

## **MEMORANDUM**

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**To:** Chief Prosecutor of the International Criminal Court  
**From:** Anuak Justice Council on Behalf of the Anuak of Ethiopia  
**Re:** Complaint of Crimes against Humanity Committed by the Ethiopian Government against the Anuak  
**Date:** June 13, 2005

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### **ISSUE PRESENTED**

The Ethiopian government's continuous attacks and persecution against the Anuak tribe of the Gambella region of Ethiopia constitute crimes against humanity as defined and punishable by The Rome Statute of the International Criminal Court.

### **SHORT ANSWER**

The Ethiopian government committed multiple violations of crimes against humanity, including murder, deportation or forcible transfer of a population, rape, and persecution of an identifiable group. The Rome Statute of the International Criminal Court establishes the three elements that constitute crimes against humanity: 1) the perpetration of an enumerated act, 2) committed as part of a widespread or systematic attack directed against civilians, and 3) with the perpetrators having knowledge of the widespread or systematic attack. Although Ethiopia has not ratified the Rome Statute, crimes against humanity constitute customary international law and are thus applicable to and enforceable upon all states.<sup>1</sup> Based on a careful application of international legal standards to the crimes committed, it is evident that the Ethiopian government has committed the crimes against humanity of murder, deportation or forcible transfer of a population, rape, and persecution of an identifiable group.

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<sup>1</sup> See generally M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, Kluwer Law International, 1999, pp. 210-217; *Prosecutor v. Furundzija*, No. IT-95-17/1, para. 227, Dec. 10, 1998 ("In many areas, the [Rome] Statute may be regarded as indicative of the legal views, i.e. *opinio juris* of a great number of states.").

## STATEMENT OF FACTS

Since December 13-16, 2003, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) forces and highland Ethiopian settlers have continued a systematic genocidal campaign deliberately targeting the indigenous Anuak minority of Gambella State in southwestern Ethiopia. Because of these policies, the government of Ethiopia has committed crimes against humanity.

The Anuak people are a minority group in Ethiopia, but they are the predominant landowners in the southwestern Gambella region. Since the fall of the *Dergue* regime in 1991, the Anuak's relationship with the central government and "Highlander" (e.g., Tigray) populations has been strained, due to concerns over land encroachment and regional autonomy. Historically, the lighter-skinned Ethiopian tribes have shunned the darker-skinned African tribes, and sometimes raided the tribes to acquire slaves.<sup>2</sup> The Anuak are one such dark-skinned African people indigenous to regions of the lower Nile. Other tribes include the Nuer, Dinka, and Shilluk. All these tribes are racially distinct from the olive-skinned Ethiopian tribes such as the Tigray, the Oromo, and the Amhara.

The Anuak ancestral homeland of Gambella, near the Sudanese border, is not only geographically remote from the capital of Addis Ababa, it is also agriculturally fertile, relatively sparsely populated, and contains gold and oil reserves. This has made their land much coveted by the central government for economic development and population resettlement. Over the past decade, the Anuak have pressed Addis Ababa for a share in the projected development of these resources. The response followed with political subjugation, physical beatings, and now the government-led forced deportation, persecution and murder.

In December 2003, the conflict turned violent, as the ambush and killing of several United Nations and Ethiopian government officials prompted open attacks on Anuak in the Gambella region. Until December 13, 2003, most of the killings of Anuak were by their ancient tribal enemies, the Nuer. Many of the Nuer resettled on Anuak land as civil war refugees from Sudan.

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<sup>2</sup> "Operation Sunny Mountain? Soldiers, Oil & Ongoing State Terror against Anuak & Other Indigenous Minorities of Southwestern Ethiopia," Genocide Watch and Survivors' Rights International Field Report, October 1, 2004, [hereinafter GW-SRI October 2004 Report].

Anthropologists and missionaries say the Anuak and the Nuer in previous decades had created ritualistic peaceful ways to solve grazing rights disputes that arose between their tribes. The displacement of more than 100,000 Sudan civil war refugees onto Anuak land in Gambella upset those traditional ways.

The Anuak for years have claimed that the Ethiopian government was using the Anuak-Nuer rivalry as its main tool for Anuak extermination, arming Nuer and disarming Anuak and then standing by passively when the inevitable happened.

#### **A. Government-Sponsored Attacks and December 2003 Massacre**

Security forces fight with rural Ethiopians just as in rural Darfur. They frequently arrest citizens, claiming they are either the Oroma Liberation Front (OLF) in Oromia state, and the Ogaden National Liberation Front (ONLF) and Al-Itihad Al-Islamiya (Islamic Unity) in Somali state. Few arrested are brought to trial, and many are arbitrarily detained without a hearing for quite some time.

Major massacres occurred on December 13-16, 2003, with reportedly over 400 Ethiopian citizens of Anuak ethnic origin in more than a dozen Anuak villages killed in the western Ethiopian province of Gambella. Refugee groups say Ethiopian security forces had backed highlander militias. The government blames the OLF (Oroma Liberation Front) and says that only 57 people were killed. The government refuses to conduct reliable investigations and there has been little evidence gathered to prove that this incident happened despite eyewitness accounts. The government says the trigger for the killings was an ambush of a vehicle carrying UN and Ethiopian Government officials earlier in December that was blamed on the Anuak.

According to Genocide Watch and Survivors' Rights International (GW/SRI), during the incident in December soldiers used automatic weapons and hand grenades to target Anuak and summarily executed civilians, burned dwellings (sometimes with people inside), and looted property. Some 424 Anuak people were reportedly killed, with over 200 more wounded and some 85 people unaccounted for. Since December 2003, sporadic murders and widespread rapes have continued.<sup>3</sup>

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<sup>3</sup> GW-SRI October 2004 Report, p. 32.

The Ethiopian military broadened its attacks after December 13 by dispatching troop trucks and, in one case, allegedly a helicopter gunship, against Anuak villages throughout the Gambella state. The World Organisation Against Torture estimates 1,137 people were killed between December 13, 2003 and March 31, 2004 in the Gambella region.<sup>4</sup> The killing of the Anuak minority by sovereign Ethiopia has all the markings of a state-sponsored attempt to extinguish an entire race. The crisis in 2003 is by far the bloodiest phase of the continuing genocide of the Anuak in Ethiopia. Scorched-earth raids carried out from January through April have destroyed a dozen Anuak villages in Gambella. The raids have driven more than 10,000 Anuak into refugee camps in neighboring Sudan and Kenya. While the December 13 massacre in the Gambella province was directed only at educated male Anuak (dragged out of their homes and shot with AK-47 rifles), the new phase of the genocide has seen women and children killed, hundreds of Anuak homes and fields burned, and gang rapes of dozens of girls and women.

In February 2004, the GW/SRI called for an independent inquiry to establish whether the actions described in this report were ordered, encouraged or condoned by the Ethiopian government. That call was ignored. This report has raised serious questions about the EPRDF government's actions of December 2003.

Human Rights Watch researchers traveled to towns in Gambella in 2004 where they documented military raids on Anuak neighborhoods and villages throughout the region.<sup>5</sup> In the first four months of 2004, soldiers burned several villages to the ground. Eyewitnesses told how more than one hundred Anuak civilians were shot down from behind by government soldiers as they tried to flee attacks on their villages. Others were killed in chance encounters with military patrols in the countryside. Soldiers also looted homes as well as cattle and other livestock when they pass through Anuak villages. As one farmer whose home was stripped bare by soldiers from a passing patrol put it, "because everything is in their hands, they take whatever they want."<sup>6</sup>

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<sup>4</sup> "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.omct.org/base.cfm?page=article&num=4856&consol=close&kwr=OMCT&cfid=1305405&cftoken=60023615>

<sup>5</sup> Human Rights Watch Update - Ethiopia: Crimes against Humanity in Gambella Region: *Army Impunity and Official Inaction Fuel Abuses*, (Nairobi, March 24, 2005).

<sup>6</sup> *Id.*, p. 2.

# **THE ETHIOPIAN GOVERNMENT’S PERSECUTION OF THE ANUAK CONSTITUTE CRIMES AGAINST HUMANITY AND VIOLATIONS OF INTERNATIONAL LAW**

Genocide Watch, Survivors’ Rights International and World Organisation Against Torture are just three of many organizations calling attention to the atrocities committed against the Anuak by the government of Ethiopia. If in fact the Ethiopian government violated international law in its persecution of the Anuak people, the government should be criminally liable for its acts.

## **A. International Law and Crimes Against Humanity**

Crimes against humanity have existed under international law since the adoption of the Nuremberg Charter in 1945.<sup>7</sup> More recently, the charters of the International Criminal Tribunals for Yugoslavia (“ICTY”)<sup>8</sup> and Rwanda (“ICTR”)<sup>9</sup> each established definitions for crimes against humanity for their respective jurisdictions. Currently, the Rome Statute of the International Criminal Court (“Rome Statute”) defines the elements for crimes against humanity.

### **1. The Rome Statute and Crimes Against Humanity**

Article 7(1) of the Rome Statute generally follows the precedent of the Nuremberg Charter, the ICTY, and the ICTR and defines crimes against humanity as follows:

For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;

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<sup>7</sup> Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal at Nuremberg, 82 U.N.T.S. 280, entered into force Aug. 8, 1945, *available at* <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm>.

<sup>8</sup> Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/25704 at 36, annex (1993) and S/25704/Add.1 (1993), *available at* <http://www.un.org/icty/legal/doc/index.htm>.

<sup>9</sup> Statute of the International Tribunal for Rwanda, U.N. Doc. S/RES/955 (1994), 33 I.L.M. 1598 (1994), *available at* <http://www.ictt.org/ENGLISH/basicdocs/statute.html>.

- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>10</sup>

This language gives rise to three distinct elements. First, the perpetrator must commit one of the enumerated acts. Second, the Rome Statute requires the act to be committed as a part of a widespread or systematic attack directed at civilians. Third, the perpetrator must have knowledge of the attack. Each of these elements must be present for the act to constitute a crime against humanity.

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<sup>10</sup> Rome Statute, art. 7(1).

## **B. The Rome Statute Applied to the Conflict in Gambella**

To apply the Rome Statute to the actions of the Ethiopian government against the Anuak people, the current conflict in Gambella must be evaluated in light of the three requisite elements. For violence against the Anuak to constitute a crime against humanity:

- The actions in question must take the form of an enumerated act;
- The perpetrators must engage in the act as part of a widespread or systemic attack against a civilian population, and;
- The perpetrators must have knowledge of the attack.

### **1. Has the Ethiopian government perpetrated any of the acts enumerated in the Rome Statute against the Anuak people?**

The Ethiopian government's discrimination against the Anuak people of Gambella and the violence in the region beginning in December 2003 constitute crimes against humanity under Article 7(1) of the Rome Statute. Specifically, the facts indicate that the Ethiopian government has committed the crimes against humanity of murder, deportation or forcible transfer of a population, rape, and persecution against an identifiable group.

#### **a) The Ethiopian Government Unquestionably Murdered the Anuak People**

The legal definition of murder under the Rome Statute is relatively straightforward. According to the Report of the First Session of the Assembly of States Parties to the Rome Statute ("First Session Report"),<sup>11</sup> the perpetrator must kill one or more persons.<sup>12</sup> The term "kill" is interchangeable with "caused death."<sup>13</sup> Both the ICTY and the ICTR further note that the killing must occur through "an unlawful act or omission of the accused."<sup>14</sup>

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<sup>11</sup> Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, Sept. 10, 2002, Doc. No. ICC-ASP/1/3, [hereinafter First Session Report].

<sup>12</sup> *Id.* at 116.

<sup>13</sup> *Id.* at 116, note 7.

<sup>14</sup> *Prosecutor v. Akayesu*, No. ICTR-96-4-T, para. 589 (Sept. 2, 1998); *see also Prosecutor v. Kupreskic*, No. IT-95-16-T, para. 560 (Jan. 14, 2000).

Multiple non-governmental organizations (NGOs) have reported similar accounts of Ethiopian military forces and Highlander militias killing Anuak in the Gambella region since December 2003. A joint report released in February 2004 by Genocide Watch and Survivors' Rights International, based on interviews of eyewitnesses, field research, and investigation into mass graves, destroyed property, and other physical results of the violence, assessed the actions of the Ethiopian government in the Gambella region. The report found that Ethiopian military personnel and Highlander militias killed 424 Anuak in Gambella on December 13, 2003 after surrounding a number of villages and proceeding into the homes of Anuak citizens.<sup>15</sup>

Further, the World Organisation Against Torture notes continuing incidents of smaller-scale killings and puts the total number of dead at over 1,100.<sup>16</sup> An October 2004 GW/SRI joint Field Report highlights similar numbers of civilians killed in the conflict by the Ethiopian government and the Highlander militias. That report estimates between 1,500 and 2,500 Anuak civilians dead.<sup>17</sup>

The Ethiopian government disputes both NGOs' figures and their claims that Ethiopian military personnel are responsible. Government officials first contended that other rebel factions, such as the Oromo Liberation Front, were responsible for the December 13, 2003 massacre, and then insisted that Highlander militias caused the violence.<sup>18</sup> A specially appointed Ethiopian commission placed the number of Anuak dead at 65.<sup>19</sup> Other estimates, however, differ greatly. For example, one journalist provided names of 400 killed in the December 13, 2003 attack.<sup>20</sup>

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<sup>15</sup> Genocide Watch and Survivors' Rights International, "Today is the Day of Killing Anuaks," Feb. 25, 2004, p. 4, available at <http://genocidewatch.org/Today%20is%20the%20Day%20of%20Killing%20Anuaks.htm> [hereinafter GW-SRI February 2004 Report].

<sup>16</sup> "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.omct.org/base.cfm?page=article&num=4856&consol=close&kwrd=OMCT&cfid=1305405&cftoken=60023615> [hereinafter OMCT – Genocide Watch Response].

<sup>17</sup> "Operation Sunny Mountain? Soldiers, oil, & ongoing state terror against Anuak and other indigenous minorities of Southwestern Ethiopia." Genocide Watch and Survivors' Rights International Field Report, Oct. 1, 2004. [hereinafter GW-SRI October 2004 report].

<sup>18</sup> Doug McGill, "Secret genocide across Sudan's border," *Scotland on Sunday* (quoting Barnabas Gebre-Ab, Ethiopian Minister of Federal Affairs for the State of Gambella), available at <http://news.scotsman.com/topics.cfm?tid=1160&id=1208522004>

<sup>19</sup> "Members of the Defense Forces involved in the Gambella killings," *Gambella News*, July 7, 2004, available at <http://www.gambellanews.com>.

<sup>20</sup> See "Anuaks Massacred in Gambella Town on December 13-15, 2003," available at <http://www.mcgillreport.org/list%20of%20dead.htm>.



Further, the Special Commission limited its investigation to interviews of Highlanders and failed to question any Anuak refugees or Ethiopian military personnel.<sup>21</sup> At a minimum, the various NGO reports strongly indicate that the Ethiopian military participated in the killings of hundreds of Anuak.

Therefore, the murder requirement as defined by the Rome Statute is satisfied and supported by the multiple NGO reports detailing similar accounts of the Ethiopian government killing members of the Anuak tribe.

### **b) The Ethiopian Government Deported and Forcibly Transferred the Anuak Population**

“Forcible transfer” means “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”<sup>22</sup> This definition requires a showing of force, but that force need not be physical or even actual. The threat of force or fear of violence may also suffice.<sup>23</sup>

Violence and destruction occurring in the Gambella region since December 2003 has clearly established a sufficient showing of force, and numerous NGOs have reported that the conflict has displaced thousands of persons. Representatives of Oxfam International stated that approximately 51,000 Anuak have been displaced in the region.<sup>24</sup> Oxfam further reported that Ethiopian military forces and Highlander militias burned over 1,500 homes, slaughtered Anuak livestock, and destroyed Anuak crops.<sup>25</sup> Additionally, a representative for the United Nations High Commissioner for Refugees, after an investigation, found that 8,500 Anuak had fled Ethiopia to reach a Sudanese refugee camp at Pochalla.<sup>26</sup>

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<sup>21</sup> Aniwaya Survival Organization, “Gambella Update: situation remains tense,” May 22, 2004; “Members of the Defense Forces involved in the Gambella killings,” *Gambella News*, July 7, 2004, available at <http://www.gambellanews.com>.

<sup>22</sup> Rome Statute, art. 7(2)(d).

<sup>23</sup> First Session Report, *supra* note 11, at 118. The given elements in the First Session Report also require the persons to have been lawfully present in the area from which they were deported. *Id.* Given that Gambella is the ancestral homeland of the Anuak, this element is readily met.

<sup>24</sup> “Oxfam’s assistance improves life for thousands in Ethiopia’s Gambella region,” Aug. 31, 2004, available at <http://www.reliefweb.int/w/rwb.nsf/0/873012cf9ca1245c85256f0100726f33?OpenDocument>.

<sup>25</sup> *Id.*

<sup>26</sup> See Sudan Transition and Recovery Database, July 2004, at 2, available at <http://www.unsudanig.org/STARBASE/reports/Regional-reports/South/UpperNile/Pochalla.pdf>

Further, the Ethiopian Disaster Preparedness and Prevention Bureau (DPPB) estimated in August 2004 that approximately 25% of Gambella's population had been displaced.<sup>27</sup> Given that this displacement coincides with continued violence, during which witnesses have heard Ethiopian military personnel say, "There will be no Anuak land,"<sup>28</sup> if these actions qualify as forcible transfer under international law. Based on this evidence, the Ethiopian government committed acts of deportation and forcible transfer of population as defined by the Rome Statute.

### c) **The Ethiopian Military Raped Anuak Women and Girls**

Under Article 7 of the Rome Statute, the crime of rape has two elements: 1) the physical sexual act, and 2) the inability of the victim to genuinely consent due to force or the threat of force.<sup>29</sup> The ICTR has similarly defined the crime against humanity of rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."<sup>30</sup>

The February 2004 report by Genocide Watch and Survivors' Rights International documented a high number of rapes in the Gambella region. The report noted that one Gambella police officer recorded 138 incidents of rape in Gambella town before being told to stop taking new reports,<sup>31</sup> and found evidence of 26 gang-rapes after that point.<sup>32</sup> Further, the February 2004 report indicated that Ethiopian military personnel and Highlander militiamen would rape Anuak women at gunpoint,<sup>33</sup> clearly demonstrating a threat of force.

In a May 2004 press release, the World Organisation Against Torture observed that mass rapes of Anuak women were continuing.<sup>34</sup> The October 2004 Genocide Watch and Survivors Rights International field report heard additional firsthand and eyewitness accounts of rapes by Ethiopian military forces from Anuak women.<sup>35</sup> Based on this evidence, Ethiopian military forces have committed rape as defined by the Rome Statute.

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<sup>27</sup> GW-SRI October 2004 Report, *supra* note 17.

<sup>28</sup> GW-SRI February 2004 Report, *supra* note 15, at 4.

<sup>29</sup> First Session Report, *supra* note 11, at 119.

<sup>30</sup> *Akayesu*, *supra* note 14, para. 598; *see also Prosecutor v. Delalic*, No. IT-96-21-T, para. 479 (Nov. 16, 1998) (using identical language to define the crime against humanity of rape).

<sup>31</sup> GW-SRI February 2004 Report, *supra* note 15, at 14.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 5.

<sup>34</sup> OMCT—Genocide Watch Response, *supra* note 16.

<sup>35</sup> GW-SRI October 2004 Report, *supra* note 17.

#### **d) The Ethiopian Government and Military Forces Persecuted An Identifiable Group**

The First Session Report denotes three elements for persecution. The perpetrator must: 1) deprive persons of their rights in violation of international law, 2) target the victims by reason of their group identity, and 3) commit the act in conjunction with another of the enumerated acts under Article 7(1) of the Rome Statute.<sup>36</sup> The deprivation must be one of “fundamental rights,” as well as “intentional and severe.”<sup>37</sup> The severity of the persecution, in turn, refers not to the act of persecution, but rather to the nature of the deprivation of rights.<sup>38</sup>

During the buildup to its campaign against the Anuak people, the Ethiopian government disenfranchised the Anuak politically. In the Gambella regional elections of May 2000, the Gambella People’s Democratic Front, a branch of the ruling national party, won only narrowly.<sup>39</sup> The central government subsequently appointed all regional officers and disbanded all democratically elected regional institutions, denying the Anuak their rights to political participation.

This disenfranchisement was aimed at the Anuak people, and later accompanied by the disarmament of all Anuak police officers and the incarceration of Anuak political leaders. These latter tactics occurred just days before the December 13, 2003 killings, leaving the Anuak people with little ability to defend themselves and linking the persecution efforts of the Ethiopian government to its larger attacks on the Anuak.<sup>40</sup>

Regarding the group distinction, the Ethiopian government has clearly targeted the Anuak people specifically, and reports of persecution and discrimination against the Anuak by national and local authorities date back to at least 1980.<sup>41</sup> The Ethiopian government disarmed only the Anuak forces following the collapse of the Dergue in 1991, signaling a continued pattern of discrimination.

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<sup>36</sup> First Session Report, *supra* note 11, p. 122.

<sup>37</sup> Rome Statute, art. 7(2)(g).

<sup>38</sup> *Kupreskic*, *supra* note 14, para. 622 (“Although individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be determined ‘inhumane.’”).

<sup>39</sup> World Organization Against Torture, Press Release, Ethiopia: concerns about a Commission of Investigation attempting to cover up State involvement in acts of genocide, Apr. 27, 2004, *available at* <http://www.omct.org/base.cfm?page=article&num=4838&consol=close&kwr=OMCT&cfid=1305415&cftoken=60720513>.

<sup>40</sup> GW-SRI October 2004 Report, *supra* note 17.

<sup>41</sup> *Id.*

The more recent disarmament of Anuak police forces does not appear to have applied to Highlander authorities. Further, Anuak villages and civilians have suffered the majority of violence in Gambella since December 2003. The Ethiopian government has specifically targeted the Anuak people as a group in its persecution efforts.

## **2. Did the Ethiopian Government Engage in the Aforementioned Acts as Part of a Widespread or Systematic Attack Against a Civilian Population?**

Article 7(2)(a) of the Rome Statute specifies that a “widespread or systematic attack against a civilian population” contains two elements: the “multiple commission of [enumerated] acts” and the commission of such acts pursuant to a “State or organizational policy to commit such attack[s]”.<sup>42</sup>

### **a) The Ethiopian Government Committed Multiple Violations of Crimes Against Humanity, Including Murder, Deportation or Forcible Transfer of a Population, Rape, and Persecution of an Identifiable Group**

The multiplicity of the acts is sufficiently “widespread” if the acts are “committed on a large scale by the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>43</sup> In other words, either multiple attacks had to have been committed against civilians over a period of time, or a single act that resulted in harm to an especially large number of individuals must have occurred.

The prolonged conflict in the Gambella region contains multiple examples of the acts enumerated in the Rome Statute, such as murder, deportation, and rape, to name a few. According to Genocide Watch, at least 424 people died in the December 2003 killings alone,<sup>44</sup> and both Survivors’ Rights International and the World Organization Against Torture have reported killings, persistent violence, and intimidation as recently as September 2004.<sup>45</sup>

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<sup>42</sup> First Session Report, *supra* note 11, at 116.

<sup>43</sup> *Prosecutor v. Blaskic*, No. IT-95-14-T, para. 206 (Mar. 3, 2000); *see also Akayesu*, *supra* note 14, para. 580 (“massive, frequent, large scale action, carried out collectively”).

<sup>44</sup> GW-SRI February 2004 Report, *supra* note 15, at 4.

<sup>45</sup> GW-SRI October 2004 Report, *supra* note 17, at 32.

Additionally, a series of reports in *Cultural Survival Quarterly* have pointed to massacres of Anuak since 1981.<sup>46</sup> Regarding forcible transfer, Oxfam states that over 51,000 people in the Gambella region are still currently displaced.<sup>47</sup>

Ethiopian military personnel and Highlander militiamen have raped many Anuak women as well. A non-Anuak police officer in Gambella reported an average of seven rapes per day in January 2004,<sup>48</sup> and many of these offenses have been gang-rapes.<sup>49</sup> Based on this evidence, numerous incidents occurring during the conflict in Gambella are examples of the Rome Statute's enumerated acts constituting crimes against humanity.

### **b) As Part of the Ethiopian State Policy, the Government Supported the Persecution of the Anuak People**

The “state or organizational policy” requirement exists to distinguish crimes against humanity from isolated and random acts of violence. Accordingly, the First Session Report requires the State or organization to “actively promote or encourage such an attack.”<sup>50</sup> However, the ICTY has held that the policy need not be formal, and that it can be deduced from the way in which the acts occur.<sup>51</sup>

The ICTY further identified several relevant factors, including a “political objective [or] ideology ... to destroy or weaken a community,” “the repeated and continuous commission of inhumane acts linked to one another,” “the preparation and use of significant public or private resources,” and “the implication of high level military and/or military authorities.”<sup>52</sup> There is ample evidence to support the existence of a state policy to attack the Anuak. In an interview, Okello Akway Ochalla, the former regional governor of Gambella who is now living in exile in Europe, claimed that he was with Tsegaye Beyene, the regional commander of Ethiopian military forces, when Beyene received a call from Barnabas Gebre-Ab, Ethiopia's Minister of Federal Affairs for the State of Gambella, just hours before the start of the killings on December 13, 2003.<sup>53</sup>

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<sup>46</sup> For the most recent report, see Ochalla, Nike and Deirdre Determent, “Oil Development in Ethiopia: a Threat to the Anuak of Gambella,” *Cultural Survival Quarterly*, Oct. 31, 2001, available at <http://www.culturalsurvival.org>

<sup>47</sup> “Oxfam's assistance improves life for thousands in Ethiopia's Gambella region,” Aug. 31, 2004, available at <http://www.reliefweb.int/w/rwb.nsf/0/873012cf9ca1245c85256f0100726f33?OpenDocument>.

<sup>48</sup> GW-SRI February 2004 Report, *supra* note 15, at 5.

<sup>49</sup> *Id.* at 14.

<sup>50</sup> First Session Report, *supra* note 11, at 122.

<sup>51</sup> *Prosecutor v. Tadic*, No. IT-94-1-T, para. 653 (May 7, 1997).

<sup>52</sup> *Blaskic*, *supra* note 43, para. 203.

<sup>53</sup> Doug McGill, “Secret genocide across Sudan's border,” *Scotland on Sunday*, available at <http://news.scotsman.com/topics.cfm?tid=1160&id=1208522004>.

Mr. Okello stated that Beyene then ordered Ethiopian troops to attack Anuak in Gambella. When he pleaded with Beyene to stop the killings, Beyene responded, “All Anuak are the same, they are butchers.”<sup>54</sup> Mr. Okello further asserted that he called Gebre-Ab to ask for an end to the violence, but the Minister only told him to tell Beyene to increase the military force.<sup>55</sup>

Other evidence also supports the existence of an Ethiopian policy of violence against Anuak. The Ethiopian military still maintains a significant presence in Gambella. Reports in April 2004 indicated that 15,000 troops remained in the region,<sup>56</sup> and there are multiple accounts of helicopter gunship attacks. Such evidence indicates major military activity within Gambella and implies complicity in the attacks on the Anuak people.

Furthermore, Human Rights Watch indicated in its Update that the Ethiopian government continues to inadequately respond to the ongoing abuses.<sup>57</sup> Even though the government launched a public inquiry into the December 2003 massacre, the government’s report ignored overwhelming evidence of the army’s participation in the massacre and absolved the military of any wrongdoing. Moreover, the government has not taken any steps to investigate allegations of ongoing abuse in other parts of Gambella. Hundreds of civilians have been killed and raped, and numerous villages have been burned to the ground, yet the government has only recently said it would put six soldiers on trial for their alleged involvement in the December 2003 massacre.<sup>58</sup>

Also according to the Update, several Anuak villagers that reported past abuses to regional authorities informed Human Rights Watch that Ethiopian officials admitted there was nothing they could do to control the military and continuously urged them to keep quiet for their own safety.<sup>59</sup> Others complained to the military authorities about rapes committed by soldiers garrisoned near their communities, only to be advised that the best way to prevent such abuses was to tell women not to walk the roads alone.

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<sup>54</sup> *Id.*

<sup>55</sup> Doug McGill, “Ethiopia’s Genocide of the Anuak Broadens to Women, Children, and Small Villages,” *The McGill Report*, May 16, 2004, available at <http://genocidewatch.org/EthiopianGenocideofAnuakContinuesMcGillReport6May2004.htm>.

<sup>56</sup> Obang Metho, Aniwaya Survival Organization, Statement to the United Nations Commission on Human Rights, 60th Session, Apr. 8, 2004.

<sup>57</sup> Human Rights Watch Update - Ethiopia: Crimes against Humanity in Gambella Region: *Army Impunity and Official Inaction Fuel Abuses*, (Nairobi, March 24, 2005), p. 2.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

In some cases, military officers have responded to complaints of abuse by accusing villagers of supporting armed Anuak groups and threatening them with further violence. The military's continuing depredations have left many Anuak farmers afraid to travel to their fields, which often lie in isolated areas far from the villages they live in. The total area under cultivation in Gambella dropped by 25 percent in 2004, and relief agencies attribute this alarming development mainly to insecurity in the region.<sup>60</sup>

As a result of its findings, Human Rights Watch deemed the numerous acts of murder, rape and torture committed by the Ethiopian army against Anuak civilians since late 2003 as crimes against humanity and urged donor governments to publicly call on the Ethiopian government conduct a thorough, public and independent investigation into military abuses in Gambella.<sup>61</sup>

### **c) The Ethiopian Government Cannot Justify its Campaign Against the Anuak Civilians As Collateral Damage of its Campaign Against Rebel Factions**

An implicit element of crimes against humanity is that the victims belong to a civilian population. The ICTY has observed that “the civilian population which is subjected to the attack must be the primary rather than an incidental target of the attack.”<sup>62</sup> However, the ICTR noted that “the fact that there are certain individuals among the civilian population who are not civilians does not deprive the population of its civilian character,”<sup>63</sup> and therefore the people attacked need only be “predominantly” civilian.<sup>64</sup> Given this broad interpretation of “civilian population,” the Ethiopian government cannot justify its treatment of Anuak civilians in Gambella as collateral damage of its campaign against rebel factions. Attacks against Anuak have been primarily against civilians. In addition, the number of victims in Gambella far outpaces any estimates of armed rebels in the area.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Prosecutor v. Kunarac*, No. IT-96-23&23/1-A, para. 92 (June 12, 2002).

<sup>63</sup> *Prosecutor v. Musema*, No. ICTR-96-13-A, para. 207 (Jan. 27, 2000).

<sup>64</sup> *Prosecutor v. Kayishema*, No. ICTR-95-1, para. 128 (May 21, 1999).

### **3. Did the Ethiopian Government Have Knowledge of Attacks Against the Anuak?**

Evidence that the Ethiopian government's state policy included the persecution of the Anuak coupled with the numerous reports from several global NGOs clearly indicates that the government was aware of the continuous attacks against the Anuak.

The First Session Report states that this element can be satisfied relatively easily. The perpetrator of the enumerated acts need not know the exact details of the state policy or the characteristics of the larger pattern of attacks. Rather, the perpetrator satisfies this condition if he "intended to further such an attack."<sup>65</sup> The ICTY and ICTR have similarly articulated their knowledge standards as "know[ing] that there is an attack on a civilian population and that [the perpetrator's] act is part of the attack."<sup>66</sup> According to those tribunals, however, such knowledge can be actual or constructive,<sup>67</sup> as well as inferred from the circumstances of their commission.<sup>68</sup>

Given that the evidence indicates that the Ethiopian government formed the state policy, there is little question that the Ethiopian government intended for its actions to further that policy. Mr. Okello's statements directly implicate the Ethiopian government in the attacks on the Anuak people. Further, in the absence of any government justifications, the continued massive military presence in Gambella strongly suggests complicity in the ongoing attacks against the Anuak.

#### **C. A High Likelihood of Genocide Exists if the Attacks Against the Anuak Continue**

The criminalization of genocide under international law also dates from the post-World War II era. In 1948, the United Nations passed the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention").<sup>69</sup>

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<sup>65</sup> First Session Report, *supra* note 11, at 116.

<sup>66</sup> *Kayishema*, *supra* note 64, para. 133; *see also Tadic*, *supra* note 51, para. 248 (the act "must comprise part of a pattern of widespread or systematic attack directed against a civilian population and that the accused must have known that his acts fit into such pattern").

<sup>67</sup> *Tadic*, *supra* note 51, para. 659; *Kayishema*, *supra* note 64, para. 134.

<sup>68</sup> *Blaskic*, *supra* note 43, para. 259.

<sup>69</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, entered into force Jan. 12, 1951, available at [http://www.unhchr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhchr.ch/html/menu3/b/p_genoci.htm).



As with crimes against humanity, the International Criminal Tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY) have also addressed charges of genocide, but Genocide Convention governs here because Ethiopia signed and ratified the Genocide Convention in 1948 and, subsequently, 1949.<sup>70</sup>

According to Article II of the Genocide Convention, genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>71</sup>

There are three important characteristics that are highlighted by this language. First, a determination must be made regarding what constitutes a national, ethnic, racial, or religious group. Second, the Convention dictates that one or more of the enumerated physical acts must have been carried out upon members of a particular group. Third, those acts of harm must be undertaken with the intent to destroy or partially destroy the group. All three elements must be present for an act to constitute genocide.

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<sup>70</sup> Genocide Watch: The Anuak of Ethiopia, Issued 8 January 2004. Updated 23 January 2004, *available at* <http://genocidewatch.org/THE%20ANUAK%20OF%20ETHIOPIA.htm>.

<sup>71</sup> *Id.*, art. II.

## **1. Are the Anuak Members of a Specific Group?**

The Anuak people can be termed a recognizable, stable, and permanent group. The first characteristic of the crime of genocide is the group status of the victims. Article II of the Genocide Convention requires the victims to belong to a “national, ethnical, racial, or religious group.” In evaluating charges of genocide, the ICTR and ICTY have offered definitions for these various distinctions. In the case of the *Prosecutor vs. Akayesu*, the ICTR ruled that the Tutsi were indeed identified by all as a stable and permanent group and, thus the accused could be charged with genocide for the violent acts he committed or ordered against the Tutsi in Rwanda.<sup>72</sup> In *Prosecutor v. Jelusic*, the ICTY argued that objective criteria alone were insufficient and believed it appropriate to evaluate group status from the perspective of the individuals who wished to single out that group from the rest of the community.<sup>73</sup>

The Anuak people share racial and ethnic characteristics that are different from those of other groups in Ethiopia. The majority of Anuak live specifically in the Gambella region of Ethiopia (though disproportionate amounts currently live in refugee camps in Sudan due to the violence currently taking place in Gambella). Additionally, they are recognized as a group by the Ethiopian government, by those from other ethnic groups within Ethiopia, and by the international community. Within Ethiopia, the Anuak have been termed “African” as opposed to “Ethiopian” by other groups, and the Anuak are perceived to be different ethnically and linguistically.<sup>74</sup> Thus, the Anuak people can be termed a recognizable, stable, and permanent group, satisfying the first criterion for a determination of genocide.

## **2. Have Any of the Acts Enumerated in the Genocide Convention Been Perpetrated Against the Group?**

The GW/SRI and the World Organisation Against Torture report that the Ethiopian government perpetrated several acts of crimes against humanity, murder, rape, and other acts as enumerated in the Genocide Convention which caused an estimate of 1,500-2,500 Anuak civilian deaths. Under the Genocide Convention, the legal definition of a killing is interchangeable with a “caused death.”<sup>75</sup>

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<sup>72</sup> *Akayesu*, *supra* note 10, para. 702.

<sup>73</sup> *Prosecutor v. Jelusic*, No. IT-95-10, para. 70 (Dec. 14, 1999).

<sup>74</sup> GW-SRI October 2004 Report, *supra* note 17.

<sup>75</sup> “Addendum: Part II – Finalized draft text of the Elements of Crimes,” *Report of the Preparatory Commission for the International Criminal Court*, p. 6, U.N. Doc. PCNICC/2000/1/Add.2, Nov. 2, 2000.

The ICTR requires: 1) a deceased, and 2) an unlawful act or omission which causes the death.”<sup>76</sup> As stated in greater detail in the “International Law and Crimes Against Humanity” section of this memorandum, multiple NGOs have reported similar accounts of Ethiopian military forces and Highlander militias killing Anuak in the Gambella region since at least December 2003.<sup>77</sup> According to a joint report of Survivors’ Rights International and Genocide Watch, Ethiopian military personnel and Highlander militias killed 424 Anuak in Gambella on December 13, 2003 after surrounding a number of villages and proceeding to the homes of Anuak civilians.<sup>78</sup>

Further, the World Organisation Against Torture notes continuing incidents of smaller-scale killings and puts the number of dead at over 1,100.<sup>79</sup> An October 2004 Genocide Watch and Survivors’ Rights International joint Field Report estimates between 1,500 and 2,500 Anuak civilians have been killed.<sup>80</sup> Thus, the element of “killing” as defined by the Genocide Convention is clearly met.

#### **a) Members of the Anuak Suffered Serious Bodily or Mental Harm at the Hands of the Ethiopian Government**

“Serious bodily or mental harm” requires proof of actual harm, but the injury need not be permanent in nature.<sup>81</sup> In *Kayishema and Ruzindana*, the ICTR defined this requirement as “harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses.”<sup>82</sup> The ICTY also suggested that torture and degrading treatment may qualify as genocidal acts under Article II(b).<sup>83</sup>

Regarding mental harm, the Preparatory Committee of the International Criminal Court stated in a draft provision on genocide that mental harm “is understood to mean more than the minor or temporary impairment of mental faculties.”<sup>84</sup>

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<sup>76</sup> *Akayesu*, *supra* note 10, para 588.

<sup>77</sup> *See infra* notes 7-18.

<sup>78</sup> GW-SRI February 2004 Report, *supra* note 15, at 4.

<sup>79</sup> OMCT – Genocide Watch Response, *supra* note 16.

<sup>80</sup> GW-SRI October 2004 Report, *supra* note 17.

<sup>81</sup> *Akayesu*, *supra* note 10, para 501.

<sup>82</sup> *Kayishema*, *supra* note 64, para. 109.

<sup>83</sup> *Prosecutor v. Karadzic and Mladic*, Nos. IT-95-5-R61 and IT-95-18-R61, Transcript of Hearing, p. 986 (July 11, 1999).

<sup>84</sup> “Report of the Preparatory Committee on the Establishment of an International Criminal Court.” Part 2. Jurisdiction, Admissibility, and Applicable Law, U.N. Doc. A/CONF. 183/2/Add.1, 14 April 1998, p.11.

In *Kayishema and Ruzindana*, the ICTR determined that mental harm occurred only when the accused possessed the intention to inflict serious harm at the time of the act.<sup>85</sup> In *Akayesu*, the ICTR further stated that “rape...certainly constitutes infliction of serious bodily and mental harm.”<sup>86</sup>

As noted in greater detail in the preceding sections of this memorandum, Ethiopian government forces as well as Highlander militia have inflicted widespread physical and mental harm on the Anuak people. Instances of beatings, torture, rape, unlawful detention, and destruction and looting of property have been reported by numerous sources present in the Gambella region. The abuses committed by the Ethiopian government and the Highlander militias thus qualify for the criterion of causing physical and mental harm.

#### **b) The Anuak Suffered Physical Destruction in Whole or In Part From Deliberate Infliction on Group’s Conditions of Life**

Regardless of whether death occurs, this act is completed by imposing conditions that do not immediately kill, “but ultimately seek [the victims’] physical destruction.”<sup>87</sup> The United Nations Preparatory Commission for the International Criminal Court stated that this category may include “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”<sup>88</sup> The ICTR has stated that rape fits under this category as a “method of destruction which do[es] not immediately lead to the death of members of the group.”<sup>89</sup>

The Ethiopian government and the Highlander militias have deliberately attempted to impose conditions on the Anuak people so as to bring about the destruction of the group. In addition to the systematic killing and physical harm of Anuak, government and Highlander military forces have also destroyed or confiscated homes across the Gambella region, causing Anuak to flee their property into refugee camps in Ethiopia or Sudan. Livestock and crops were also destroyed during the attacks. Additionally, government and Highlander forces have specifically targeted men for execution, and have raped scores of women in an attempt to impregnate them with children who are not wholly ethnically Anuak.

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<sup>85</sup> *Kayishema*, *supra* note 54, para 112.

<sup>86</sup> *Akayesu*, *supra* note 10, para. 731.

<sup>87</sup> *Akayesu*, *supra* note 10, para. 505.

<sup>88</sup> Addendum: Part II – Finalized draft text of the Elements of Crimes,” Report of the Preparatory Commission for the International Criminal Court, p.6, n.3, U.N. Doc. OCNICC/2000/1/Add.2, Nov. 2, 2000.

<sup>89</sup> *Kayishema*, *supra* note 64, para. 116.

Reports indicate that one woman was told, while being raped, that, “We are going to kill your men and the next generation of Anuak will be produced by us.”<sup>90</sup> Based on this evidence, the actions by the Ethiopian government and Highlander militias were deliberately undertaken in order to bring about the physical destruction of the Anuak as a group and, thus, satisfy this criterion.

### **3. Have Any of the Acts Enumerated in the Genocide Convention Been Undertaken With the Intent to Destroy or Partially Destroy the Group?**

The Ethiopian government’s persecution of the Anuak was undertaken with the intent to destroy the tribe and remove them from the Gambella region. Intent represents the final element of the crime of genocide. Article II of the Genocide Convention requires not only the intent to engage one of the enumerated physical acts, but also the specific “intent to destroy” a group “in whole or in part.”

#### **a) The Ethiopian Government Intended to Destroy the Anuak Tribe**

To commit genocide, a perpetrator must engage in an enumerated physical act with the intent of destroying the protected group, not merely the person or persons attacked or otherwise affected. Public statements calling for genocide or tangible documentation of genocidal plans can establish this specific intent, but the intent may also be inferred from the acts of the perpetrator.<sup>91</sup> The ICTY and the ICTR have considered a number of factors when evaluating intent in past cases. These factors include the scale of the atrocity, evidence of systematic planning, and statements of the perpetrators.<sup>92</sup>

Due to the December 2003 massacres and continued violence against the Anuak, evidence to support the genocidal intent on behalf of the Ethiopian government and Highlanders is growing. Of the 100,000 Anuak living in Ethiopia and Sudan, at least 1,500 and perhaps as many as 2,500 Anuak civilians have died, while hundreds remain unaccounted for or have disappeared.<sup>93</sup> Of the three minority groups living in Gambella (including the Anuak, Majenger, and Nuer), approximately 25%, or about 50,000 people, have been displaced.<sup>94</sup> Estimates of Anuak in refugee camps in Sudan and Kenya range from 7,000 to 9,000 people.<sup>95</sup> Given the relatively small population of Anuak, these numbers show the high level of atrocities occurring in Gambella.

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<sup>90</sup> GW-SRI February 2004 Report, *supra* note 15, p. 14.

<sup>91</sup> *Akayesu*, *supra* note 10, para. 523.

<sup>92</sup> *Kayishema*, *supra* note 64, para. 93.

<sup>93</sup> GW-SRI October 2004 Report, *supra* note 17, pp. 5-8.

<sup>94</sup> Cited in *id.*, p. 5.

<sup>95</sup> *Id.*, p. 23.

According to a recent NGO report, government forces and highland Ethiopian settlers deliberately targeted the indigenous Anuak minority of Gambella.<sup>96</sup> Credible sources describe a “coordinated military operation to systematically eliminate Anuak people from Gambella” in December of 2003.<sup>97</sup> Genocide Watch reports that the High Commander in Chief of the Ethiopian Army in Gambella, Tsegaye Beyene, under the authorization of Dr. Gebrhab Barnabas, an Ethiopian government official, ordered the December massacres of the Anuak people.<sup>98</sup> The national government and its military remain the principal agents behind the violence still occurring in the Gambella region.<sup>99</sup>

NGOs have also recorded numerous statements made by Ethiopian soldiers and government officials. The Anuak who survived the attacks testified that the Ethiopian soldiers shouted, “Let’s kill them all” and “From today forward there will be no Anuak.”<sup>100</sup> Survivors’ Rights International reports that government officials stated in public that “We will wipe you [Anuak] out of this place.”<sup>101</sup> Such statements in conjunction with sanctions by the highest levels of the government indicate a manifest intent to destroy the Anuak in Ethiopia.

**b) The Growing Number of People Affected by the Violence Demonstrates the Ethiopian Government’s Intent to Destroy the Anuak “in part.”**

The perpetrator need not intend to completely annihilate a group in all parts of the world. It is only necessary that intent exists to destroy the group “in part” in order to satisfy the Convention language. The ICTR has interpreted this provision as requiring “the intent to destroy a considerable number of individuals,”<sup>102</sup> and the ICTY understands it to mean a “substantial” part.<sup>103</sup> However, the tribunals have not further defined “considerable” or “substantial,” and international law scholars believe the Genocide Convention drafters included the “in part” language largely to prevent perpetrators from claiming they intended only the partial destruction of a group, such as the total destruction of a group’s population within a given state.<sup>104</sup>

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<sup>96</sup> *Id.*, p. 5.

<sup>97</sup> *Id.*, p. 19.

<sup>98</sup> *Id.*, p. 22.

<sup>99</sup> *Id.*, pp. 16, 20.

<sup>100</sup> *Id.*, p. 20.

<sup>101</sup> *Id.*, p. 23.

<sup>102</sup> *Kayishema*, *supra* note 64, para. 97.

<sup>103</sup> *Prosecutor v. Sikirica, et.al.*, No. IT-95-8, Judgment on Defense Motions to Acquit, para. 65 (Sept. 3, 2001).

<sup>104</sup> William A. Schabas, *Genocide in International Law: The Crime of Crimes*, Cambridge University Press, 2000, p. 235.

Considering that there are only 100,000 Anuak, the reported killings may represent a substantial part of the Anuak group – up to 2.5% of the total population based on the numbers of reported dead by the Genocide Watch and Survivors’ Rights International Field Report. Some Anuak villages have been entirely depopulated, with all people (Anuak and others) killed or driven out of the region.<sup>105</sup> Furthermore, soldiers have systematically raped a large number of Anuak women in an attempt to destroy the Anuak ethnic group in part. Most Of the Anuak killed were intellectuals, leaders, and members of the educated and student classes – individuals with the most capability of leading a resistance. In *Jelusic*, the ICTY considered the targeting of “the total leadership of a group” as relevant in its ‘in whole or in part’ analysis.<sup>106</sup> The growing number of people affected by the violence demonstrates intent to destroy the Anuak “in part.”

## **STATEMENT OF JURISDICTION**

The Ethiopian government has not ratified the Rome Statute. Yet crimes against humanity are treated as *jus cogens* – an absolute norm of international law that is binding on all states.<sup>107</sup> In other words, due merely to its existence as a state, Ethiopia must abide by international law that prohibits crimes against humanity. Accordingly, the Ethiopian government cannot rely on its failure to ratify the Rome Statute as justification for any acts it has committed constituting crimes against humanity. Moreover, even though Ethiopia is not yet a member state of the ICC, the country may become a member in the future, thus fulfilling the personal jurisdiction requirement. In this vein, even though the Anuak complaint currently fails to satisfy all the jurisdictional requirements, the Anuak should be allowed to provisionally file this complaint subject to Ethiopia’s accession to the ICC.

### **A. Personal Jurisdiction**

Currently, the International Criminal Court does not have personal jurisdiction over the government of Ethiopia. In order to satisfy the personal jurisdiction requirements for submitting a claim to the ICC, the claim must fulfill the following requirements:

- 1) The accused must be a national of a state member country;

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<sup>105</sup> GW-SRI October 2004 Report, *supra* note 17, p. 27.

<sup>106</sup> *Jelusic*, *supra* note 73, para. 82.

<sup>107</sup> *See id.* Actions such as slavery and genocide are other examples of *jus cogens*.

- 2) One or more parties must be a state actor;
- 3) The crime must have been committed within the territory of a member state; and
- 4) The crime must have occurred after July 1, 2002 or be ongoing and continuous.<sup>108</sup>

As mentioned above, presently a complaint against the Ethiopian government does not meet the personal jurisdiction requisites. Nonetheless, the court should retain a file of this complaint until the court assumes jurisdiction, or until the Security Council directs the court to act.

## **B. Subject Matter Jurisdiction**

The Rome Statute establishes that the ICC can only hear claims within the subject matter of its jurisdiction, specifically the crimes of genocide, war crimes, crimes of aggression, or crimes against humanity.<sup>109</sup> The forced displacement and persecution of the Anuak qualify as crimes against humanity. The Rome Statute includes within its definition of crimes against humanity the deportation or forcible transfer of population.<sup>110</sup> The Anuak have been forcibly removed from their ancestral domain and have been continually denied return to that land. The restrictions the Ethiopian government has placed on access to the resources of the Gambella region are a continuous crime of displacement against the Anuak.

The government of Ethiopia has also committed the crime of persecution against the Anuak. The removal of the Anuak from the Gambella and the subsequent constant threat of cultural annihilation qualify as persecution since the Anuak are a distinct group with a distinct culture that is being targeted by the Ethiopian government and forced to change.

Life in the refugee camps has brought the Anuak population and its culture to the brink of extinction. The government's crimes against the Anuak have been widespread and systematic since their policies have injured the vast majority of the Anuak in Ethiopia.

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<sup>108</sup> Rome Statute, art. 12.

<sup>109</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, art. 5, *available at* <http://www.un.org/law/icc/statute/romefra.htm> [*hereinafter* Rome Statute].

<sup>110</sup> Rome Statute, art. 7.



## **CONCLUSION**

Given the events in Gambella in light of international standards, it is evident that crimes against humanity have been committed against Anuak civilians. First, several enumerated acts have been committed including murder, deportation or forcible transfer, rape, and persecution. Second, the crimes have been committed on a widespread and systematic basis with violence occurring across Gambella over a span of time. Finally, evidence demonstrates that the perpetrators understood that their actions were part of a larger government policy of targeting the Anuak in Gambella.

Furthermore, the acts committed in Gambella are perilously close to satisfying the definition of genocide. It is evident that the Anuak are a distinct group as recognized by the Ethiopian government and other ethnic groups in the area. In addition, several acts enumerated in the Genocide Convention have been committed against the Anuak. The only element as to which any ambiguity may exist is intent, and the case for the presence of genocidal intent has gained credibility as more information is made known to the public.

Evidence has emerged which implicates high-level Ethiopian officials in a planned campaign against the Anuak. If this information can be substantiated, the intent element, and therefore the definition of genocide, will be satisfied. In addition, the gravity of the situation can be taken into account to determine intent. To this point, up to 2.5% of the entire Anuak population has been killed in recent violence. There is no specific number of victims necessary to determine intent to destroy a group under the Convention language. However, further probable violence will strengthen arguments that the campaign against the Anuak is a coordinated effort to destroy the group in whole or in part. Unless the violence is halted immediately, it is very likely that the definition of genocide will be satisfied.

The Ethiopian government's actions in the current conflict in Gambella constitute crimes against humanity. The Anuak have suffered acts of murder, physical and sexual violence, and sustained persecution and forced transfer from their homes as a direct result of the actions of the Ethiopian government and Highlander militias. Since the Ethiopian government perpetrated the acts as part of a larger policy of attacking the Anuak, they must have had knowledge of the policy. Thus, the Ethiopian government was and continues to be directly involved in the perpetration of a number of the enumerated acts required to fulfill a finding of crimes against humanity.

Furthermore, if the Ethiopian government and Highlander militias continue the attacks, and it is proven that the government committed these crimes as part of a broader intent to destroy the Anuak people, the Ethiopian government faces not only charges of crimes against humanity but of genocide as well.