

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

SUPPLEMENTARY BRIEF ON THE MERITS

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

I. INTRODUCTION

1. The Centre on Housing Rights and Evictions (COHRE) respectfully submits the following Supplementary Brief on the Merits 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. This brief supplements the original Communication submitted to the African Commission dated 15 November 2004. This Supplementary Brief on the Merits incorporates by this reference the content, including alleged facts and legal arguments, contained in the original Communication and its addenda submitted to the African Commission and dated 15 November 2004.

2. COHRE is an international human rights non-governmental organisation based in Geneva, Switzerland with Observer Status with the African Commission and Consultative Status with the United Nations (UN). COHRE has offices around the world including Ghana and South Africa. COHRE works to promote and protect economic, social and cultural rights for everyone, everywhere, with a particular focus on the right to adequate housing, preventing or remedying forced evictions, and the right to water.

II. GENERAL FACTUAL BACKGROUND: UPDATE TO ORIGINAL COMMUNICATION

3. This Supplementary Brief on the Merits updates the facts subsequent to 15 November 2004, when the original Communication was submitted to the African Commission. The Supplementary Brief on the Merits incorporates by reference the entire content of the original Communication and its addenda that was submitted to the African Commission in 2004.

4. COHRE conducted a mission to Sudan, including Darfur, from 16 July to 1 August 2006. That mission confirmed the pattern of forced evictions and accompanying human rights violations by Republic of The Sudan forces and the Janjaweed militia.

5. While in Darfur, COHRE conducted interviews with various international agencies as well as with internally displaced persons themselves. On 26 July, COHRE visited Kalma camp in Southern Darfur, which is the largest camp for internally displaced persons in all of Darfur – housing approximately 163,000 persons.

6. Testimonial evidence collected by COHRE confirmed that villages in Darfur has been attacked systematically by the Janjaweed militias, which have looted and burned entire communities, forcing residents to flee and seek safety in the growing IDP camps in Darfur and neighboring areas. Some residents have been living in the camps for up to three years.

7. Kalma residents told COHRE how their communities had been attacked by the Janjaweed in February of 2003. Attackers arrived on foot, in cars, and on camel back, shooting as they came. These attackers reportedly burned houses, killed villagers, burned

and destroyed crops, looted animals and abducted children. They kept burning surrounding villages, until they had razed a total of 22 villages to the ground, displacing a total of some 84,000 people. International agencies also told COHRE how the Janjaweed would often use tracer bullets intentionally to burn huts (most often made of straw), even though this kind of ammunition is only available to Sudanese Government forces. Additionally, testimony confirmed that the Janjaweed threw corpses into wells in order to poison water supplies.

8. In the days which immediately followed these attacks, affected villagers reportedly ran and sought safety on a nearby hill (Maghra mountain). There, the villagers were again attacked, this time with an air bombardment. The morning following the bombardment, the casualties were very high. In total, some 1,324 persons were killed in these series of attacks.

9. Other reputable reports provide updated information about forced evictions and accompanying human rights violations subsequent to the submission of the original Communication on 15 November 2004. Information from those reports follows.

10. In January 2005, the village of Hamada was attacked by Janjaweed militia. Several villagers were separated from the community and summarily executed.¹ Others, including children, were killed while attempting to flee a school.² Women and girls were raped. According to witnesses, the attackers repeatedly stated their intention of “cleaning

¹ Human Rights Watch, Entrenching Impunity: Government Responsibility for International Crimes in Darfur, Vol. 17, No. 17(A), p. 43 (December 2005).

² *Id.*

the whole area.”³ One witness was more precise, noting they said they were “cleaning the land from Shariya to El Fashir through Shangil Tobaya and Thabit.”⁴

11. The United Nations Special Rapporteur on the human rights situation in Sudan undertook a mission to Darfur in late 2005. After her visit, the Special Rapporteur reported that “the human rights situation in Darfur worsened from July 2005”⁵ and that “armed conflict too often left civilians the target of attacks by government forces, militia, and the rebels.”⁶ She also reported that “police failed in their obligation to carry out effective investigations”⁷ and that “perpetrators of abuses were rarely brought to justice.”⁸

12. Regarding violations of the obligation to respect human rights, the Special Rapporteur reported that “victims and witnesses have reported that government forces, at times in cooperation with militia forces, carried out at least eight organized armed attacks from September to November [2005] on over a dozen IDP camps or villages ... in such areas as Jebel Moun, Gereida, Shearia, Tawilia and Shangil Tobiya.”⁹ She went on to report that “the attacks left civilians dead and injured, and homes destroyed”¹⁰ and that “thousands of people were displaced by these attacks.”¹¹ The Special Rapporteur also received evidence that rape and other forms of sexual violence continued to be perpetrated against women and girls.¹²

³ *Id.*

⁴ *Id.*

⁵ Report of the Special Rapporteur on the human rights situation in the Sudan, para. 20, UN Doc. E/CN.4/2006/111 (11 January 2006).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at para. 22.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See, id.* at para. 31.

13. Regarding the obligation to protect persons' human rights, the Special Rapporteur reported that "the human rights situation was worsened by the failure of the Government to prevent and protect the internally displaced and villagers from being killed, assaulted and raped by armed militias"¹³ and that "in attacks where government involvement was not evident, it was clear that it nevertheless had failed in its obligation of due diligence to protect the rights of the people of the Sudan from the violence of third parties"¹⁴ and "failed to bring perpetrators of human rights abuses to justice."¹⁵

14. Additionally, "attacks perpetrated by armed militias restricted Darfurians from farming land, collecting fireweed for cooking, and collecting grass for feed"¹⁶ and thereby violating the right to adequate food. Furthermore, "government authorities quarantined Abu Shouk camp on 30 and 31 October 2005, which resulted in internally displaced persons not being permitted to access latrines, water points and primary health services inside the camp"¹⁷ thereby violating the rights to water and to the best attainable state of health.

15. The forced eviction of villages and other human rights violations continued into 2006. A Mission of the UN Security Council in June 2006 reported similar human rights violations to those articulated above and in the original Communication and its addenda.¹⁸ For instance, the Mission reported on the "deteriorating security situation in Darfur" and "the need to send a strong message to the Government concerning its

¹³ *Id.* at para. 24.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at para. 64.

¹⁷ *Id.* at para. 65.

¹⁸ *See*, Report of the Security Council mission to the Sudan and Chad, 4 – 10 June 2006, UN Doc. S/2006/433 (22 June 2006).

responsibility to protect its citizens in the region.”¹⁹ The Mission reported that “attacks against civilians continued, as did ... human rights abuses carried out by the law enforcement agencies.”²⁰

16. The Security Council also reported that “abuse and assault continue on a daily basis”²¹ and that “sixty to seventy per cent of women who left the camps to collect firewood had experienced gender-based violence,”²² including “girls as young as 10 years old ... becoming pregnant as the result of rape.”²³

17. The Secretary General of the UN reported the following in December 2005:

In November alone, up to 20,000 people were forced from their homes. ... Militia attacks on more than a dozen Massalit villages south-west of Gereida occurred from 6 to 17 November, resulting in an estimated 60 deaths, the highest figure recorded in the last year for a single incident. Huts were set on fire, fields and harvested crops were burned, and a total of 15,000 people were displaced. An attack of this scale, occurring over the course of more than one week in an area where the African Union Mission in Sudan (AMIS) is present, is a shocking indication of the Government’s continuing failure to protect its own population.²⁴

18. According to the UN Secretary General, “An estimated 250,000 people have been displaced or redisplaced in Darfur as a consequence of the ongoing violence since the beginning of 2006.”²⁵ As of mid-2006, according to the United Nations, some three million persons have been forcibly evicted and displaced from or within the Darfur

¹⁹ *Id.* at para. 53.

²⁰ *Id.* at para. 54.

²¹ *Id.* at para. 59.

²² *Id.*

²³ *Id.*

²⁴ UN Security Council, Monthly Report of the Secretary General on Darfur, paras. 5 and 10, UN Doc. S/2005/825 (23 December 2005).

²⁵ UN Security Council, Monthly Report of the Secretary General on Darfur, para. 17, UN Doc. S/2006/430 (21 June 2006).

region of Sudan. As of mid-2006, some 200,000 persons have been killed in the Darfur region.

19. The above-mentioned facts, as well as the facts contained in the original Communication and its addenda, are illustrative of a broader pattern of forced evictions and accompanying human rights violations in the Darfur region of Sudan. The scope of this Communication is intended to be on behalf of all victims of Darfur, and not limited to those mentioned in the expressly articulated facts.

III. MORE ON THE RESPONSIBILITY OF THE REPUBLIC OF THE SUDAN

20. As stated in the legal arguments below, the Republic of The Sudan has legal obligations under the African Charter to both *respect* and *protect* the residents of Darfur from human rights violations. The obligation to *protect* has been violated by the Republic of The Sudan on account of its failure to exercise due diligence in protect residents of Darfur from human rights violations.

21. The facts of this particular situation, however, illustrate that the Republic of The Sudan has also directly participated in human rights violations in Darfur and thus has also violated the obligation to respect human rights. Furthermore, the Republic of The Sudan has a large degree of control over the Janjaweed militias operating in Darfur. Evidence of this large degree of control is highlighted in Human Rights Watch, Entrenching Impunity: Government Responsibility for International Crimes in Darfur, Vol. 17, No. 17(A) (December 2005) which is annexed to this Supplementary Brief on the Merits and incorporated into this Brief by this reference.

IV. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE REPUBLIC OF THE 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.

22. The Republic of The 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.²⁶

23. Additionally, the forced evictions and accompanying human rights violations that have 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.²⁷

24. The Republic of The Sudan has been directly involved through the armed forces of The 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 Republic of The 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, and at

²⁶ 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.

²⁷ 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.

other times directly participate in these violations. 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 local mosques 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 Antonov planes, shelling from helicopter gunships, AK 47 assault weapons, MiG3 and rocket propelled grenades. The following accounts provide just some examples.

25. 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.²⁸

26. 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.²⁹

27. 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.³⁰

²⁸ See, Amnesty International, Sudan, Darfur: Too many people killed for no reason, AI Index: AFR 54/008/2004 (3 February 2004).

²⁹ *Id.*

³⁰ *Id.*

28. In Dar Masalit alone about fourteen coordinated attacks by the Sudanese military 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.³¹

29. 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 military and Janjaweed militia killing about 290 people comprising men, women and children.³²

30. On 7 February 2004 the villages of Sildi, and Tunfuka were attacked and about 38 people killed.³³ There have been and continue to be scores of such attacks, forced evictions, and accompanying human rights violations in Darfur since February 2003. Please see Addenda to the original Communication which, again, are incorporated by this reference into the Communication.³⁴

³¹ See, Human Rights Watch, Darfur Destroyed: Ethnic Cleansing By Government and Militia Forces in Western Sudan, Vol. 16 No. 6(A), (May 2004).

³² *Id.*

³³ *Id.*

³⁴ 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).

31. For instance, in January 2005, the village of Hamada was attacked by Janjaweed militia. Several villagers were separated from the community and summarily executed.³⁵ Others, including children, were killed while attempting to flee a school.³⁶

32. The Republic of The 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 Republic of The Sudan has violated both of these legal obligations.

33. The Republic of The 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 Republic of The Sudan has violated both of these legal obligations.

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

34. 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.

35. Indeed, the facts indicate the intent by the Republic of The Sudan and the Janjaweed is to forcibly evict and forcibly displace thousands upon thousands of persons

³⁵ Human Rights Watch, Entrenching Impunity: Government Responsibility for International Crimes in Darfur, Vol. 17, No. 17(A), p. 43 (December 2005).

³⁶ *Id.*

from their chosen and established places of residence. Such intentional and forced displacement clearly contravenes the right to freedom of residence.

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

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

37. 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.³⁷

38. The Republic of The 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 in the original Communication and its addenda 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 community, these forced evictions amount to gross violation of human rights, as

³⁷ 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.

recognized by the United Nations Commission on Human Rights in Resolutions 1993/77 and 2004/28.³⁸

39. 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 drafters’ 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 Republic of The Sudan has violated Article 14 of the African Charter.

40. 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)*.³⁹

41. *SERAC and CESR* dealt with, *inter alia*, forced evictions and housing destruction by both Nigerian 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) and

³⁸ UN Commission on Human Rights resolutions 1993/77 and 2004/28 state, in relevant part, that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing.” UN Commission on Human Rights resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 (1993) and UN Commission on Human Rights resolution 2004/28, UN Doc. E/CN.4/RES/2004/28 (2004).

³⁹ 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.

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.’⁴⁰

42. 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.⁴¹ 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.⁴²

43. 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

⁴⁰ 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)).

⁴¹ 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).

⁴² 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 Turkey violated both Article 8⁴³ 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.

44. Based on the legal obligations of the Republic of The 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 Republic of The 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 Republic of The 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 Republic of The Sudan acting in the course of their official duties.

VII. THE FORCED EVICTIONS AND DESTRUCTION OF HOUSING CONSTITUTE VIOLATIONS BY THE REPUBLIC OF THE 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 REPUBLIC OF THE SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, AND FULFIL.

⁴³ Article 8 of the European Convention on Human Rights and Fundamental Freedoms states "Everyone has the right to respect for his private and family life, his home and his correspondence" and that "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

45. The facts involving forced eviction and housing destruction articulated in the preceding paragraphs constitute violations by the Republic of The 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.

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

47. 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.⁴⁴

48. 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.⁴⁵

49. 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.⁴⁶

⁴⁴ 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.

⁴⁵ *Id.* at Art. 16.

⁴⁶ *Id.* at Art. 18(1).

50. 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 recognised that “the combined effect of Articles 14, 16, and 18(1) reads into the Charter a right to housing.”⁴⁷

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

51. 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.⁴⁸

52. 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:

⁴⁷ 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.

⁴⁸ 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.

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.⁴⁹

53. 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 Republic of The Sudan ratified the ICESCR on 18 June 1986 and thereby became legally obligated to respect, protect, 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 effect the essential importance of international co-operation based on free consent.⁵⁰

54. 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 1991.⁵¹ General Comment No. 4, *inter alia*, obligates States Parties to respect, protect, and fulfil security

⁴⁹ Universal Declaration of Human Rights, Art. 25(1), G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁵⁰ 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.

⁵¹ 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).

of tenure, stating “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”⁵² 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.⁵³ 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.⁵⁴

55. Furthermore, with respect to forced evictions, which, again, the facts in the preceding paragraphs and the original Communication and its 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.⁵⁵ Indeed, the international community has repeatedly affirmed that the practice of forced eviction “constitutes a gross violation of human rights, in particular the right to adequate housing.”⁵⁶

56. 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

⁵² Id. at para. 8(a).

⁵³ 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).

⁵⁴ 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.

⁵⁵ 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).

⁵⁶ UN Commission on Human Rights, Resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 (1993); UN Commission on Human Rights, Resolution 2004/28, UN Doc. E/CN.4/RES/2004/28 (2004).

correctly “drew inspiration from the definition of the term ‘forced evictions’ by the [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.’”⁵⁷

57. 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.⁵⁸

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

58. 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.⁵⁹

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ 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.

59. 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 shelter obliges [States Parties to the African Charter] not to destroy the housing of its citizens.”⁶⁰

60. 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)).

61. 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...”⁶¹ Furthermore, “where such infringements occur, [the State Party] should act to preclude further deprivations as well as guaranteeing access to legal remedies.”⁶²

62. 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, and fulfil these rights.⁶³ These obligations universally apply to all rights and entail a combination

⁶⁰ *Id.* at para. 61.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *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 Rajja Hanski

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 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.

63. 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.

64. 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

and Markku Suksi (Eds.), Second Revised Edition, *An Introduction to the International Protection of Human Rights: A Textbook* (1999).

the Covenant.”⁶⁴ Since forced evictions are clearly retrogressive measures, they constitute violations of the right to adequate housing unless justified under the Covenant.⁶⁵

65. 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.⁶⁶

66. 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 [Republic of The Sudan] from certain practices,”⁶⁷ and

⁶⁴ 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).

⁶⁵ 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.

⁶⁶ 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).

⁶⁷ 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).

that “effective monitoring of the situation with respect to housing is another obligation of immediate effect.”⁶⁸

67. The Committee’s General Comment No. 7 on forced evictions also reaffirms this principle of immediate effect, stating:

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.⁶⁹

68. 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.”⁷⁰ 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”⁷¹ and, as mentioned above, to refrain from taking “any deliberately retrogressive

⁶⁸ Id. at para. 13.

⁶⁹ 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).

⁷⁰ 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).

⁷¹ Id. at para. 10.

measures” except when justified by the “totality of the rights provided for in the Covenant.”⁷² 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 evictions nor may they fail to adequately investigate and prosecute those persons and parties responsible for the forced evictions.⁷³ 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 Republic of The Sudan acting in the course of their official duties.

E. CONCLUSION TO SECTION VII.

69. Consequently, the Republic of The 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 Republic of The 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.

⁷² 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).

⁷³ 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).

70. Based on the legal obligations of the Republic of The Sudan under the African Charter, the African Commission should find violations by the Republic of The 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.

VIII. THE FORCED EVICTIONS AND DESTRUCTION OF HOUSING CONSTITUTE VIOLATIONS BY THE REPUBLIC OF THE 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 REPUBLIC OF THE SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, AND FULFIL.

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

72. 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 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."⁷⁴ In those Concluding Observations, the "certain instances" included forced evictions and destruction of housing on a massive scale, noting that "the homes of at least 173 families had been destroyed by Israeli forces between September 2000 and February 2001,... [causing] indescribable suffering to the population" that "could not be justified on military or security grounds and had been committed solely for the purposes of intimidation."⁷⁵

⁷⁴ Committee Against Torture, Concluding Observations on the Government of Israel, UN Doc. CAT/C/XXVII/Concl.5 (23 November 2001).

⁷⁵ Committee Against Torture, Summary Record of the 480th meeting: Israel, UN Doc. CAT/C/SR.480, para. 5 (21 May 2001).

73. 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, *Hijrizi v. Yugoslavia*,⁷⁶ involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby. The Danilovgrad authorities knew of the impending forced evictions and failed to protect the residents of Bozova Glavica from the mobs that carried out the forced evictions and destruction of housing, thereby acquiescing to that violation. The entire Bozova Blavica settlement was levelled and burned to the ground.

74. 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 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.”⁷⁷

75. 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 Serbia and Montenegro had violated Article 16 of the Torture Convention by not protecting the rights of the residents of Bozova Glavica.

⁷⁶ Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).

⁷⁷ 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.

76. 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.

IX. THE FORCED EVICTIONS AND ACCOMPANYING HUMAN RIGHTS VIOLATIONS CONSTITUTE VIOLATIONS BY THE REPUBLIC OF THE 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 REPUBLIC OF THE SUDAN IS LEGALLY OBLIGATED TO RESPECT, PROTECT, AND FULFIL.

77. The facts involving forced eviction and accompanying human rights violations articulated in the preceding paragraphs and addenda constitute violations by the Republic of The 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.

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

79. 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.⁷⁸

⁷⁸ 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.

80. 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.⁷⁹

81. 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.⁸⁰

82. 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 [States Parties to the African Charter] 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.⁸¹

⁷⁹ Id. at Art. 16.

⁸⁰ Id. at Art. 22.

⁸¹ 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.

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

83. 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.⁸²

84. 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.⁸³

⁸² 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.

⁸³ Universal Declaration of Human Rights, Art. 25(1), G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

85. 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 Republic of The Sudan ratified the ICESCR on 18 June 1986 and thereby became legally obligated to respect, protect, 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 effect the essential importance of international co-operation based on free consent.⁸⁴

86. 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 1999.⁸⁵ General Comment No. 12, *inter alia*, obligates States Parties to respect, protect, and fulfil the right to adequate food.

C. THE AFRICAN CHARTER GUARANTEES THE RIGHT TO WATER.

87. 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*,

⁸⁴ 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.

⁸⁵ 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).

Articles 4, 16, and 22 of the African Charter. Again, guidance should be sought from the Committee on Economic, Social and Cultural Rights.

88. In November 2003, subsequent to the *SERAC and CESR* decision, 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, including the right to adequate housing, the right to adequate food, and the right to the highest attainable standard of health.⁸⁶

89. If General Comment No. 15 had been in force at the time of the *SERAC and CESR* decision, the Commission would likely have found violations of the right to water as implicitly guaranteed by Articles 4, 16, and 22 of the African Charter. With General Comment No. 15 now in force, and having been in force since before the human rights violations at issue in this Communication, the African Commission should hold that the right to water is indeed guaranteed by the African Charter and hold the Republic of The Sudan accountable for violations of that right.

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

90. 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

⁸⁶ 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).

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.⁸⁷

91. 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.”⁸⁸

92. 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 original Communication and its addenda and ongoing in the Darfur region of The Sudan clearly constitutes a violation of the right to adequate food by the Republic of The Sudan.

⁸⁷ 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.

⁸⁸ 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).

93. As for State Party obligations regarding the right to water, States are obligated to respect, protect, and fulfil the right to water.⁸⁹

94. 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.⁹⁰

95. 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 water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.⁹¹

⁸⁹ 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).

⁹⁰ *Id.* at para. 21.

⁹¹ *Id.* at para. 23.

D. CONCLUSION TO SECTION IX.

96. Consequently, the Republic of The 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 and denying access to water sources 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 and denying access to water sources at the hands of third parties including the Janjaweed. Furthermore, the Republic of The 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.

97. Based on the legal obligations of the Republic of The Sudan under the African Charter, the African Commission should find violations by the Republic of The 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.

X. REMEDIES

98. The Republic of The Sudan shall cease with immediate effect, all attacks against civilians in the Darfur region, including forced evictions and forced displacement. To this end, the Republic of The Sudan shall disarm the Janjaweed militias and any other paramilitary forces associated or otherwise supported by the Government and to stop supporting them.

99. The Republic of The Sudan shall comply with its obligations under the African Charter on Human and Peoples' Rights, other international human rights instruments to which it is a party, customary international law, and international humanitarian law.

100. The Republic of The Sudan shall implement the United Nations Principles on Housing and Property Restitution for Refugees and Other Displaced Persons ("Pinheiro Principles").⁹²

101. The Republic of The Sudan shall provide just and fair reparations, including restitution or compensation or both, to the victims of human rights violations in the Darfur region, and do so in genuine consultation with the victims.⁹³

102. The Republic of The Sudan shall investigate the forced evictions and accompanying human rights violations complained of and prosecute and punish those responsible for such violations. The Republic of Sudan should remove any obstacles to the above including immunity laws for military, security and other government authorities, officials and agents.

103. The Republic of the Sudan shall establish a development fund to invest in health, housing, food, water and health care programmes, including health care to deal with the

⁹² Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

⁹³ Note that with respect to housing, land and property restitution, international law required that "States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation." Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 21.1, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

physical and mental harm suffered on account of human rights violations and the resultant displacement, for the victims of the complained of human rights violations.

104. The Republic of The Sudan shall take positive measures “to protect the reproductive rights of women by authorizing [safe and accessible] medical abortion in cases of sexual assault [and] rape.”⁹⁴

105. The Republic of The Sudan shall publicly recognise international responsibility for the human rights violations that occurred in the Darfur region, including by issuing a public apology to the victims of those violations.

106. The Republic of The Sudan shall construct a monument recognising and honouring the victims of Darfur and place such monument in a suitable and prominent public location.

107. The Republic of The Sudan shall keep the African Commission informed regarding implementation of the ruling in this case. The Petitioners would request the African Commission to supervise the implementation of its ruling and to order the closing of this case only upon verification off full compliance with all the aspects of its ruling.

⁹⁴ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Art. 14(2c), Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (13 September 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force 25 November 2005. Although the Republic of The Sudan has not ratified this Protocol, Art. 14(2c) should be seen as a proper remedy for rape resulting in pregnancy as such rape violates Articles 4, 5, 16 and 18(3) of the African Charter on Human and Peoples’ Rights.

108. Petitioners respectfully reserve the right to address additional issues of remedies and damages in a supplemental communication to the Commission.

XI. REQUEST FOR PROVISIONAL MEASURES

109. COHRE urges the African Commission should exercise authority to issue Provisional Measures, pursuant to Rule 111 of the Rules of Procedure for the African Commission, since the ongoing forced evictions and accompanying human rights violations result in irreparable damage to the victims. Such Provisional Measures should include ordering the Republic of The Sudan to immediately implement UN Commission on Human Rights resolution 2005/82 and in particular to “cease all acts of violence immediately, and protect women and girls from sexual and other forms of violence” and to “respect the rights of refugees and internally displaced persons and their right of voluntary return in safety and dignity.” With respect to the latter, the African Commission should expressly order that the Republic of The Sudan implement the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) (Annex 4)⁹⁵ and in particular Principle 2.1 which states:

All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing land and/or property that is factually impossible to restore as determined by an independent impartial tribunal.⁹⁶

and Principles 21.1 and 21.2 which state that:

⁹⁵ Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

⁹⁶ Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 2.1, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.⁹⁷

States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.⁹⁸

XII. CONCLUSION

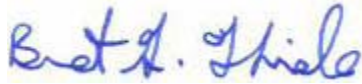
110. Petitioners reaffirm the request that the African Commission on Human and Peoples' Rights hold the Republic of The Sudan liable for the human rights violations suffered in the Darfur region at the hands of official Sudanese forces and the Janjaweed, and in particular violations of Articles 4, 5, 6, 7, 12(1), 14, 16, 18(1) and 22 of the African Charter on Human and Peoples' Rights, including the rights to adequate housing, food and water implicitly guaranteed by the African Charter.

⁹⁷ Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 21.1, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

⁹⁸ Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 21.2, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

111. 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, again, 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,



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