

## COMMUNICATION FROM THE CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE)

**Ref: ACHPR/LPROT/COMM/296/05/SUD/RE**

### **BRIEF ON ADMISSIBILITY PURSUANT TO ARTICLE 56 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

#### **I. INTRODUCTION**

1. The Centre on Housing Rights and Evictions (COHRE) respectfully submits the following brief on the admissibility of its Communication (Ref: ACHPR/LPROT/COMM/296/05/SUD/RE) to the African Commission on Human and Peoples' Rights (African Commission) with respect to past and ongoing forced evictions and accompanying human rights violations in the Darfur region of Sudan. Taken together, these forced evictions and accompanying human rights violations amount to both a series of serious human rights violations and a massive violation of human rights protected by the African Charter, and in particular Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22. With this Communication, COHRE asserts violations of Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter on Human and Peoples' Rights.

2. For Communications to be considered admissible, they must meet the admissibility requirements of Article 56 of the African Charter on Human and Peoples' Rights, which states that:

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.<sup>1</sup>

**II. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) AND 22 ARE ADMISSIBLE AS THEY (1) INDICATE THEIR AUTHORS.**

3. The author of the Communication is clearly stated as the Centre on Housing Rights and Evictions (COHRE). COHRE is an international human rights non-governmental organisation with Observer Status with the African Commission with its African Programme based in Accra, Ghana. COHRE works to promote and protect economic, social and cultural rights for everyone, everywhere, with a particular focus on the right to adequate housing and preventing or remedying forced evictions.

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<sup>1</sup> African [Banjul] Charter on Human and Peoples' Rights, Art. 56, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 Oct. 1986.

4. The contact information for the chief author of the Communication is:

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**III. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) AND 22 ARE ADMISSIBLE AS THEY (2) ARE COMPATIBLE WITH THE CHARTER OF THE ORGANIZATION OF AFRICAN UNITY OR WITH THE PRESENT CHARTER.**

5. The purposes of the Charter of the Organization of African Unity include the reaffirmation of the Universal Declaration of Human Rights. Furthermore, the Preamble of the Charter of the Organization of African Unity highlights that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate objectives of the African peoples.<sup>2</sup>

6. The purposes of the African Charter include promoting and protecting human and people's rights and freedoms as well as international protection of human rights.<sup>3</sup>

7. The purpose of the present Communication is to give effect to those purposes by accessing the human rights mechanisms, on behalf of those unable to do so on their own, created under the African Charter in order to enforce the human rights of the affected

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<sup>2</sup> Charter of the Organization of African Unity, Preamble.

<sup>3</sup> African [Banjul] Charter on Human and Peoples' Rights, Preamble, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 Oct. 1986.

persons and communities in the Darfur region of Sudan. Consequently, the present Communication is compatible with the Charter of the Organization of African Unity and the African Charter on Human and Peoples' Rights.

**IV. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) AND 22 ARE ADMISSIBLE AS THEY (3) ARE NOT WRITTEN IN DISPARAGING OR INSULTING LANGUAGE DIRECTED AGAINST THE STATE CONCERNED AND ITS INSTITUTIONS OR TO THE ORGANIZATION OF AFRICAN UNITY.**

8. The Communication is written in professional and respectful language which lays out the factual basis and legal analyses for the conclusion that the Government of Sudan has violated Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter. The authors of the Communication in no way intend the Communication to be deemed as written in disparaging or insulting language directed against the Government of Sudan or its institutions or the Organization of African Unity.

**V. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) AND 22 ARE ADMISSIBLE AS (4) THE FACTUAL BASIS IS NOT BASED EXCLUSIVELY ON NEWS DISCRIMINATED THROUGH THE MASS MEDIA.**

9. The factual basis of the present Communication is based on information received from organisations known for their accurate and objective fact-finding and reporting, including the United Nations, Amnesty International and Human Rights Watch. Reports from these entities are annexed to the Communication and form the foundation for the factual basis of the present Communication. These reports are part of the Communication by reference herein and in the main Communication. The only media source upon which the present Communication relies is the United Nations' IRIN News

service and this information merely confirms the information found in the other documentation

**VI. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 ARE ADMISSIBLE AS (5) LOCAL REMEDIES ARE NOT AVAILABLE AND THE CLAIMS HAVE NOT BEEN SETTLED BY THE GOVERNMENT OF SUDAN.**

10. Generally, local remedies must be exhausted prior to submitting a Communication to the Commission. There are, however, exceptions to this general rule. In *Consolidated communication 147/95 and 149/96*,<sup>4</sup> the African Commission held that local remedies must be available, effective and sufficient; A local remedy is considered available if the petitioner can pursue it without impediment, it is effective if it offers a prospect of success and it is sufficient if it is capable of redressing the complaint.

11. Those forcibly evicted and victims of accompanying human rights violations as well as those threatened by forced eviction and accompanying human rights violations in the Darfur region cannot avail themselves of local remedies for several reasons. First, they are increasingly being displaced into remote regions of Sudan or across international frontiers. Second, the Government of Sudan has not created a climate of safety necessary for victims to avail themselves of local remedies. Consequently, these impediments render local remedies unavailable to the victims.

12. Finally, as pointed out by the Commission in *World Organisation Against Torture, et al. v. Zaire*, Communications 25/89, 47/90, 56/91 and 100/93, as well as *SERAC and CESR v. Nigeria*, Communication 155/96, one rationale for the exhaustion of

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<sup>4</sup> *Sir Dawda K. Jawara v. The Gambia*, Communication No. 147/95,14996 (1999-2000).

local remedies is that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation. Similar to the reasoning and conclusion in the above-mentioned cases, it is not necessary to recount the international attention the violations in Darfur have received. The Government of Sudan is well aware of the series of serious and massive human rights violations that have occurred and are now occurring in Darfur and has taken no steps to halt and remedy those violations. Consequently, the Government of Sudan has had ample notice and more than sufficient opportunity to give local remedies and has failed to do so.<sup>5</sup>

**VII. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 ARE ADMISSIBLE AS (6) THEY ARE TIMELY.**

13. The facts asserted in this Communication have occurred very recently and indeed are ongoing. This communication, therefore, has been submitted to the African Commission within a reasonable period of time.

**VIII. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 ARE ADMISSIBLE AS (7) THE CLAIMS HAVE NOT BEEN SETTLED BY THE GOVERNMENT OF SUDAN.**

14 While peace talks have proceeded, they do not adequately address the individual and collective remedies due to the violations of Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter.

15. For instance, while the peace talks will hopefully result in what could be considered injunctive relief by halting further human rights violations, it does not provide

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<sup>5</sup> See, *World Organisation Against Torture, et al. v. Zaire*, Communications 25/89, 47/90, 56/91 and 100/93; *SERAC and CESR v. Nigeria*, Communication 155/96 (27 May 2002).

remedies for past human rights violations, including those of Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter.

16. Furthermore, the potential case to be brought before the International Criminal Court does not duplicate the present Communication as (1) the ICC has personal jurisdiction only over individuals and not the Government of Sudan; and (2) the ICC has substantive jurisdiction only over a narrow set of international humanitarian law and not over the substantive human rights law enshrined in Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter.

17. Finally, for the human rights enshrined in the African Charter to be meaningful, governments must abide by the corresponding legal obligations and when they fail to do so, as in the present case, victims must have access to remedies. Neither of the above-mentioned mechanisms provide individual or collective remedies for violations of the African Charter.

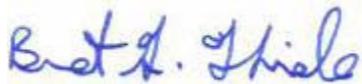
## **IX. CONCLUSION**

18. For the foregoing reasons, the present Communication addressing the past and ongoing forced evictions and accompanying human rights violations in the Darfur region of Sudan is admissible as it satisfies the requirements of Article 56 of the African Charter. Furthermore, taken together, these forced evictions and accompanying human rights violations amount to both a series of serious human rights violations and a massive

violation of human rights protected by the African Charter, and in particular Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22.

19. COHRE respectfully reserves the right to comment on any submissions by the Government of Sudan in this matter.

Respectfully submitted,



15 June 2005

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Date