

**Communication 372GTK/2009-Interights (on behalf of Gizaw Kebede and Kebede
Tadesse) v Ethiopia**

Summary of Complaint

1. The Complaint was received at the Secretariat of the African Commission on Human and Peoples' Rights on 12 March 2009. The Complaint is brought by International Centre for the Legal Protection of Human Rights (INTERIGHTS) on behalf of Gizaw Kebede (1st Applicant) and Tadesse Kebede (2nd Applicant) against the Federal Democratic Republic of Ethiopia¹.
2. The 1st Applicant is the son of the 2nd Applicant and they are both citizens of Ethiopia. The Complainant alleges that the 1st Applicant was issued licence for the production of river washed sand from 1993 to 2004 and the 2nd Applicant was issued licences for the production of construction materials from 30 June 1954 to 4 February 2004, at District Met Walga Farmers Association in Walgaa River (now the Goro District Soyema Farmers Association), and at Woliso District Maru Gotu Farmers Association.
3. The Complainant states that in Ethiopia, administrative zones are made up of districts. The former Woliso District is located in South West Shoa District which administers the area in which the quarries are located. South West Shoa District authorities issued the licences on behalf of the Ministry of Energy and Mines and in accordance with Proclamation 52/1993 article 46.

¹ The Federal Democratic Republic of Ethiopia ratified the African Charter on Human and Peoples' Rights on 15 June 1998 and is thus a State party to the African Charter.

4. The Complainant alleges that on 4 February 2004, South West Shoa authorities invoked directives issued by the Federal Ministry of Mines and Energy which effectively revoked the Applicants licences. The directive was that the work undertaken by the Applicants would instead be undertaken by members of Associations. On 30 April 2004, the Oromia State authorities issued similar directives which were distributed to zonal administrative offices. They also stated that the production of any construction and precious materials and mines would be done through workers belonging to an Association.
5. The Complainant alleges that the Applicants together with their workers formed an Association and requested official recognition to allow them to continue operating the quarries. This request was denied.
6. The Complainant avers that from April 2004 to December 2006, the Applicants were not allowed to produce construction materials on the quarries, but only allowed to sell already processed construction materials. Subsequently from January 2007 to 13 January 2008, the district administration denied access to the quarries which were under constant guard by policemen and farmer association guards.
7. The Complainant states that on 13 January 2008, the Respondent State seized the Applicant's quarries and ordered that organized, unemployed youth belonging to Melti Walga Sand Producers Association should work at and manage the quarries.
8. The Complainant alleges that contrary to the Respondent States position that the quarries would be run by a youth association, the quarries are now being managed by Getahun Gudisa and Muluneh Getahum. The Complainant further

alleges that members of the youth association are not directly engage in the sand production as Getahun Gudisa and Muluneh Getahum have employed other workers as the Applicants had done.

9. The Complainant states that the 1st and 2nd Applicants filed separate petitions before the District Court against the Office of Mines and Energy of the South West Shoa Zone for the reinstatement of their licences. On 17 June 2005, the District Court found in favour of the 1st Applicant and on 25 January 2006, found in favour of the 2nd Applicant. For both cases, the District Court found that the Respondent State's Proclamation 52/93, Article 2.2, was meant to regulate a different kind of mine and not the kind run by the Applicants and as such the Respondent State should have made provision for the Applicants to continue running the mines. The District Court also found that cancellation of the licences was invalid and therefore ordered for the Applicants licences to be reinstated.
10. The Complainant avers that the Respondent State failed to comply with the judgement of the District Court and the Applicants re-applied to the District Court in 20 March 2007, requesting the reinstatement of their licences. In refusing their application, the District Court held that the judgement should have been executed within a year of its pronouncement, despite the fact that Article 384 of the Ethiopian Civil Procedure Code provides a 10 year time limit for the execution of judgements.
11. The Complainant states that on 22 March 2007, the Applicants made separate appeals to the South West Shoa High Court against the District Court Judgement of 20 March 2007. In separate judgements delivered on 15 and 29 May 2007, respectively, the High Court held that the District Court's judgement of 20 March 2007 was contradictory and ordered the District Court to execute its previous

judgements of 17 and 25 June 2006, respectively. The District Court declined to comply with the High Court order.

12. The Complainant further states that on 1 January 2008, the Respondent State had prepared a contract which states that the Applicants would use their own labour at the quarries and not engage workers. The Applicants did not agree with the contents of the contract. The Applicants informed the District Court of this development and in its decision of 14 January 2008; the District Court stated that it could not interfere with the authorities' decision.

13. The Complainant avers that the matter went to the High Court again on appeal from the decision of 14 January 2008, and the High Court affirmed the decision of the District Court. The Applicants applied to the Federal Council of Constitutional Inquiry which on 6 June 2008, declined to hear the application on the grounds that the facts before it did not warrant a Constitutional interpretation.

14. The Complainant alleges that the Applicants also claim that they also sought resolution of their grievances through non judicial remedies such as lodging a petition with the Ethiopian Federal Government, the Parliament, the Ethiopian Human Rights Commission, the Public Ombudsman, the Council of Constitutional Inquiry and the Ethical and Anti-Corruption Commission, to no avail.

Articles alleged to have been violated

15. The Complainant alleges a violation of Articles 1, 7, 14 and 26 of the African Charter by the Respondent State.

16. The Complainant requests that the following remedies be granted by the African Commission:

- I. An order directing the Respondent State to implement the Court judgement delivered in favour of the Complainant or an order directing that the Respondent State provide an effective remedy for the Applicants.
- II. In the alternative, if the African Commission finds that the withdrawal of the Applicants licenses and the seizure of the quarries were justified and in the public interest, an order that the Respondent State pay commensurate compensation to the Applicants.

The Procedure

17. The Secretariat of the African Commission received the Complaint on 12 March 2009, and acknowledged receipt of the same on 15 March 2009, requesting that a signed copy of the Complaint be sent to the Secretariat as soon as possible.

18. On 17 March 2009, the Secretariat received a signed copy of the complaint and acknowledged receipt of the same.

19. During the 6th Extra Ordinary Session of the African Commission, which took from 30 March to 3 April 2009, in Banjul, The Gambia, the African Commission considered the Communication and decided to be seized thereof.

20. By Note Verbale dated 6 April 2009, and by letter of the same date, both parties were informed of the decision of the African Commission and requested to

submit arguments on Admissibility of the Communication within three months thereof, i.e. 6 July 2009.

21. By letter and Note Verbale dated 7 January 2010, the Secretariat informed both parties that two Communications were registered with the same reference number and as in that regard, has re-numbered the above Communication as Communication 372GTK/09. The Secretariat also informed both parties that during the 46th Ordinary Session of the African Commission, which took place from 11 to 25 November 2009, in Banjul, The Gambia, the African Commission deferred consideration of the Communication pending both parties submission on Admissibility.
22. By letter and Note Verbale dated 4 June 2010, the Secretariat informed both parties that during the 47th Ordinary Session of the African Commission which took place from 12 to 26 May 2010, in Banjul, The Gambia, the African Commission deferred consideration of the Communication pending both parties submission on Admissibility.
23. On 6 July 2010, the Secretariat received the Complainant's submission on Admissibility of the Communication.
24. By letter dated 7 October 2010, the Secretariat acknowledged receipt of the Complainant's submission on Admissibility and forwarded same to the Respondent State.
25. By Note Verbale dated 29 October 2010, the Secretariat received the Respondent States submission on Admissibility of the Communication.

26. By Note Verbale and letter dated 9 December 2010, the Secretariat acknowledged receipt of the Respondent States submission on Admissibility and forwarded same to the Complainant respectively. The Secretariat also informed both parties that during the 48th Ordinary Session which took place from 10 to 24 November 2010, in Banjul, The Gambia, the African Commission deferred consideration on Admissibility of the Communication because it had just received the submission of the Respondent State on Admissibility.
27. By Note Verbale and letter dated 16 May 2011, the Secretariat informed both parties that during the 49th Ordinary Session of the African Commission which took place from 28 April to 12 May 2011, in Banjul, The Gambia, the African Commission deferred consideration on Admissibility of the Communication to its 50th Ordinary Session due to lack of time.
28. By letter dated 28 September 2011, the Secretariat received additional submissions on Admissibility from the Complainant.
29. By letter dated 10 October 2011, the Secretariat acknowledged receipt of the Complainant's additional submission on Admissibility.
30. By Note Verbale and letter dated 9 November 2011, the Secretariat informed both parties that during the 50th Ordinary Session of the African Commission which took place from 24 October to 7 November 2011, in Banjul, The Gambia, the African Commission deferred consideration on Admissibility of the Communication to its 51st Ordinary Session due to lack of time.

The Law on Admissibility

Complainant's Submission on Admissibility

31. The Complainant submits that the criteria for Admissibility stipulated in Article 56 of the African Charter has been satisfied and goes further to address each of these criteria.
32. The Complainant submits that in accordance with Article 56(1) of the African Charter, the Applicants in this Communication have been identified and relevant details provided to the African Commission, along with the details of those individuals and organisations representing them.
33. The Complainant states that Article 56(2) of the African Charter has been complied with, noting that the Communication is compatible with the Constitutive Act of the African Union and with the African Charter.
34. The Complainant submits that the Communication is presented in a polite and respectful language and as such is in compliance with Article 56(3) of the African Charter.
35. The Complainant avers that the Communication is based on information provided by the Applicants and on Court documents, not on media reports and as such has complied with Article 56(4) of the African Charter.
36. The Complainant submits that Article 56(5) has been fulfilled because the Applicants have exhausted all the remedies available to them in Ethiopia. The

Complainant states that the Applicants undertook the following steps in their quest for remedies before the Ethiopian judicial system:

- i. On 10 June 2005 and 25 January 2006, the District Court ruled in favour of the Applicants. On 20 March 2007, the District Court rejected the application regarding the non-implementation of its judgments by wrongly stating that these should have been implemented within a year.
- ii. On 29 March 2007, due to the non-implementation of the decisions, the Applicants appealed to the South West Shoa High Court. On 15 and 29 May 2007, Judge Gazali ordered that the District Court execute its decisions of 17 June 2005 and 25 January 2006 in respect of the two Applicants.
- iii. On 14 January 2008, the District Court declined to comply with the High Court Order stating that it would not interfere with the authorities' decision.
- iv. On 6 February 2008, the Federal Council of Constitutional Inquiry refused to hear the Applicants' application. It found that their petition did not warrant a constitutional interpretation.
- v. On 4 March 2008, the matter went to the High Court again on appeal from the decision of 14 January 2008. The High Court affirmed the decision of the District Court.

37. The Complainant submits that on the exhaustion of local remedies, the African Commission has stated that such a remedy, if it is available must be exhausted

by the Complainant before any recourse of the African Commission can be allowed. In determining this rule, the African Commission has stated that “the remedy must be available, effective and sufficient and a remedy is considered available if the petitioner can pursue it without impediment, and if sufficient it is capable of redressing the complaint²”.

38. The Complainant further submits that it is quite clear from the evidence set out in the Complaint that no good and sufficient remedy was available to the Applicants despite their engagement in a long and protracted judicial process, and as a result the Applicants have duly exhausted all the domestic remedies available to them in Ethiopia for the purpose of Article 56(5) of the African Charter.

39. The Complainant states that Article 56(6) of the African Charter has been fulfilled because the Communication is submitted within a reasonable time of their having exhausted local remedies.

40. The Complainant submits that the Communication has not been submitted to any other procedure of international investigation or settlement and as such has complied with Article 56(7) of the African Charter.

Respondent State’s Submission on Admissibility

41. The Respondent State submits on the following two grounds:

- i. the Communication is incompatible with the Constitutive Act of the AU or with the African Charter

² Communication 147/95, para 3 and 32. *Dawda Jawara v The Gambia*.

- ii. the Communication does not fulfil the requirements of Article 56(5) of the African Charter.

- i. Incompatibility with Constitutive Act/African Charter

42. The Respondent State argues that a Communication which does not reveal a prima facie violation of the African Charter will not be executed³. The Respondent State further argues that the facts of the case represent literally a renewal of an artisanal license obtained before the coming into force of the Proclamation No. 52/1993. Any issue beyond the renewal of the license was not raised by the Applicants during those proceedings nor were they entertained by the courts.

43. Thus, the rights at stake are the right to conduct mining operations which is accorded by Proclamation No.52/1993; and not by the African Charter. Therefore, the African Commission should not entertain the case as it does not invoke any provision of the Constitutive Act of the AU or the African Charter. Moreover, the African Commission does not have a jurisdiction to entertain a right which is solely given by the laws of Ethiopia.

- ii. Non Exhaustion of Local Remedies

44. On the non exhaustion of local remedies by the Complainant, the Respondent State avers that the exhaustion of local remedies rule is a well established principle under international law that provides a State an opportunity to redress

³ ACHPR Information Sheet No.3, Communication Procedure, Page 6.

a Complaint within the framework of the domestic legal system⁴. The Respondent State argues that according to the jurisprudence of the African Commission, local remedies mean “all local remedies”⁵, which could be defined as any domestic legal action that may lead to the resolution of Complaints at the domestic level. Furthermore, Rule 114 of the amended rules of procedure of the African Commission specifically affirms that all local remedies should be exhausted unless the processes of such remedies are taking an unduly long time.

45. The Respondent State submits that as can be observed from the allegation of the Complainant, the last step taken by the Applicants was to appeal to the High Court of the Regional Government, however, is not the end of the story regarding the judicial structure and arrangement of Ethiopia. If a party is aggrieved by a decision of a Regional High Court, that party can appeal to the Regional Supreme Court. In the extent that he is not satisfied with the decision of the Regional Supreme Court and believes that the decision has basic error of law, the party can still present the case to the Cassation Bench of that Regional Supreme Court. It does not end even there. The Federal Supreme Court has a power of cassation over any final decision by the Regional or Federal Courts containing basic error of law. This is prescribed under Article 80 of the Constitution of the Federal Democratic Republic of Ethiopia.

46. The Respondent State further submits that the Applicants did not exhaust local remedies available at the Regional and Country level.. The Applicants at least should have brought their case before the Regional Supreme Court or before the appropriate judicial organs of Ethiopia. It is abundantly clear that the local remedies are not exhausted. Therefore, the Respondent State submits that the

⁴ Communication 73/92, Mohammed L. Diakite v. Gabon. Para. 16.

⁵ Communication 107/92. Lawyers Comm. For Human Rights v. Tanzania.

African Commission should not entertain the case as doing so will certainly interfere with the jurisdictional sovereignty of Ethiopia.

47. Finally, the Respondent State request for the Communication to be declared Inadmissible on the grounds that the Applicants failed to comply with the requirements under Article 56(2) and 56(5) of the African Charter.

Complainant's Additional Submission on Admissibility

48. The Complainant responded to the Respondent State's submissions on the compatibility of the Communication with the African Charter and to the Respondent's State's assertions that the Applicants' have failed to exhaust local remedies.

49. The Complainant argues that the Respondent State's argument that the issues at the heart of this matter should not be considered by the African Commission but by the Respondent State's courts is flawed. Firstly, Article 45 of the African Charter does not enumerate classes of cases that the African Commission is mandated to consider, it provides a general outline of its role. Relevantly, this includes to "[e]nsure the protection of human and peoples' rights under conditions laid down by the present African Charter" (Article 45 (2)). Secondly, the African Charter protects the fair trial guarantees, the right to property and the independence of the judiciary which goes to the heart of the universality of human rights. Where policies or practices impinge on rights protected in the African Charter, the compliance with these policies or practices with the African Charter can be evaluated by the African Commission. The inclusion of these articles of the African Charter - which deals specifically with alleged violations

in the Applicant's complaint - confirms this, as does the fact that this Commission has dealt with several Complaints alleging similar violations.

50. The Complainant contends that the seizure of this Communication by the African Commission at the Ordinary Session of April 2009 is an indication that the alleged violations detailed in it are compatible with the African Charter⁶. This in effect means that the African Commission can consider this application.

51. The Complainant argues that the African Commission's protective mandate entitles it to assess and analyse the application of domestic legislation ratified by member states and to establish whether the application of those laws, policies and practices conflict with a state's international human rights obligations. The implementation of the Court Order by the Respondent State and the interferences of the Authorities in the judicial proceedings which the Applicants believed to be their only hope of securing redress for their grievances, infringed the Applicants right to property (14) and to a fair trial (Art.7) under the African Charter.

52. The Respondent State is therefore erroneous to assert that the Complaint only concerns rights provided for by domestic law. The actions of the Respondent State and its impact on the Applicants fall within the purview of the African Charter and therefore, the African Commission is empowered to consider the compatibility of those actions with the African Charter. The Government of Ethiopia ratified the Charter on 15 June 1998 and in so doing unreservedly accepted the competence of the African Commission to consider Communications alleging all African Charter violations.

⁶ Article 56(2) of the African Charter.

53. In response to the Respondent States submission on the exhaustion of local remedies, the Complainant argues that the remedies which the Respondent State argues that they should have pursued failed to meet the standard for an effective remedy in international and regional human rights law. Article 56 (5) of the African Charter provides that Communications shall be considered if they are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged⁷. In determining this rule the African Commission has stated that “the remedy must be available, effective and sufficient⁸”. The African Commission has observed that a “remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint⁹”.

54. The Complainant further argues that international and regional human rights law requires that for a domestic remedy to be exhausted, it must be available, effective and sufficient. This means that the particular remedy must not only be available in theory but also in practice and must have a reasonable prospect of success¹⁰. The European Court on Human Rights has held that to uphold objections based on failure to exhaust local remedies, the remedies must be both formally available and sufficiently certain in theory as well as in practice failing which they will lack the requisite accessibility and effectiveness¹¹. The Inter-American Court on Human Rights has opined that remedies should be exhausted when they exist formally, where they are adequate to protect the legal

⁷Article 56 (5) of the African Charter, http://www.achpr.org/english/info/charter_en.html, accessed 13 July 2011.

⁸*Dawda Jawara v The Gambia* (Communications 147/95 and 149/96), para 31.

⁹ *Ibid*, para 32.

¹⁰ *Collins v Jamaica Communication* UN Human Rights Committee, No. 356/1989, para 7.1.

¹¹ *Pavletic v Slovakia* App. No. 39359/98, June 22, 2004, para 68.

interest infringed and where they are effective in producing the result for which they were designed¹².

55. The Complainant submits that in the Applicants' case, existing remedies are not adequate and they do not protect the legal interest infringed. In *Anuak Justice Council v Ethiopia*, the African Commission has opined that it is incumbent on every Complainant to take all necessary steps to exhaust, or to at least attempt the exhaustion of local remedies¹³. The Complainant states that this Complaint should be distinguished from the *Anuak Justice Council* case, in which, the Applicant did not bother to seek redress before the Ethiopian Courts at all. The Complainant argues that in this case, the Applicants went to the District Court and the High Court and did not take the matter to the Regional Supreme Court because it is clear on settled legal opinion from the Oromia Supreme Court, the Supreme Court's Cassation Bench and the Cassation Bench of the Federal Supreme Court that there is no prospect of success and secondly that the filing of an appeal would not have achieved anything more and would simply have unduly prolonged an already protracted process.

56. The Complainant further argues that in *Ato Bekele Welde Michael & 25 Ors v the State*¹⁴, the Applicants sued the West Shoa Administrative Zonal Mine and Energy office in respect of the renewal of their revoked licenses. The High Court in West Shoa decided against the Appellants. The Appellants appealed to the Oromia Supreme Court and that Court confirmed the West Shoa Court's decision on the basis that it had found no error of law¹⁵. The Appellants appealed to the Cassation Bench of Oromia's Supreme Court, which decided that there was no

¹² *Parque Sao Lucas v Brasil*, Case 10.31, Inter-Am CHR, Report para 31.

¹³ *Anuak Justice Council v Ethiopia* 299/ 05 para 58.

¹⁴ Case No 10597.

¹⁵ File No. 649 13.

error of law in the lower Courts decision; and the file was closed. The Appellants appealed to the Federal Supreme Court's Cassation Bench and the Court found that there was no error in law and the substance of the appeal was not considered.

57. The Complainant argues that the case of *Ato Bekele Welde Michael & 25 Ors v the State* therefore demonstrates that the Regional Supreme Court considers cases similar to the Applicants only in instances where there has been an error of law. The Cassation Court does not consider the substance of cases. The law provides that in cases where they contain fundamental errors of law, the Federal Supreme Court shall have the power of cassation over the final decisions of the Regional Supreme Court rendered as a regular division or in its appellate capacity¹⁶. For these reasons, the Complainant submits that the Applicants case would not have been considered by the superior Regional or Federal Courts given the above settled legal opinion.

58. The Complainant submits that the African Commission should follow its jurisprudence that if a Complainant cannot make use of a remedy in the circumstances of his case such remedy is unavailable¹⁷. Therefore in a case where the remedy exists in theory but the Applicants cannot use it to address their grievances in practice; those remedies are in effect unavailable. The Complainant further submit that the remedies are also insufficient since the existing local remedies do not adequately deal with the problem, because in an analogous case, the Courts held that there was no error in the lower Courts decision and they could not therefore proceed to consider the substance of the case.

¹⁶ Article 10(2) *Federal Negarita Gazeta of the Federal Democratic Republic of Ethiopia*, 2nd Year No. 13, 1991.

¹⁷ *Jawara v Gambia*, op. cit., para 33.

59. In conclusion, the Complainant submits that based on the above, the Complaint is compatible with the African Charter and that local remedies have been exhausted because appealing to the higher Courts serves no purpose, when it is clear as has been illustrated above, that the procedures in those Courts would not address the substance of their matter and thus the violations they have suffered. For these reasons, the remedies asserted by the Respondent State do not meet the requirements for a remedy which they were required to exhaust, in that they are ineffective, unavailable and insufficient.

The African Commission's Analysis on Admissibility

60. The Admissibility of Communications within the African Commission is governed by the requirements of Article 56 of the African Charter. This Article provides seven requirements that must be met before the African Commission can declare a Communication Admissible. If one of the conditions/requirements is not met, the African Commission will declare the Communication Inadmissible, unless the Complainant provides sufficient justifications why any of the requirements could not be met.

61. The Complainant submits that the Communication complies with all the seven requirements of Article 56 of the African Charter. The Respondent State on the other hand, contends that the Complainant has complied with Article 56(2) and (5) of the African Charter. The African Commission will thus proceed to analyse these contended sub-articles.

62. Article 56(2) of the African Charter states that 'Communications...received by the Commission shall be considered if they are compatible with the Charter of the Organisation of African Unity or with the present Charter.' The Complainant

alleges violations of Articles 1,7,14 and 26 of the African Charter and as such state that the Article 56(2) has been complied with. The Respondent State on the other hand argues that, the Complainant has failed to comply with the requirements of Article 56(2), because the right to conduct a mining operation is accorded by Proclamation No.52/1993 of Ethiopian laws and not by the African Charter.

63. The African Commission observes that the Communication is brought against the Democratic Republic of Ethiopia which became a party to the African Charter on 15 June 1998, and also alleges violations of rights contained in the African Charter, in particular, rights guaranteed under Articles 1,7,14 and 26 of the African Charter. Having identified the violation of certain rights guaranteed under the African Charter, which Ethiopia is a party to and which the African Commission has a mandate to promote and protect, it holds that the requirements under Article 56(2) of the African Charter have been fulfilled.

64. Article 56(5) of the African Charter states that ‘Communications relating to human and peoples’ rights... shall be considered if they: are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged’. The Complainant submits that the Applicants have duly exhausted all the domestic remedies available to them in Ethiopia for the purpose of Article 56(5) of the African Charter by undertaking the following steps in their quest for remedies before the Ethiopian judicial systems:

- i. On 10 June 2005 and 25 January 2006, the District Court ruled in favour of the Applicants. On 20 March 2007, the District Court rejected the

application regarding the non-implementation of its judgments by wrongly stating that these should have been implemented within a year.

- ii. On 29 March 2007, due to the non-implementation of the decisions the Applicants appealed to the South West Shoa High Court. On 15 and 29 May 2007, Judge Gazali ordered that the District Court execute its decisions of 17 June 2005 and 25 January 2006 in respect of the two Applicants.
- iii. On 14 January 2008, the District Court declined to comply with the High Court Order stating that it would not interfere with the authorities' decision.
- iv. 6 February 2008, the Federal Council of Constitutional Inquiry refused to hear the Applicants' application. It found that their petition did not warrant a constitutional interpretation.
- v. On 4 March 2008, the matter went to the High Court again on appeal from the decision of 14 January 2008. The High Court affirmed the decision of the District Court.

65. The Respondent State on the other hand argues that the Complainant has failed to comply with Article 56(5) because as can be observed from the above, the last step taken by the Applicants was to appeal to the High Court of the Regional Government, which is not the end of the judicial structure and arrangement of Ethiopia. The Respondent State further argues that in accordance with Article 80 of the Constitution of the Federal Democratic Republic of Ethiopia, the Applicants since aggrieved by a decision of a Regional High Court, could have appealed to the Regional Supreme Court. If the Applicants are not satisfied with the decision of the Regional Supreme Court, they can still present the case to the Cassation Bench of that Regional Supreme Court. It does not end even there. The

Applicants could then approach the Federal Supreme Court, which has a power of cassation over any final decision by the Regional or Federal Courts containing basic error of law.

66. The Complainant in response to the Respondent State's submission on exhaustion of local remedies argues that the remedies which the Respondent State argues that they should have pursued fail to meet the standard for an effective remedy in international and regional human rights law. The Complainant argues that international and regional human rights law requires that for a domestic remedy to be exhausted, it must be available, effective and sufficient. This means that the particular remedy must not only be available in theory but also in practice and must have a reasonable prospect of success¹⁸.
67. The Complainant submits that the Applicants case would not have been considered by the superior Regional or Federal Courts because it is clear on settled legal opinion in the case of *Ato Bekele Welde Michael & 25 Ors v The State* that the Supreme Court's Cassation Bench and the Cassation Bench of the Federal Supreme Court can only use their cassation powers to consider cases in which there have been an error on points of law made by lower Courts, that the procedures in those Courts would not address the substance of their matter and thus the violations they have suffered. Therefore the filing of an appeal would not have achieved anything more and would simply have unduly prolonged an already protracted process.
68. The African Commission is of the view that the Complainant's argument that approaching the Regional Supreme Court would not have achieved any success because based on settled legal opinion in *Ato Bekele Welde Michael & 25 Ors v*

¹⁸ *Collins v Jamaica Communication* UN Human Rights Committee, No. 356/1989, para 7.1.

The State, the Supreme Court's Cassation Bench and the Cassation Bench of the Federal Supreme Court can only use their cassation powers to consider cases where there have been an error on points of law, made by lower Courts is flawed.

69. The African Commission in *Article 19 v Eritrea* and in *Anuak Justice Council v. Ethiopia* held that: "it is incumbent on the Complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies", adding that: "it is not enough for the Complainant to cast aspersions on the ability of the domestic remedies of the State due to isolated or past incidences". The African Commission further held that "arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will simply not sway this Commission". In these cases, the African Commission referred to the Human Rights Committee's decision in *A. v Australia*, in which the Committee held that: "mere doubts about the effectiveness of local remedies or prospect of financial costs involved did not absolve the author from pursuing such remedies. According to Article 80 (5) of the Constitution of Ethiopia, decisions of the Regional High Court are appealable to the Regional Supreme Court. It is only when the decision has a basic error of law that the Complainant's can appeal to the Cassation Bench of the Regional Supreme Court. This is also illustrated in the case cited by the Complainant in *Ato Bekele Welde Michael & 25 Ors v The State*, where the Applicants in that case approached the Regional Supreme Court appealing the decision of the Regional High Court, and thereafter approached the Cassation Bench of the Regional Supreme Court appealing on the decision having a basic error of law. Therefore the Complainant's argument that the Regional Supreme Court considers cases similar to the Applicants only in instances where there has been an error of law is flawed.

70. It is therefore the African Commission's view that the Complainant should have attempted to exhaust all available remedies, including appealing to the Regional Supreme Court which was the next step for the Complainant to appeal the decision of the Regional High Court according to the Ethiopian judicial structure stipulated in Article 80 of the Constitution of Ethiopia. It is not sufficient for the Complainant to cast mere aspersion on the ability of the Regional Supreme Court, its Cassation Bench and the Cassation Bench of the Federal Supreme Court due to past incidences such as in the case of *Ato Bekele Welde Michael & 25 Ors v The State*, without availing itself to them.

71. Furthermore, in the African Commission's decision on Admissibility, in the case of **Institute of Human Rights and Development in Africa and Interights/Mauritania**¹⁹, the African Commission reaffirmed the principle that "the generally accepted meaning of local remedies, which must be exhausted prior to any communication/complaint procedure before the African Commission, are the ordinary remedies of common law that exist in jurisdictions and normally accessible to people seeking justice". It is also the African Commission's view that in order to avoid a prolonged litigation process, the time the Applicants took to seek their grievances through non judicial remedies such as lodging a petition with the Ethiopian Federal Government, the Parliament, the Ethiopian Human Rights Commission, the Public Ombudsman, the Council of Constitutional Inquiry and the Ethical and Anti-Corruption Commission, they could have used that time attempting to exhaust the ordinary remedies of a judicial nature in Ethiopia²⁰. For these reasons the African Commission holds that the Complainant has not fulfilled the requirements under Article 56(5) of the Charter.

¹⁹ Communication 242/01. Institute of Human Rights and Development in Africa and Interights/Mauritania.

²⁰ Communication 242/01 and Communication 221/98. Institute of Human Rights and Development in Africa and Interights/Mauritania, Alfred B. Cudjoe/ Ghana.

Decision of The African Commission

72. Based on the above analysis, the African Commission on Human and Peoples' Rights decides:

- i. To declare the Communication Inadmissible because it does not comply with the requirements under Article 56 (5) of the African Charter;
- ii. To give notice of this decision to the parties;
- iii. To publish this decision on its 32nd Activity Report.

Done in Banjul, The Gambia, during the 10th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, December 2011.