

**Rapporteur:**

24<sup>th</sup> Session: Commissioner Rezag-Bara  
25<sup>th</sup> Session: Commissioner Rezag-Bara  
26<sup>th</sup> Session: Commissioner Rezag-Bara  
27<sup>th</sup> Session: Commissioner Rezag-Bara  
28<sup>th</sup> Session: Commissioner Rezag-Bara  
29<sup>th</sup> Session: Commissioner Rezag-Bara  
30<sup>th</sup> Session: Chairperson Rezag-Bara  
31<sup>st</sup> Session: Chairperson Rezag Bara

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**Summary of Facts:**

1. Complainant is a Human Rights Law office in Sudan and is submitting the communication on behalf of all University Students and Teachers in Sudan.
2. The complaint was sent by post and received at the Secretariat on 14 October 1998.
3. Complainant alleges that on 26 September the Minister of Education in Sudan announced that all the universities in Sudan would be closed for one month.
4. It is alleged that the closure of universities is in order to assist the military mobilisation for the civil war in Southern Sudan.
5. The Complainant has included with the complaint, a sworn affidavit by a university lecturer in the Khartoum University to attest to these allegations.
6. Complainant notifies the Commission that though an administrative appeal has been filed against the decision of the Minister of Education, he does not believe this will yield any realistic success.
7. The Complainant urges the Commission to adopt provisional measures under Rule 111 of its Rules of Procedure which will request the government of Sudan to re-open the universities immediately and prevent further interference with university teaching.

**Complaint:**

The Complainant alleges a violation of the following provisions of the African Charter on Human and Peoples' Rights:

## Articles 6, 7(c) and 17(1)

### Procedure:

8. At the 24<sup>th</sup> ordinary session held in Banjul, The Gambia from 22<sup>nd</sup> to 31<sup>st</sup> October 1998, the Commission decided to be seized of the communication.
9. On 26 November 1990, the Secretariat informed the two parties of the Commission's decision.
10. On 3 May 1999, during the 25<sup>th</sup> ordinary session of the Commission in Bujumbura, Burundi, a representative of the government of Sudan submitted a written response to the Commission concerning the communication.
11. At its 25<sup>th</sup> ordinary session held in Bujumbura, Burundi, the Commission postponed consideration of the communication to the next session.
12. On 13 May 1999, the Secretariat of the Commission wrote letters to all the parties notifying them of this decision.
13. On 21 September 1999, the Complainant notified the Secretariat of the Commission of a new address for all correspondences relating to the communication.
14. During the 26<sup>th</sup> ordinary session, the Commission received a written response, together with a three paged document in Arabic, from Dr. Ahmed El Mufti, Rapporteur of the Advisory Council for Human Rights, Ministry of Justice, Sudan concerning the communication. The attached document is said to be the decision of the Constitutional Division of the High Court.
15. The Commission considered the communication at its 26<sup>th</sup> ordinary session held in Kigali, Rwanda and requested the Complainant to submit written observations on the outcome of the administrative appeal filed against the decision of the Minister of Education, and generally, on the administrative appeal processes in the Republic of Sudan.
16. On 21 January 2000, the Secretariat of the Commission wrote to the parties informing them of the decision of the Commission. It specifically requested the government of Sudan to furnish it with the translation of the decision of the Constitutional Division of the High Court in English or French.
17. On 23 February 2000, following an email from Dr. Curtis Doebbler of the Complainant Firm requesting the Secretariat to furnish him on the progress of all communications filed, the Secretariat forwarded to him through email the letter of 21 January 2000. It also requested him to indicate a fax number to enable it send observations received from the government of Sudan for his response.

18. On 1 March 2000, the Secretariat received an email from Dr. Curtis Doebbler indicating a fax number for the above documents to be sent. The Secretariat acknowledged receipt of the same and intimated to him the necessity of submitting the requested written responses on time.
19. On 8 March 2000, the observation of the government of Sudan was faxed to the Complainant in the U. S. as requested.
20. The Complainant repeated its request for information on the progress of all communications pending before the Commission on 9 and 16 March 2000.
21. At last, the Secretariat received an e-mail from Dr. Curtis Doebbler on 17 March 2000, acknowledging receipt of the e-mail indicating the facts of all the pending communications filed by the Complainant, and also promising to furnish it with their responses no later than 24 March 2000.
22. At the 27<sup>th</sup> ordinary session held in Algeria, the Commission heard oral submissions from parties and decided to consolidate all the cases. It requested to furnish it with written submissions on the issue of exhaustion of local remedies.
23. On 30 June 2000, the above decisions were communicated to parties.
24. On 4 September 2000, Dr. Curtis Doebbler wrote from Cairo to the Secretariat of the Commission requesting information on the decision taken by the Commission at the 27<sup>th</sup> session in Algiers.
25. The Secretariat responded on 7 September 2000, informing him that same had earlier been faxed to him and observing that there were at least three e-mail addresses given by him to the Secretariat for communication purposes and proposing that he should indicate the most suitable e-mail address for future correspondence in order to avoid delays and missing mails. The mails were dispatched to though all the e-mail addresses designated by him and also through fax.
26. On 14 September 2000, Dr. Curtis Doebbler acknowledged receipt of the mails but pleaded for an adjournment to enable him submit in advance a full brief on the issue of exhaustion of local remedies and to arrange for his witnesses.
27. On 13<sup>th</sup> March 2001, the Secretariat received the Complainant's submission. At the 29<sup>th</sup> Ordinary Session, the Commission will hear evidence on exhaustion of local remedies and will then decide on admissibility.
28. At the 29<sup>th</sup> Ordinary session held in Tripoli, the rapporteur introduced the communications and reviewed the facts and the status of the case. The Commission thereafter heard the parties to the case. Following detailed discussions, the Commission noted that the Complainant had submitted a detailed brief on the case. It was therefore recommended that consideration of this communication be deferred to the 30<sup>th</sup> Session pending submission of detailed replies by the Respondent State.

29. On 19<sup>th</sup> June 2001, the Secretariat of the African Commission informed the parties of the above decision and requested the Respondent State to forward its written submissions within two (2) months from the date of notification of the decision.
30. On 14<sup>th</sup> August 2001, a reminder was sent to the Respondent State to forward its submissions within the prescribed time to enable the Secretariat proceed with the communication.
31. During the 30<sup>th</sup> Session, the rapporteurs introduced the communications and reviewed the facts and the status of each case. The Commission thereafter heard the oral submission of the Respondent State to the case. Following detailed discussions, the Commission noted that the Respondent State did not respond to the questions raised by the Complainant. The Commission also heard oral submissions by Dr. Curtis Doebbler and recommended that consideration of these communications be deferred to the 31<sup>st</sup> Session, pending detailed written submission by the Respondent State to the submissions of the Complainant.
32. On 15<sup>th</sup> November 2002, the Secretariat of the African Commission informed the parties on the decision of the Commission and requested Respondent State to forward its written submissions within two (2) months from the date of notification of this decision.
33. On 7<sup>th</sup> March 2002, a reminder was sent to the Respondent State to forward its submissions within the prescribed time to enable the Secretariat to proceed with the communication.

## LAW

### Admissibility

34. Article 56(5) of the African Charter provides:

"The communications stipulated in Article 55 received by the Commission relating to human and peoples' rights, must meet the following conditions in order to be investigated:

(5) *Be subsequent to exhausting all local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is abnormally prolonged;"*
35. Concerning the question of exhausting local avenues of recourse, the Complainant informed the Commission that no effective recourse was available and that, even if used, the Constitutional Court is not qualified due to the state of emergency and the political limitations, which makes it impossible to legitimately complain to the court.
36. He maintains that the grounds for a local remedy that could apply are rendered ineffective by the fact that the legal system in Sudan is neither free nor independent since the Sudanese courts have been controlled by the executive since 1998 and that, given this situation, the executive could not rule on proceedings brought against the

- Sudanese government which are based on international humanitarian law, or even apply this law when it is clearly relevant.
37. The Complainant alleges that, in practice, the procedures in place, which allow for compensation for human rights violations committed by the Government of Sudan, are often inaccessible to those individuals whose rights have been violated, due to the fact that current administrative and legal solutions are serious obstacles to their use. Consequently, complainants who ask that their rights be protected before Sudanese courts, come up against obstacles which make these avenues of redress ineffective.
  38. The Sudanese government alleges that the complainants did not use the remedies available to them in the local courts before applying to the Commission. It insists that neither the lawyer lodging the complaint, nor the complainants, filed an appeal against the decision; this is proved from the registers of the administrative courts.
  39. The government maintains that the complainants, despite their insistence in previous correspondence, did not transmit to them the reference number of the appeal that had been filed which proves that no appeal was filed, contrary to the assertions of the complainants who therefore did not exhaust all the local remedies as provided in Article 56 of the African Charter on Human and Peoples' Rights.
  40. It argues that the right of the complainants to file an appeal against a decision of the court, is provided for in Article 20 (1) of the administrative and constitutional code of justice of 1996 as amended in 2000, and documentation on decisions handed down in similar cases was submitted.
  41. Article 56 (5) of the African Charter requires that "*a communication be introduced subsequent to exhaustion of local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is abnormally prolonged*". The complaint before the Commission was received by the Secretariat on 14<sup>th</sup> October 1998 and the decision to close the universities was taken on 26<sup>th</sup> September 1998 - an interval of one month between closure of the universities and receipt of the complaint.
  42. The Commission is of the view that an interval of one month is a short time within which the Complainant could have accessed and exhausted all local remedies. Furthermore, the Complainant gives no indication of instituting proceedings before the domestic courts.

For these reasons, and in accordance with Article 56(5) of the African Charter, the Commission declares this communication inadmissible due to non-exhaustion of local remedies.

***Done at the 31<sup>st</sup> Ordinary Session held in  
Pretoria, South Africa, from 2<sup>nd</sup> to 16<sup>th</sup> May 2002.***

