due to the lack of an independent and impartial judiciary, a lack of an efficient remedy, the significant likelihood of an unduly prolonged domestic remedy, and most importantly, the potential for violence against the Anuak or those supporting them within the legal system”.

⁶ Jawara v. The Gambia, Comm. Nos. 147/95, 149/96, para. 31,

⁷ Id. para. 32

⁸ Id para 33

⁹ LONGMAN SYNONYM DICTIONARY 82 (1986)

¹⁰ Jawara *supra*, para. 33.

¹¹ Id para 32.

¹² Longman *supra*.

¹³ Jawara *supra* para 32.

¹⁴ Id para 35.

¹⁵ Longman *supra* at 1183.

The complainant argued that the violations that took place in Gambella were massive and serious and involved many people – it noted that “the government forces and its collaborators, having previously drawn a list of targets, went from door to door, slaughtering any educated Anuak men they could find, women and children were raped, and homes and schools were burnt to the ground...”.

54. The complainant noted further that the judiciary in the respondent state is not independent due to interference at State level where there are reports of Administrative officers interfering with court decisions, firing of judges, dictating decisions to judges, reducing salaries of judges and deliberately refusing to enforce certain decisions of the courts; and that bringing the case before Ethiopian courts would be unduly prolonging the process as the Ethiopian judiciary suffers from “a complex system of multiple courts that lack coordination and resources”, including “dismal conditions of service, staff shortages, lack of adequate training, debilitating infrastructure and logistical problems”. The complainant claims court proceedings “take years to yield results”, and concluded that the Respondent State’s judicial system is “so under resourced that prosecutions would be nearly impossible”.

55. The complainant also alleges that the Anuak fear for their safety in bringing the case in Ethiopia adding that there are no Anuak trained as lawyers who could bring the case before Ethiopian courts. The complainant concluded by stating that to bring the case within the Respondent State would only further endanger the lives of the remaining Anuak in the Ethiopia. The complainant added that the Respondent State had been given notice and adequate time to remedy the human rights violations against the Anuak but has utterly failed to do so.

56. Can this Commission conclude, based on the above allegations by the complainant that local remedies in the respondent State are not available, ineffective or insufficient?

57. It must be observed here that the complainant’s submissions seems to suggest that local remedies may in fact be available but it is apprehensive about their effectiveness as far as the present case is concerned. From the complainant’s submissions, it is clear that the complainant has relied on reports, including a World Bank report which concluded that “of the three branches of government, the judiciary has the least history and experience of independence and therefore requires significant strengthening to obtain true independence”.

58. The complainant’s submissions also demonstrate that it is apprehensive about the success of local remedies either because of fear for the safety of lawyers, the lack of independence of the judiciary or the meagre resources available to the judiciary. Apart from casting aspersions on the effectiveness of local remedies, the complainant has not provided concrete evidence or demonstrated sufficiently that these apprehensions are founded and may constituted a barrier to it attempting local remedies. In the view of this Commission, the complainant is simply casting doubts about the effectiveness of the domestic remedies. This Commission is of the view that it is incumbent on every complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of, local remedies. It is not enough for the complainant to cast

aspersion on the ability of the domestic remedies of the State due to isolated or past incidences. In this regard, the African Commission would like to refer to the decision of the Human Rights Committee in **A v Australia**¹⁶ in which the Committee held that “mere doubts about the effectiveness of local remedies ... did not absolve the author from pursuing such remedies”.¹⁷ The African Commission can therefore not declare the communication admissible based on this argument. If a remedy has the slightest likelihood to be effective, the applicant must pursue it. Arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will simply not sway this Commission.

59. The complainant also argue that the violations alleged are serious and involve a large number of people and should be declare admissible as the Commission can not hold the requirements of local remedies to apply literally in cases where it is impracticable or undesirable for the complainant to seize the domestic courts in the case of each violation. In the *Malawi African Association* case¹⁸, for example, this Commission observed that [t]he gravity of the human rights situation in Mauritania and the great number of victims involved render[ed] the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process [was] “unduly prolonged”. In like manner, the *Amnesty International v. Sudan* case¹⁹ involved the arbitrary arrest, detention, and torture of many Sudanese citizens after the coup of July 30, 1989. The alleged acts of torture included forcing detainees into cells measuring 1.8 meters wide and 1 meter deep, deliberately flooding the cells, frequently banging on the doors to prevent detainees from lying down, forcing them to face mock executions, and prohibiting them from bathing or washing. Other acts of torture included burning detainees with cigarettes, binding them with ropes to cut off circulation, and beating them with sticks until their bodies were severely lacerated and then treating the resulting wounds with acid. After the coup, the Sudanese government promulgated a decree that suspended the jurisdiction of the regular courts in favor of special tribunals with respect to any action taken in applying the decree. It also outlawed the taking of any legal action against the decree. These measures, plus the “seriousness of the human rights situation in Sudan and the great numbers of people involved, the Commission concluded, “render[ed] such remedies unavailable in fact.”²⁰

60. Thus, in cases of massive violations, the state will be presumed to have notice of the violations within its territory and the State is expected to act accordingly to deal with whatever human rights violations. The pervasiveness of

¹⁶ Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

¹⁷ See also *L. Emil Kaaber v. Iceland*, Communication No. 674/1995. UN Doc. CCPR/C/58/D/674/1995 (1996). See also *Ati Antoine Randolph v. Togo*, Communication No. 910/2000, UN Doc. CCPR/C/79/D/910/2000 (2003).

¹⁸ See combined Communications. Nos. 54/91, 61/91, 98/93, 164/97, 210/98, para. 80,

¹⁹ Comm. Nos. 48/90, 50/91, 52/91, 89/93, para. 32.

²⁰ *Ibid.*

these violations dispenses with the requirement of exhaustion of local remedies, especially where the state took no steps to prevent or stop them.²¹

61. The above cases must however be distinguished from the present case which involves one single incident that took place for a short period of time. The respondent State has indicated the measures it took to deal with the situation and the legal proceedings being undertaken by those alleged to have committed human rights violations during the incident. By establishing the Gambella Commission of Inquiry and indicting alleged human rights perpetrators, the state, albeit under international pressure, demonstrated that it was not indifferent to the alleged human rights violations that took place in the area and in the view of this Commission could be said to have exercised due diligence.

62. This Commission has also held in many instances that domestic remedies have not been exhausted if a case that includes the subject matter of the petition before it is still pending before the national courts. In *Civil Liberties Organization v. Nigeria*,²² the African Commission declined to consider a Communication with respect to which a claim had been filed but not yet settled by the courts of the respondent state. In the present communication, the respondent State indicates that the matter is still pending before its courts and attached a list of cases still pending before the Federal Circuit Court in relation with the Gambella incident. The list provided the names of the suspects, file number of their cases, previous and future dates of adjournments. The complainant does not deny this process is going on. In the view of this Commission, it does not matter whether the cases still pending before the courts have been brought by the complainant or the state. The underlying question is whether the case is a subject matter of the proceedings before the Commission and whether it is aimed at granting the same relief the complainant is seeking before this commission. As long as a case still pending before a domestic court is a subject matter of the petition before this Commission, and as long as this Commission believes the relief sought can be obtained locally, it will decline to entertain the case. It is the view of this Commission that the present communication is still pending before the courts of the respondent State and therefore does not meet the requirements under Article 56 (5).

For the above reasons, the African Commission declares communication 299/2005 – Anuak Justice Council/Ethiopia **inadmissible** for non-exhaustion of local remedies in conformity with Article 56 (5) of the African Charter on Human and Peoples' Rights.

21 Organisation Mondiale Contre la Torture and Association Internationale des Juristes Démocrates, Commission Inter.nationale des Juristes (C.I.J.), *Union Inter.africaine des Droits de l'Homme v. Rwanda*, Comm. Nos. 27/89, 46/91, 49/91, 99/93.

22 Comm. No. 45/90.

