

Communication from the Centre on Housing Rights and Evictions (COHRE)

I. INTRODUCTION

1. The Centre on Housing Rights and Evictions (COHRE) respectfully submits the following communication to the African Commission on Human and Peoples' Rights (African Commission) with respect to the forced evictions and accompanying human rights violations now ongoing in the Darfur region of Sudan pursuant to Articles 55, 56, and 58 of the African Charter on Human and Peoples' Rights (African Charter). 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. COHRE is an international human rights non-governmental organisation with Observer Status with the African Commission. 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.

II. THE ASSERTION OF VIOLATIONS OF ARTICLES 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 ARE ADMISSIBLE AS THEY ARE TIMELY, DOMESTIC REMEDIES ARE NOT AVAILABLE, THE CLAIMS HAVE NOT BEEN SETTLED BY THE GOVERNMENT OF SUDAN, AND THEY INVOLVE BOTH A SERIES OF SERIOUS HUMAN RIGHTS VIOLATIONS AND A MASSIVE VIOLATION OF HUMAN RIGHTS.

3. 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.

4. 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*,¹ the African Commission held that domestic remedies must be available, effective and sufficient; A domestic 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.

5. Those facing 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. Finally, the Government of Sudan is well aware of the series of serious and massive human rights violations now occurring in Darfur and has taken little or no steps to halt and remedy those violations. Consequently, these impediments render local remedies unavailable to the victims.

III. GENERAL FACTUAL BACKGROUND

6. Darfur is the largest region in Sudan, on its western border with Libya, Chad and the Central African Republic. Darfur is divided into south, west and north. Darfur has an area of about 256,000 square kilometers in size. It has a population of an estimated five million (5,000,000) persons, consisting of a complex tribal mix. The predominant ethnic groups in west Darfur are the Masaalit and Fur, together making a population of about 1.7 million.

¹ *Sir Dawda K. Jawara v. The Gambia*, Communication No. 147/95,14996 (1999-2000).

7. In February 2003 fighting intensified in the Darfur region following the emergence of two groups, the Sudan Liberation Army (SLA) and the Justice Equality Movement (JEM). The SLA and JEM share an ethnic background and come primarily from the Fur, Zaghawa and Masaalit tribes whose political demand essentially is for the Khartoum authorities to address the marginalisation and underdevelopment of the region.

8. In response to the emergence of these groups, the Government of Sudan formed, armed and sponsored a militia composed of a loose collection of fighters of so-called “Arab” background known as the “Janjaweed” to help suppress the rebellion.² Sudanese Government documentation indicates the involvement at the highest level of the Government of Sudan in the recruitment, arming and activities of the Janjaweed militia. For instance, a directive dated 13 February 2004 from the office of Sub-locality in North Darfur directed all Security units within the locality to allow the activities of the Janjaweed under the command of Sheikh Musa Hilal to proceed in areas of North Darfur and to secure their “vital needs.”³ The Janjaweed rode on horses and camels while Musa Hilal, the militia leader, and his guards use eight Landcruisers mounted with machine guns.⁴ This contingent of the Janjaweed was trained, armed and clothed in military uniform by the Government of Sudan. Furthermore, Government military helicopters provide arms and supplies of food to the Janjaweed camps in Mistriyah, Ustani, Jebel

² The terms “Arab” and “black African” are not necessarily based on ethnic origin. Rather, they relate to linguistic, tribal or lifestyle distinction, with the “Arab” Sudanese being predominantly nomadic pastoralists and the “black African” Sudanese being predominantly sedentary farmers. The Janjaweed consist of so-called “Arab” fighters who usually use camels or horses. In its present form, the Janjaweed was established by the security agencies of the Sudanese government headed by Musa Hilal. They have been trained, armed and clothed in military uniform by the Government of Sudan. The Sudanese Government military helicopters provide arms and supplies of food to the Janjaweed camp in Mistriyah, with about 6,000 militia fighters and other camps in north Darfur.

³ See, Human Rights Watch: Darfur documents confirm Government Policy of militia support. A human Rights briefing Paper, July 20, 2004.

⁴ See *id.*

Kaya, Girgigirgi, Masry, Milla, Ussayala, Funu Abu Jida, Kuma and several other Janjaweed camps in Darfur.⁵

9. In addition to attacking rebel targets, the Sudan Government's campaign has targeted the civilian population of the Fur, Masaalit and Zaghawa tribes. In certain areas in Darfur, the Janjaweed have been supported by the regular army in attacking and targeting civilians merely suspected of supporting the rebellion, while in other areas the Janjaweed have played the primary role of attack with the support of the military.⁶ These attacks on the civilian population either by the Government forces or the Janjaweed have resulted in wide-spread human rights violations against the people of Darfur. Essentially, the victims are being forcibly evicted from their homes and lands by some of the most egregious means, including killings, rape, assault, burning of houses, destruction of crops, looting of property and slaughter of livestock. Indeed, rape has been a feature of most attacks on women and girls in the Fur, Massalit and Zaghawa areas in Darfur. Furthermore, women and girls fleeing from the attacks are often sexually assaulted by the Janjaweed militia as they seek refuge in neighboring Chad or in one of the camps for internally displaced persons within Sudan.

10. Food stores, crops and livestock have been either looted or destroyed and wells been poisoned by the Janjaweed in an intentional attempt to starve the people of Darfur. In one such example, an aid worker reported to the United Nations news agency that the Janjaweed burned villages to the ground and poisoned wells and that the areas were

⁵ *See id.*

⁶ United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3 (7 May 2004).

rendered uninhabitable.⁷ The United Nations also reports that foodstuffs and livestock have been systematically looted or destroyed.⁸

11. These attacks on the civilian population of Darfur take many forms, including ground and air raids. The Government of Sudan has used the Janjaweed as ground forces in its attacks against civilians from the Fur, Massalit and Zaghawa ethnic groups. The villages have been raided with the use of helicopter gunships and Antonov airplanes belonging to the Government of Sudan, which often drop bombs on defenseless people in villages, towns, markets, and around wells.⁹

12. The air strikes are primarily pronounced in north Darfur, which is largely populated by the Zaghawa tribe.¹⁰ The attacks on villages take place in the night or early in the morning. The air raids are usually followed with land attacks by the military and Janjaweed who are often armed with AK 47 assault rifles, MiG3 assault rifles and rocket propelled grenades.

13. Residents of hundreds of villages have been forcibly evicted, with their homes and other structures totally or partially burned and destroyed. Thousands of civilians in Darfur have been killed in deliberate and indiscriminate attacks and more than a million people have already been displaced.¹¹

⁷ United Nations IRIN News Service, SUDAN: Threat of forced return looming in Darfur, (12 July 2004).

⁸ United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, para. 70, UN Doc. E/CN.4/2005/3 (7 May 2004).

⁹ *See, e.g.*, United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3 (7 May 2004).

¹⁰ United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3 (7 May 2004).

¹¹ Amnesty International Report, Sudan, Darfur: Too many people killed for no reason, 3 February 2004.

14. Finally, the facts contained in the Addenda to this Communication are incorporated into the Communication by this reference.¹²

IV. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF THE RIGHT TO LIFE ENSHRINED IN ARTICLE 4 AND THE RIGHT TO SECURITY OF THE PERSON ENSHRINED IN ARTICLE 6 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS.

15. The Government of Sudan has and is violating the right to life guaranteed by Article 4 of the African Charter on Human and Peoples' Rights. Article 4 states in relevant part that:

Human beings are inviolable. Every human being shall be entitled to respect for his [or her] life and the integrity of his [or her] person. No one may be arbitrarily deprived of this right.¹³

16. Additionally, the forced evictions and accompanying human rights violations that have recently occurred and are continuing to occur in the Darfur region violate the right to security of the person guaranteed by Article 6 of the African Charter on Human and Peoples' Rights. Article 6 stated in relevant part that:

Every individual shall have the right to ... security of his [or her] person.¹⁴

¹² Addenda include: United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3 (7 May 2004); Amnesty International, Sudan, Darfur: Too many people killed for no reason, AI Index: AFR 54/008/2004 (3 February 2004); Amnesty International, Sudan, Darfur: Rape as a weapon of war, AI Index: AFR 54/076/2004 (July 2004); Human Rights Watch, Darfur Destroyed: Ethnic Cleansing By Government and Militia Forces in Western Sudan, Vol. 16 No. 6(A), (May 2004); Human Rights Watch, Darfur documents confirm Government Policy of militia support, A Human Rights Briefing Paper (20 July 2004); Human Rights Watch, Empty Promises? Continuing abuses in Darfur, Sudan, A Human Rights Briefing Paper (11 August 2004); and United Nations IRIN News Service, SUDAN: Threat of forced return looming in Darfur, (12 July 2004).

¹³ African [Banjul] Charter on Human and Peoples' Rights, Art. 4, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

¹⁴ African [Banjul] Charter on Human and Peoples' Rights, Art. 7, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

17. The Government of Sudan has been directly involved through the armed forces of Sudan and the Government-backed militia, the Janjaweed, in the killing of hundreds of thousands of civilians in Darfur. This brutality is one means utilised by the Government of Sudan to forcibly evict the civilian population of the Darfur region. From February 2003 to the present, there have been numerous attacks on and killings of civilians by the Janjaweed, at times accompanied by Sudanese Government soldiers. The Government soldiers either stay behind the Janjaweed and cordon off villages, thereby preventing people from fleeing, or participate directly in the attacks and killings. These attacks are often carried out at dawn or during day as well as on market days. They have also been carried out during or after prayers at the local mosque or in the houses and at wells where women and children draw water. These attacks were carried out with the use of bombs dropped from the back of Antonov planes, shelling from helicopter gunships, AK 47 assault weapons, MiG3 and rocket propelled grenades. The following accounts provide just some examples.

18. On 17 May 2003, the village of Adu Jidad was attacked. Sudanese soldiers cordoned the market, and the Janjaweed killed at least 76 people in that market. In Kutum, in north Darfur, at least 32 persons were killed in their houses in July 2003. Between the period of February 2003 and August 2004, similar attacks and killings took place in several villages in Darfur, including, Abu Gamara, Sasa, Nana, Gorsella, Kornoy, Adar, Tina, Kishkish, Jafal, Amir, Garadai, Silaya, Murli, Meramta, Tukultukul, Usha and Jizu, all located in the Darfur region.¹⁵

¹⁵ See, Amnesty International, Sudan, Darfur: Too many people killed for no reason, AI Index: AFR 54/008/2004 (3 February 2004).

19. In August 2003, the village of Kishkish was cordoned and attacked by the Janjaweed and Sudanese soldiers and several people were killed including Mohamad Ishaq, Ishaq Abaker, Aisha Ishaq, Adam Mohamad, Ibrahim Yahaya Abdulahi, Ahmed Abubakar, Yahya Ismail, Abu Ishaq, Dilak Mohamad Bas, Adam Mohamad Abdulahi, Omar Adams and many more.¹⁶

20. In Usha village about 400 people were killed, about 72 people killed in Murli, about 300 people killed in Meramta, 18 people killed in the village of Kasia, about 280 people killed in Garadai and several others in other villages and towns in Darfur.¹⁷

21. In Dar Masalit alone about fourteen coordinated attacks by the army and Janjaweed were carried out beginning in mid-2003. Mororo village was attacked on 30 August 2003 and about forty people were killed. On 9 October 2003 an attack in Murnei area comprising about twelve villages left 82 people dead including children. In Urum about 122 people were killed in two attacks within a month.¹⁸

22. Between 6 and 29 December 2003, the villages of Bareh, Habila, Kondoli, Nouri, Kenyu and Sildi, all inhabited by the Fur, Masaalit and Zaghawa tribes, were attacked by the Sudanese army and Janjaweed militia killing about 290 people comprising men, women and children.¹⁹

23. On 7 February 2004 the villages of Sildi, and Tunfuka were attacked and about 38 people killed.²⁰ There have been and continue to be scores of such attacks, forced evictions, and accompanying human rights violations in Darfur since February 2003.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See, Human Rights Watch, Darfur Destroyed: Ethnic Cleansing By Government and Militia Forces in Western Sudan, Vol. 16 No. 6(A), (May 2004).

¹⁹ *Id.*

²⁰ *Id.*

Please see Addenda which, again, are incorporated by this reference into the Communication.²¹

24. The Government of Sudan has legal obligations pursuant to Article 4 of the African Charter to both respect the right to life, by not violating that right itself, as well as to protect the right to life, by protecting persons within its jurisdiction from non-state actors, such as the Janjaweed, that may violate that right. The facts above illustrate that the Government of Sudan has violated both of these legal obligations.

25. The Government of Sudan has legal obligations pursuant to Article 6 of the African Charter to both respect the right to security of the person, by not violating that right itself, as well as to protect the right to security of the person, by protecting persons within its jurisdiction from non-state actors, such as the Janjaweed, that may violate that right. The facts above illustrate that the Government of Sudan has violated both of these legal obligations.

IV. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF ARTICLE 12(1) OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS.

26. The forced evictions and accompanying human rights violations constitute violations of the right to freedom of residence as guaranteed in Article 12(1) of the African Charter on Human and Peoples' Rights.

²¹ Addenda include: United Nations, Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Situation of Human Rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3 (7 May 2004); Amnesty International, Sudan, Darfur: Too many people killed for no reason, AI Index: AFR 54/008/2004 (3 February 2004); Amnesty International, Sudan, Darfur: Rape as a weapon of war, AI Index: AFR 54/076/2004 (July 2004); Human Rights Watch, Darfur Destroyed: Ethnic Cleansing By Government and Militia Forces in Western Sudan, Vol. 16 No. 6(A), (May 2004); Human Rights Watch, Darfur documents confirm Government Policy of militia support, A Human Rights Briefing Paper (20 July 2004); Human Rights Watch, Empty Promises? Continuing abuses in Darfur, Sudan, A Human Rights Briefing Paper (11 August 2004).

27. Indeed, the facts indicate the intent by the Government of Sudan and the Janjaweed is to forcibly evict and forcibly displace thousands upon thousands of persons from their chosen and established places of residence. Such intentional and forced displacement clearly contravenes the right to freedom of residence.

V. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF THE RIGHT TO PROPERTY ENSHRINED IN ARTICLE 14 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS.

28. The facts involving forced eviction and housing and property destruction articulated in the preceding paragraphs constitute violations by the Government of Sudan of the right to property enshrined in Article 14 of the African Charter.

29. Article 14 of the African Charter states:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.²²

30. The Government of Sudan has an obligation under Article 14 of the African Charter, read in concert with Article 1, not only to *respect* the right to property, but also to *protect* that right. Clearly, the forced evictions and destruction of housing and property as laid out in the preceding paragraphs and the addenda to this Communication constitute violations of those obligations. The forced evictions that have occurred and are occurring in the Darfur region have not been carried out in accordance with the provisions of appropriate law, including international human rights law, and did not contribute to public need nor was it in the general interest of the community. Indeed, rather than contributing in any way to public need or in the general interest of the

²² African [Banjul] Charter on Human and Peoples' Rights, Art. 14, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

community, these forced evictions amount to gross violation of human rights, as recognized by the United Nations Commission on Human Rights in Resolutions 1993/77 and 2004/28.

31. Article 14 states that States Parties to the African Charter shall *guarantee* the right to property. The use of the word “guarantee,” rather than respect as used generally in Article 1 regarding all the rights in the African Charter, clearly signifies the drafter’s intention to create the obligation on the part of States Parties to also *protect* the right to property against arbitrary or unlawful interference from non-State actors, such as the Janjaweed. Therefore, by failing to adequately protect the petitioners from such interference with their right to property, the Government of Sudan has violated Article 14 of the African Charter.

32. The African Commission has addressed factual situations involving forced eviction and destruction of housing in the case of *Social and Economic Rights Action Centre and Center for Economic and Social Rights – Nigeria (SERAC and CESR)*.²³

33. *SERAC and CESR* dealt with, *inter alia*, forced evictions and housing destruction by both Government of Nigeria military troops and private security forces belonging to the Shell Petroleum Development Corporation. The African Commission held that these acts violated Article 14 of the African Charter as well as the right to adequate housing which, although not explicitly expressed in the African Charter, is implicitly guaranteed by Articles 14, 16 (protection of the best attainable state of physical and mental health)

²³ African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002), Fifteenth Annual Activity Report of the African Commission on Human and Peoples’ Rights, 2001-2002, Done at the 31st Ordinary Session of the African Commission held from 2nd to 16th May 2002 in Pretoria, South Africa.

and 18(1) (protection of the family). In reaching its conclusion, the African Commission also drew:

... inspiration from the definition of the term ‘forced evictions’ by the [United Nations] Committee on Economic, Social and Cultural Rights which defines this term as ‘the permanent removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.’²⁴

34. The European Court has dealt with principles of international human rights law similar to those protected by Article 14 of the African Charter, and thus provides additional guidance.²⁵ For instance, Article 1 of Protocol 1 to the European Convention states:

Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.²⁶

35. In *Akdivar and Others v. Turkey*, the European Court held that forced evictions constitute a violation of Article 1 of Protocol 1 to the European Convention. *Akdivar and Others* involved the destruction of housing in the context of the ongoing conflict between the Government of Turkey and Kurdish separatist forces. The petitioners were forcibly

²⁴ African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002) (citing Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, para. 4, U.N. Doc. E/C.12/1997/4 (1997)).

²⁵ See, e.g., *Akdivar and Others v. Turkey*, App. no. 00021893/93, Judgment 16 September 1996 (Involving large-scale evictions, forced relocation and demolition of villages by the Government of Turkey. The Court held that there had been a violation of both Article 8 of the Convention and Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation); *Cyprus v. Turkey*, App. no. 00025781/94, Judgment 10 May 2001 (Regarding Greek Cypriots displaced from northern Cyprus. The Court held that there are continuing violations by the Government of Turkey of Article 8 of the Convention and Article 1 of Protocol No. 1).

²⁶ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1, 213 U.N.T.S. 262, *entered into force* 18 May 1954.

evicted from their homes, which were subsequently set on fire and destroyed. It was unclear which party to the conflict was responsible. Nonetheless, the European Court held that the Government of Turkey violated both Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention because it has a duty to *both respect and protect* the rights enshrined in the European Convention and its Protocols.

36. Based on the legal obligations of the Government of Sudan under the African Charter, and guided by past precedent of the African Commission and the persuasive analyses of the European Court, the African Commission should find violations by the Government of Sudan of its obligations to respect and to protect the right to property as guaranteed under Article 14 of the African Charter on Human and Peoples' Rights. The African Commission should also find a violation of the right to appeal to a competent national organ against acts violating fundamental rights as recognised and guaranteed by conventions, laws, regulation and customs in force protected under Article 7 on account of the Government of Sudan's failure to adequately investigate and prosecute those responsible for the forced evictions and housing destruction, even if those responsible are agents of the Government acting in the course of their official duties. Furthermore, the Government of Sudan must provide restitution, compensation or both, as warranted, for damages resulting from the violation of the right to property.

VI. THE FORCED EVICTIONS AND DESTRUCTION OF HOUSING CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF THE RIGHT TO ADEQUATE HOUSING IMPLICITLY GUARANTEED BY ARTICLES 14, 16 AND 18(1) OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS AS INFORMED BY STANDARDS AND PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW TO WHICH THE GOVERNMENT OF SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, PROMOTE AND FULFIL.

37. The facts involving forced eviction and housing destruction articulated in the preceding paragraphs constitute violations by the Government of Sudan of the right to

adequate housing implicitly guaranteed by Articles 14, 16 and 18(1) of the African Charter.

A. THE AFRICAN CHARTER GUARANTEES THE RIGHT TO ADEQUATE HOUSING.

38. Article 14, 16 and 18(1) of the African Charter on Human and People's Rights guarantee, by implication, the right to adequate housing.

39. Article 14 protects the right to property, stating:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.²⁷

40. Article 16 states:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.²⁸

41. Article 18(1) states:

The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.²⁹

42. In Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) the African Commission

²⁷ African [Banjul] Charter on Human and Peoples' Rights, Art. 14, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

²⁸ *Id.* at Art. 16.

²⁹ *Id.* at Art. 18(1).

recognised that “the combined effect of Articles 14, 16, and 18(1) reads into the Charter a right to shelter or housing.”³⁰

B. INTERNATIONAL HUMAN RIGHTS LAW BINDING ON THE GOVERNMENT OF SUDAN PROVIDES GUIDANCE ON THE CONTENT OF THE RIGHT TO ADEQUATE HOUSING.

43. The African Commission should look to international human rights law for guidance when interpreting human rights protected by the African Charter. Indeed, Article 60 of the African Charter States:

The Commission shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of various African instruments on human and peoples’ rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.³¹

44. The right to adequate housing is one of the most well-defined rights under international human rights law. The Universal Declaration of Human Rights (UDHR) contains one of the earliest statements recognizing the right to adequate housing, stating in Article 25(1) that:

Everyone has the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care and necessary social services,

³⁰ African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) at para. 60.

³¹ African [Banjul] Charter on Human and Peoples’ Rights, Art. 60, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [or her] control.³²

45. When the United Nations codified the rights enshrined in the UDHR in legally binding international instruments, it included in the International Covenant of Economic, Social and Cultural Rights one of the strongest expressions of the right to adequate housing. The Government of Sudan ratified the ICESCR on 18 June 1986 and thereby became legally obligated to respect, protect, promote and fulfill the rights enshrined in that instrument. Article 11(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.³³

46. The United Nations Committee on Economic, Social and Cultural Rights (Committee) elaborated upon the precise content of the right to adequate housing through the unanimous adoption of its General Comment No. 4 on 12 December 1991.³⁴ General Comment No. 4, *inter alia*, obligates States Parties to respect, protect, promote and fulfill security of tenure, stating “all persons should possess a degree of security of tenure which

³² Universal Declaration of Human Rights, Art. 25(1), G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

³³ International Covenant on Economic, Social and Cultural Rights, Art. 11(1), G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976.

³⁴ See Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 53 (1994).

guarantees legal protection against forced eviction, harassment and other threats.”³⁵ On 16 May 1997, the Committee further elaborated on the obligations under the Covenant with the unanimous adoption of General Comment No. 7, which defines and proscribes the practice of forced evictions.³⁶ No State Party to the ICESCR has expressed disagreement with the right to adequate housing as defined and elaborated upon in these two General Comments.³⁷

47. Furthermore, with respect to forced evictions, which, again, the facts in the preceding paragraphs and addenda clearly constitute, it has been recognised that the practice of forced eviction is *prima facie* incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights, in particular the right to adequate housing.³⁸ Indeed, the international community has affirmed that the practice of forced eviction “constitutes a gross violation of human rights, in particular the right to adequate housing.”³⁹

48. The African Commission has indeed relied on international human rights law to define the right to adequate housing implied by Articles 14, 16 and 18(1) of the African Charter. In Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) the African Commission correctly “drew inspiration from the definition of the term ‘forced evictions’ by the

³⁵ Id. at para. 8(a).

³⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, UN Doc. E/C.12/1997/4 (1997).

³⁷ See, e.g., United Nations Expert Group Meeting on the Right to Adequate Housing, para. 6(c), UN Doc. E/CN.4/Sub.2/1996/10 (10 July 1996); see also State Party periodic reports to the UN Committee on Economic, Social and Cultural Rights.

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), para. 18, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 53 (1994).

³⁹ United Nations Commission on Human Rights, Resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 adopted unanimously on 10 March 1993.

[United Nations] Committee on Economic, Social and Cultural Rights which defined the term as ‘the permanent removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.’⁴⁰

49. The African Commission also relied on General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights on the right to adequate housing, and specifically on the requirement that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” In doing so, the Commission has found a violation of the right to adequate housing where a State Party has either carried out forced evictions or failed to protect persons within its jurisdiction from forced eviction by non-State actors.⁴¹

C. STATES PARTIES TO THE AFRICAN CHARTER MUST BOTH *RESPECT* AND *PROTECT* THE RIGHT TO ADEQUATE HOUSING.

50. Article 1 of the African Charter obligates States Parties to “recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.” The African Commission has recognized the “international accepted ideas of the various obligations engendered by human rights” including the obligations to respect and to protect.⁴²

51. The African Commission has reaffirmed that States Parties to the African Charter must *respect* the right to adequate housing, stating that, “at a very minimum, the right to

⁴⁰ Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) (citing United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the right to adequate housing (Article 11(1)): Forced Evictions.

⁴¹ See Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) at para. 63.

⁴² See African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002) at paras. 43 to 48.

shelter obliges [States Parties to the African Charter] not to destroy the housing of its citizens.”

52. States Parties to the African Charter must also *protect* the right to adequate housing against its own organs and agents as well as against non-State actors. The obligation to *protect* is made clear by the requirement that States Parties *guarantee* the right to property (Art. 14), *protect* the right to *enjoy* the best attainable state of physical and mental health (Art. 16), and that the family *shall be protected* (Art. 18(1)).

53. The African Commission made the obligation to *protect* clear when it unequivocally stated that, with respect to the right to adequate housing, the State’s “obligations to protect obliges it to prevent the violation of any individual’s right to housing by any other individual or non-State actors....” Furthermore, “where such infringements occur, [the State Party] should act to preclude further deprivations as well as guaranteeing access to legal remedies.”

54. Additionally, internationally accepted ideas of the various obligations engendered by human rights indicate that all rights – both civil and political rights and economic, social and cultural rights – generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duties to respect, protect, promote, and fulfil these rights.⁴³ These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter also inherently reflects these concepts. The obligation to *respect* entails that the State should refrain from interfering in the enjoyment of all human rights, while the

⁴³ See generally, Asbjørn Eide, “Economic, Social and Cultural Rights As Human Rights” in Asbjørn Eide, Catarina Krause and Allan Rosas (Eds.) *Economic, Social, and Cultural Right: A Textbook* (1995) PP. 21-40; Krzysztof Drzewicki, “Internationalization of Human Rights and Their Juridization” in Raija Hanski and Markku Suksi (Eds.), Second Revised Edition, *An Introduction to the International Protection of Human Rights: A Textbook* (1999).

obligation to *protect* entails the State to protect rights-holders against third parties, including non-State actors, through legislation, enforcement of that legislation and provision of effective remedies.

D. THE “UNDERTAKE TO ADOPT MEASURES” AND “PROGRESSIVE REALIZATION” CLAUSES ARE INAPPLICABLE TO THE PRACTICE OF FORCED EVICTIONS.

55. In Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002), the African Commission correctly recognised that the obligations *to respect* and *to protect* persons from forced eviction are not affected by the “undertake to adopt measures” or “progressive realization” clauses, as they largely entail “negative” legal implications that do not rely heavily on the availability of resources.

56. Indeed, principles of international human rights law require that the obligations to respect and protect persons from forced eviction are to have *immediate* effect. Again, the Committee on Economic, Social and Cultural Rights provides guidance. The Committee has stated in its General Comment No. 3 that “the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content” and that “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant.”⁴⁴ Since forced evictions are clearly retrogressive measures, they

⁴⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States parties obligations (Art. 2, para.1 of the Covenant) (Fifth session, 1990), para. 9, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 45 (1994).

constitute violations of the right to adequate housing unless justified under the Covenant.⁴⁵

57. Specifically with respect to the right to adequate housing, the Committee reaffirmed this principle in its General Comment No. 4, in which it stated:

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take *immediate* measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.⁴⁶

58. General Comment No. 4 reiterates this principle by stating that “regardless of the state of development of any country, there are certain steps which must be taken immediately [, that] many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices,”⁴⁷ and that “effective monitoring of the situation with respect to housing is another obligation of immediate effect.”⁴⁸

59. The Committee’s General Comment No. 7 on forced evictions also reaffirms this principle, stating:

⁴⁵ The Committee has stated that forced eviction, to be considered justified under the ICESCR, may only take place in “very exceptional circumstances” and in “strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality” and that they “should not result in rendering individuals homeless or vulnerable to the violation of other human rights.” General Comments No. 4 and 7.

⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), para. 8(a), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 53 (1994) (emphasis added).

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), para. 10, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 53 (1994).

⁴⁸ *Id.* at para. 13.

The obligations of States Parties to the Covenant in relation to forced evictions are based on Article 11(1), read in conjunction with other relevant provisions. In particular, Article 2(1) obliges States to use ‘all appropriate means’ to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. The State itself *must* refrain from forced evictions and *ensure* that the law is enforced against its agents *or third parties* who carry out forced evictions.⁴⁹

60. Finally, the “undertake to take steps” clause in Article 2(1) of the ICESCR has been interpreted *not* to allow undue delay in the full realisation of economic, social and cultural rights, but rather as requiring that “steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned.”⁵⁰ The “undertake to take steps” clause also does not affect a State Party’s obligation to respect and protect “minimum core obligation[s] to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party”⁵¹ and, as mentioned above, to refrain from taking “any deliberately retrogressive measures” except when justified by the “totality of the rights provided for in the Covenant.”⁵² As such, States are clearly forbidden to *expend* resources that would *deny* persons the right to adequate housing, including by carrying out forced evictions. States Parties, however, must also not stand idly by and allow third parties to carry out forced

⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, para. 9, UN Doc. E/C.12/1997/4 (1997) (emphasis added).

⁵⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States parties obligations (Art. 2, para.1 of the Covenant) (Fifth session, 1990), para. 2, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 45 (1994).

⁵¹ *Id.* at para. 10.

⁵² Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States parties obligations (Art. 2, para.1 of the Covenant) (Fifth session, 1990), para. 9, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 45 (1994).

evictions nor may they fail to adequately investigate and prosecute those persons and parties responsible for the forced evictions.⁵³ Indeed, to do so would not only constitute violations of the provisions related to the protection from forced eviction, but of the right to judicial protection enshrined in Article 7 of the African Charter as well, even if those responsible are agents of the government acting in the course of their official duties.

E. CONCLUSION TO SECTION VI.

61. Consequently, the Government of Sudan has violated the right to adequate housing implied in Articles 14, 16 and 18(1) of the African Charter by (1) *not respecting* the right to adequate housing by being complicit in the forced evictions and destruction of housing in the Darfur region; and (2) by *not protecting* the residents of those communities from forced eviction and housing destruction at the hands of third parties including the Janjaweed. Furthermore, the Government of Sudan also violated the right to judicial protection under Article 7 of the African Charter, by not adequately investigating and prosecuting its agents and the third parties responsible for the forced evictions and housing destruction that occurred and is occurring in the Darfur region.

62. Based on the legal obligations of the Government of Sudan under the African Charter, the African Commission should find violations by the Government of Sudan of its obligation to respect and to ensure the right to adequate housing as guaranteed under Articles 14, 16, and 18(1) of the African Charter on Human and Peoples' Rights. Furthermore, the Government of Sudan must provide restitution, compensation or both, as warranted, for damages resulting from the violation of the right to adequate housing.⁵⁴

⁵³ See, e.g., American Convention on Human Rights, Arts. 1 and 25, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁵⁴ See for *persuasive guidance*, Inter-American Court of Human Rights, *Velásquez Rodríguez* Case, para. 166, Judgment of 19 July 1988, Series C, No. 4.

VII. THE FORCED EVICTIONS AND DESTRUCTION OF HOUSING CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF THE PROHIBITION ON CRUEL OR INHUMAN TREATMENT GUARANTEED BY ARTICLE 5 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS AS INFORMED BY STANDARDS AND PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW TO WHICH THE GOVERNMENT OF SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, PROMOTE AND FULFIL.

63. The egregiousness and brutality of the forced evictions in the Darfur region constitute cruel and inhuman treatment by the Government of Sudan in violation of Article 5 of the African Charter on Human and Peoples' Rights.

64. The jurisprudence of the Committee Against Torture provides persuasive guidance with respect to when forced eviction amounts to cruel and inhuman treatment. In its Concluding Observations on the Government of Israel in 2001, for instance, the Committee held that "Israeli policies on house demolitions, ... in certain instances, amount to cruel, inhuman or degrading treatment or punishment."⁵⁵

65. Even more concretely, on 2 December 2002, the Committee Against Torture held that the forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention, even though the eviction was not perpetrated by public officials. The case, *Hijrzi v. Yugoslavia*,⁵⁶ involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby.

66. Article 16 of the Convention Against Torture states in relevant part that "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as

⁵⁵ Committee Against Torture, Concluding Observations on the Government of Israel, UN Doc. CAT/C/XXVII/Concl.5 (23 November 2001).

⁵⁶ Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).

defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁵⁷

67. The Committee found that the Police Department did not take any appropriate steps in order to protect the residents of Bazova Glavica, thus implying acquiescence in the sense of Article 16 of the Convention, and that the burning and destruction of their homes constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Torture Convention by not protecting the rights of the residents of Bozova Glavica.

68. It is clear from the facts articulated in the preceding paragraphs and the addenda, which include forced evictions carried out through killings, rapes and other such violations to persons’ physical and mental security, violations even more egregious than those used in Bazova Glavica, that the forced evictions that have occurred and are occurring in the Darfur region of Sudan rise to violations of the right to be free from cruel or inhuman treatment as guaranteed in Article 5 of the African Charter on Human and Peoples’ Rights.

VIII. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE GOVERNMENT OF SUDAN OF THE RIGHT TO ADEQUATE FOOD AND THE RIGHT TO WATER IMPLICITLY GUARANTEED BY ARTICLES 4, 16, AND 22 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS AS INFORMED BY STANDARDS AND PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW TO WHICH THE GOVERNMENT OF SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, PROMOTE AND FULFIL.

⁵⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 16, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* 26 June 1987.

69. The facts involving forced eviction and accompanying human rights violations articulated in the preceding paragraphs and addenda constitute violations by the Government of Sudan of the right to adequate food and the right to water implicitly guaranteed by, *inter alia*, Articles 4, 16 and 22 of the African Charter.

A. THE AFRICAN CHARTER GUARANTEES THE RIGHT TO ADEQUATE FOOD.

70. Article 4, 16, and 22 of the African Charter on Human and Peoples' Rights guarantee, by implication, the right to adequate food.

71. Article 4 protects the right to life, stating in relevant part that:

Human beings are inviolable. Every human being shall be entitled to respect for his [or her] life and the integrity of his [or her] person. No one may be arbitrarily deprived of this right.⁵⁸

72. Article 16 states:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when the are sick.⁵⁹

73. Article 22 states:

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind [and that] States shall have the duty, individually or collectively, to ensure the exercise of the right to development.⁶⁰

⁵⁸ African [Banjul] Charter on Human and Peoples' Rights, Art. 4, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

⁵⁹ *Id.* at Art. 16.

⁶⁰ *Id.* at Art. 22.

74. In Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) the African Commission recognized that:

The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind [States Parties] to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that [Government] should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.⁶¹

B. INTERNATIONAL HUMAN RIGHTS LAW BINDING ON THE GOVERNMENT OF SUDAN PROVIDES GUIDANCE ON THE CONTENT OF THE RIGHT TO ADEQUATE FOOD.

75. The African Commission should look to international human rights law for guidance when interpreting human rights protected by the African Charter. Indeed, Article 60 of the African Charter States:

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the

⁶¹ African Commission on Human and Peoples' Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (27 May 2002) at para. 65.

Specialized Agencies of the United Nations of which the parties to the present Charter are members.⁶²

76. The right to adequate food is well-defined under international human rights law. The Universal Declaration of Human Rights (UDHR) contains one of the earliest statements recognizing the right to adequate housing, stating in Article 25(1) that:

Everyone has the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [or her] control.⁶³

77. When the United Nations codified the rights enshrined in the UDHR in legally binding international instruments, it included in the International Covenant of Economic, Social and Cultural Rights one of the strongest expressions of the right to adequate food. The Government of Sudan ratified the ICESCR on 18 June 1986 and thereby became legally obligated to respect, protect, promote and fulfil the rights enshrined in that instrument. Article 11(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this

⁶² African [Banjul] Charter on Human and Peoples' Rights, Art. 60, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

⁶³ Universal Declaration of Human Rights, Art. 25(1), G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

effect the essential importance of international co-operation based on free consent.⁶⁴

78. The United Nations Committee on Economic, Social and Cultural Rights (Committee) elaborated upon the concise content of the right to adequate food through the unanimous adoption of its General Comment No. 12 in 1999.⁶⁵ General Comment No. 12, *inter alia*, obligates States Parties to respect, protect, promote and fulfil the right to adequate food.

C. THE AFRICAN CHARTER GUARANTEES THE RIGHT TO WATER.

79. The same analysis with respect to the right to adequate food applies to the right to water, and thus the right to water should be read into the rights guaranteed by, *inter alia*, Articles 4, 16, and 22 of the African Charter. Again, guidance should be sought from the Committee on Economic, Social and Cultural Rights.

80. In November 2003, the Committee unanimously adopted General Comment No. 15 on the right to water. General Comment No. 15 states that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” and makes clear that the right to water is implicit in several of the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights.⁶⁶

⁶⁴ International Covenant on Economic, Social and Cultural Rights, Art. 11(1), G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976.

⁶⁵ See Committee on Economic, Social and Cultural Rights, General Comment No. 12, The right to adequate food, (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).

⁶⁶ See, Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water, (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003).

D. STATES PARTIES TO THE AFRICAN CHARTER MUST BOTH *RESPECT* AND *PROTECT* THE RIGHT TO ADEQUATE FOOD AND THE RIGHT TO WATER.

81. In addition to the obligations to respect and to protect the right to adequate food as articulated in General Comment No. 12 and the obligations to respect and protect the right to water as articulated in General Comment No. 15, Article 1 of the African Charter obligates States Parties to “recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.” The African Commission has recognized the “international accepted ideas of the various obligations engendered by human rights” including the obligations to respect and to protect.⁶⁷

82. General Comment No. 12 states that “the obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access” while “the obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”⁶⁸

83. General Comment No. 12 states that the right to adequate food is violated, for example, on account of the “denial of access to food to particular individuals or groups, ... the prevention of access to humanitarian food aid in internal conflicts or other emergency situations, ... and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others.” Consequently, the factual situation articulated above and in the addenda and ongoing in the Darfur region of Sudan clearly constitutes a violation of the right to adequate food by the Government of Sudan.

⁶⁷ See African Commission on Human and Peoples’ Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002) at paras. 43 to 48.

⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food, para. 15, (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).

84. As for State Party obligations regarding the right to water, States are obligated to respect, protect, promote and fulfil the right to water.⁶⁹

85. Regarding the obligation to respect the right to water, General Comment No. 15 states, *inter alia*, that:

The obligation to respect requires that States Parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, *inter alia*, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.⁷⁰

86. Regarding the obligation to protect the right to water, General Comment No. 15 states that:

The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate

⁶⁹ See, Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water, paras. 20 – 29, (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003).

⁷⁰ *Id.* at para. 21.

water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.⁷¹

D. CONCLUSION TO SECTION VIII.

87. Consequently, the Government of Sudan has violated the right to adequate food and the right to water implied in, *inter alia*, Articles 4, 16, and 22 of the African Charter by (1) *not respecting* the right to adequate food and the right to water by being complicit in looting and destroying foodstuffs, crops and livestock as well as poisoning wells in the Darfur region; and (2) by *not protecting* the residents of those communities from looting and destroying foodstuffs, crops and livestock as well as poisoning of wells at the hands of third parties including the Janjaweed. Furthermore, the Government of Sudan also violated the right to judicial protection under Article 7 of the African Charter, by not adequately investigating and prosecuting its agents and the third parties responsible for these actions that occurred and are occurring in the Darfur region.

88. Based on the legal obligations of the Government of Sudan under the African Charter, the African Commission should find violations by the Government of Sudan of its obligation to respect and to ensure the right to adequate food and the right to water as guaranteed under, *inter alia*, Articles 4, 16, and 22 of the African Charter on Human and Peoples' Rights. Furthermore, the Government of Sudan must provide restitution, compensation or both, as warranted, for damages resulting from the violation of the right to adequate housing.⁷²

IX. DAMAGES

⁷¹ *Id.* at para. 23.

⁷² *See for persuasive guidance*, Inter-American Court of Human Rights, *Velásquez Rodríguez* Case, para. 166, Judgment of 19 July 1988, Series C, No. 4.

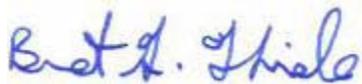
89. Petitioners respectfully reserve the right to address the issue of damages in a supplemental communication to the Commission.

X. CONCLUSION

90. Petitioners request that the African Commission on Human and Peoples' Rights hold the Government of Sudan liable for the human rights violations suffered in the Darfur region at the hands of Government forces and the Janjaweed, and in particular violations of Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter on Human and Peoples' Rights.

91. The Petitioners also urge the Commission to place the violations described in this Communication, before the Assembly of Heads of States for consideration under article 58 of the African Charter; that the Commission, with the approval of the Assembly, undertake an in-depth study of the situation in Darfur and make a factual report with findings and recommendations as mandated by Article 58(2) of the African Charter; and that the Commission apply Rule 111(3), of the Provisional Measures of the Rules and Procedure of the African Commission on Human and Peoples Rights, adopted on 6 October 1995, in view of the urgency required in this communication.

Respectfully submitted,



15 November 2004

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