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BY EMAIL

13 July 2011

RE: Introduction of Communication: Sudan Democracy First Group, Interights, Human Rights Watch and REDRESS v SUDAN

Dear Commissioner,

This Communication is submitted by the Sudan Democracy First Group, Interights, Human Rights Watch and REDRESS (the Applicants) pursuant to Article 55 of the African Charter on Human and Peoples'

Rights (the African Charter) and Rule 111 (1) of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the African Commission).

Sudan Democracy First Group (SDFG) is a coalition of democrats and Sudan activists, trade unionists and academics men and women representing Sudan different cultural and ethnic backgrounds. Its objective is to voice the concerns of the voiceless Sudanese people across the country in the current critical moment the country is going through. The initiative is connected to other initiatives formed by Sudanese people in different centres across Sudan. Human Rights Watch and INTERIGHTS are both international human rights organisations with observer status before the African Commission. REDRESS is an international human rights organisation based in London.

The Communication is filed against the state of Sudan (the Respondent State). Sudan ratified the African Charter on 11 March 1986. The Applicants have not submitted this complaint to any other procedure of investigation or settlement.

The Applicants allege that the Respondent State has been engaged in a military campaign characterised by extrajudicial killings, enforced disappearances, torture and ill-treatment, arbitrary arrest and detention, forced displacement, destruction of property and unjustified restrictions of freedom of expression. The state authorities have failed to provide protection and have not investigated these violations and/or provided other forms of reparation. The Applicants submit that this conduct violated articles 1, 4, 5, 6, 9 (1), 12 and 14 of the African Charter.

1. Background

The Nuba Mountains are situated in Southern Kordofan and have the status of a transitional area under the Comprehensive Peace Agreement of 2005. Its unresolved status, the dispute over neighbouring Abyei, state elections that took place in May 2011 and returned Ahmed Haroun (who is subject to an arrest warrant by the International Criminal Court for war crimes and crimes against humanity committed in Darfur¹) as Governor of Southern Kordofan State, as well as the independence of South Sudan set for 9 July 2011 heightened tensions. Following a military build up in the region, armed hostilities broke out on 5 June 2011 between the army of North Sudan, the Sudan Armed Forces (SAF), and forces aligned with South Sudan's army, the Sudan People's Liberation Army (SPLA) in Southern Kordofan State/Nuba Mountains.

¹ International Criminal Court, No. ICC-02/05-01/07, Pre-Trial Chamber I, Situation in Darfur, Sudan, in the case of *The Prosecutor v Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman*, Warrant of Arrest for Ahmad Harun, 27 April 2007.

The hostilities are reportedly marked by large scale human rights violations allegedly committed primarily by the SAF with the support of the Popular Defence Forces (PDF) and NCP security forces, predominantly against civilians in the Southern Kordofan/ Nuba Mountains State. The SAF, together with the PDF, is alleged to be responsible for widespread killings through indiscriminate bombing attacks, arbitrary arrests, torture, enforced disappearances and extrajudicial killings, particularly of civilians apparently targeted because of their ethnicity, as well as wide scale destruction of property.² The Sudan Democracy First Group (SDFG) in a report published on 13 June 2011, documented the devastating impact that violations had within a period of 9 days on life and living conditions in the region.³ The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated on 27 June 2011 that at least 73,000 people had been displaced in the region, resulting in a humanitarian crisis.⁴

The African Union (AU), United Nations (UN) and others have unanimously expressed concern or condemned the violations, and called for an immediate end thereto. The UN called the “treatment of civilians in South Kordofan, including the reported human rights abuses and targeting people along ethnic lines” reprehensible.⁵ On 27 June 2011, the UN Deputy High Commissioner for Human Rights Kyung-Wha Kanghe called for an end to hostilities and a thorough human rights investigation in Abyei and South Kordofan as soon as possible.⁶ The AU, meanwhile, on 20 June 2011 expressed “deep concerns” about the humanitarian crisis in Southern Kordofan, which involved “hundreds of thousands of civilians who have been displaced from their homes”. The Chairperson of the Commission of the AU called for an investigation into reports of human rights abuses.⁷ The U.S. Ambassador to the United Nations at a UN

² United Nations (UN), Emergency Relief Coordinator’s Key Messages on South Kordofan, Sudan, 17 June 2011, Issue Number 1, Internal Guidelines, mentions reported attacks on civilians, presence of new landmines, and confirms that “there is clearly an ethnic dimension” to the conflict and that “civilians are increasingly concerned about being targeted because of their ethnicity”; The Guardian, “Half a million displaced as Khartoum moves to crush Sudan’s Nuba people”, 18 June 2011, at <http://www.guardian.co.uk/world/2011/jun/18/sudan-khartoum-displaced-nuba>; AFP, “Sudan eyewitness recall South Kordofan horror”, 17 June 2011, at <http://english.ahram.org.eg/NewsContent/2/8/14459/World/Region/Sudan-eyewitness-recalls-South-Kordofan-horror.aspx>

³ SDFG report, “Ethnic Cleansing Once Again: Southern Kordofan/ Nuba Mountains” (“SDFG Report”), 13 June 2011, at <http://www.sudantribune.com/Ethnic-cleansing-once-again,38972>.

⁴ United Nations, Security Council sets up UN security force for disputed Sudanese town of Abyei, UN News Centre, 27 June 2011, <http://www.un.org/apps/news/story.asp?NewsID=38858&Cr=abyei&Cr1=>

⁵ UN Office for Coordination of Humanitarian Affairs, Statement on South Kordofan, Sudan, Under- Secretary- General for Humanitarian Affairs, Valerie Amos, 21 June 2011, at http://www.unsudanig.org/docs/South%20Kordofan%20ERC%20statement_21%20June%202011.pdf.

⁶ UN official urges human rights probe in Abyei, South Kordofan, Sudan Tribune, 27 June 2011, at <http://www.sudantribune.com/UN-official-urges-human-rights,39360>.

⁷ African Union, Press Release, “The African Union Deeply Concerned By The Humanitarian Situation In Southern Kordofan, Sudan”, 21 June 2011, at <http://au.int/en/sites/default/files/South%20Kordofan%20Statement.pdf>; The EU High Representative on 12 June 2011 said she was “gravely concerned about reported acts of violence against individuals based on their political and ethnic affiliation”, calling for the actions to be investigated by the UN, at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122655.pdf; The United States White House on 12 June 2011 issued a statement condemning reported acts of violence “in Southern Kordofan that target individuals based on their

Security Council meeting on 20 June 2011 called the reports on the ongoing fighting in Southern Kordofan “horrifying, both because of the scope of human right abuses and because of the ethnic dimensions to the conflict”.⁸

The Applicants allege the following facts giving rise to violations of articles 1, 4, 5, 6, 9 (1), 12, and 14 of the African Charter as set out further below:

Indiscriminate bombing

According to reports from UNMIS personnel, aid workers receiving displaced people in camps and witnesses fleeing the fighting, SAF forces carried out more than 50 air attacks in only 12 days.⁹ The United Nations Mission in Sudan (UNMIS) expressed serious concern over the bombing campaign carried out by SAF, saying that it “seemed indiscriminate” and caused great suffering to civilians.¹⁰ The Under Secretary General for Humanitarian Affairs on 16 June 2011 was “extremely concerned” about the bombing campaigns and “increasing reports of civilians being targeted”.¹¹ According to the SDFG report, bombing attacks were targeting villages inhabited predominantly by Nuba ethnic groups including Beleinya, Taferey, Katcha, Daloka, Hajir el- Mek and Kololo.¹² While the precise numbers of civilians killed in these villages are currently unknown, the SDFG report specifically refers to the killings of 66 civilians through aerial bombardment by Antonov bombers in Talodi, Buram, Diling, Korongo Abdalla, Shat and Keiga.¹³

Extrajudicial Killings

In addition to the indiscriminate bombing campaign, the SAF and other Sudanese forces also committed a number of targeted extrajudicial killings. Aid workers, UN staff and displaced persons reported that extrajudicial killings were specifically targeting those belonging to the Nuba ethnic group, raising fears of

ethnicity and political affiliation”, at <http://iipdigital.usembassy.gov/st/english/texttrans/2011/06/20110611130915su0.9998372.html#axzz1Q6MCgbaL>.

⁸ Statement by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at a Security Council Briefing on Sudan, 20 June 2011, at <http://usun.state.gov/briefing/statements/2011/166533.htm>.

⁹ SDFG report, p. 1; The Guardian, “Half a million displaced as Khartoum moves to crush Sudan’s Nuba people”, 18 June 2011, at <http://www.guardian.co.uk/world/2011/jun/18/sudan-khartoum-displaced-nuba>.

¹⁰ UN News Centre, “Sudan: UN reports intense air bombardment of Southern Kordofan State”, 14 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38719&Cr=sudan&Cr1=>.

¹¹ Statement on South Kordofan, Sudan, Under Secretary General for Humanitarian Affairs Valerie Amos, 16 June 2011, at <http://appablog.wordpress.com/2011/06/16/statement-on-south-kordofan-sudan-under-secretary-general-for-humanitarian-affairs-valerie-amos/>

¹² SDFG report, p. 2.

¹³ Ibid, pp.2-3.

an ethnic cleansing campaign across Nuba populated areas.¹⁴ The U.S. Ambassador to the UN referred to information that the US government received according to which “security services and military forces have reportedly detained and summarily executed local authorities, political rivals, medical personnel and others. These acts could constitute war crimes or crimes against humanity”.¹⁵

Specifically, SAF and other Sudanese forces reportedly committed the following acts:

- Explosion of SAF planted landmines in Kadugli town resulted in an unknown number of deaths and injuries.¹⁶
- The SDFG report documents extrajudicial killings of 21 identified civilians, including 2 local UNMIS personnel, 2 teachers, a student, workers, a doctor and a priest.¹⁷
- Human Rights Watch reported that one of those arrested by military personnel and taken from inside a UNMIS run displacement camp was later found dead.¹⁸

Torture and ill treatment

The UN, national and international human rights organisations, and media reported that the SAF and other security forces are responsible for torture, disappearances and ill treatment throughout Southern Kordofan state. Specifically, the SDFG report documents the arrest, torture and disappearance of 90 civilians taken from Hay Mwazafin in Kadugli, and the arrest of another 26 identified civilians, whose whereabouts remain unknown.¹⁹ According to the UN, four UN peacekeepers were arbitrarily detained and abused by SAF personnel in Kadugli.²⁰ In another reported incident, an Al Jazeera TV team was detained by security forces when trying to access Deling city on 8 June 2011. The team, consisting of one reporter, one photographer, one engineer and a driver, was beaten with rifle butts and threatened to be

¹⁴ The New York Times, U.N. Officials Warn of a Growing Panic in Central Sudan as Violence Spreads, 15 June 2011, at <http://www.nytimes.com/2011/06/16/world/africa/16sudan.html>; SDFG report, pp.1-6; McClatchy, “Aid workers recount ethnic killings in central Sudan”, 16 June 2011, at <http://www.mcclatchydc.com/2011/06/16/115997/aid-workers-recount-ethnic-killings.html>.

¹⁵ Statement by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at a Security Council Briefing on Sudan, 20 June 2011, at <http://usun.state.gov/briefing/statements/2011/166533.htm>.

¹⁶ OCHA, Sudan-South Kordofan, Situation Report No.7, 21 June 2011, p.1, at <http://www.unsudanig.org/docs/OCHA%20Situation%20Report%20on%20South%20Kordofan%2019%20to%2021%20June%202011.pdf>

¹⁷ SDFG report, p.3.

¹⁸ Human Rights Watch, “UN, AU: Urge End to Sudanese Abuses in S.Kordofan”, 10 June 2011, at <http://www.hrw.org/en/news/2011/06/10/un-au-urge-end-sudanese-abuses-s-kordofan>

¹⁹ See the SDFG report pp. 3-4 for a detailed list of people allegedly arbitrarily detained, disappeared and tortured.

²⁰ UN News Centre, “Sudan: UN condemns harassment of its peacekeepers in Southern Kordofan”, 17 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38758&Cr=sudan&Cr1=>; UNMIS statement, ‘Bombs dropped near UNMIS in Kadugli’, 17 June 2011, at <http://unmis.unmissions.org/Default.aspx?tabid=511&ctl=Details&mid=697&ItemID=14119>

killed. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.²¹

Arbitrary arrest

The UN, national and international human rights organisations and media reported that the SAF and other security forces carried out mass arrests. UNMIS reported on 22 June that the SAF arbitrarily arrested six UNMIS staff while they were being relocated from Southern Kordofan. The staff were among 23 Sudanese UN staff and were of Southern origin. No evidence against the six detained staff members was presented to UNMIS.²² On 17 June 2011, UNMIS condemned the arbitrary detention and abuse by the SAF of four UN peacekeepers on patrol in Kadugli.²³ The SAF, together with NCP security services, conducted house to house searches for Nuba political and civil society activists, set up check points on the main roads²⁴ and searched UNMIS-run displacement camps, where individuals were screened allegedly with the aim of arresting political rivals and ethnic Nuba in general.²⁵ SDFG refers to the arrest of 90 unidentified civilians in Hay Mwazafin in Kadugli who were reportedly relocated to Khartoum, and 28 identified persons arrested during house searches and raids across the region.²⁶

Forced displacement

The indiscriminate character of the SAF's bombing in combination with the large scale human rights violations committed by the SAF, both confirmed by reports of the UN and NGOs, caused thousands of persons to flee within the first days of the conflict, with numbers steadily increasing up to hundreds of thousands of displaced persons. On 11 June 2011, the Sudanese Social Development Organisation (SUDO) reported that a continuing influx of thousands of displaced people from the region resulted in around 12,000 to 15,000 displaced people while on 13 June, the number of displaced people increased by the hour by about 300 persons in the town of El Obeid.²⁷ After a 7 day bombing campaign carried out by

²¹ Arabic Network for Human Rights Information, 'ANHRI condemns attack on Al Jazeera team in South Kordofan, 15 June 2011, at <http://reliefweb.int/node/420875>.

²² UNMIS, "SAF arrests six UN staff in Southern Kordofan", 22 June 2011, at <http://unmis.unmissions.org/Default.aspx?tabid=511&ctl=Details&mid=697&ItemID=14188>; AFP, "Sudan army arrests six UN staff", 22 June 2011, at <http://www.google.com/hostednews/afp/article/ALeqM5hGSAPmzGNzMQPwJkKuCSK3INZphA?docId=CNG.303a98314b212653789ee9d519e7b3fd.2d1>.

²³ UN, "Sudan. UN condemns harassment of its peacekeepers in Southern Kordofan, UN New Centre, 17 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38758&Cr=sudan&Cr1=>

²⁴ SDFG report, p. 3; Human Rights Watch, "UN, AU: Urge End to Sudanese Abuses in S.Kordofan", 10 June 2011, at <http://www.hrw.org/en/news/2011/06/10/un-au-urge-end-sudanese-abuses-s-kordofan>

²⁵ SDFG report; The Guardian, 18 June 2011, "Half a million displaced as Khartoum moves to crush Sudan's Nuba people", at <http://www.guardian.co.uk/world/2011/jun/18/sudan-khartoum-displaced-nuba>.

²⁶ SDFG report, pp.3-4.

²⁷ Sudanese Social Development Organisation UK (SUDO), Press Release, Update, 11 June 2011 and 13 June 2011.

SAF, the UN reported on 15 June 2011 that more than 70% of the population of Kadugli town and a total of at least 60,000 people of Southern Kordofan have been displaced.²⁸ On 27 June 2011, the OCHA estimated that at least 73,000 people had been displaced in the region.²⁹ The AU referred to “hundreds of thousands of civilians [that] have been displaced from their homes and face hunger and diseases, due to fighting, aerial bombardment and the interruption of essential supplies”.³⁰

Right to property

SAF air and ground attacks resulted in the destruction of property and the loss of livestock and other resources. SFA forces have looted and burned churches³¹, as well as houses and properties of individuals belonging to, or suspected of belonging to, SPLA/SPLM.³² Specific incidents where the SFA was responsible for looting and damaging property as reported by media, witnesses and/or the UN and human rights organisations include the looting and pillaging of the offices of the UN World Health Organization and World Food Programme on 10 June.³³ On 7 June 2011, SAF soldiers broke into the house of the Archbishop of the Episcopal Church of the Sudan in Kadugli where church staff was living, taking all properties, sound system projector, beds, chairs, and two motor bikes. The same SAF troops then proceeded to burn files in the Bishop’s office, and looted other offices, burning 8 computers, a photocopier, TV, tents, refrigerator, Solar System.³⁴

Freedom to receive information

National and international media were prevented from accessing the area, as the Sudanese government in Khartoum closed the region to international scrutiny.³⁵ An Al Jazeera TV team was detained by security

²⁸ World Health Organisation, “Southern Kordofan Crisis- Sudan Health Sector, Bulletin No1, 15 June 2011”, at http://www.who.int/hac/crises/sdn/sitreps/sudan_health_sector_15june2011.pdf; UN Office for the Coordination of Humanitarian Affairs, Sudan, Southern Kordofan, Situation Report, No.4, 14 June 2011, at http://www.unsudanig.org/docs/OCHA%20Situation%20Report_4%20on%20South%20Kordofan%2012%20to%2013%20June%202011.pdf

²⁹ United Nations, “Security Council sets up UN security force for disputed Sudanese town of Abyei”, UN News Centre, 27 June 2011, <http://www.un.org/apps/news/story.asp?NewsID=38858&Cr=abyei&Cr1=>

³⁰ African Union, Press Release, “The African Union Deeply Concerned By The Humanitarian Situation In Southern Kordofan, Sudan”, 21 June 2011, at <http://au.int/en/sites/default/files/South%20Kordofan%20Statement.pdf>.

³¹ Statement by the Archbishop of Canterbury on South Kordofan, Sudan, 14 June 2011, at <http://www.archbishopofcanterbury.org/articles.php/2069/archbishops-statement-on-south-kordofan-sudan>

³² The UN Office for the Coordination of Humanitarian Affairs referred to “widespread looting of property” which was “inhibiting returnees to villages and towns of origin, ever after the fighting has ceased”. See “Sudan border state airstrikes may have killed 64-UN, Reuters Africa, 15 June 2011, <http://af.reuters.com/article/sudanNews/idAFLDE75E0XG20110615>

³³ WFP, UN pleads for aid access to Southern Kordofan, 14 June 2011, at <http://www.wfp.org/content/un-pleads-aid-access-sudans-south-kordofan>, and UN Warehouses in State of Sudan looted, Voices for Sudan, 15 June 2011, <http://www.voicesforsudan.org/2011/06/un-warehouses-in-sudan-state-of-south-kordofan-looted/>

³⁴ Statement by the Archbishop of Episcopal Church of the Sudan, 8 June 2011, at http://www.perth.anglican.org/web/Ministry_Opportunities/?pageid=156&article=464.

³⁵ Human Rights Watch, “UN, AU: Urge End to Sudanese Abuses in S.Kordofan”, 10 June 2011, at <http://www.hrw.org/en/news/2011/06/10/un-au-urge-end-sudanese-abuses-s-kordofan>

forces when trying to access Deling city on 8 June 2011. The team, consisting of one reporter, one photographer, one engineer and a driver, was brutally beaten with rifle butts and threatened to be killed. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.³⁶ A TV team from Al Arabiya was stopped by security forces on the highway on their way to Kadogli and told that they would not be allowed to access the town and to return to Khartoum.³⁷ The efforts of the government in Khartoum to shut out any media have been described by one witness as “they are trying to make sure we can’t report on what they do. It’s a war and a dirty war.”³⁸

2. ADMISSIBILITY

The Applicants submit that the conditions set out in Article 56 of the African Charter are all complied with, including particularly article 56 (5).

Exhaustion of domestic remedies [Article 56 (5) of the African Charter]

The Commission has previously distinguished between cases in which the complaint deals with “violations against victims identified or named and cases of serious and massive violations in which it may be impossible for the complainants to identify all the victims.”³⁹ In *Amnesty International and Others v Sudan*, where hundreds of prisoners were detained without trial or charge, the Commission held that “[t]he seriousness of the human rights situation in Sudan, and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be unduly prolonged.”⁴⁰ Similarly, in *Malawi African Association v Mauritania*, where the complainants alleged mass violations of rights of black ethnic groups, the Commission emphasised that it interprets Article 56 (5) in light of its duty to protect human and peoples’ rights and stated that “[I]t does not believe that the condition that internal remedies must have been exhausted can be applied literally to those cases in which it is “neither practicable nor desirable” for the complainants or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims.”⁴¹ The Commission confirmed this jurisprudence in *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, where it held that “considering that the alleged violations prima facie constitute

³⁶ Arabic Network for Human Rights Information, ‘ANHRI condemns attack on Al Jazeera team in South Kordofan, 15 June 2011, at <http://reliefweb.int/node/420875>

³⁷ Ibid; SDFG report, p.5.

³⁸ The Guardian, “Half a million displaced as Khartoum moves to crush Sudan’s Nuba people”, 18 June 2011, at <http://www.guardian.co.uk/world/2011/jun/18/sudan-khartoum-displaced-nuba>.

³⁹ *Amnesty International and Others v Sudan*, Communications 48/90- 50/91-52/91- 89/93, para.30.

⁴⁰ Ibid, para.30.

⁴¹ *Malawi African Association v Mauritania*, Communications 54/91, 61.91, 98/93, 164/97-196,97 and 210/98, para.85.

‘serious and massive violations’, [it] finds that under the prevailing situation in the Darfur, it would be impractical to expect the complainants to avail themselves of domestic remedies, which, are in any event, ineffective. Had the domestic remedies been available and effective, the Respondent State would have prosecuted and punished the perpetrators of the alleged violations, which it has not done.’⁴²

In the present case, the Applicants submit that the Government of Sudan has violated and continues to violate the rights of thousands of largely unidentified individuals. There is no indication that any authority or judicial body has opened proceedings to provide effective protection and/or assess the lawfulness of this conduct, investigate and prosecute perpetrators of violations where evidence of violations is available and provide reparation to victims of such violations. Their displacement to different and partly remote regions within Sudan makes it further impossible for victims to avail themselves of any local remedies that may exist. Furthermore, as highlighted in the jurisprudence of the African Commission and the AU High-Level Panel on Darfur, Sudan has failed to respond effectively to large-scale violations in the Darfur context due to legislative and institutional obstacles, such as immunity legislation, which would equally apply to violations committed in Southern Kordofan.⁴³ It would therefore be “neither practicable nor desirable” for the large number of individuals concerned to try to exhaust domestic remedies in Sudan.

In light of the forgoing considerations, the Applicants request the Commission to find this Communication admissible.

3. Violations of the African Charter

3.1. Failure to adopt measures to give effect to the African Charter [Article 1 of the African Charter]

The Commission recognised in *Zimbabwe Human Rights NGO Forum v. Zimbabwe* that:

“Human rights standards do not contain merely limitations on State’s authority or organs of State. They also impose positive obligations on States to prevent and sanction private violations of human rights...”⁴⁴

⁴² *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communications 279/03-296/05, para.102.

⁴³ *Ibid.* See also *Darfur: The Quest for Peace, Justice and Reconciliation*, Report of the African Union High-Level Panel on Darfur (AUPD), PSC/AHG/2 (CCVII) (29 October 2009).

⁴⁴ *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication 245/2002, para.143.

The Applicants submit and set out further below that in regards to the situation in Southern Kordofan, the respondent state is responsible both for violations committed by its forces, as well as the failure to take reasonable and necessary steps to prevent and to respond to violations in conformity with Article 1 of the African Charter, including the lack of a prompt, impartial and effective investigation of any alleged violations.

3.2 Right to life [Article 4 of the African Charter]

The indiscriminate bombing campaign carried out by the SAF, PDF and other forces, and the extrajudicial killings of a large number of identified and unidentified persons constitute violations of Article 4, which provides that

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

The Commission held that Article 4 imposes a positive obligation on states parties to protect human life against unwarranted or arbitrary actions by public authorities, as well as by private persons and “to strictly control and limit the circumstances in which a person may be deprived of life by State authorities”.⁴⁵ The state’s obligations are not suspended, including in times of emergencies such as civil war, since, according to the Commission, “even if Sudan is going through a civil war... the State must take all possible measures to ensure that they [civilians] are treated in accordance with international humanitarian law.”⁴⁶ Indeed, international humanitarian law prohibits the bombing of civilian targets and extrajudicial killings.⁴⁷

There are no indications that the Respondent State took steps to protect individuals and civilians from violence. To the contrary, the indiscriminate bombing of villages as reported by the UN and human rights organisations as well as witnesses fleeing the fighting, the planting of landmines in Kadugli city and the extrajudicial killing of approximately 38 identified, as well as a large number of unidentified individuals suggest that the violence of the SAF, PDF and NCP was part of a coordinated assault in Southern Kordofan State. The methods used by the SAF, PDF and NCP therefore violate Sudan’s obligations under Article 4.

⁴⁵ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communications 279/03-296/05, para.147.

⁴⁶ *Amnesty International and Others v Sudan*, Communications 48/90- 50/91-52/91- 89/93, para.50.

⁴⁷ See ICRC, Customary International Humanitarian Law, Rule 1. The Principle of Distinction between Civilians and Combatants, at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1 and common article 3(1)(a) to the 1949 Geneva Conventions.

3.3. Absolute prohibition of torture [Article 5 of the African Charter]

The SAF, PDF and other state security forces are responsible for torture and ill-treatment in violation of article 5.

Beatings, kicking and enforced disappearances

In interpreting Article 5 of the African Charter, the Commission has referred to Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information of a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing of any kind, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The Commission has also drawn on the jurisprudence of the European Court of Human Rights (ECHR) on Article 3 of the European Convention on Human Rights (prohibition of torture), for example in *Huri Laws v. Nigeria*.⁴⁸ According to the ECHR torture is characterised by “deliberate inhuman treatment causing very serious and cruel suffering”.⁴⁹

The Commission has further underlined that the practice of enforced disappearance of individuals constitutes cruel, inhuman and degrading treatment, not only in relation to the disappeared victim, but also in relation to his or her family. In *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*,⁵⁰ the Commission, recognising that the enforced disappearances of political opponents constituted a violation of Article 5, held:

“Article 5 of the Charter guarantees respect for the dignity inherent in the human person and the recognition of his legal status. This text further prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture cruel, inhuman or degrading punishment and treatment. The guarantee of the physical integrity and security of the person is also enshrined in

⁴⁸ *Huri Laws v. Nigeria*, Communication No. 225/98 (2000), para.41.

⁴⁹ *Ireland v. UK*, Application no.5310/71, Judgment 18 January 1978, para.167.

⁵⁰ *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Communication No. 204/97 (2001).

Article 6 of the African Charter, as well as in the Declaration on the Protection of all Persons against Forced Disappearances, adopted by the General Assembly of the United Nations in Resolution 47/133 of 18th December 1992, which stipulates in article 1(2) that “any act leading to forced disappearance excludes the victim from the protection of the law and causes grave suffering to the victim and his family. It constitutes a violation of the rules of international law, especially those that guarantee to all the right to the recognition of their legal status, the right to freedom and security of their person and the right not be subjected to torture or any other inhuman or degrading punishment or treatment. It also violates the right to life or seriously imperils it.”⁵¹

SAF forces targeted members of the Nuba community, UN personnel and journalists, and abused four UN peacekeepers, as well as beat and threatened Al Jazeera journalists. Dozens of identified and unidentified individuals were forcibly disappeared. The SAF and other security forces deliberately used these methods to inflict severe pain and suffering as part of a campaign based on coercion and intimidation, as well as ethnic discrimination in so far as persons belonging to the Nuba community are targeted because of their ethnicity. The various acts attributed to the Sudanese forces constitute a violation of Article 5.

3.4. Right to liberty and security of the person [Article 6]

The circumstances of the arrest of numerous Nuba and others believed to be SPLM/A sympathizers, as well as UN peacekeepers, without the presentation of any evidence against them, constitute a violation of Article 6 of the African Charter.

Article 6 prohibits arbitrary arrest. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provide that:

“States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause.”⁵²

As recognised by the Commission in *Article 19 v. Eritrea*, quoting the decision of the UN Human Rights Committee in the *Albert Mukong* case:⁵³

⁵¹ Ibid., para. 44.

⁵² Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001, M (1) (b).

⁵³ Human Rights Committee, Communication 458/1991, *Albert Mukong v Cameroon*, 10 August 1994, para.9.8.

“Arbitrariness is not to be equated with ‘against the law’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law... remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances...”⁵⁴

SAF forces arrested UN personnel as well as Nuba political and civil society activists without adherence to any provisions of Sudanese legislation according to which an arrest without warrant can only be made where a person is “suspected, or accused of having committed an offence in which an arrest warrant may be made.”⁵⁵ SAF forces carried out mass arrests in an indiscriminate manner and without providing evidence of any individual wrongdoing, primarily on the basis of their perceived opposition to the government rather than on the grounds of a reasonable suspicion against them.

3.5. Forced displacement [Article 12 of the African Charter]

The reported displacement of over 73,000 persons from their chosen residence as a result of the SAF’s campaign of violence and the failure to take steps to ensure their return constitutes a violation of a person’s right to residence and freedom of movement as enshrined in Article 12 of the African Charter. Many of those displaced were not permitted access to IDP camps and indeed forced to return to areas where their lives and safety were considered to be at risk.⁵⁶ The Commission held that freedom of movement implies the freedom to “reside in, and/or work in, any part of the State the citizen wishes, without interference from the State”⁵⁷ and considered that “[f]reedom of movement and residence are two sides of the same coin.”⁵⁸ In *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, the Commission held that displacement by force and the failure “to prevent forced evictions or to take urgent steps to ensure displaced persons return to their homes” constitutes a violation of Article 12.⁵⁹

3.6. The Right to Property [Article 14 of the African Charter]

SAF’s indiscriminate air and ground attacks on civilian life led many to leave their homes, losing their livestock and other resources, and caused the destruction of churches, houses and other property in violation of Article 14, which provides that

⁵⁴ Communication 275/2003, *Article 19 v. Eritrea*, para. 93.

⁵⁵ Article 68(2) of the Sudanese Criminal Procedure Act 1991.

⁵⁶ Amnesty International, ‘Sudan: Authorities force people to return to danger zones in Southern Kordofan, 29 June 2011, at http://www.amnesty.org.uk/news_details.asp?NewsID=19545.

⁵⁷ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communication 279/03-296/05, para.187.

⁵⁸ *Ibid*, para.188.

⁵⁹ *Ibid.*, paras.189 and 190.

“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.”

The African Commission held that

“The role of the State is to respect and protect this right [the right to property] against any forms of encroachment, and to regulate the exercise of this right in order for it to be accessible to everyone, taking public interest into due consideration...The right to property...provides for the principle of ownership and peaceful enjoyment of property.”⁶⁰

According to the Commission, the State must demonstrate that property was “confiscated for public interest, or in accordance with any established law.”⁶¹ In respect of developments in Southern Kordofan, state forces looted and burned churches, houses and properties of individuals believed to belong to the political opposition as well as property belonging to the Episcopal Church and the United Nations. There was no public interest in the SAF’s activities, nor a basis in Sudanese legislation. The destruction of such property therefore constituted a violation of Article 14. Moreover, as recognised by the Commission in *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, the state has an obligation to protect property against infringements in times of disturbances and armed conflict,⁶² an obligation that was not fulfilled in the present case.

3.7. Freedom to receive information [Article 9 (1) of the African Charter]

In violation of Sudan’s obligation under Article 9 (1), the Government of Sudan restricted the right of individuals to receive information by closing the region of Southern Kordofan state to national and international media.⁶³ Article 9 (1) provides that

“Every individual shall have the right to receive information.”

The Commission held that the only legitimate reason to limit the “rights and freedoms recognised in the African Charter are found in Article 27 (2), that is, that the rights of the Charter shall be exercised with

⁶⁰ *INTERIGHTS, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l’Homme v Mauritania*, Communication 373/06, para.45.

⁶¹ *Ibid*, para.46.

⁶² *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communication 279/03-296/05, para.201.

⁶³ Human Rights Watch, “UN, AU: Urge End to Sudanese Abuses in S.Kordofan”, 10 June 2011, at <http://www.hrw.org/en/news/2011/06/10/un-au-urge-end-sudanese-abuses-s-kordofan>.

due regard to the rights of others, collective security, morality and common interest”⁶⁴ [quotes within quote omitted]. The de-facto blanket ban on national and international media from reporting on the conduct of hostilities in Southern Kordofan, ostensibly with a view to prevent reporting on human rights violations by SAF, PDF and NCP forces, cannot be justified with reference to any of the limitations referred to in article 27 (2) of the African Charter.

3.8. Right to Health [Article 16 of the African Charter]

The Respondent State also violated Article 16 of the African Charter, providing that

- (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 to ensure that they receive medical attention when they are sick.”

In interpreting Article 16, the Commission held that the failure of a government to provide basic services such as safe drinking water, electricity and medicine constitutes a violation of Article 16, and that the destruction of homes, livestock and farms can expose victims to serious health risks, thereby constituting a violation of Article 16.⁶⁵

The indiscriminate bombing campaign by the Respondent State led to the widespread destruction of homes and livestock and caused hundreds of thousands of people to be cut off from drinking water, electricity and any medical aid and constituted a violation of Article 16. The right to water is essential for securing an adequate standard of living as it is one of the most fundamental conditions for survival; it is also inextricably related to the right to the highest attainable standard of health.⁶⁶ The African Commission should draw inspiration from the International Covenant on Economic Social and Cultural Rights which the Respondent acceded to on 18 March 1986⁶⁷ to find that there has been a violation of an

⁶⁴ *Kenneth Good v Republic of Botswana*, Communication 313/05, para.189.

⁶⁵ *Fee Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interfricaine des Droits de l’Homme, Les Temoins de Jehovah v DRC*, para.46; *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communication 279/03-296/05, para.212.

⁶⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), UN Doc. E/C.12/2002/11, 20 January 2003, para 3, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4538838d11&page=search> 8 July 2011.

⁶⁷ Under Article 60 of the African Charter, 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”.

implied right to water as a result of the violation of the right to health. Under General Comment 15 of the UN Committee on Economic, Social, and Cultural Rights the Respondent State is obliged to refrain from engaging in any activity that denies access to adequate water and it should not destroy water services and infrastructure during armed conflict.⁶⁸

Moreover, the Respondent State failed to comply with its obligation to protect the health of its citizens by deliberately bombing the airstrip in Kauda, closing the air space for UN flights and by the erection of roadblocks to prevent humanitarian supplies from reaching areas where displaced people were in need of medical aid.

Requested Remedies

The Applicants submit this communication without prejudice to the later submission of additional facts and legal arguments under the Charter.

The Applicants make note of their prior request dated 2 July 2011 to the Commission for provisional measures to be taken in respect of the facts set out in relation to this Communication.

Furthermore, in requesting the Commission to examine their case, the Applicants request the Commission:

- (i) To recognise a violation of articles 1, 4, 5, 6, 9 (1), 12,14 and 16 of the Charter.
- (ii) To determine appropriate forms of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for these violations, including for the next of kin of those who were unlawfully killed by SAF, PDF, NCP or other state forces, or who suffered harm as a result of the failure of the state to provide adequate protection against violations and to request the Government of Sudan to give effect to such findings.
- (iii) To request the Government of Sudan to carry out a prompt, effective and impartial investigation into the circumstances of the above mentioned violations, and ensure that where sufficient evidence exists, the perpetrators are brought to justice and held accountable for any violations.
- (iv) To request the Government of Sudan to provide appropriate housing and basic needs to the 73,000 displaced people.
- (v) To demand that the Government of Sudan ensure the safe return of the displaced people to their communities after the unrest has ceased.

⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 15; The right to water para 21

(vi) To urge the Respondent State to ensure that its national law provides:

- a) for adequate and effective safeguards against abusive use of force as well as abuse of powers in the course of arrest and detention by government forces, law enforcement and security officials.
- b) that arbitrary or abusive use of force as well as violations committed in the course of arrest and detention procedures by government forces and law enforcement officials is effectively punished as a criminal offence under the law in Sudan, including by removing immunity legislation for such crimes that officials enjoy under Sudanese legislation.

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