

The Anuak of Gambella, Ethiopia

Shadow Report submitted by

**The International Human Rights Law Clinic
Washington College of Law, Washington DC, USA**

in collaboration with

**The Anuak Justice Council
Saskatoon, Saskatchewan, Canada**

**Submitted to the
United Nations Committee on the Elimination of
All Forms of Racial Discrimination (CERD)**

March 2007

"The abuses chronicled herein suggest the continued existence of a systematic pattern of abuse targeting Anuak civilians. Many of the documented abuses – such as the rape of Anuak women and the arbitrary beatings of Anuak men – have stemmed from a culture of impunity in which individual soldiers went unpunished for (and thus undeterred from) criminal acts against civilians. Yet the nature of many incidents, along with their sheer frequency, suggests that the climate of impunity is accompanied by an overall schema of deliberate persecution."

-Harvard International Human Rights Clinic

**The International Human Rights Law Clinic
American University Washington College of Law
Contact Persons: Elizabeth Rushing and Abigail Okrent
4801 Massachusetts Avenue, NW, Washington DC, 20016
Tel: (202) 274-4147
Fax: (202) 274-0659
Email: elizabeth.rushing@gmail.com; okrent.wcl@gmail.com
Website: <http://www.wcl.american.edu/clinical/inter.cfm>**

Table of Contents

Executive Summary	4
Introduction: The Massacres of December 2003	5
Ethiopia and the ICERD	6
Article 1: Racial Discrimination	6
Data on the Anuak population and the Gambella region	6
Article 2(2): State Obligation to Ensure and Protect Adequate Development; Article 5(e): State Obligation to Ensure Economic, Social, and Cultural Rights; Article 5(d)(i): Freedom of Movement	7
Direct Attacks	8
Failure to Protect Development and Economic, Social, and Cultural Rights	8
General neglect of economic, social, and cultural rights	9
Article 5(a): The Right to Equal Treatment Before Tribunals and all Organs of Administering Justice	10
Article 5(b): The Right to Security of Person and Protection by the State ...	11
Violence Against the Anuak Suggests Deliberate Targeting of the Anuak	11
Ethiopia Has Failed to Protect the Anuak from Violence or Bodily Harm	12
Article 6 State Obligation to Assure to Everyone Within Their Jurisdiction Effective Protection and Remedies	13
Ethiopia has Failed to Halt the Violence or Hold the ENDF Accountable	13
Ethiopia's Sole Attempt to Provide Redress for the December 2003 Massacres has been Grossly Inadequate	14
Conclusion	16
Appendix A: Summary of Recommendations	17

Executive Summary

1. This report addresses the plight of the Anuak, a minority group who live in the Gambella region of Ethiopia. The Anuak's experience in the last decade demonstrates a host of violations by Ethiopia of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"). Ethiopia must take immediate and concrete action to bring itself into full compliance.

2. This report highlights **Articles 1; 2(2), 5(e), and 5(d)(i); 5(a); 5(b); and 6.**

- **Article 1: Racial Discrimination.** The Anuak are a distinct racial group in their own region, and should also be viewed in a larger context of country-wide racial distinctions.
- **Articles 2(2) and 5(e): State obligation to protect and ensure economic development, economic, social, and cultural rights, and Article 5(d)(i): Freedom of movement.** Ethiopia has failed to provide security for the Anuak's development, or basic measures needed to ensure the Anuak's economic, social, and cultural rights. This section focuses on three levels of violations: first, deliberate attacks by Ethiopia on the Anuak infrastructure; second, failure of Ethiopia to provide the protect against attacks on the Anuak infrastructure and persons and thus ensure generate the security necessary for the achievement of economic, social, and cultural rights; and third, general neglect of the region's development.
- **Article 5(a): The right to equal treatment in the justice system.** The discriminatory treatment that the Anuak have received in the justice system, especially through arbitrary and uncharged detentions, is the focus of this section.
- **Article 5(b): Protection Against Violence.** Ethiopia has committed egregious violations of Article 5(b), most notably through the massacres of December 2003 that claimed over 400 Anuak lives, but also in continuing violence.
- **Article 6: Access to Remedies and Justice for Crimes of Racial Discrimination.** To date, there has been no apparent action either to protect the Anuak from the ongoing human rights abuses, or to provide them with avenues for justice or redress. Instead, the Anuak have been re-victimized and discriminated against by their own justice system, and are continuously subjected to extra-judicial detention and arbitrary beatings.

3. This report includes a list of recommendations, recapped in Appendix A. Generally, Ethiopia need look no farther than the text of the ICERD and the General Recommendations to implement its obligations. Ethiopia is a long way from legislation or a special monitoring body to ensure progress of all racial groups; it must first begin by refraining from active violations against certain racial groups. The recommendations contained herein come from different human rights reports, the contributing authors, and the United States Department of State. In general, they can be categorized as requirements to immediately cease all violence, to train and deploy forces for protection, and to ensure access to justice and resources to the Anuak.

4. This report is based on studies by the International Human Rights Clinic at Harvard's Law School, UNICEF Ethiopia, Human Rights Watch, the United States Department of State,

several reports by Genocide Watch and Survivors' Rights International, and information from the Anuak Justice Council. The information contained herein also comes from multiple conversations with Obang Metho, Director of International Advocacy for the Anuak Justice Council, and a meeting with several recently defected Ethiopian judges and lawyers.¹

Introduction: The Massacres of December, 2003

5. Gambella is a region the size of Belgium in the remote southwest part of Ethiopia. The population is estimated to be between 220,000 and 393,495.² Most of the people living in Gambella are subsistence farmers.³ The Anuak are one of the largest groups in this region, and they are the predominant landholders.⁴ They have a long history of neglect and abuse by various governments of Ethiopia.

6. The region lacks sufficient medical facilities and schools, as well as basic amenities such as clean water. The Anuak in particular are underserved and denied basic opportunities available to other citizens of Ethiopia. In addition to this basic neglect, the Anuak have been subjected to massive violence by the Ethiopian government.

7. This violence reached a peak in December 2003 during a three-day massacre in which approximately 424 Anuak civilians were killed.⁵ An additional 16,000 Anuak were displaced to Sudan during the massacre and its aftermath.⁶ Ethiopian police and government soldiers (referred to collectively as the Ethiopian National Defense Forces or ENDF) and Highlander civilians carried out the death and destruction,⁷ and they targeted educated men specifically.⁸

¹ The authors have met repeatedly with Obang Metho, and had a formal interview with the defected Ethiopian judges and lawyers on Wednesday, January 17, 2007, at the Washington College of Law in Washington, D.C.

² The numbers vary widely due to a lack of current data. Human Rights Watch estimates that there are about 220,000 people in the region. *Ethiopia and Eritrea: Promoting Stability, Democracy, and Human Rights: Testimony Before the Subcommittee On Africa, Global Human Rights, and International Operations*, 109th Cong. (May 5, 2005) (testimony by Michel Clough, Africa Advocacy Director of Human Rights Watch), available at http://hrw.org/english/docs/2005/05/05/ethiop10659_txt.htm (last visited Feb. 19, 2007). UNICEF created its own estimate in 2006, based on vaccination statistics, of 393,495 people. U.N. Children's Fund (UNICEF) Addis Ababa, Ethiopia, *Livelihoods & Vulnerabilities Study: Gambella Region of Ethiopia*, at 10 (Feb. 5, 2006) (unpublished UNICEF report) available at www.anuakjustice.org, click on "Download 96 page report" link (last visited Feb. 19, 2007) [hereinafter UNICEF Study].

³ UNICEF Study, *supra* note 1, 13.

⁴ Genocide Watch and Survivors' Rights International, *Today is the Day for Killing Anuaks: Crimes Against Humanity, Acts of Genocide and Ongoing Atrocities Against the Anuak People of Southwestern Ethiopia*, § II(A), Feb. 25, 2004, available at

www.genocidewatch.org/Today%20is%20the%20Day%20of%20Killing%20Anuaks.htm (last visited Feb. 19, 2007) [hereinafter Genocide Watch, *Today is the Day for Killing Anuaks*].

⁵ Human Rights Watch, *Targeting the Anuak: Human Rights Violations and Crimes against Humanity in Ethiopia's Gambella Region*, HUMAN RIGHTS WATCH VOL. 17, NO. 3(A), March 2005, at 20 [hereinafter Human Rights Watch, *Targeting the Anuak*].

⁶ UNICEF Study, *supra* note 1, 14.

⁷ Human Rights Watch, *Targeting the Anuak*, *supra* note 4, 11. Please note that "Ethiopian National Defense Forces" is used throughout this report to denote both military, police and militia forces. The abuses detailed in this report have been perpetrated predominately by federal military forces but also the term includes local and state police as well as militia forces.

⁸ Genocide Watch and Survivors' Rights International, *Operation Sunny Mountain: Soldiers, Oil, and Ongoing State Terror against Anuak and Other Indigenous Minorities of Southwestern Ethiopia*, §I, Dec. 13, 2004, available at

Violence continued between the Anuak and Highlanders through September 2004, and the government actively sided with the Highlanders.⁹ Periodic outbursts of violence, which include killings and rapes, continue today.¹⁰

Ethiopia and the ICERD

8. Ethiopia is in serious non-compliance with its obligations under the ICERD: (1) it has failed to submit periodic reports on its progress to the CERD; (2) it has failed to comply with the actual requirements of the ICERD. Ethiopia acceded to the ICERD on 23 June 1976 and the ICERD entered into force on 23 July 1976.¹¹ However, Ethiopia now owes the CERD its periodic reports from 1989-2006. Because of this long tardiness, CERD will review Ethiopia without Ethiopia's actual participation. Ethiopia's substantive breaches of its obligations under ICERD are illustrated in the remainder of this report.

Article 1: Racial Discrimination

9. The ICERD defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."¹²

10. Racial discrimination is closely linked to a number of other forms of discrimination. For example, indigenous people often face discrimination both because of their race/ethnicity and because of their culture, ways of life, and ways of inhabiting the land. Therefore, the ICERD calls for special attention to be paid to indigenous peoples.¹³ Racial discrimination is also often interlinked with gender discrimination, and the ICERD strives to be conscious of this connection and the different effects of racism on men and on women.¹⁴

11. To determine whether racial discrimination exists in a country, it is first essential to understand that country's racial composition. In the Gambella region, there are a number of different ethnic groups. Six of these groups are self-described as indigenous to the region, and the two largest of these are the Anuak and the Nuer.¹⁵ The Anuak and Nuer are Nilotic peoples, and are generally darker than the "Highland" populations of Ethiopia. "Highlanders," mainly

<http://www.genocidewatch.org/EthiopiaAnuakOperationSunnyMountainGWSRIReport13December2004.htm> (last visited Feb. 19, 2007) [hereinafter Genocide Watch, *Operation Sunny Mountain*].

⁹ UNICEF Study, 14.

¹⁰ Human Rights Watch, *Targeting the Anuak* report, 30.

¹¹ Signatories to the ICERD as of 1991. UN Office of the High Commissioner of Human Rights, *Fact Sheet No. 12: The Committee on the Elimination of Racial Discrimination*, Annex A, available at <http://www.unhchr.ch/html/menu6/2/fs12.htm#annexa> (last visited Feb. 19, 2007).

¹² International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106(XX), Art. 1(1) (Dec. 21, 1965) [hereinafter ICERD].

¹³ Office of the High Commissioner for Human Rights, CERD Gen. Rec. No. 23: Indigenous Peoples (Aug. 18, 1997).

¹⁴ Office of the High Commissioner for Human Rights, CERD Gen. Rec. No. 25: Gender related dimensions of racial discrimination (Mar. 20, 2000).

¹⁵ UNICEF Study, 10.

people of Tigrayan, Oromo, Amhara and other ethnicities, make up the third largest group in Gambella region, due largely to settlement programs by the Ethiopian government that put these people on some of the richest farm lands in the region and displaced the indigenous peoples in the process.¹⁶

12. The racial discrimination in the Gambella region must be placed in the larger context of racial divisions in the whole country. In 1991, the new Ethiopian government implemented a system known as “ethnic federalism.”¹⁷ This system of governance divided Ethiopia into nine regions along ethnic lines. In Gambella, the Anuak initially controlled the federal government, but the Highland population soon took control.¹⁸ The political parties are also divided along ethnic lines, enabling the government to conflate legitimate criticism with racially-motivated hatred. Human Rights Watch reports that the result of ethnic federalism has been that “the Anuak are now a minority in what they regard as their own land.”¹⁹ Ethnic federalism has served to disenfranchise the Anuak while fostering tribalism and racial divisions.

13. **Recommendations**

- A. Ethiopia should conduct a new national census in the region to determine its demographics. To date, getting a clear picture of racial discrimination is difficult because out-dated statistics form the basis for loose estimates of the population of Gambella and its racial composition.
- B. Ethiopia should implement an inter-ethnic forum in which all groups in Gambella can gather to discuss resource sharing and ethnic tensions that exist.
- C. Ethiopia should be aware of how ethnic federalism may violate the purpose of ICERD.

Article 2(2): State Obligation to Ensure and Protect Adequate Development;
Article 5(e): State Obligation to Ensure Economic, Social, and Cultural Rights;
Article 5(d)(i): Freedom of Movement

14. Article 2, paragraph 2, requires governments to ensure and protect the development of “certain racial groups for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”²⁰ General Recommendation 23(4)(c) to the ICERD states that governments should provide indigenous peoples the conditions to allow them to have a sustainable economy and development.²¹ Article 2, paragraph 2 is integrally connected to Article 5(e), which requires the government to guarantee basic economic, social, and cultural rights. If a region or a people does not have adequate development, it will be unable to recognize the full realm of economic, social, and cultural rights. Additionally, Article 5(d)(i), which protects the freedom of movement, is fundamental if people are to utilize the roads, buildings, farms, and other entities that form a basic infrastructure.

¹⁶ UNICEF Study, 10-12.

¹⁷ Human Rights Watch, *Targeting the Anuak*, 13.

¹⁸ Human Rights Watch, *Targeting the Anuak*, 13.

¹⁹ Human Rights Watch, *Targeting the Anuak*, 7.

²⁰ ICERD, Art. 2(2).

²¹ Office of the High Commissioner of Human Rights, Gen. Rec. No. 23: Indigenous Peoples (Aug. 18, 1997).

15. Ethiopia has failed to comply with Art. 2(2) and 5(e) in three ways, ranging in severity from commissions to omissions. First, Ethiopia has undermined the Anuak's basic economy by directly attacking the buildings and entities that form the Anuak infrastructure. Second, the government has failed to provide basic protection to the Anuaks' persons and infrastructure necessary for their development. Finally, Ethiopia has not taken basic measures to ensure the Anuak's enjoyment of their economic, social, and cultural rights. These three levels of non-compliance from Ethiopia have manifested in the pitiful state of health care and the educational system, as well as the lack of adequate housing and food.

Direct Attacks

16. During the December 2003 massacres, ENDF soldiers attacked buildings, roads, and other parts of civilian infrastructure in the Gambella region. Houses, a school, and a medical clinic were burned down in the Anuak village of Okuna Pino, and thousands of houses were razed or burned in other villages.²² In addition to destroying buildings essential to basic economic, social, and cultural rights, the ENDF targeted people responsible for implementing these rights; for example, the ENDF targeted educated Anuak for death or torture, therefore compromising the right of the Anuak to education.²³ In two villages, ENDF soldiers destroyed maize grinding mills that were collectively owned, claiming they needed to search for bullets in the flour.²⁴ These attacks violated the Anuak's right to housing, education, food, and health, and deprived the Anuak of the basic necessities for an independent economy.

17. UNICEF reports that although the intensity of violence has waned in the region, earlier violence and conflict severely damaged the economy and the infrastructure.²⁵ Structures which were damaged in fighting have not been repaired, and supplies in the region are low.²⁶ The regional Gambella Bureau of Agriculture believes that the situation is worsening for farmers, and that food security in the region is also deteriorating.²⁷ There are regular raids on Anuak livestock by ENDF soldiers.²⁸ Access to water pumps is severely hampered by the presence of ENDF soldiers,²⁹ where the soldiers should actually be serving to ensure civilians safe access to water under Art. 2(2). The continuing military presence in the Gambella region prevents repair of earlier damage and keeps the Anuak from developing a solid economy or enjoying basic rights.

Failure to Protect Development and Economic, Social, and Cultural Rights

18. Even if the government was not directly implicated in the destruction of the Anuak's basic civilian infrastructure, it still has a duty to protect basic development and economic, social, and cultural rights under Art. 2(2). The Ethiopian government blames conflict between the

²² Human Rights Watch, *Targeting the Anuak*, 39.

²³ Educated Anuak men were targeted in the December 2003 massacres. Genocide Watch, *Operation Sunny Mountain*, 5. For example, teacher Omok Thwole was tortured so severely that he was unable to return to his position. Genocide Watch, *Today is the Day for Killing Anuak*, 13.

²⁴ Human Rights Watch, *Targeting the Anuak*, 41.

²⁵ UNICEF Study, 14.

²⁶ UNICEF Study, 14.

²⁷ UNICEF Study, 23.

²⁸ Human Rights Watch, *Targeting the Anuak*, 42.

²⁹ UNICEF Study, 28.

Anuak and Nuer for livestock theft and infrastructure damage, but by its own admission states that government forces did not do enough to prevent such violence or protect the Anuak.³⁰

19. Ethiopia's failure to protect the Anuak from violence against their persons has also had detrimental effects on development and rights. Article 5(d)(i) obligates Ethiopia to protect the freedom of movement. This freedom of movement is essential to the enjoyment of economic, social, and cultural rights. UNICEF found that:

The climate of fear and terror affects all levels of society in Gambella today, and it is directly impacting the capacity of the government to perform normal tasks, fulfill normal obligations, and provide even basic services.³¹

Even where there are schools, medical services, and clean water, the lack of access to these services renders their existence moot. Restrictions on freedom of movement affect food security for the Anuak by preventing them from accessing rivers for fishing and fields for farming.³² According to UNICEF, "security is a primary factor aggravating factor in an already poor situation regarding access to education."³³ Access to the few functioning clinics is restricted to the people who live in the towns where the clinics are located, because violence and general insecurity prevents people from traveling in much of the region.³⁴

General neglect of economic, social, and cultural rights

20. The Gambella region is resource-rich, but the Anuak have neither been allowed to participate in discussion of its development, nor do they benefit financially from the resources. The region has gold,³⁵ and oil was discovered in 2001.³⁶ One Anuak civilian told the International Human Rights Clinic of Harvard, "what causes all the violence is probably the gas and oil we have. Problems are always happening nearest the oil."³⁷ The Anuak have not been allowed to participate in development plans. When a high-ranking government minister visited to discuss development issues in the region in 2005, Anuak leaders were reportedly left out of the discussion.³⁸ The benefits from development could be used to aid the Anuak's economy.

21. Schools, medical clinics, and basic health systems are grossly inadequate in the Gambella Region. Schools lack teachers and equipment in Gambella.³⁹ The enrollment rate is at

³⁰ Full text of the Report of the Gambella Inquiry Commission to the House of Peoples Representatives, 4, The Amharic Reporter (July 11, 2004) (trans. Melese Tilahoun) 4, available at <http://genocidewatch.org/EthiopianCommissionofInquiryReport.htm> (last visited Feb. 19, 2007) [hereinafter Gambella Inquiry Commission Report].

³¹ UNICEF Study, 22.

³² UNICEF study, 23.

³³ UNICEF study, 25.

³⁴ UNICEF Study, 26-27.

³⁵ The International Human Rights Clinic, "We are now hoping for death." *Grave human rights abuses in Gambella, Ethiopia*, Harvard Law School's Human Rights Program, 13 (Dec. 14, 2006), available at http://www.law.harvard.edu/programs/hrp/clinic/current_projects/africa/ethiopiareport1.html (last visited Feb. 19, 2007) [hereinafter Harvard Report].

³⁶ Genocide Watch and Survivors Rights International, *Today is the Day for Killing Anuak*, p. 6 (or II(C)).

³⁷ Harvard Report, 14.

³⁸ Human Rights Watch, *Targeting the Anuak*, 54.

³⁹ UNICEF Study, 24.

around one third of all school-age boys and one quarter of school-age girls, and in some places enrollment may be as low as eight percent for boys and four percent for girls.⁴⁰ UNICEF's report encapsulates the health care situation by noting that, "[i]n theory for the complete region there are four doctors. In practice never more than two are actually present."⁴¹ In other words, there are two doctors for a region the size of Rwanda. The entire health situation is worsened by the dismal sanitation and water system. Only one in every seven or eight people has access to clean water.⁴² Even in Gambella Town, the capital, there is no effective water supply and the situation has been deteriorating since 2003.⁴³

22. **Recommendations**

- D. Ethiopia must immediately withdraw all ENDF forces that are impeding the Anuak's ability to travel and to reach resources.
- E. Ethiopia should train a regional police force, representative of the ethnic make-up of Gambella, to ensure the safety of the civilian population and its infrastructure.
- F. Ethiopia must repair the grain mills, schools, and medical clinics that were damaged or destroyed in the December 2003 massacres, and provide the resources necessary for the Anuak to rebuild their houses.
- G. Ethiopia must recognize the right of the Anuak to benefit from Gambella's resources, and immediately set forth a transparent plan to include the Anuak in the development and distribution of said resources.
- H. Ethiopia must provide development assistance for infrastructure including school supplies and teachers, water pumps, roads, and health care facilities.

Article 5(a) The Right to Equal Treatment Before Tribunals and all Organs of Administering Justice

23. Article 5(a) of the ICERD guarantees the right to equal treatment before the tribunals and all other organs administering justice.⁴⁴ This assures access to the justice system for everyone, without differentiation on ethnic or racial grounds. Ethiopia has consistently violated the right to equal treatment before tribunals in Gambella.

24. The Ethiopian government has subjected the Anuak to arbitrary arrest and illegal detention. Investigations have revealed the arbitrary detention of "hundreds of young Anuak men simply for being the same ethnicity as the rebels."⁴⁵ After a two-week research mission, the Harvard International Human Rights Clinic found Ethiopia to be in violation of basic due process rights through its arbitrary arrests, in which many of the men and women detained "never see the inside of a courtroom and, even upon release, remain confused as to the reason for their arrest."⁴⁶ Furthermore, those who have been arbitrarily detained are kept for long periods of time, and have reported serious beatings, lack of food and water, and no access to judicial processes for

⁴⁰ UNICEF Study, 24.

⁴¹ UNICEF Study, 26.

⁴² UNICEF Study, 28-29.

⁴³ UNICEF Study, 29.

⁴⁴ ICERD, Art. 5(a).

⁴⁵ Harvard Report, 16.

⁴⁶ Harvard Report 59.

weeks or even months.⁴⁷ Because these arbitrary arrests and prolonged detentions are executed on the basis of the Anuak's ethnicity, Ethiopia has violated Article 5(a) guarantee that all persons receive equal treatment before the law.

25. **Recommendations**

- I. Ethiopia must observe its obligations to guarantee judicial due process to all Ethiopian citizens, regardless of ethnicity.
- J. Ethiopia must immediately release the Anuak prisoners who have been detained without charge.
- K. Those who are charged with some crime or offense must be treated to a fair and speedy trial, and remain free from torture, abuse or cruel and unusual punishment while in confinement.
- L. Ethiopia must follow the CERD General Recommendation No. 13 to train its law enforcement officers to implement the law without discrimination, and to protect and uphold human rights and dignity.

Article 5(b) The Right to Security of Person and Protection by the State

26. Article 5(b) guarantees the right to security of person and protection by the State against violence or bodily harm, regardless of whether the violence is inflicted by government officials or by any individual group or institution. The violence against the Anuak suggests a pattern of abuse so consistent that it could be constituted a schema of persecution. Even if the persecution were not deliberate, Ethiopia has clearly failed in its obligation to protect the Anuak against violence of bodily harm.

Violence Against the Anuak Suggests Deliberate Targeting of the Anuak

27. Violence and discrimination have been perpetrated against the Anuak people since the British government ceded Gambella to the Ethiopian government in 1951, yet this current government has taken the violence to a new level of egregiousness. Abuses by the ENDF include the massacre of more than 424 civilians, the wounding of over 200 civilians and the disappearance of over 85 civilians in the Gambella region during a single, three day period between December 13 and 15 of 2003.⁴⁸ Unknown numbers of Anuak refugees still reside in camps outside of Gambella. They face violence as well as dispossession, and have been the subjects of attempted forced repatriation numerous times.⁴⁹

28. Since December 2003, the ENDF have continued to perpetrate violence against the Anuak through extrajudicial killings, torture, detention, rape, and property destruction. These post-December 2003 human rights violations have resulted in hundreds of civilian casualties

⁴⁷ Harvard Report 29.

⁴⁸ See generally Genocide Watch, *Operation Sunny Mountain*.

⁴⁹ Genocide Watch, *Ethiopian Government Plans Forced Repatriation of Anuak Refugees*, June 7, 2006, available at <http://genocidewatch.org/EthiopianGovernmenttorepatriateAnuakRefugees7June2006.htm> (last visited Feb. 17, 2007).

among both the Anuak and the Highlander populations. Anuak civilians, in particular, face daily risk of being shot, raped, beaten, tortured, or harassed.⁵⁰ Harvard's International Human Rights Clinic reports that Anuak civilians face "massive human rights violations . . . including extrajudicial killings, rapes, torture, and beatings."⁵¹ It notes that "the nature of many incidents, along with their sheer frequency, suggests that this climate of impunity is accompanied by an overall schema of deliberate persecution."⁵² Human Rights Watch reports that there is a "continuing pattern of abuse of Anuak communities throughout Gambella since December 2003."⁵³ A deliberate targeting of the Anuak would clearly be a breach of Ethiopia's responsibility to protect the security of the group from bodily harm.

Ethiopia Has Failed to Protect the Anuak from Violence or Bodily Harm

29. Even if Ethiopia has not deliberately persecuted the Anuak, it has failed to protect the Anuak from violence perpetrated by other ethnic groups and the government's own armed forces.

30. In the Gambella region, inter-ethnic tensions have led to violence between Nuer and Anuak, and Anuak and Highlanders. The Ethiopian Inquiry Commission into the Gambella (discussed in more detail in Paragraphs 37-41) blamed the Nuer and Highlanders for the killings of Anuak civilians during the December 2003 massacres. However, even in the official government statement of the causes and results of the massacres, Ethiopia admits that it failed to deploy sufficient forces to protect the Anuak during these massacres.⁵⁴

31. If the Ethiopian government is not deliberately using the ENDF to execute this persecution, then it has lost control of its armed branches and must rein them in. While the Ethiopian government has reprimanded several ENDF military leaders for their violent tactics,⁵⁵ the Anuak are still persecuted and abused on a regular basis. The Harvard International Human Rights Clinic Report notes that:

The sense of dread within the Anuak civilian community cannot be emphasized enough. Even a single random encounter with the military can be enough to convince a town that members of the community should no longer travel in the region. It is the climate of fear, as much as the actual abuse, that characterizes life in the region.⁵⁶

Despite the fact that ethnic tensions have repeatedly spawned violence against the Anuak, federal and regional authorities have taken "almost no effective action to protect victims."⁵⁷ Human Rights Watch notes that the abuse is "so widespread that many Anuak villagers described it as a routine part of their existence that one simply has to accept."⁵⁸

⁵⁰ Harvard Report, 6.

⁵¹ Harvard Report, 6.

⁵² Harvard Report, 17.

⁵³ Human Rights Watch, *Targeting the Anuak*, 1.

⁵⁴ Gambella Inquiry Commission Report.

⁵⁵ Harvard Report, 34.

⁵⁶ Harvard Report, 37.

⁵⁷ Human Rights Watch, *Targeting the Anuak*, 1.

⁵⁸ Human Rights Watch, *Targeting the Anuak*, 38.

32. Recommendations

- M. Ethiopia must order the immediate cessation of all attacks on the Anuak community and its leaders.
- N. Ethiopia must withdraw its sizable ENDF forces from the Gambella region.
- O. Ethiopia must ensure Anuak refugees the protections outlined in General Recommendation No. 22, including the right to return to their homes in safety, the right to be compensated for lost property, and the right to not be forcibly returned.

Article 6 State Obligation to Assure to Everyone Within Their Jurisdiction Effective Protection and Remedies

33. Article 6 requires states to provide effective protection and legal remedies to victims of racially discriminatory acts that violate a person’s human rights and fundamental freedoms contrary to the ICERD.⁵⁹ It guarantees the right to seek just and adequate reparation or satisfaction from tribunals for any damage suffered because of such discrimination.⁶⁰ While Ethiopia has received clear notice about the human rights violations committed against the Anuak, it has failed to take action to prevent ENDF forces from committing human rights violations against the Anuak, or to hold its military accountable for their actions. Furthermore, Ethiopia has only superficially attempted to provide a legal remedy to the Anuak for the massacre of December 2003; this attempt was in the form of a Commission of Inquiry, which was grossly inadequate and has still produced no resolution even years later.

Ethiopia has Failed to Halt the Violence or Hold the ENDF Accountable

34. Ethiopia has taken little or no apparent action to protect the Anuak from ENDF abuses or to provide remedy for past abuses suffered. Human Rights Watch reports that “the prevailing climate of impunity that now exists in Gambella has allowed ENDF soldiers to prey upon and terrorize the Anuak communities they patrol.”⁶¹ Witnesses have testified that soldiers are never punished for raping Anuak women, and therefore many women never even report these crimes.⁶² The Harvard International Human Rights Clinic Report describes Gambella as “a culture of impunity in which individual soldiers [are] unpunished for (and thus undeterred from) criminal acts against civilians.”⁶³ To date, federal authorities have taken no action to investigate ongoing human rights violations; in particular, higher-ranking ENDF officers “have been effectively beyond the reach of justice because of the federal government’s refusal to investigate persistent complaints of the ENDF abuse.”⁶⁴

35. The Ethiopian judicial system suffers from the undue influence of the Ethiopian executive branch. Despite the protections guaranteed in Article 78 of the Ethiopian Constitution, declaring that the judiciary shall be independent, many individuals both within and outside of

⁵⁹ ICERD, Art. 6.

⁶⁰ ICERD, Art. 6.

⁶¹ Human Rights Watch, *Targeting the Anuak*, 2.

⁶² Harvard Report, 24.

⁶³ Harvard Report, 17.

⁶⁴ Human Rights Watch, *Targeting the Anuak*, 2.

Ethiopia perceive the Executive Branch as having considerable or even undue influence over the decisions made by judges.⁶⁵ According to a recent World Bank Judicial and Legal Sector Assessment of Ethiopia, “[o]f the three branches of government [in Ethiopia]; the judicial branch has the least history and experience of independence and therefore requires significant strengthening to obtain true independence.”⁶⁶ The Ethiopian justice system is not only losing credibility throughout the Gambella region, but also in the capital, Addis Ababa.⁶⁷ A number of judges from different federal supreme courts throughout Ethiopia have defected since August 2006, and a number of prominent government officials as well as private attorneys have fled or retired.⁶⁸

36. All attempts made by the Anuak to seek domestic remedies in Ethiopia have been futile. Currently, a number of Anuak remain imprisoned and uncharged as part of the only arrests made after the December 2003 massacres.

Ethiopia’s Sole Attempt to Provide Redress for the December 2003 Massacres has been Grossly Inadequate

37. Under international pressure, the Ethiopian government established an Inquiry Commission under Proclamation No. 398/2004, to investigate the December 2003 killings.⁶⁹ However, the Inquiry Commission’s work was biased and ineffectual and did not meet the international standards of an independent investigation, for several reasons outlined here.

38. First, the Commission’s report was not written by “independent” parties, but rather by Ethiopian government officials with concern for their own positions within the government and their own security. In fact, one of the alleged planners of the attacks was appointed Chairman of the Inquiry Commission.⁷⁰

39. Second, the report unabashedly attempts to downplay the ENDF’s role in the December 2003 massacre, and it essentially “absolve[s] the military of any wrongdoing.”⁷¹ It dramatically underestimates the number of dead as reported by the Ethiopian Human Rights Council, eye witnesses, and numerous humanitarian agencies reporting on the crisis. The

⁶⁵ *Ethiopia: Legal and Judicial Sector Assessment*, 27, The World Bank, The International Bank for Reconstruction, 2004.

⁶⁶ *Id.* at 22.

⁶⁷ From an interview with Mitiku Teshome, member of the Inquiry Commission for Addis Ababa and Former President of the Ethiopian Catholic Secretariat Legal Council; Frehiywot Samuel, Chair of the Inquiry Commission for Addis Ababa and Former President of the Southern Peoples Supreme Court; and Alemayehu Zemedkun, Former Assistant Attorney General and Head of the Civil Office Department in the Ministry of Justice, Jan. 17, 2007, on record with the authors. [hereinafter Interview Jan. 17, 2007].

⁶⁸ Interview Jan. 17, 2007.

⁶⁹ Draft Resolution on the Report Submitted by the Gambella Conflict Inquiry Commission, Federal Democratic Republic of Ethiopia, Page 1. *Available at* <http://www.ethiembassy.org.uk/news/press%20releases/RESOLUTION%20ON%20THE%20REPORT%20SUBMITTED%20BY%20THE%20GAMBELLA%20INQUIRY%20COMMISSION.htm>. (last visited Feb. 19, 2007).

⁷⁰ World Organization Against Torture and Genocide Watch respond to Ethiopian Prime Minister’s denial of massacres of Anuaks in interview with Reuters, May 5, 2004, *available at* http://www.allthingspass.com/uploads/html-96OMCT_PR_May6-1.htm (last visited Feb. 19, 2007).

⁷¹ Interview Jan. 17, 2007.

Commission of Inquiry found that only sixty-five people were killed,⁷² as opposed to the 424 deaths recorded by numerous humanitarian agencies. The twenty-four eyewitnesses to the massacre interviewed by Human Rights Watch alone witnessed more killings than the sixty-five reported by the Commission of Inquiry.⁷³ The Harvard International Human Rights Clinic labeled the Commission of Inquiry a “largely symbolic investigation,” and concluded:

[T]he then-deputy minister of federal affairs attributed the violence to two insurgent groups. Police rebuffed requests to investigate the involvement of uniformed officers. Obtaining accountability for the behavior of ENDF soldiers has proven equally fruitless; authorities had arrested only eight low-ranking soldiers as of January 2005.⁷⁴

40. Subsequent special commissions of inquiry have also been convened in Ethiopia, with the same degree of success. The Inquiry Commission for Addis Ababa, for example, was convened to investigate shootings by police during the 2005 election cycle.⁷⁵ Prominent judges and attorneys from throughout Ethiopia were appointed to the Commission.⁷⁶ The Commission found that the police had used excessive force.⁷⁷ In the final days of the report’s drafting, however, power was cut to the office where the commission was working, and Parliament was released early to prevent the report from being read on the day it was scheduled.⁷⁸ The government asked the commission to change the report, causing the Chair of the Inquiry Commission to resign.⁷⁹ Finally, the Speaker of the House of Parliament submitted a report by an unknown author to the remaining members to sign but they were not given a chance to read through it.⁸⁰ The Addis Commission was told to look to the Inquiry Commission for Gambella as a model.⁸¹ It is in this context that the international community should view the special inquiry commissions which Ethiopia convenes to investigate human rights abuses.

41. Ethiopia has failed to provide effective protection or legal remedies, either in response to the December 2003 massacre or in response to the ongoing human rights abuses against the Anuak thereafter. In accordance with Article 6, the Anuak are guaranteed not only legal redress for the abuses they have suffered, but also “just and adequate reparation” for those abuses.

42. **Recommendations**

- | |
|---|
| <p>P. Ethiopia must convene an independent and transparent investigation of human rights abuses suffered throughout the Gambella region.</p> <p>Q. The ENDF members who have been involved in the attacks on the Anuak must be held accountable and responsible before the law.</p> <p>R. In accordance with Article 6 of the ICERD and with CERD’s General Recommendation No. 26, Ethiopia should award financial compensation for damage, material and moral,</p> |
|---|

⁷² Gambella Inquiry Commission Report.

⁷³ Human Rights Watch, *Targeting the Anuak*, 20.

⁷⁴ Harvard Report, 15.

⁷⁵ Interview Jan. 17, 2007

⁷⁶ Interview Jan. 17, 2007

⁷⁷ Interview Jan. 17, 2007

⁷⁸ Interview Jan. 17, 2007

⁷⁹ Interview Jan. 17, 2007

⁸⁰ Interview Jan. 17, 2007

⁸¹ Interview with judges

suffered by the Anuak in response to the December 2003 massacre and the ongoing human rights abuses thereafter. Ethiopia should also provide adequate and speedy compensation to civilians who have theft or destruction of property by ENDF forces.

- S. The Ethiopian government should provide health care and psychological services to the girls and women who have been raped by the ENDF, and all others affected by military violence.

Conclusion

43. The facts presented herein illustrate that Ethiopia is in gross violation of the ICERD. The CERD is urged to require immediate and concrete action by Ethiopia to bring itself into full compliance with its obligations.

Appendix A: Summary of Recommendations

Article 1: Racial Discrimination

- A. Ethiopia should conduct a new national census in the region to determine its demographics. To date, getting a clear picture of racial discrimination is difficult because out-dated statistics form the basis for loose estimates of the population of Gambella and its racial composition.
- B. Ethiopia should implement an inter-ethnic forum in which all groups in Gambella can gather to discuss resource sharing and ethnic tensions that exist.
- C. Ethiopia should be aware of how ethnic federalism may violate the purpose of ICERD.

Article 2(2): State Obligation to Ensure and Protect Adequate Development;

Article 5(e): State Obligation to Ensure Economic, Social, and Cultural Rights;

Article 5(d)(i): Freedom of Movement

- D. Ethiopia must immediately withdraw all ENDF forces that are impeding the Anuak's ability to travel and to reach resources.
- E. Ethiopia should train a regional police force, representative of the ethnic make-up of Gambella, to ensure the safety of the civilian population and its infrastructure.
- F. Ethiopia must repair the grain mills, schools, and medical clinics that were damaged or destroyed in the December 2003 massacres, and provide the resources necessary for the Anuak to rebuild their houses.
- G. Ethiopia must recognize the right of the Anuak to benefit from Gambella's resources, and immediately set forth a transparent plan to include the Anuak in the development and distribution of said resources.
- H. Ethiopia must provide development assistance for schools and infrastructure including water pumps, roads, and health care facilities.

Article 5(a) The Right to Equal Treatment Before Tribunals and all Organs of Administering Justice

- I. Ethiopia must observe its obligations to guarantee judicial due process to all Ethiopian citizens, regardless of ethnicity.
- J. Ethiopia must immediately release the Anuak prisoners who have been detained without charge.
- K. Those who are charged with some crime or offense must be treated to a fair and speedy trial, and remain free from torture, abuse or cruel and unusual punishment while in confinement.
- L. Ethiopia must follow the CERD General Recommendation No. 13 to train its law enforcement officers to implement the law without discrimination, and to protect and uphold human rights and dignity.

Article 5(b) The Right to Security of Person and Protection by the State

- M. Ethiopia must order the immediate cessation of all attacks on the Anuak community and its leaders.
- N. Ethiopia must withdraw its sizable ENDF forces from the Gambella region.
- O. Ethiopia must ensure Anuak refugees the protections outlined in General Recommendation No. 22, including the right to return to their homes in safety, the right to be compensated for lost property, and the right to not be forced to return.

Article 6 State Obligation to Assure to Everyone Within Their Jurisdiction Effective Protection and Remedies

- P. Ethiopia must convene an independent and transparent investigation of human rights abuses suffered throughout the Gambella region.
- Q. The ENDF members who have been involved in the attacks on the Anuak must be held accountable and responsible before the law.
- R. In accordance with Article 6 of the ICERD and with CERD's General Recommendation No. 26, Ethiopia should award financial compensation for damage, material and moral, suffered by the Anuak in response to the December 2003 massacre and the ongoing human rights abuses thereafter. Ethiopia should also provide adequate and speedy compensation to civilians who have theft or destruction of property by ENDF forces.
- S. The Ethiopian government should provide health care and psychological services to the girls and women who have been raped by the ENDF, and all others affected by military violence.