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African Commission on Human and Peoples' Rights

Communications 402/11 and 420/12

***Sudanese Civilians in South Kordofan and Blue Nile
(represented by REDRESS, Sudan Democracy First Group,
Interights, Human Rights Watch and the Enough Project)***

v

Sudan

SUBMISSION ON THE MERITS

30 OCTOBER 2013

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I. Procedural history

1. The complainants in Communication 402/11 submitted their complaint: *Interights, Human Rights Watch, Sudan Democracy First Group and REDRESS v Sudan* to the African Commission on Human and Peoples' Rights ('African Commission' or 'Commission') on 13 July 2011, after having previously submitted a request for provisional measures on 2 July 2011.¹ The complaint sets out alleged violations committed in South Kordofan by the Respondent State's authorities from the outbreak of hostilities on 5 June 2011 until 13 July 2011. The Commission was seized of the complaint at its 50th Ordinary Session, communicated it to the Government of Sudan ('the Respondent State') and requested provisional measures on 7 November 2011.² The Commission called on the Respondent State to "intervene in the matter with a view to preventing irreparable harm being caused to the victims." In the absence of a response from the Respondent State, the Commission re-iterated its request for provisional measures in August 2012.³
2. The complainants in Communication 420/12 submitted their complaint: *Sudanese Civilians in South Kordofan and Blue Nile (represented by the Enough Project) v Sudan* to the Commission on 13 April 2012, setting out alleged violations committed in South Kordofan and Blue Nile from 5 June 2011 to April 2012.⁴
3. On 15 August 2012, the complainants in Communication 402/11 submitted their arguments on admissibility. On 22 August 2012, the Commission informed both complainants (together the 'Applicants') that it had decided to join Communications 402/11 and 420/12. Following the Applicants' preliminary objection on 9 April 2013 against granting the Respondent State an extension of time to submit arguments on admissibility, the Commission on 6 August 2013 informed the Applicants that it found the Communications admissible and requested the Applicants to present evidence and arguments on the merits of the case. On 5 October 2013, the Applicants requested an extension of one week to file their submission on the merits of the case. On 11 October 2013, the Commission granted the request for extension of one month.
4. The Applicants herewith present evidence and their arguments on the merits of the case in accordance with Rule 108 (1) of the Commission's Rules of Procedure. In the interests of judicial

¹ See Interights, Human Rights Watch, Sudan Democracy First Group and REDRESS, *Request for provisional measures in respect of the situation in South Kordofan State, Sudan*, 2 July 2011, at http://www.redress.org/downloads/Submission_to_ACHPR_Provisional_Measures_Southern_Kordofan_State_Sudan26No_v.pdf.

² African Commission on Human and Peoples' Rights, *Request for provisional measures under rule 98 of the rules of procedure of the African Commission on Human and Peoples' Rights*, 7 November 2011, at <http://www.redress.org/downloads/provisional-measures-for-transmittalpm-by-achpr-7november-2011.pdf>.

³ The Commission decided at its 14th Extra-Ordinary Session to re-send the initial provisional measures request of 7 November 2011 to the Respondent State. To date, the Respondent State has not responded to the Commission's two requests.

⁴ See Enough Project, *'Communication Submitted To The African Commission On Human And Peoples' Rights By The Enough Project For Violations Of The African Charter With Respect To Sudanese Civilians In South Kordofan And Blue Nile States'*, 19 April 2012, at <http://www.enoughproject.org/files/Communication%20Submitted%20Against%20Republic%20of%20Sudan.pdf>.

economy, the Applicants decided to submit a single joint submission. This submission on the merits (the 'Submission') complements the Applicants' submissions referred to above.⁵

II. Sources of Evidence⁶

5. The information and evidence presented in this Submission is based on reports from official sources, including the African Union (AU), the African Commission and the United Nations (UN), as well as from national and international non-governmental organisations as listed in the Annex. It is also based on investigations and/ or fact finding missions, including on-site visits, and interviews with victims and witnesses inside and outside Sudan. These missions and interviews have been conducted, *inter alia*, by human rights officers of the then UN Mission to Sudan (UNMIS) and by local human rights monitors of the Human Rights and Development Organisation (HUDO), Arry Organisation, Nuba Reports, Sudan Democracy First Group and the Sudan Consortium, as well as researchers of Human Rights Watch, Amnesty International and The Enough Project.⁷ The evidence presented includes detailed satellite imagery and expert analysis by the Satellite Sentinel Project—a collaboration between The Enough Project and DigitalGlobe—as well as reports from national and international media, and photographs and video clips filmed by local human rights activists documenting violations.
6. The evidence presented was collected in spite of access and reporting restrictions imposed by the Respondent State in regard to South Kordofan and Blue Nile. In addition, there are challenges of obtaining and verifying information from all areas in both states. The evidence presented therefore does not reflect the totality of the violations committed in both states since the outbreak of

⁵ Both complaints submitted included detailed information on the alleged violations, with communication 420/12 setting out violations committed in South Kordofan and Blue Nile since the outbreak of hostilities in both States up until April 2012.

⁶ The material referred to in the footnotes throughout this Submission is included in an Annex which will be provided to the Commission in hard copy.

⁷ The UN High Commissioner for Human Rights report '*Preliminary report on violations of international human rights and humanitarian law in South Kordofan from 5 to 30 June*', 15 August 2011, ('OHCHR South Kordofan Report, August 2011'), is based on preliminary investigations into a number of serious incidents in South Kordofan, on-site visits and interviews with victims, witnesses and authorities, para.2, see further at www.ohchr.org/Documents/Countries/13thSouth_Kordofan_report.doc; Human Rights Watch's report entitled '*Under Siege- Indiscriminate Bombing and Abuses in Sudan's South Kordofan and Blue Nile State*' ('Under Siege'), is based on five separate fact finding missions to Sudan and South Sudan, each lasting about ten days, in August 2011, April 2012 and October 2012, p.17, at <http://www.hrw.org/node/111880/section/7>; Sudan Democracy First Group (SDFG) carried out interviews in particular in South Kordofan during the first months of the conflict, see SDFG, '*Ethnic Cleansing Once Again: South Kordofan/ Nuba Mountains*' (SDFG Report'), 13 June 2011, at http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=38972; in October 2011, the Enough Project conducted interviews at Sherkole Refugee Camp in Ethiopia, see The Enough Project, '*Field Dispatch: Refugees from Blue Nile Recount Atrocities, Government's Targeting of Civilians*', at http://www.enoughproject.org/files/Overview%20Sherkole_0.pdf. In late June 2012, Enough conducted interviews at Batil refugee camp, in South Sudan, with refugees who had recently crossed the border from Blue Nile, see The Enough Project, '*Sudan Field Dispatch: Refugees Provide Details of Attacks in Isolated Blue Nile State*', at http://www.enoughproject.org/files/Blue_Nile_Dispatch_20120723.pdf. Amnesty International based its various reports on South Kordofan and Blue Nile on '*interviews and other research conducted both inside and outside Sudan*', including for instance Yida and Pariang refugee camps in Unity State and refugee camps in Upper Nile state, all in South Sudan, as well as to rebel held areas in Blue Nile and South Kordofan, see Amnesty International, '*We had no time to bury them- War Crimes in Sudan's Blue Nile State*' ('We had no time to bury them'), June 2013, p.9, at <http://www.amnestyusa.org/sites/default/files/afr540112013en.pdf>; and '*Sudan: Civilians caught in unending crisis in South Kordofan*', April 2013, p.6, at <http://www.amnestyusa.org/sites/default/files/afr540092013en.pdf>. Through its collaboration with Digital Globe, Enough and the Satellite Sentinel Project have captured and analysed satellite evidence of the Respondent State's actions in South Kordofan and Blue Nile.

hostilities on 5 June 2011 in South Kordofan and in September 2011 in Blue Nile. However, the available evidence shows that the Respondent State's forces, including the Sudanese Armed Forces ('SAF'), Popular Defence Forces ('PDF') and the National Intelligence and Security Services (NISS) as well as various government militia groups are responsible for serious and massive human rights violations committed in South Kordofan and Blue Nile. Violations reportedly committed by the Sudan Peoples' Liberation Army- North ('SPLA-North') in South Kordofan and Blue Nile during the conflict are not the subject of the present Communication and will therefore not be considered in this Submission.⁸

III. Factual Background & Context⁹

A. International Bodies Call For Cessation of Hostilities And Respect For International Law

7. The Nuba Mountains are situated in South Kordofan and have the status of a transitional area under the Comprehensive Peace Agreement (CPA) of 2005. Its unresolved status, the dispute over neighbouring Abyei, state elections that took place in May 2011 and elected Ahmed Haroun (who is subject to an arrest warrant by the International Criminal Court for war crimes and crimes against humanity committed in Darfur¹⁰) as Governor of South 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 and efforts by the SAF to disarm members of the SPLA troops in the 'Joint Integrated Units',¹¹ armed hostilities broke out in South Kordofan/ Nuba Mountains on 5 June 2011 between the army of North Sudan, the SAF, and the SPLA- North, a Sudanese armed opposition group that emerged from the southern Sudanese rebel movement, SPLA , now the army of South Sudan.
8. In the early hours of 5 June 2011, the SAF blocked major roads into and out of the town of Kadugli, in South Kordofan.¹² Two days later, on 7 June 2011, the SAF shelled "densely civilian-inhabited areas" in Kadugli, leading to "[t]he displacement of thousands of Internally Displaced Persons (IDPs) who had taken refuge in churches and hospitals and in the United Nations Mission in Sudan ('UNMIS') compound."¹³ During the first weeks of the conflict in South Kordofan, UN staff in the area "interviewed numerous witnesses who indicated that the SAF, together with militia elements of the PDF, were conducting house-to-house searches and subjecting residents to identity checks" of individuals "based on their ethnicity and political affiliation."¹⁴ These led to arbitrary arrests "and, in

⁸ See for instance UN News Centre, 'Shelling forces relocation of UN staff in Sudanese city of Kadugli', 9 October 2012, at <http://www.un.org/apps/news/story.asp?NewsID=43245&Cr=sudan&Cr1> and OCHA 'Humanitarian Bulletin', 12-18 November 2012, at http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_1166.pdf.

⁹ For further background information on the conflict see complaints submitted by complainants in Communication 402/11 and 420/13 respectively; see also, International Crisis Group, 'Sudan's Spreading Conflict (I): War in South Kordofan', Africa Report No 198, pp.17-20, at [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/sudan/198-sudans-spreading-conflict-i-war-in-south-kordofan](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/sudan/198-sudans-spreading-conflict-i-war-in-south-kordofan); United Nations, *Report of UN Independent Expert on the situation of human rights in the Sudan, Mohamed Chande Othman*, UN Doc. A/HRC/18/40, 22 August 2011, paras. 35-36.

¹⁰ 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 ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb")', Warrant of Arrest for Ahmad Harun, 27 April 2007, at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/Pages/situation%20icc-0205.aspx.

¹¹ Joint Integrated Units were composed of equal numbers from the SPLA and the SAF, created by the CPA. They no longer exist.

¹² OHCHR, 'OHCHR South Kordofan Report, August 2011' p.3.

¹³ Ibid.

¹⁴ Ibid.

some cases, summary executions in many pro-SPLM [Sudan Peoples' Liberation Movement] areas of Kadugli town."¹⁵

9. The conflict in South Kordofan quickly spread to neighbouring Blue Nile in September 2011,¹⁶ and has been on-going in both states ever since, with different levels of intensity. The conflict has been characterised by serious and massive human rights violations. Targeted attacks by the Respondent State's forces and authorities on perceived supporters of the SPLA- North, including members of different ethnic groups, have been extensively documented.¹⁷ The African Commission and a range of other regional and international institutions have expressed grave concern and condemnation of on-going, large-scale violations.

10. At the end of its 50th Ordinary Session, the African Commission on 5 November 2011 expressed its concern

at the proliferation of conflicts and internal violence in the Nubian Mountains, in the Kordofan and Blue Nile regions in South Sudan, resulting in the indiscriminate aerial bombardment of civilian targets, and causing death among the populations, destruction of houses and the systematic displacement of civilian populations destruction of habitat and purposeful displacement of civilian populations, extrajudicial killings and forced disappearances of members of the indigenous tribes of these region.¹⁸

11. The Commission then called on State parties to the Charter "to put an end as soon as possible to the practice of impunity" and to "abide by the principles of international humanitarian law and those enshrined in the African Charter on Human and Peoples' Rights and to immediately desist from launching attacks against the civilian population."¹⁹ As the situation in both states continued to

¹⁵ Ibid, pp.3-4.

¹⁶ See for background information Amnesty International, 'We had not time to bury them', pp.12-13; International Crisis Group, 'Sudan's Spreading Conflict (II): War in Blue Nile', 2013, pp.17-20, at [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/sudan/204-sudans-spreading-conflict-ii-war-in-blue-nile.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/sudan/204-sudans-spreading-conflict-ii-war-in-blue-nile.pdf).

¹⁷ See for instance the UN Emergency Relief Coordinator's *Key Messages on South Kordofan, Sudan*, on 17 June 2011, Issue Number 1, Internal Guidelines, which confirms that "there is clearly an ethnic dimension" to the conflict and that "civilians are increasingly concerned about being targeted because of their ethnicity;" *Report of UN Independent Expert on the situation of human rights in the Sudan, Mohamed Chande Othman*, 2011, para.39; 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>; for background information on the history of violence against the Nuba, see for instance Alex de Waal, *Facing Genocide: The Nuba of Sudan*, African Rights, July 1995; Alex de Waal, 'Averting Genocide in the Nuba Mountains, Sudan' (*Averting Genocide*), 22 December 2006, pp.1-2, at http://howgenocidesend.ssrc.org/de_Waal2/; African Centre for Justice and Peace Studies, 'On the Brink Again: Conflict and Ethnic Cleansing in South Kordofan', ('On the Brink again'), July 2011, pp. 3-4, at http://www.africancentreforjustice.org/wp-content/uploads/2012/04/OntheBrinkAgain_ConflictandEthnicCleansinginSouthKordofan.pdf; Amin Mekki Medani, 'Crimes against international humanitarian law in Sudan- 1989-2000', 2001, p.133; Minority Rights Group International, 'Profile of the Nuba', at <http://www.minorityrights.org/?lid=4011>; Mohamed Suliman, 'Resource Access: A major cause of armed conflict in the Sudan. The case of the Nuba Mountains', Institute for African Alternatives, London, 1998, at <http://srdis.ciesin.org/cases/Sudan-Paper.html>.

¹⁸ African Commission, 'Resolution 207 on the General Human Rights Situation in Africa', 5 November 2011, at <http://www.achpr.org/sessions/50th/resolutions/207/?prn=1>.

¹⁹ Ibid.; the Commission also expressed 'its particular concern by the new renewed conflict in South Kordofan and the Blue Nile regions of Sudan, and the resultant tragedy' in Resolution 219 adopted on 2 May 2012 'On the situation Between Sudan and South Sudan', at <http://www.achpr.org/sessions/51st/resolutions/219/>.

deteriorate, the Commission at its 51st Ordinary Session reiterated its concerns about the conflict “and the resulting humanitarian tragedy.”²⁰

12. In its ‘*Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan*’, adopted in August 2012, the Commission observed that “[G]overnment forces persistently and indiscriminately bomb civilian areas across the Nuba Mountains, forcing people to seek shelter in caves and in mountains, where they lack food, shelter, and access to basic needs such as water and sanitation.”²¹ The Commission went on to call on Sudan to respond to its “request for Provisional Measures on South Kordofan.”²²

13. A range of other regional and international institutions have echoed the African Commission’s concern about the continuing conflict in South Kordofan and Blue Nile and the deteriorating human rights situation in the regions.²³

14. At the outset of the conflict in South Kordofan, the AU on 20 June 2011 expressed “deep concerns” about the humanitarian crisis in South Kordofan, which involved “hundreds of thousands of civilians who have been displaced from their homes”, calling for an investigation into reports of human rights abuses.²⁴ Eighteen months later, the situation had significantly worsened and spread to Blue Nile state, leading the AU Peace and Security Council in January 2013 to express its “grave concern at the continued deterioration of the humanitarian situation in Blue Nile and South Kordofan states of Sudan.”²⁵ Also in January 2013, the AU High Level Implementation Panel for Sudan and South Sudan (AUHIP) called on the Respondent State and the SPLM-North “to enable urgent humanitarian assistance to reach the affected population in the Two Areas, and additionally called for a ceasefire for these purposes.”²⁶

15. Various UN bodies have expressed their concern about on-going serious and massive violations committed since the outbreak of hostilities, including indiscriminate aerial attack and shelling, abductions, extrajudicial killings of civilians and UN personnel, as well as reliable reports of mass graves.²⁷ A 2011 report by the UN High Commissioner for Human Rights documented widespread

²⁰ Resolution 219, *ibid.*

²¹ African Commission, ‘*Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan*’, adopted at the ‘12th Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights’ held from 29 July to 4 August 2012, Algiers, Algeria, paras.51 and 87.

²² *Ibid.*, para.87.

²³ See also Interights, Sudan Democracy First Group, Human Rights Watch and REDRESS, ‘*Introduction of Communication*’, pp. 3-4.

²⁴ African Union, Press Release, ‘*The African Union Deeply Concerned By The Humanitarian Situation In South Kordofan, Sudan*’, 21 June 2011, at <http://au.int/en/sites/default/files/South%20Kordofan%20Statement.pdf>; The EU High Representative stated on 12 June 2011 that she was ‘*gravely concerned about reported acts of violence against individuals based on their political and ethnic affiliation*’, and called 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 11 June 2011 issued a statement condemning reported acts of violence ‘*in South Kordofan that target individuals based on their ethnicity and political affiliation*’, at <http://iipdigital.usembassy.gov/st/english/texttrans/2011/06/20110611130915su0.9998372.html#axzz1Q6MCgBaL>.

²⁵ African Union, ‘*Communiqué of the 353rd Peace and Security Council meeting at the level of Heads of State and Government/ Sudan-South Sudan*’, January 2013, at <http://www.sudantribune.com/spip.php?article45303>.

²⁶ ‘*African Union High Level Implementation Panel for Sudan and South Sudan*’ (AUHIP) Mediation Report Addis Ababa, 28 January 2013 at <http://radiotamazuj.org/en/article/full-text-ahip-mediation-report>.

²⁷ See for instance UN News Centre, ‘*Alarmed by reports of mass graves, UN urges access to South Kordofan*’, 15 July 2011, at <http://www.un.org/apps/news/story.asp?NewsID=39059&Cr=kordofan&Cr1=#.UjrKkXxwa70>; see also ‘*UN Official*

violations of international law in South Kordofan. According to the UN, these violations, if substantiated, “could amount to crimes against humanity or war crimes for which individual criminal responsibility may be sought.” The High Commissioner recommended the Respondent State to undertake an “independent, thorough and objective inquiry” into “alleged violations of international human rights and humanitarian law that occurred during hostilities in South Kordofan with a view to holding perpetrators to account.”²⁸

16. Most recently, on 23 August 2013, the U.N. Security Council issued a Presidential Statement calling upon the parties to the conflict to “cease hostilities and engage in direct talks to end the conflict in South Kordofan and Blue Nile.”²⁹ The Council also called on the parties to:

refrain from any acts of violence against civilians, to expedite safe and unhindered humanitarian access for the timely and full delivery of humanitarian aid to all civilians in urgent need of assistance in accordance with relevant provisions of international law, including international humanitarian law and the United Nations guiding principles of humanitarian assistance, and to fully respect international human rights law and international humanitarian law.³⁰

The Security Council also emphasised that “those responsible for violations of international humanitarian law and violations and abuses of international human rights law must be held accountable.”³¹

B. Current situation (September 2013)

17. Serious and massive violations are on-going in South Kordofan and Blue Nile, despite repeated calls by the African Commission requesting the Respondent State to “prevent irreparable harm to victims” and calls on the Respondent State to investigate the documented violations. There is no evidence to suggest that authorities investigated any of these violations. Recent reports indicate that the fighting has spread to North Kordofan, where it is equally characterised by human rights violations.³²

urges human rights probe in Abyei, South Kordofan, Sudan Tribune, 27 June 2011, at <http://www.sudantribune.com/spip.php?article39360>.

²⁸ OHCHR, ‘OHCHR South Kordofan Report, August 2011’.

²⁹ UN Security Council, ‘Security Council, in Statement, urges implementation of agreements between Sudan, South Sudan, aided by new mechanisms, including technical border team, SC/11102’, 23 August 2013, 7022nd Meeting, at <http://www.un.org/News/Press/docs/2013/sc11102.doc.htm>.

³⁰ Ibid.

³¹ Ibid.

³² See for instance Office for the Coordination of Humanitarian Affairs (OCHA), ‘UN Grants Sudan \$10 million from the Central Emergency Response fund’, 28 August 2013, at <http://reliefweb.int/report/sudan/united-nations-grants-sudan-10-million-central-emergency-response-fund-enar>; UN Human Rights Council, 24th Session, ‘Report of the Independent Expert on the situation of Human Rights in Sudan, Mashood A Baderin’, 10 September 2013, at http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-24-31_en.pdf and Human Rights Watch, ‘Human Rights in Sudan: Testimony of Jehanne Henry’, Tom Lantos, Human Rights Commission, 19 June 2012, at <http://www.hrw.org/news/2013/06/19/human-rights-sudan> and Amnesty International ‘Renewal and strengthening of the special procedure mandate on the situation of human rights in Sudan, UN Human Rights Council 24th session’, (9-27 September 2013) at <http://www.amnesty.org/en/library/asset/AFR54/017/2013/en/abeed0fb-e746-4501-b2d1-eface4986978/afr540172013en.pdf>.

18. In their communications dated 13 July 2011 and 12 April 2012, the Applicants alleged that the Respondent State's forces and authorities have been engaged in a military campaign characterised by discrimination on the basis of gender, ethnicity or political belief, extrajudicial killings, enforced disappearances, torture and ill-treatment, sexual violence, arbitrary arrests and detentions and unjustified restrictions of freedom of expression. The Respondent State's indiscriminate bombing and shelling campaign has caused large scale forced displacement of hundreds of thousands of people, resulting in, *inter alia*, violations of the right to health and to family life and to the right to property. The Respondent State is also responsible for extensive violations of collective rights of the Nuba people. The state authorities have failed to provide protection, and have not investigated these violations and / or provided other forms of reparation to victims. The Applicants submit that the facts as set out in their communications and elaborated herein constitute violations of articles 1, 2, 3, 4, 5, 6, 7 (1) (a), 9 (1), 12, 14, 16, 18, 19, 20, 21 and 23. The following paragraphs provide an overview of the violations of these articles since the filing of the communication in July 2011 and April 2012 respectively.

C. Indiscriminate bombing and shelling of civilians and civilian areas³³

19. Following the outbreak of the conflict in South Kordofan on 5 June 2011, and in Blue Nile in September 2011, the SAF resorted to a pattern of warfare characteristic of other recent conflicts in Sudan: the indiscriminate aerial bombing and shelling of civilians and civilian areas throughout both states.³⁴ A wide range of organisations, institutions and experts have investigated the SAF's indiscriminate bombing and shelling campaign, and documented the resulting killing and injuring of civilians and serious damage to civilian property, including homes, schools, clinics, crops and livestock.³⁵ In addition to injuring and killing civilians directly, the campaign threatens the lives of a

³³ The incidents highlighted are only indicative and not exhaustive of all incidents of indiscriminate bombing and shelling.

³⁴ See for instance Sudan Tribune, 'UN rights envoy accuses Sudan of indiscriminate bombing in Darfur', 10 September 2008, at <http://www.sudantribune.com/spip.php?article28583>; Alex de Waal, 'Averting Genocide'; the Commission has recognised a pattern of indiscriminate bombing in a previous case against the Respondent State, see *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan*, Communications 48/90-50/91-52/91-89/93, para.50.

³⁵ Selected report on indiscriminate bombing in both states: Human Rights Watch, 'Under Siege', pp. 20-21; 34-39; Amnesty International, 'We can run away from bombs, but not from hunger- Sudan's refugees in South Sudan', June 2012, at http://www.amnestyusa.org/sites/default/files/3919_s_sudan_report_final_2.pdf; Enough Project, 'Architects of Atrocity: The Sudanese Government's War Crimes, Crimes against Humanity, and Torture in South Kordofan and Blue Nile States', 3 April 2013, at <http://www.enoughproject.org/reports/architects-atrocity-sudanese-governments-war-crimes-crimes-against-humanity-and-torture>; in **SOUTH KORDOFAN**: OHCHR, 'OHCHR South Kordofan Report, August 2011'; Sudan Democracy First Group (SDFG), 'Ethnic Cleansing Once Again: South Kordofan/ Nuba Mountains' ('SDFG Report'), 13 June 2011; UN News Centre, 'Sudan: UN reports intense air bombardment of South Kordofan State', 14 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38719&Cr=sudan&Cr1>; OCHA, '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/>; African Centre, 'On the Brink again'; Amnesty International, 'Sudan: Civilians caught in unending crisis in South Kordofan', April 2013, p.6; International Crisis Group, 'Sudan's Spreading Conflict (I): War in South Kordofan', February 2013. The Sudan Consortium, 'Human Rights Update: South Kordofan State, Sudan', August 2013, at http://sudanconsortium.org/darfur_consortium_actions/pressreleases/2013/Sudan%20Consortium%20Update%20August%202013%20FINAL.pdf and 'The impact of aerial bombing attacks on civilians in South Kordofan, Republic of Sudan- A Briefing to the Summit of the African Union', May 2013, at <http://www.refugee-rights.org/htdocs/Assets/PDFs/2013/Sudan%20Consortium%20AU%20Summit%20May%202013.pdf>; in **BLUE NILE**: Amnesty International, 'We had no time to bury them- War Crimes in Sudan's Blue Nile State', June 2013, p.9, at <http://www.amnestyusa.org/research/reports/we-had-no-time-to-bury-them-war-crimes-in-sudan-s-blue-nile-state>. International Crisis Group, 'Sudan's Spreading Conflict (II): War in Blue Nile', June 2013. Enough Project, 'Sudan's Bloody

majority of the surviving population who depend on cultivating their lands in order to feed themselves. It leaves civilians on the ground in a state of fear, and has contributed to the forced displacement of hundreds of thousands of persons inside and outside Sudan.³⁶

20. The air strikes vary in frequency and intensity, from several times per month to several times per day.³⁷ Sudanese local human rights monitors in South Kordofan, for example, recorded how the SAF indiscriminately dropped more than 231 bombs from October 2012 to the first half of November 2012,³⁸ and 178 bombs in the period of 1 June 2013 to 15 July 2013.³⁹ In Blue Nile, the SAF reportedly intensified attacks in October 2012 and indiscriminately dropped an estimated 240 bombs between October 2012 and March 2013.⁴⁰

i. Indiscriminate nature of the bombing

21. UN experts and NGO researchers, as well as human rights monitors on the ground in both South Kordofan and Blue Nile state, have collected consistent evidence of the indiscriminate nature of the SAF's bombing campaign through interviews with victims and witnesses, on the ground investigations of bomb sites, examination of bomb fragments, as well as photographs and satellite images of damaged property and craters.⁴¹ The evidence shows, *inter alia*, that the SAF uses unguided munitions such as 'barrel bombs' rolled out of Antonov cargo planes flying at high altitude, which do not allow for accurate delivery.⁴²

21. The evidence also shows that the vast majority of bombing victims in both states are civilians, mostly women, children and the elderly.⁴³ Witnesses consistently recounted that when the bombings occurred, there were no SPLA- North troops or other military targets in the vicinity of the attacks.⁴⁴ Civilians interviewed in both states recounted how they lived in fear of Antonov planes circulating

Periphery - The Toll on Civilians from the War in Blue Nile State, at http://www.enoughproject.org/files/SudansBloodyPeriphery_FieldDispatch.pdf.

³⁶ Ibid; see also further below, Section G.

³⁷ See for instance Human Rights Watch, 'Sudan: Crisis Conditions in South Kordofan', 4 May 2012, at <http://www.hrw.org/news/2012/05/04/sudan-crisis-conditions-southern-kordofan>; Human Rights Watch, 'Sudan: Blue Nile Civilians Describe Attacks, Abuses', 23 April 2012, at <http://www.hrw.org/news/2012/04/23/sudan-blue-nile-civilians-describe-attacks-abuses>; Amnesty International, 'We can run away from bombs, but not from hunger- Sudan's refugees in South Sudan', pp.10-14; The Sudan Consortium, 'Human Rights Update: South Kordofan State, Sudan', August 2013; Sudan Consortium, 'The Impact of Aerial Bombing of Civilian Settlements in Southern Kordofan', September 2013.

³⁸ Human Rights Watch, 'Under Siege', referring on p.21 to the 'Humanitarian Situation Report on South Kordofan and Blue Nile States, Sudan', South Kordofan and Blue Nile Coordination Unit, 15 October -15 November 2012.

³⁹ The Sudan Consortium, 'Human Rights Update: South Kordofan State, Sudan', August 2013.

⁴⁰ International Crisis Group, 'Sudan's Spreading Conflict (II): War in Blue Nile', p.26, also referring in footnote 165 to SPLM-N sources estimating that the SAF dropped an around 2,000 bombs between September 2011 and May 2013.

⁴¹ For instance, 'OHCHR Report, August 2011', paras.26-29; Human Rights Watch, 'Under Siege', pp.20-24; 35-39; African Centre for Justice and Peace Studies, 'On the Brink Again', pp.6-13.

⁴² Human Rights Watch explains that barrel bombs are "improvised crude devices filled with nails and other jagged pieces of metal that become deadly projectiles upon impact", Human Rights Watch, 'Under Siege', pp.3,35; see also Eric Reeves, 'They Bombed Everything That Moved: Aerial military attacks on civilians and humanitarians in Sudan, 1999-2012'; Human Rights Watch, 'Sudan: Civilians describe attacks, abuses', 23 April 2012; Amnesty International, 'Sudan: Possible war crimes in Southern Kordofan', 30 August 2011, at <http://www.amnesty.org/en/news-and-updates/report/sudan-possible-war-crimes-southern-kordofan-2011-08-26>.

⁴³ Human Rights Watch, 'Under Siege', p. 21; Human Rights Watch and Amnesty International, 'Sudan: South Kordofan Civilians Tell of Air Strike Horror', 30 August 2011.

⁴⁴ Ibid.

over civilian areas and dropping bombs.⁴⁵ According to Amnesty International, civilians in Blue Nile often “spoke of hiding from military planes believing that if they were spotted they would be bombed.”⁴⁶

ii. Examples of specific allegations of indiscriminate bombing incidents in South Kordofan:⁴⁷

- a. Researchers from international human rights organisations report having personally witnessed indiscriminate aerial bombings in South Kordofan in the course of their visit to the area in August 2011.⁴⁸ During their week-long mission, researchers investigated 13 air strikes in the Kauda, Delami and Kurchi areas which killed at least 26 civilians and injured more than 45 others since mid-June 2011. Evidence examined included bomb fragments, unexploded ordnances, craters, damaged properties as well as photographs and video recordings taken by community members.⁴⁹ Medical records and patterns of injuries matched witnesses’ testimonies about the impact of the bombing. Victims and witnesses testified that there were no SPLA-North fighters in the areas at the time of or before the strikes. None of the investigated incidents took place near front-line positions or areas of active armed confrontations.⁵⁰
- b. Local monitors also documented an SAF bombing of a medical clinic in Tadugli, Delami County, on 9 July 2011. According to monitors, “the clinic was completely destroyed, along with its entire stock of medicines. A medical nurse who was working in the clinic at the time of the attack was amongst those killed.”⁵¹
- c. Human Rights Watch documented the SAF’s use of ‘cluster bombs’ in several locations in South Kordofan, including in an attack on Torji on 29 February 2012, where, according to local residents, it led to “two teenage boys” being killed “when one picked up a submunition by its orange colored ribbon.”⁵²
- d. Amnesty International reported that SAF bombings in Buram County on 17 November 2012 killed a 42-year-old woman, and injured a six year-old girl, in addition to destroying 3 civilian dwellings.⁵³
- e. Local human rights monitors working in South Kordofan documented more than 50 indiscriminate attacks carried out by SAF from 1 June to 15 July 2013 on civilian

⁴⁵ See for instance Enough Project, ‘*Field Dispatch: Refugees from Blue Nile Recount Atrocities, Government’s Targeting of Civilian’s*’, 1 November 2011, p.2.

⁴⁶ See Amnesty International, ‘*We had no time to bury them — War Crimes in Sudan’s Blue Nile State*’, p. 15; see also Enough Project, ‘*Sudan Field Dispatch: Refugees Provide Details of Attacks in Isolated Blue Nile State*’, p.8.

⁴⁷ See also further incidents described in the Annex; for a detailed overview of incidents of indiscriminate bombings documented by local monitors, see Nubareports, <http://www.nubareports.org/>.

⁴⁸ Amnesty International and Human Rights Watch, ‘*Sudan: South Kordofan Civilians Tell of Air Strike Horror*’, 30 August 2011, at <http://www.hrw.org/news/2011/08/30/sudan-south-kordofan-civilians-tell-air-strike-horror>.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Human Rights Watch, ‘*Sudan: Cluster Bomb Found in Conflict-Zone*’, 24 May 2012, at <http://www.hrw.org/news/2012/05/24/sudan-cluster-bomb-found-conflict-zone>.

⁵³ Amnesty International, <http://www.amnesty.org/en/library/asset/AFR54/051/2012/en/d84e4390-2032-4def-b39e-b379cf247d08/afr540512012en.pdf>.

settlements and populated areas in Heiban, Al Buram, Kadugli and Um Doreign counties. 10 civilians are known to have been killed, and 25 injured. According to the monitors, all locations where casualties occurred “were clearly identifiable as being civilian in character, were not being used for military purposes and did not present legitimate military targets.”⁵⁴

- f. On 7 August 2013, local monitors reported 8 indiscriminate attacks by SAF air force against civilians in Tangal Um and Cham Chacka villages in South Kordofan, killing one woman, Madina Ismail, and wounding three civilians.⁵⁵

iii. Examples of specific allegations of indiscriminate bombing incidents in Blue Nile:

- a. As a result of the Respondent State’s restriction to access particularly in Blue Nile, there is less information available regarding specific incidents in Blue Nile state.⁵⁶ The details that have emerged, however, demonstrate similarities to the situation in South Kordofan.
- b. In late July 2012, at the Batil refugee camp in South Sudan, The Enough Project conducted over a dozen interviews with refugees from Blue Nile.⁵⁷ This followed the influx of nearly 35,000 refugees from Blue Nile into Upper Nile, South Sudan, between late May and early June 2012.⁵⁸ Refugees explained that, during the nine months between the outbreak of violence in Blue Nile in September 2011 and their arrival in Batil in mid-2012, most of them had “fle[d] to the bush and mountains nearby for refuge from the fighting.”⁵⁹ “Some returned to their villages and other towns when the bombings and shelling abated to retrieve food and other goods. Most described constant movement.”⁶⁰ “The problem,” explained Kuol, a mother of 10 from the village of Jogom, “is bad security on the roads,” due to the Respondent State’s policy of indiscriminate bombings.⁶¹ “When you walk in the daytime,” she explained, “the Antonovs could bomb you. Maybe you can stay in one place for one or two weeks.” “When I find a good place, I sleep; I find food for the children.”
- c. This constant movement has taken a particularly heavy toll on infants and the elderly, who are often too weak or too small to effectively avoid Antonov attacks. Omer, a 28-year-old refugee from the town of Maganza, in July 2012 described selling his recently-harvested crops in the market when he “saw the soldiers coming and shooting and . . . heard the Antonovs.”⁶² Fearing aerial bombardment, he was forced to leave his three-year-old son behind. “The war was too much,” he said. “There was no time to look for him.”⁶³ Amna, a woman from Jam, described being forced to abandon her grandmother during the long

⁵⁴ The Sudan Consortium, ‘Human Rights Update: South Kordofan State, Sudan’, August 2013.

⁵⁵ Radio Dabanga, ‘One killed, three wounded in air raid on Sudanese village: rebels’, 7 August 2013, at <https://www.radiodabanga.org/node/54393>.

⁵⁶ The Enough Project, ‘Sudan Field Dispatch: Refugees Provide Details of Attacks in Isolated Blue Nile State’, at p.1.

⁵⁷ Ibid.

⁵⁸ Ibid. at p.2.

⁵⁹ Ibid. at p.5.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid. at p.1.

⁶³ Ibid.

journey to the Batil refugee camp. “She could not move one day,” Amna explained, “[w]e had to leave her.”⁶⁴ She said they were still searching for her among the refugees.

- d. Human Rights Watch undertook five research missions to hard-to-access rebel-held areas in the two states and to refugee camps in South Sudan and also interviewed many witnesses from Blue Nile. Witnesses interviewed described several SAF bomb attacks and shellings in the Kormuk and Bau localities in which civilians were killed. One example is the testimony of a witness who saw his neighbour ‘Ahmed’ killed in an indiscriminate shelling attack of the SAF in August 2012 on Wadega village. According to the witness, Ahmed was working in the field at the time he was killed, and there were no rebel forces in the vicinity before or during the attack. The same witness had seen a total of four civilians being killed through aerial bombings since the outbreak of hostilities in September 2011.⁶⁵ In another incident in late 2011, a mother recounted how she was fleeing from Surkum, Blue Nile, towards South Sudan, when a barrel bomb hit her group of refugees and killed her 17 year old daughter Fatallah and two others, including a 12 year old child.⁶⁶

iv. Targeted attacks on exclusively civilian areas

22. In addition, victims and witnesses testified that the SAF carried out bombings of exclusively civilian areas, including the SAF’s bombing of a market place in the Nuba Mountains, a refugee camp in South Sudan and, between 1 June and 15 July 2013, cultivated agricultural areas in South Kordofan.⁶⁷

v. Destruction of property, livestock and other means of livelihood

23. In addition to the killing and injuring of civilians, the SAF’s indiscriminate bombing campaign (in combination with its ground attacks) resulted in the destruction of property, the loss of livestock and other means of livelihood. It has had a significant impact on farmers whose lives are threatened by the SAF’s targeted bombings of cultivated land. The SAF’s increase of bombings during the harvest and planting season prevents civilians from farming due to fear of being bombed.⁶⁸

24. In Blue Nile, in February and March 2013, “farming virtually came to a halt, as the threat of bomber attacks and targeted attacks by jet fighters and helicopter gunships prevented farmers from harvesting in safety.”⁶⁹ According to Enough Project staff carrying out field visits late in 2012 and in February 2013, “it was clear that the majority of the crops [in the Chali area] could not be harvested. The local staples, sorghum, maize and pumpkin were rotting in the fields.”⁷⁰

⁶⁴ Ibid. at p.5.

⁶⁵ Human Rights Watch, ‘Under Siege’, p.36.

⁶⁶ Ibid.

⁶⁷ UN News Centre ‘UN calls for probe into Sudanese bombing of refugee camp’ 11 November 2011 at <http://www.un.org/apps/news/story.asp?NewsID=40374&Cr=sudan&Cr1=&Kw1=Kordofan&Kw2=&Kw3;> Amnesty International, ‘Sudan’s civilians in crisis: Indiscriminate attacks and arbitrary arrests pervade South Kordofan’; The Sudan Consortium, ‘Human Rights Update: South Kordofan State, Sudan’, August 2013.

⁶⁸ Amnesty International, ‘Sudan’s civilians in crisis: indiscriminate attacks and arbitrary arrests pervade South Kordofan’.

⁶⁹ Enough Project, ‘Sudan’s Bloody Periphery - The Toll on Civilians from the War in Blue Nile State’, p.4.

⁷⁰ Ibid.

25. The air strikes carried out between 1 June and 15 July 2013 on civilian settlements in Heiban, Al Buram, Kadugli and Um Doreign counties in South Kordofan also included targeted bombings of “cultivated agricultural areas” in Delami County, with 178 bombs dropped in the course of 32 separate air raids. The attacks destroyed cultivated land and damaged or destroyed newly planted crops in 12 locations. The timing of the targeted attacks suggests that it was deliberately coinciding with the start of the planting and early growing season (as the planting season in Delami began in June).⁷¹
26. The Satellite Sentinel Project⁷² documented several SAF attacks (by air and ground) deliberately targeting civilians and civilian areas, leading to extensive destruction:
- a. In mid-April 2011, PDF militia forces attacked the town of el-Feid in South Kordofan, burning at least 356 civilian structures, primarily homes.⁷³ Satellite photos show an absence of scorch marks between the burned buildings, such as would be expected if the village had been destroyed by a wide-ranging, naturally-occurring fire.⁷⁴ This, coupled with the wide distribution of burn sites, indicates that the structures were deliberately razed.⁷⁵
 - b. In November 2011, following a series of airstrikes, SAF forces entered and razed the village of 'Amara in Blue Nile state.⁷⁶ Satellite imagery and eyewitness reports confirm that more than one-third of the civilian structures in the area had been burned to the ground.⁷⁷
 - c. A similar attack occurred at the village of Um Bartumbu near the Nuba Mountains, also in South Kordofan, sometime between 12 November and 28 November 2011.⁷⁸ Satellite images show that at least 80 buildings in Um Bartumbu village had been destroyed by burning, corroborating earlier eyewitness reports.⁷⁹ Local witnesses reported the attack to be the work of a mixed unit of SAF and PDF militia-members calling themselves *il katiba il kabreet*—the “Match Battalion.”⁸⁰ A cell phone video, recorded during the attack and later recovered from the body of an SAF soldier, shows a member of the Match Battalion marching through the village of Um Bartumbu brandishing a lit torch.⁸¹ Subsequent photos taken by a local citizen-journalist captured what was remained of the village: homes, a church, and the local mill burned to their foundations, their walls blackened by fire.⁸²

⁷¹ The Sudan Consortium, ‘Human Rights Update: South Kordofan State, Sudan’, August 2013.

⁷² The Satellite Sentinel Project conducts regular, “intensive monitoring of Sudan to assess the current human security situation and identify potential threats to civilians”, see further at <http://www.satsentinel.org/our-story>.

⁷³ Satellite Sentinel Project, ‘the Razing: Intentional Burning Confirmed At El-Feid, Nuba Mountains’, 19 April 2011, p.1, at http://www.satsentinel.org/sites/default/files/Satellite_Sentinel_Project_report_The_Razing-041911-compressed.pdf

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Satellite Sentinel Project, ‘Blue Nile Burning: Evidence of the Destruction of ‘Amara Village’, 1 December 2011, p.1, at: <http://www.satsentinel.org/sites/default/files/SSP%2023%20Blue%20Nile%20Burning.pdf>

⁷⁷ Ibid.

⁷⁸ Satellite Sentinel Project, ‘Match Battalion: Confirmation of the Razing of Um Bartumbu Village’, 20 July 2012, p.3, at <http://satsentinel.org/sites/default/files/SSP%20Report%20Match%20Battalion%20072012.pdf>

⁷⁹ Ibid, pp. 3-4.

⁸⁰ Ibid.

⁸¹ Ibid, pp. 3-4.

⁸² Ibid, pp.11-12.

- d. The Enough Project has analysed video evidence showing that, on 29 July, 2012, SAF bombarded Gardud al Badry with artillery and destroyed schools and residential structures.⁸³
- e. Satellite evidence also shows that, in late August 2012, the SAF bombarded El Moreib and surrounding area with heavy artillery. As a result, approximately 3,000 civilians were forced to flee their homes.⁸⁴
- f. Satellite imagery collected on 26 November 2012 shows the destruction of thirteen villages and 31 square miles of fields and forests near al Abassiya and al Hoi villages.⁸⁵
27. In addition, SAF forces have looted and burned churches,⁸⁶ as well as houses and properties of individuals belonging to, or suspected of belonging to, SPLA/SPLM.⁸⁷ Specific incidents where the SAF was responsible for looting and damaging property as documented by media, witnesses and/or the UN and human rights organisations include the looting and pillaging of the offices of the UN World Health Organisation and World Food Programme on 10 June 2011.⁸⁸ 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 offices, burning eight computers, a photocopier, a television, tents, a refrigerator and a solar power system.⁸⁹
28. Video evidence recovered from the body of an SAF soldier shows that, on 16 October 2012, SAF soldiers and PDF militiamen razed and looted the village of Gardud al Badry.⁹⁰
29. On or about 3 January 2013, displaced civilians witnessed SAF soldiers shell the village of Harazaya near Kadugli, also in South Kordofan, set fire to the houses, and then proceed to loot the villagers' livestock and other property.⁹¹
30. Witnesses in Damazin, Blue Nile, stated that on the night of 1 September 2011, SAF soldiers "used tanks and heavy weapons to target civilian property, including residential homes and the Malik Agar cultural center" before "loot[ing] civilian property extensively."⁹²

⁸³ Satellite Sentinel Project, 'Cameras on the Battlefield: Multimedia Confirmation of Razing of Gardud al Badry, South Kordofan, Sudan', 16 October 2012, p.3.

⁸⁴ Satellite Sentinel Project, 'Gateway to the North: Confirmation of Bombardment and New SAF Fortification at El Moreib Village, South Kordofan, Sudan', 28 September 2012, p.3.

⁸⁵ Satellite Sentinel Project, 'Situation Report: Scorched Earth Near al Abassiya, Sudan', 30 November 2012, p.1.

⁸⁶ '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>.

⁸⁷ OCHA 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, at <http://af.reuters.com/article/sudanNews/idAFLDE75E0XG20110615>.

⁸⁸ World Food Programme, 'UN pleads for aid access to South 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, at <http://www.voicesforsudan.org/2011/06/un-warehouses-in-sudan-state-of-south-kordofan-looted/>.

⁸⁹ '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.

⁹⁰ Satellite Sentinel Project, 'Multimedia Confirmation of the Razing of Gardud al Badry', 16 October 2012, at 3-4, at <http://www.satsentinel.org/sites/default/files/Cameras%20on%20the%20Battlefield%20Full%20Report.pdf>.

⁹¹ Human Rights Watch 'Under Siege', p.34.

31. Satellite pictures captured on 27 November 2011 identified “the intentional destruction of at least thirty-three structures largely consistent with civilian dwellings in the vicinity of Amara, Blue Nile, Sudan.”⁹³

D. Extrajudicial Killings

32. The SAF and other Sudanese forces also committed a number of targeted extrajudicial killings of individuals presumed to support the SPLA-North. Aid workers, UN staff and displaced persons reported that killings specifically targeted those living in rebel held areas and those belonging to the Nuba ethnic group, raising fears of an ethnic cleansing campaign across Nuba populated areas.⁹⁴ The International Crisis Group highlighted that the Respondent State was also targeting ethnic groups such as *Ingessana* and *Uduk* in Blue Nile who it “systematically considers to be pro-rebels.”⁹⁵ 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”.⁹⁶ Furthermore, explosion of SAF planted landmines in Kadugli town resulted in an unknown number of deaths and injuries.⁹⁷ Indeed, the preliminary report of the UN “indicates that more than one third of Kadugli town is riddled with either landmines or unexploded ordnance.”⁹⁸

i. Examples of specific incidents of extrajudicial killings in South Kordofan:⁹⁹

- a. According to a witness of the SAF’s campaign of arrests of ethnic Nuba and perceived or actual supporters of the SPLM/A- North in the first month of the conflict, arrests were accompanied by targeted killings:

Many of the Nuba tribe members have been arrested and were targeted just for being Nubian. Many have disappeared but there are no statistics. Some are being

⁹² Human Rights Watch, ‘Sudan: Blue Nile Civilians Describe Attacks, Abuses.’

⁹³ Satellite Sentinel Project, ‘Blue Nile Burning: Evidence of the Destruction of Amara village.’

⁹⁴ 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>; African Centre for Justice and Peace Studies in its report ‘On the Brink again’ lists dozens of people who had been reportedly killed unlawfully in the first month of the conflict in South Kordofan on the basis of their ethnic and/ or perceived or actual political affiliation, pp.11-12; OCHR Report, August 2011, para.13.

⁹⁵ International Crisis group, *Sudan’s Spreading Conflict (II): War in Blue Nile*, p.28.

⁹⁶ United States State Department, ‘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>; see also Resolution of the European Parliament, ‘Sudan: situation in South Kordofan and Blue Nile State’, 15 September 2011, calling on the parties of the conflict to ‘halt targeted summary and extra judicial killings, arbitrary arrests and detentions, acts of torture, enforced disappearances and looting’, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:051E:0143:0146:EN:PDF>.

⁹⁷ OCHA, ‘Sudan-South Kordofan, Situation Report No.7’, 21 June 2011, p.1, at http://www.undis.org/docs/OCHA%20Situation%20Report_7%20on%20South%20Kordofan%2019%20to%2021%20June%202011.pdf; UN, ‘Report of UN Independent Expert on the situation of human rights in the Sudan, Mohamed Chande Othman’, 2011, para.40.

⁹⁸ Ibid.

⁹⁹ See for further incidents as documented in the *OHCHR South Kordofan Report, August 2011*, paras.13-25.

killed in front of their families. Some of the perpetrators were wearing civilian clothes and were carrying Kalashnikovs. They looked like militias. Central Reserve Forces have committed many crimes and are responsible for what's happened. No trial, just shooting. On June 7, I saw many dead bodies around Kadugli on the ground. On June 8, the medical assistant in Kadugli hospital named al-Shreif was killed in front of the hospital by militia members. The militias mainly targeted the Nuba.¹⁰⁰

- b. Satellite evidence shows that, between 2 June and 19 August 2011, the Central Reserve Police, also known as "Abu Tira," reinforced and fortified a training center within approximately 100 meters of the UNMIS compound perimeter. Witness reports indicate that multiple IDPs were then kidnapped from the UNMIS compound and killed at or near this training center. The Satellite Sentinel Project also received an eyewitness report according to which CRP, SAF, and PDF forces tied civilians to the gates of the Kadugli airport checkpoint on 8 June and beat them before shooting the civilians and burying their bodies in a mass grave near Kadugli.¹⁰¹
- c. Human Rights Watch documented that one of those arrested by military personnel and taken from inside a UNMIS-run displacement camp was later found dead.¹⁰²
- d. The SDFG report documents extrajudicial killings of 21 identified civilians, including two local UNMIS personnel, two teachers, a student, workers, a doctor and a priest in the first month of the conflict.¹⁰³

ii. Examples of specific incidents of extrajudicial killings in Blue Nile:

33. In Blue Nile, Human Rights Watch interviewed a number of witnesses who testified about government forces killing civilians:

- a. Mr Shukri Ahmed Ali, the former administrator of Roseris and a member of SPLM testified that on 3 September 2011, soldiers at a checkpoint between Damazin and Roseris killed two of his family members and his driver, apparently believing that he was in the car;¹⁰⁴
- b. A 26-year-old man from Roseris, now living in South Sudan, testified that while he was detained, he saw a "military officer shoot two men in the head at close range outside the cell, killing them instantly;"¹⁰⁵
- c. Mr Issa Daffala Sobahi, who had been arrested on 2 September 2011 and was beaten and insulted (he was called a "kafir" [infidel]), testified that soldiers took "people to the river

¹⁰⁰ Ibid, p.10.

¹⁰¹ The Satellite Sentinel Project, 'Special Report- In close proximity: Alleged abduction, detention and extrajudicial killings by Abu Tira', 13 October 2011, at

http://www.satsentinel.org/sites/default/files/SSP20_Abductions_killings_by_Abu_Tira_101311.pdf.

¹⁰² 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>.

¹⁰³ 'SDFG report', p.3.

¹⁰⁴ Human Rights Watch, 'Under Siege', p.39.

¹⁰⁵ Ibid, p.42.

and shot them” and that he witnessed soldiers killing two persons and a woman who was carrying her baby and resisted arrest;¹⁰⁶

- d. A 25 year old woman from a village around Gebanit said she witnessed the PDF attack the village on multiple occasions and how, when she had tried to flee to South Sudan with her mother-in-law, uniformed men armed with AK-47s shot and killed her brother, a civilian.¹⁰⁷
- e. Mrs Saudi Idris, a 25 year old woman from a village near Ganeet, testified how she and a group of 35 adults were ambushed by PDF members in October 2012 as they tried to flee to South Sudan. The militia shot and killed 3 of the 30 men in the group at Jabla al-Tien.¹⁰⁸
- f. In July 2012, the Enough Project interviewed refugees from Blue Nile, who had recently crossed into South Sudan and who reported about extrajudicial killings of civilians by SAF and other forces. Their statements confirm the Respondent State’s pattern on extrajudicial killings of civilians:
 - i. Mustafa, a 28-year-old man from Taga, stated that SAF soldiers “were shooting with guns, they set houses on fire. They did not differentiate between civilians and soldiers. They shot everyone.”¹⁰⁹
 - ii. Fatima, from Jam, described seeing SAF soldiers enter her town. “They are shooting everybody,” she said, “the army, the community, the cows, the animals.”¹¹⁰
 - iii. Mohammed, a 25-year-old refugee from Jam, said he saw Sudanese soldiers “collect old people in a building” and set the building on fire.¹¹¹ “There were many [people],” he said, “but I don’t know how many.”¹¹² Magdi, a 39-year-old cattle-keeper, returned to the town after the SAF attack and saw human remains in the same building. “You cannot identify anybody,” he said, “all the bodies were burnt.”¹¹³

E. Rape and Sexual Violence

34. The Respondent State’s violence against civilians included widespread sexual violence against women and girls. Local human rights monitors, national and international NGOs have documented SAF soldiers assaulting and raping women and girls in South Kordofan and Blue Nile.¹¹⁴ Specifically, women refugees interviewed in refugee camps in South Sudan identified “sexual violence as a pressing concern while fleeing their homes in Nuba Mountains, as well as an on-going concern in the

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, p.40.

¹⁰⁸ Ibid, p.41.

¹⁰⁹ The Enough Project, ‘Sudan Field Dispatch: Refugees Provide Details of Attacks in Isolated Blue Nile State’, at p.3.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Human Rights Watch, ‘Under Siege’, pp.28-29.

camp.”¹¹⁵ During a fact finding mission by the International Rescue Committee (IRC) to Yida refugee camp in South Sudan in February 2012, the IRC spoke with “more than 100 women and girls and several key members of the community”.¹¹⁶ The women and girls reported that “gender based violence is a defining feature of the experiences of women and girls as they flee Nuba, as they cross the border, and once they arrive at refugee camps such as Yida.” Women and girls who have fled the Nuba Mountains reported being “raped in front of family members, raped by multiple perpetrators and taken for long periods of time, sometimes never to return.”¹¹⁷ The prevalence of rape and other forms of sexual violence committed by armed forces during the conflict is consistent with similar reports of the practice documented and reported in the context of other past and present conflicts in Sudan.¹¹⁸

i. Examples of specific incidents of sexual violence in South Kordofan include:

- a. In November 2011, PDF soldiers stationed at Jau (South Kordofan), a military base near the South Sudan border, assaulted and raped two Nuba girls, ages 14 and 16, who were fleeing to the Yida refugee camp in South Sudan.¹¹⁹
- b. In El Taice, Human Rights Watch interviewed victims and witnesses of sexual violence by government soldiers at different times between November 2011 and early 2012. Halima T., a young woman in her twenties, told Human Rights Watch that her aunt was raped by government soldiers: “I saw my aunt being raped. We were in the mountain together, and they came and took her. She was raped near the mountain... afterward they took her to Kadugli.”¹²⁰

ii. Examples of specific incidents of sexual violence in Blue Nile include:

- a. Aziz, a man who had fled from Baw town, told the Enough Project that government militias kidnapped and detained some of the displaced women and young girls in a school. SAF soldiers and government militia would bring visitors to the school who did “whatever they wanted with them.”¹²¹ According to another witness interviewed by Enough, “two young girls were killed as a result of being raped by around 30 men.”¹²²

F. Arbitrary arrest, detention and torture and ill-treatment

35. The UN, national and international human rights organisations and media outlets have documented that the SAF and other security forces carried out mass arrests in South Kordofan during the first months of the conflict. UNMIS reported on 22 June 2011 that the SAF arbitrarily arrested six UNMIS

¹¹⁵ Ibid, p.28.

¹¹⁶ International Rescue Committee, ‘Still Not Safe: Violence Against Women & Girls of the Nuba Mountains, Yida Camp’, March 2012, at <http://bit.ly/16Oes24>.

¹¹⁷ Ibid.

¹¹⁸ See e.g. Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, Communications 279/03-296/05, paras.151, 154.

¹¹⁹ Human Rights Watch, ‘Under Siege’, p.28.

¹²⁰ Ibid;

¹²¹ Enough Project, ‘Field Dispatch: Refugees from Blue Nile Recount Atrocities, Government’s Targeting of Civilians’, 1 November 2011.

¹²² Ibid.

staff while they were being relocated from South Kordofan. No evidence against the six detained staff members was presented to UNMIS.¹²³ On 17 June 2011, UNMIS condemned the “arbitrary detention and abuse” by the SAF of four UN peacekeepers on patrol in Kadugli.¹²⁴ At the time, the SAF, together with NISS officials, conducted house to house searches for Nuba political and civil society activists, set up check points on the main roads¹²⁵ and searched UNMIS-run displacement camps, where individuals were screened allegedly with the aim of arresting political rivals and ethnic Nuba.¹²⁶ Several incidents of arbitrary arrest, detention, torture and enforced disappearance were reported as a result of these house-to-house searches.¹²⁷ In November 2012, Sudanese security forces and military intelligence reportedly carried out a campaign of mass arbitrary arrests, continuing the pattern of targeting people from the Nuba ethnic group in South Kordofan. Amnesty International reported that over 90 persons were arrested during that campaign in Kadugli and Dilling.¹²⁸

36. In Blue Nile, witnesses told Human Rights Watch that immediately following the outbreak of hostilities in September 2011, “government forces rounded up and placed in prolonged detention, verbally and physically abused, and killed civilians based on their presumed ties to SPLM- North and its armed wing, SPLA-North.”¹²⁹ According to the African Centre for Justice and Peace Studies, 92 men had been detained in prisons in Blue Nile and Sennar states since September 2011, mostly because of their real or perceived links to SPLM-North.¹³⁰

37. As illustrated below, in a large number of cases of arbitrary arrest and detention, SAF soldiers, NISS authorities and other government authorities and forces resorted to committing other violations, specifically torture and ill-treatment of those arrested and detained, as well as enforced disappearance in several cases.

i. Examples of specific incidents of arbitrary arrest, detention, torture and ill-treatment in South Kordofan:

- a. Four UN peacekeepers were arbitrarily detained and subjected to a mock firing squad by SAF personnel in Kadugli.¹³¹

¹²³ UNMIS, ‘SAF arrests six UN staff in South 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>.

¹²⁴ UN, ‘Sudan, UN condemns harassment of its peacekeepers in South Kordofan, UN New Centre’, 17 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38758&Cr=sudan&Cr1>.

¹²⁵ ‘SDFG report’, p. 3; Human Rights Watch, ‘UN, AU: Urge End to Sudanese Abuses in South Kordofan’.

¹²⁶ ‘SDFG report’; The Guardian, ‘Half a million displaced as Khartoum moves to crush Sudan’s Nuba people’.

¹²⁷ African Centre for Justice and Peace Studies, ‘On the Brink again’, p.9.

¹²⁸ Amnesty International, ‘Sudan’s civilians in crisis: Indiscriminate attacks and arbitrary arrests pervade South Kordofan’, 11 December 2012, at <http://amnesty.org/en/library/asset/AFR54/051/2012/en/d84e4390-2032-4def-b39e-b379cf247d08/afr540512012en.pdf>.

¹²⁹ Human Rights Watch, ‘Under Siege’, p.41.

¹³⁰ Ibid, p.42; according to HUDO, several of those detained have since been tried and sentenced by an ad hoc “special court”, and most remain in detention. Report on file with the Applicants.

¹³¹ UN News Centre, ‘Sudan: UN condemns harassment of its peacekeepers in South Kordofan’, 17 June 2011; 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>; African Centre on Justice and Peace Studies, ‘On the Brink again’, p.15.

- b. 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 killed. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.¹³²
- c. Forty-six persons in and around Kadugli were arrested during the first weeks of the conflict in June 2011. In addition, at around the same time, 90 civilians were arrested in Hay Mwazafin in Kadugli, reportedly tortured and later transferred to Khartoum.¹³³
- d. On 20 June 2011, Kadugli police arrested and detained a young Nuban woman, who was interrogated about her work with an international NGO while being beaten with fists, sticks, rubber hoses, and electric wires.¹³⁴
- e. On 2 December 2011, the NISS arrested three youth belonging to the Misseriya tribe between Hajlij and Muglad in South Kordofan: Musa Bakhit; Al Fadul Altoum; and Hamdeen Eisa Al Nour. They were held in Kadugli and subjected to torture.¹³⁵
- f. On 17 January 2012, SAF Military Intelligence arrested Mr Fathi Bashir El-Feil, a pro-democracy activist from Al-Abasya Tagali in South Kordofan. His arrest follows accusations that he leaked information about the crimes committed in South Kordofan.¹³⁶ For the same reason, Mr. Fathi's family was also threatened and targeted by security forces.¹³⁷
- g. On 18 May 2012, the Central Reserve Police detained, interrogated, and tortured a Nuban high school student, whom they accused of being a rebel.¹³⁸ He was tied up and interrogated at gunpoint by uniformed Abu Tira officers who stated: "[g]et information from him, then kill him." "He doesn't know anything. He's nothing."¹³⁹
- h. On 22 August 2012, eyewitnesses stated that Omaia Abdel Latif Hassan Omaia, media representative of the SPLM-North, was arrested by two people in civilian clothes, believed to be NISS agents. On 3 November 2012 he was transferred from the town of Tajmala to Talodi in South Kordofan. He is still being held incommunicado without access to a lawyer or to his

¹³² 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>.

¹³³ African Centre for Justice and Peace Studies, '*On the Brink again*', pp.9-11.

¹³⁴ OHCHR, '*OHCHR South Kordofan Report August 2011*', para.34.

¹³⁵ African Centre for Justice and Peace Studies, '*Sudan Human Rights Monitor, December 2011- January 2012*', p. 13, at http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human_Rights_Monitor-Issue15-FINAL.pdf.

¹³⁶ Darfur Relief and Documentation Centre, '*Incommunicado Detention of Mr. Fathi Bashir El-Feil*', Submission to UN Human Rights Council, 20 March 2012.

¹³⁷ Ibid; no update or further information could be obtained on Mr Fathi's situation at the time of submission.

¹³⁸ Satellite Sentinel Project, '*Cameras on the Battlefield: Multimedia Confirmation of Razing of Gardud al Badry, South Kordofan, Sudan*' (October 16, 2012), at iv.

<http://www.satsentinel.org/sites/default/files/Cameras%20on%20the%20Battlefield%20Full%20Report.pdf>

¹³⁹ Ibid, p.v.

family. He is believed to have suffered serious injuries, including a fractured left arm and a paralysed left leg as a result of torture.¹⁴⁰

- i. Sarah L., a 22-year-old mother of two was arrested by Sudanese security officials at her home on 24 October 2012. She was detained for three days because of her alleged links to the SPLM-North. She was shackled, beaten and detained with 35 other women in a national security detention facility inside Kadugli town.¹⁴¹
- j. On 10 and 11 November 2012, security force and military intelligence officers arrested 34 women in Kadugli. The women were placed in incommunicado detention in Kadugli, without access to a lawyer or their families, and without adequate access to medical care.¹⁴² On 26 April 2013, 14 women were released, while 20 remained detained. None of the women had been charged, and five of those released had been detained with their young children, ranging in age from 6 months to 18 months, while the other 9 had suffered from health problems in detention.¹⁴³ The other 20 women were released in 10 July 2013.
- k. On 18 November 2012, 60 civilians, including men and women, were reportedly arbitrarily arrested in Dilling, South Kordofan, and taken to the military barracks, before being transferred to Kadugli. They were denied access to their families and not provided with legal representation. The majority of those arrested were from the 'Oncho' tribe, which is part of the Nuba ethnic group.¹⁴⁴ Eight of the 60 civilians were reportedly released on 5 December, after their families had paid security officers, who had reportedly threatened families of the detainees that their relatives would only be released upon payment.¹⁴⁵

ii. Examples of specific incidents of arbitrary arrest, detention, torture and ill-treatment by SAF soldiers and other government authorities in Blue Nile:

- a. In Blue Nile, a 26-year-old man recounted to Human Rights Watch in April 2012 how national security officers had arrested him and his brother from Roseris, and removed them from their house, accusing them of being SPLA-North soldiers. They detained both brothers in a crowded cell for more than three weeks, tied their hands and beat them with belts on their feet and hands and threatened them. During detention, they could see other inmates being beaten and, on one occasion, witnessed a military officer shooting two men in the head.¹⁴⁶

¹⁴⁰ Amnesty International, 'Urgent Action: Missing man believed to have been tortured', 6 December 2012, at http://www.sudantribune.com/IMG/pdf/ua_update-omaia_abdel_latif_hassan_omaia.pdf.

¹⁴¹ Interview with Human Rights Watch, see Human Rights Watch, 'Under Siege', p.27.

¹⁴² Amnesty International, 'Urgent Action: Sudanese Women Held Without Trial', 19 February 2013, at <http://www.amnesty.org/en/library/asset/AFR54/005/2013/en/679e2761-b37a-474f-9058-2e47a4fea335/afr540052013en.html>; ARRY, 'Urgent Action: Dozens of Nuba Women Detained in Kadugli/ Nuba Mountains', 15 November 2012, with a list of names of the women arrested: <http://arry.org/?p=600>.

¹⁴³ Amnesty International, 'Urgent Action: 14 women released, 20 still detained in Sudan', 14 June 2013, at <http://www.amnestyusa.org/sites/default/files/f1u04613.pdf>.

¹⁴⁴ ARRY, 'Urgent Action: 60 Nuba Civilians detained in Dilling', 27 November 2012, at <http://arry.org/?p=611>.

¹⁴⁵ Amnesty International, 'Sudan's civilians in crisis: Indiscriminate attacks and arbitrary arrests pervade South Kordofan.'

¹⁴⁶ Human Rights Watch, 'Under Siege', p.42.

iii. Examples of specific incidents of arbitrary arrest, detention, torture and ill-treatment by SAF soldiers and other government authorities outside South Kordofan and Blue Nile:

38. The targeting of ethnic Nuba and perceived or actual sympathisers of the SPLM/A- North is not confined to the conflict areas, but extends to other areas of Sudan. Extensive documentation by national and international civil society shows how the NISS as well as other government authorities have arbitrarily arrested, detained and tortured and ill-treated members of the Nuba ethnic groups, activists acting on their behalf, as well as (suspected) SPLM/A sympathisers, including:

- a. On 12 June 2011, NISS officials arbitrarily arrested Mr Al Daw Gamara al Dein Ibrahim; a member of the SPLM- North Sector's Executive Youth Committee, on Biyoyo Kwan Avenue in Khartoum and took him to NISS offices near Shandi bus station in Khartoum Bahri. There, NISS officers beat him severely with black water hoses for two hours, while subjecting him to verbal abuse and threats to his life. He was released in the evening of the same day.¹⁴⁷
- b. On 25 June 2011, the NISS arrested Mr Bushra Gamar Hussein Rahma, a Sudanese X Ray technician of Nuba ethnicity, at his home in Omdurman town. Mr Gamar had previously acted as the Director for the Sudan Social Development Organisation (SUDO) and as the Executive Director for the Human Rights and Development Organisation (HUDO) in South Kordofan. He was held incommunicado upon arrest; the NISS withheld information about his whereabouts, refused Mr Gamar access to his family, and denied him access to a lawyer.¹⁴⁸ A range of UN Special Rapporteurs, as well as the UN Working Group on Arbitrary Detention, called on the Respondent State to investigate allegations that Mr Gamar, while in the custody of the NISS, was reportedly beaten until he went into a coma, forced to stand for long hours during interrogation by NISS officers, who also threatened him with death and rape and called him a slave due to his Nuba ethnic origin.¹⁴⁹ He was released on 27 June 2012. No investigation is known to have taken place into the complaints made in this case, nor has Mr Gamar received any reparation.¹⁵⁰
- c. On 14 March 2012, NISS arbitrarily arrested Mrs Jalila Khamis Koko, a human rights defender who had supported internally displaced persons from the Nuba Mountains. She was kept in conditions of detention contrary to the UN Standard Minimum Rules for the Treatment of

¹⁴⁷ African Centre for Justice and Peace Studies, *'On the Brink again'*, p. 17.

¹⁴⁸ See Sudan Democracy First Group, REDRESS and African Centre for Justice and Peace Studies, *'Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights: Article 5 of the African Charter'*, April 2012, para. 22; photos of Mr Osman's torture, at <http://namaa09.blogspot.co.uk/2011/02/sudan-torture-victims-released-tens.html>.

¹⁴⁹ UN, *'Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment'*, 8 June 2012, at [https://spdb.ohchr.org/hrdb/22nd/public - UA Soudan_08.06.12_\(3.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public - UA Soudan_08.06.12_(3.2012).pdf).

¹⁵⁰ Amnesty International, *'Urgent action: Sudanese Activist Released Without Charge'*, 16 July 2012, at <http://www.amnesty.org/en/library/asset/AFR54/031/2012/en/3d9563a5-6ee6-4be7-abd9-2e8b2afca218/afr540312012en.pdf>.

Prisoners¹⁵¹ and subjected to death threats amounting to torture and ill-treatment. Following an urgent request to a range of UN Special Rapporteurs, she was released after a court hearing on 20 January 2013.¹⁵²

- d. On 16 April 2013, the Chair- Rapporteur of the Working Group on Enforced or Involuntary Disappearances and a range of UN Special Rapporteurs requested the Respondent State to provide further information on the case of Mr Sharf Eldein Tia, the nephew of Mrs Jalia Khamis Koko (see above at (c)). According to information received by the UN Mandate holders, NISS officers had arrested Mr Sharf Eldein Tia on 10 April 2013. Since his arrest, his “fate and whereabouts, as well as criminal charges against Mr Sharf Eldein Tia are not known.”¹⁵³
- e. In May 2012, Sidiq, a 25 year old donkey cart driver, and his family were abducted by SAF soldiers from Khor Gidat in Blue Nile after the SAF accused him of being a rebel soldier. He was hit on the back of the head with the butt of a gun, bound, and his upper arms were burned. He was taken to a prison in the state capital, where he was beaten and interrogated every day for a week, as the SAF sought to learn about SPLM-N movements and supplies. He finally escaped after being transferred to another camp.¹⁵⁴
- f. Human Rights Watch reported in July 2013 that NISS agents arrested more than 26 persons in Khartoum after a rebel alliance called the Sudan Revolutionary Forces (SRF) attacked towns in Northern and South Kordofan. While some had been released, seven Darfuri and Nuba civilians are believed to remain in custody, held in incommunicado at secret locations.¹⁵⁵ Despite a pledge of the Respondent State’s President, Mr Omar al-Bashir, that all political prisoners would be released, at least 100 more persons, the majority from South Kordofan and Blue Nile, are still being detained on the basis of their presumed political affiliation.¹⁵⁶

¹⁵¹ There was no natural light in the cell, and the victim lost her orientation and did not know whether it was day or night. She was only allowed to leave her cell during the time of prayer, and was also only then allowed to use a bathroom. The food was of poor quality and the water at times contaminated, resulting in the victim developing stomach pain on several occasions; see Arry and REDRESS, ‘Request for urgent action in respect of Jalila Khamis Koko’, sent to Mrs Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, and others, 18 December 2012, p.8, at http://www.redress.org/downloads/FinalUrgentAction_JalilaKhamiKoko_18December2012.pdf.

¹⁵² Ibid.

¹⁵³ UN, *Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Reference UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) G/SO 217/1S/DN 4/2013, 16 April 2013, p.2.

¹⁵⁴ Enough Project, ‘Sudan Field Dispatch: Refugees Provide Details of Attacks in Isolated Blue Nile State’, July 2012, at 4.

¹⁵⁵ Human Rights Watch, ‘Sudan: Wave of Arrests After Rebel Offensive’, 10 July 2013, at <http://www.hrw.org/news/2013/07/10/sudan-wave-arrests-after-rebel-offensive>.

¹⁵⁶ Human Rights Watch, ‘Sudan: Despite Pledge, Many Political Prisoners Remain’, 22 April 2013, at <http://www.hrw.org/news/2013/04/22/sudan-despite-pledge-many-political-prisoners-remain>; it was not possible to verify whether that number had changed by the time of drafting this Submission (October 2013).

G. Forced displacement

39. The indiscriminate character of the SAF's bombing in combination with the large-scale human rights violations has caused hundreds of thousands of people to flee their homes. On 11 June 2011, the Sudanese Social Development Organisation ('SUDO') reported that a continuing influx of thousands of displaced people from the region had 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 (North Kordofan).¹⁵⁷ After a seven day bombing campaign by 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 South Kordofan have been displaced.¹⁵⁸ On 27 June 2011, the OCHA estimated that at least 73,000 people had been displaced in the region.¹⁵⁹ 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".¹⁶⁰
40. By August 2013, the UN Office for the Coordination of Humanitarian Affairs estimated that in the South Kordofan and Blue Nile area, well over a million people have been displaced or severely affected by the conflict since 2011. The majority remain in Sudan, with an estimated 695, 000 people internally displaced, while 225, 000 fled to South Sudan or Ethiopia. There are 32, 000 refugees from Blue Nile in Ethiopia.¹⁶¹ The continued indiscriminate bombing campaign and on-going human rights violations are preventing the displaced persons from returning home.¹⁶²
41. According to the UN, over 80,000 additional persons have been displaced as fighting between the SPLM-N and the government forces has spread into North Kordofan from South Kordofan.¹⁶³ In South and North Kordofan states, clashes between armed groups and government forces have displaced at least 90,000 in 2013 alone.¹⁶⁴
42. This forced displacement has created extremely precarious humanitarian conditions for civilians in both states. Coupled with the Sudanese government's obstruction of unrestricted humanitarian

¹⁵⁷ Sudanese Social Development Organisation UK (SUDO), 'Press Release, Update', 11 June 2011 and 13 June 2011.

¹⁵⁸ World Health Organisation, 'South 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, South 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.

¹⁵⁹ 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>.

¹⁶⁰ African Union, Press Release, 'The African Union Deeply Concerned by the Humanitarian Situation in South Kordofan, Sudan', 21 June 2011, at <http://au.int/en/sites/default/files/South%20Kordofan%20Statement.pdf>.

¹⁶¹ OCHA, 'Sudan : Humanitarian Snapshot', 31 August 2013 at http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_Snapshot_31_Aug_%202013_1.pdf; see also International Crisis Group, 'Sudan's spreading conflict (II): War in Blue Nile', p.26, estimating that in Blue Nile for instance, in June 2013, about 15 % of the state's population was living in refugee camps, with 177, 500 living in South Sudan, and 30, 000 in Ethiopia.

¹⁶² UNICEF 'Humanitarian Action for Children 2013', Executive Director's foreword,' January 2013 at http://www.unicef.org/appeals/files/HAC_2013_Overview_FINAL_24_Jan_2013.pdf.

¹⁶³ UN, 'UN and Partners Work Plan 2013-Mid Year Review', 22 July 2013, p.4 at http://reliefweb.int/sites/reliefweb.int/files/resources/MYR_2013_Sudan_Workplan.pdf.

¹⁶⁴ OCHA, 'UN Grants Sudan \$10 million from the Central Emergency Response fund', 28 August 2013.

access to conflict affected areas under rebel control since June 2011,¹⁶⁵ the bombing campaign has meant that the civilian population in South Kordofan and Blue Nile is deprived of food, medicine and supplies. The lack of access to forcibly displaced people also had “severe implications for people’s access to clean water, which also has health repercussions.”¹⁶⁶

43. In June 2013, the UN Independent Expert on the situation of human rights in the Sudan, Mashood Adebayo Baderin, raised concerns about the humanitarian situation in both states: “I have received reports that the humanitarian situation in these areas continues to deteriorate as a result of the belligerent activities of the parties to the conflict. I have also been informed that many displaced and vulnerable civilians have been forced to move further south without access to basic necessities such as water and food.”¹⁶⁷

H. Restrictions on access to information

44. National and international media are prevented from accessing the conflict areas, as the Sudanese government in Khartoum effectively closed the entire region to international scrutiny, stopping journalists and others from entering (and leaving) through establishing checkpoints.¹⁶⁸ In June 2011, security forces detained an Al Jazeera TV team when trying to access Deling city on 8 June 2011. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.¹⁶⁹ A TV team from Al Arabiya was stopped by security forces on their way to Kadugli and told that they would not be allowed to access the town and would have to return to Khartoum.¹⁷⁰ The efforts of the government in Khartoum to shut out any media have been described by one witness as “trying to make sure we can’t report on what they do. It’s a war and a dirty war.”¹⁷¹

45. These incidents are part of a pattern in which the Respondent State’s has significantly restricted democratic freedoms, including freedom of expression, association and assembly.¹⁷² The NISS and other security forces continue to arbitrarily detain perceived opponents of the ruling National Congress Party (NCP), censor media and shut down public forums and protests.¹⁷³

¹⁶⁵ UN Human Rights Council, ‘Report of the Independent Expert on the situation of Human Rights in Sudan, Mashood A Baderin’, 10 September 2013, para. 52. According to the Independent Expert, “the question of the Government granting timely and full access to humanitarian agencies so as to facilitate humanitarian assistance to victims of conflict in affected areas is a matter of grave concern”.

¹⁶⁶ See above, Section C (v); Human Rights Watch, ‘Under Siege’, p.38; Amnesty International, ‘Indiscriminate bombing exacerbates humanitarian crisis in Southern Kordofan’, at <http://www.amnesty.org/en/news/sudan-indiscriminate-bombing-exacerbates-humanitarian-crisis-southern-kordofan-2013-04-17>; Amnesty International, ‘Sudan: Civilians Caught in Unending Crisis in South Kordofan’, April 2013, p.14, at www.amnesty.nl/sites/default/files/public/1304_rap_zuidkordofan.pdf.

¹⁶⁷ UN Human Rights Council, ‘Positive developments in Sudan, but still major issues in Darfur, Blue Nile and South Kordofan’, 21 June 2013, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13478&LangID=E>

¹⁶⁸ Human Rights Watch, ‘UN, AU: Urge End to Sudanese Abuses in S.Kordofan’, 10 June 2011; the Global Centre for the Responsibility to Protect indicates that the Respondent State continues to block the media from access to rebel-held areas in both states, at <http://www.global2p.org/regions/sudan> (last updated 15 September 2013).

¹⁶⁹ Arabic Network for Human Rights Information, ‘ANHRI condemns attack on Al Jazeera team in South Kordofan’, 15 June 2011; see also African Centre for Justice and Peace Studies, ‘On the Brink Again’, p.9; see also further above, Section F.

¹⁷⁰ African Centre for Justice and Peace Studies, ‘On the Brink Again’, p.9; ‘SDFG report’, p.5.

¹⁷¹ The Guardian, ‘Half a million displaced as Khartoum moves to crush Sudan’s Nuba people’, 18 June 2011.

¹⁷² Ibid.

¹⁷³ HRW, ‘Sudan: Letter to the Human Rights Council on the Human Rights Situation in Sudan’, 23 August, 2013, at <http://www.hrw.org/news/2013/08/23/sudan-letter-human-rights-council-human-rights-situation-sudan-0>

46. Authorities censored articles, confiscated newspaper editions, and blacklisted more than 15 journalists for reporting on sensitive topics. National security officials also routinely instructed editors to refrain from publishing criticisms of the President or the armed forces, the economic impact of the oil shut-down, or the conflicts in South Kordofan and Blue Nile.¹⁷⁴
47. Shortly after the Respondent State began its attack in South Kordofan, NISS personnel confiscated newspapers from the printing house of a pro-opposition daily (Ajress al Hurriya) on 10 June and 21 June 2011 for what was deemed unacceptable content for covering violations committed by the government in South Kordofan.¹⁷⁵
48. On 19 June 2011, NISS personnel arrested sixteen civilians outside of UNMIS Headquarters in Khartoum. The victims, who reported that some of the men among them were beaten, had been attempting to deliver a petition on violence in South Kordofan to the UNMIS Special Representative of the Secretary General and the Deputy High Commissioner for Human Rights. They were later charged with disturbing the peace and creating a public nuisance under Articles 69 and 77 of the Criminal Act of 1991.¹⁷⁶
49. Jalila Khamis Koko, a teacher from the Nuba Mountains and a member of the SPLM-N, publicly denounced the conditions in the Nuba Mountains on YouTube. NISS subsequently arrested and detained her, pressing charges against her on six criminal counts, five of which were under the category of crimes against the state, including two which carry the death penalty.¹⁷⁷

I. Discriminatory character of the violations

50. In fighting the SPLM-N, the Respondent State's forces have resorted to targeting civilians from ethnic groups with perceived links to rebel groups. Members of the Nuba, Ingessana and Uduk ethnic groups in particular were subjected to violations as outlined above.¹⁷⁸ The targeted, discriminatory attacks were fostered by statements of government officials. According to a news release by the UN High Commissioner for Human Rights, the Governor of South Kordofan, Ahmed Haroun, was filmed telling Sudanese soldiers on 5 April 2012 to "hand over the place clean, swept, rubbed and crushed. Do not bring them [i.e. rebels] back alive; they will be an administrative burden."¹⁷⁹ Two weeks later, President Omar al-Bashir was videotaped telling a crowd of SAF soldiers that: "a precious part of the land of Kordofan has been defiled by traitors . . . by traitors, mercenaries, and vermin."¹⁸⁰ The next day, 20 April, President Bashir told a crowd of assembled soldiers: "our lands in Blue Nile Province and in South Kordofan continue to be defiled by their forces. Your role and your instructions right

¹⁷⁴ HRW, 'World Report 2013 : Sudan', at <http://www.hrw.org/world-report/2013/country-chapters/sudan?page=3>

¹⁷⁵ UN Office of the High Commissioner for Human Rights, 'Preliminary Report on Violations of International Human Rights and Humanitarian Law in South Kordofan from 5 to 30 June 2011', August 2011, at para.41.

¹⁷⁶ OHCHR, *OHCHR South Kordofan Report August 2011*, para.42.

¹⁷⁷ Ibid.

¹⁷⁸ Human Rights Watch, 'Under Siege', p.39.

¹⁷⁹ UN, 'Comments by Sudanese official could lead to further violence - UN rights chief', 5 April 2012, at <http://www.un.org/apps/news/story.asp?NewsID=41721#.Ujrmw2xwa70>

¹⁸⁰ The Middle East Media Research Institute TV Monitor Project, *Video Clip #3414 - Sudanese President Omar Al-Bashir: 'We Want to Liberate Our Brothers in the South from Those Vermin'*, April 19-20, 2012, at: <http://www.memritv.org/clip/en/3414.htm>

now: We don't want any insects . . . we don't want any insects left in the Blue Nile Province. We don't want any insects left in the Nuba Mountains. We want, God willing, [Defence Minister Abdel] Al-Rahim here to deliver us the land in its entirety before the end of autumn and leave the land of Sudan free of any poisonous insects."¹⁸¹

51. The targeting of members of ethnic groups follows a pattern of methods of war employed in other parts of Sudan, striking at communities suspected of supporting the rebels, so that the SPLA-N is unable to live off the surrounding civilian population and thus can no longer operate.¹⁸² In Blue Nile, the authorities and forces of the Respondent State have targeted (perceived or real) SPLM/A-North civilian supporters, largely on the basis of ethnicity (groups like Ingessana and Uduk being systematically considered pro-rebels), but also pro-SPLM sympathisers. In South Kordofan, the government is singling out members of Nuba communities as well as individuals considered pro-SPLM-North.¹⁸³

J. Persistent impunity and lack of access to justice in Sudan for victims of conflict related crimes

52. Victims of human rights violations committed by the Respondent State's forces and authorities have not had any access to justice to date. The Respondent State has yet to respond to the Commission's two requests for provisional measures and to take the necessary steps to investigate the alleged violations, prosecute and punish those responsible, and provide reparation to victims in South Kordofan and Blue Nile.

53. Instead of ending impunity for human rights violations, high-ranking officials of the Respondent State have used language to encourage further human rights violations by its armed forces, calling on Sudanese soldiers to "hand over the place [South Kordofan] clean, swept, rubbed and crushed." To date, no cases are known where soldiers of the SAF or members of the security forces have been held accountable for human rights violations alleged to have been committed in South Kordofan and Blue Nile since the outbreak of hostilities on 5 June 2011 and September 2011 respectively.

54. As set out in the Applicants' submission on admissibility, the Respondent State has not enacted (or repealed) the requisite laws to bring its legislation into conformity with the African Charter, and its current legal framework is not capable of giving effect to the rights enshrined in the Charter. The Respondent State continues to ignore calls from the Commission and others to reform its legislation and in particular, to reform broad provisions for immunities for a range of officials and members of the SAF, which currently prevent accountability for human rights violations.¹⁸⁴

¹⁸¹ Ibid. Throughout this speech, President Bashir repeatedly uses the phrase "*ae hasirah*," which literally means "any insects," but which is frequently used in the same sense as the English word "vermin." The written subtitles translate this term as "vermin" the first two times it is said, but "insects" the third time.

¹⁸² International Crisis Group, 'Sudan's Spreading Conflict (I) : War in South Kordofan'.

¹⁸³ Ibid.

¹⁸⁴ See also the Commission's reasoning in the admissibility decision in the present case, paras.49-50.

IV Alleged violations of the African Charter

55. The Complainants submit that the facts outlined above are evidence of the Respondent State's responsibility for serious and massive violations of human rights enshrined in the African Charter, namely Articles 1, 2, 3, 4, 5, 6, 7 (1) (a), 9 (1), 12, 14, 16, 18, 19, 20, 21 and 23.

IV.1. Violation of the right to life (Article 4 of the African Charter)

a. *Extrajudicial Killings*

56. The SAF, PDF and other forces of the Respondent State carried out extrajudicial killings of a large number of identified and unidentified persons in violation of Article 4 of the African Charter, 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.

57. The Commission has held that Article 4 imposes a negative obligation on States parties to refrain from "intentional and unlawful deprivation of life" as well as a positive obligation "to protect human life against unwarranted or arbitrary actions by public authorities and private persons."¹⁸⁵ State parties are further required to "strictly control and limit the circumstances in which a person may be deprived of life by State authorities."¹⁸⁶

58. In the present case, there are consistent witness testimonies and several reports that document the killing of a large number of identified and unidentified civilians in South Kordofan and Blue Nile by the SAF and other forces of the Respondent State.¹⁸⁷ These forces targeted, in particular, members of ethnic minorities and actual or perceived supporters of the SPLM/A–North. Further, the SAF has indiscriminately planted landmines in populated areas of Kadugli which have killed an unknown number of civilians.¹⁸⁸

59. As the Commission has held, "any violation of this right without due process amounts to arbitrary deprivation of life."¹⁸⁹ The killings of civilians were contrary to international human rights law, and constitute a violation of Article 4.

60. The obligation to protect the right to life includes, according to the Commission, an obligation to "conduct effective official investigations when individuals have been killed as a result of the use of force by agents of the State." The Commission has emphasised that such investigations must be "carried out by entirely independent individuals, provided with the necessary resources, and their findings must be made public and prosecutions initiated in accordance with the information uncovered."¹⁹⁰

¹⁸⁵ *Gabriel Shumba v Zimbabwe*, Communication 288/04, para. 130; *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communications 279/03-296/05, para.147.

¹⁸⁶ UN Human Rights Committee, 'General Comment 6, Article 6, 16th session, UN', Doc. HRI/GEN/1/Rev.1, 1994, para.3.

¹⁸⁷ See above, Section D.

¹⁸⁸ See above, Section D, para.32.

¹⁸⁹ *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication No. 245/02, para. 86 (quoting *Forum of Conscience v Sierra Leone*, Communication 223/98).

¹⁹⁰ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, paras. 150-153.

61. There is no evidence to suggest that the Respondent State carried out any such investigation into the extrajudicial killings committed by its forces and authorities or that any member of the SAF or other forces and authorities has been held responsible for extra-judicial killings in South Kordofan and Blue Nile. The Respondent State has repeatedly failed to respond to calls to carry out investigations while the SAF and other forces reportedly continue committing extra-judicial killings. This “clearly demonstrates a weakness in the judicial system and lack of effectiveness to guarantee effective investigations and suppression of the said violations”.¹⁹¹
62. Furthermore, to fulfil their obligations under Article 4, the Commission has held that States are obliged to adopt legislation to ensure the criminal prosecution and punishment of those responsible for extra-judicial killings.¹⁹²
63. The Respondent State has not enacted (or repealed) the requisite laws to bring its legislation into conformity with the Charter, and its legal framework is not capable of giving effect to rights as enshrined in the Charter, including Article 4.¹⁹³ In addition, the definitions of crimes such as war crimes and crimes against humanity, particularly relevant in this case, are not in conformity with internationally recognised standards. Inconsistencies between different pieces of Sudanese legislation, the near complete absence of ‘command responsibility’ as a mode of criminal liability,¹⁹⁴ as well as the impact of immunities prevent accountability for serious crimes in violation of Article 4 as committed in South Kordofan and Blue Nile.¹⁹⁵
64. According to the Commission’s jurisprudence, the failure to take adequate steps to ensure accountability of perpetrators of arbitrary killings and extra-judicial killings is in itself a violation of Article 4 of the Charter.¹⁹⁶

¹⁹¹ Ibid., para.153.

¹⁹² Ibid, para. 147.

¹⁹³ See ‘*Submission on Admissibility*’, 15 August 2013, paras. 21-27.

¹⁹⁴ Command Responsibility is recognised in the Sudan Armed Forces Act, though in practice, no cases are known in which any higher-ranking official had to stand trial for human rights violations that constitute international crimes, see REDRESS and Khartoum Centre for Human Rights and Environmental Development, ‘*Criminal Law and Human Rights in Sudan- A Baseline Study*’, March 2008, p.8, at http://www.redress.org/downloads/publications/BASELINE_STUDY_FINALMar08.pdf

¹⁹⁵ For the incompatibility of Sudan’s legal framework with its obligations under the Charter, see REDRESS, Sudanese Human Rights Monitor and CLRS, Alternative Report, ‘*Comments to Sudan’s 4th and 5th Periodic Report to the African Commission on Human and Peoples’ Rights: The need for substantial legislative reforms to give effect to the rights, duties and freedoms enshrined in the Charter*’, April 2012, p.3, at

<http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%20Report%20-%20Legislative%20Reforms.pdf>; see also REDRESS and Khartoum Centre for Human Rights and Environmental Development, ‘*Criminal Law and Human Rights in Sudan- A Baseline Study*’. See also on the immunity provisions shielding Sudanese officials from accountability, ‘the African Commission’s recommendations in its ‘*Concluding Observations on Sudan’s 4th and 5th Periodic Report*’, urging the Respondent State for instance to “repeal Article 52 (3) of the National Security Act 2010 that provides members of the NISS and their associates with immunity from criminal and civil procedures”, *Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan*’, adopted at the 12th Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights held from 29 July to 4 August 2012, Algiers, Algeria, para.66.

¹⁹⁶ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para.153.

b. ***The Respondent State's indiscriminate bombing and shelling campaign is in violation of Article 4***

65. It is submitted that the Respondent State's indiscriminate bombing campaign constitutes a violation of Article 4.

66. The Commission has held that the African Charter, "unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations."¹⁹⁷ "Thus, even [a non-international armed conflict] . . . cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter."¹⁹⁸

67. The European Court of Human Rights considered that "any use of force which may result as an unintended outcome, in the deprivation of life," must be no more than "absolutely necessary" and "strictly proportionate to the achievement of the permitted aims."¹⁹⁹ According to the Court, it is particularly necessary to examine "whether the operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force."²⁰⁰

68. As described above, NGOs and local human rights monitors have documented in detail the indiscriminate nature of the SAF's aerial attacks.²⁰¹ Witnesses consistently testified that the Respondent State's forces bombed civilians, including those who have sought to flee their villages, and civilian areas.²⁰² The evidence collected shows that the Respondent State's forces rolled unguided munitions such as barrel bombs out of Antonov cargo planes flying at high altitudes for their bombing campaign on South Kordofan and Blue Nile. The fact that these planes lack any sort of precise guidance or targeting equipment means that such bombs are not and cannot be delivered with accuracy or precision.²⁰³ The evidence collected showed that, as a result, the majority of the victims of the bombings were civilians.

69. It is submitted that the Respondent State did not take any precautionary measures to ensure that bombings and shelling by SAF protects the right to life of civilians. In particular, it did not carry out aerial attacks in such a way as to avoid or minimise, to the greatest extent possible, harm to civilians,²⁰⁴ in violation of Article 4.

c. ***The Respondent State's indiscriminate bombing and shelling campaign is in violation of international humanitarian law***

70. The indiscriminate bombing and shelling campaign, taking place in the context of a non-international armed conflict, was not justified by international humanitarian law but rather constitutes a violation of its rules.

¹⁹⁷ *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*, Communication 74/92, para. 21

¹⁹⁸ *Ibid.*

¹⁹⁹ European Court of Human Rights, *Isayeva v Russia*, Application no. 57950/00, Judgment of 24 February 2005, para.173.

²⁰⁰ *Ibid.*

²⁰¹ See above, Section C.

²⁰² *Ibid.*, C (ii) (c).

²⁰³ *Ibid.*

²⁰⁴ See for instance European Court of Human Rights, *Isayeva v Russia*, , para.183.

71. The Commission, in the consideration of communications before it, “shall draw inspiration from international law on human and peoples’ rights”²⁰⁵ as well as “customs generally accepted as law and general principles of law recognised by African States as well as legal precedents and doctrine.”²⁰⁶ Specifically in relation to violations committed during armed conflict, the Commission emphasised that the state’s obligations [under the Charter] 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.”²⁰⁷
72. It is a recognised principle under international humanitarian law that the targeted bombing of civilians and civilian targets is prohibited.²⁰⁸ The rule of distinction between combatants and civilians, and between military and civilian areas and objects is a cornerstone of international humanitarian law. It requires a State to ensure that, where it does launch an attack, the foreseeable injury to civilians is proportionate to the “direct and concrete military advantage” as a result of the attack.²⁰⁹
73. Common Article 3 of the four Geneva Conventions of 1949 further provides for the protection of civilians, stipulating that: “[p]ersons taking no active part in hostilities” may not be subjected to “[v]iolence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.” This prohibition applies at “any time and in any place whatsoever.”²¹⁰
74. The above provisions apply in non-international armed conflicts as well as international armed conflicts. The Respondent State is a party to the four Geneva Conventions of 1949 and the Additional Protocols I and II of 1977²¹¹ and is therefore bound by their provisions. In the present case, available evidence shows that SAF bombed exclusively civilian areas such as markets places, a hospital, a refugee camp and cultivated land; this suggests that these attacks on civilian areas were intentional and carried out in the knowledge of the civilian character of the objects. This is corroborated by testimonies of witnesses who stated that the bombings took place at times where there were no SPLA-North troops or other military targets in the vicinity of the attacks.²¹² While this could not be verified in each instance, the documented incidents show that the bombings occurred far away from the frontlines where the fighting took place. For instance, 13 air strikes carried out by SAF in June and July 2011 in the Kadua, Delami and Kurch areas killed 26 civilians and injured more than 45 others. No SPLA –North fighters were reportedly present at the time of or before the strikes, and none of the incidents investigated took place near the front-line positions or areas of active armed

²⁰⁵ Article 60, African Charter.

²⁰⁶ Article 61, African Charter.

²⁰⁷ *Amnesty International and Others v Sudan*, Communications 48/90- 50/91-52/91- 89/93, para.50.

²⁰⁸ 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; Articles 48, 51 (2) and 52 (2) of Additional Protocol 1 of the four Geneva Conventions; Article 13 (2) of Additional Protocol II of the four Geneva Conventions.

²⁰⁹ Ibid; see also ICRC, ‘*Practice Relating to Rule 14. Proportionality in Attack*’, at http://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter4_rule14.

²¹⁰ Common article 3(1) (a) to the 1949 Geneva Conventions.

²¹¹ See International Committee of the Red Cross, ‘*Treaties and States Parties to such Treaties, Sudan*’, at http://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countryLabelSelected=Sudan&xp_countrySelected=SD&nv=4.

²¹² See above, Section C.

confrontations.²¹³ It is submitted that the SAF's bombings of these and other areas²¹⁴ were deliberate and/or alternatively, violated the rule requiring States to ensure that the injury to civilians is proportionate to the direct and military advantage.

75. Furthermore, SAF forces carried out its bombing attacks with Antonov cargo planes, using unguided munitions and makeshift bombs such as barrel bombs. The use of unguided munitions and 'barrel bombs', which are manually rolled out of the back of Antonov cargo planes that are unsuited for use as an attack aircraft, renders impossible a distinction between civilians and potential military targets.²¹⁵
76. It is therefore submitted that the SAF's bombing campaign was indiscriminate and disproportionate, and therefore constituted a violation of Article 4 of the Charter and of international humanitarian law.

IV.2. Violation of the absolute prohibition of torture enshrined in Article 5 of the African Charter

77. The Respondent State is responsible for torture and ill-treatment committed by its various forces in violation of Article 5.

a. Beatings and kicking

78. 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.

79. 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

²¹³ Ibid.

²¹⁴ See above, Section C.

²¹⁵ Human Rights Watch, '*Under Siege*', p.22; see also UN Under Secretary General for Humanitarian Affairs, Valerie Amos, 16 June 2011, Statement on South Kordofan, Sudan, at <http://appablog.wordpress.com/2011/06/16/statement-on-south-kordofan-sudan-under-secretary-general-for-humanitarian-affairs-valerie-amos>; according to Amnesty International: "Even if such attacks are aimed at a military objective, when areas around military targets are populated by civilians, the use of these unguided weapons means it is not feasible to ensure compliance with the principle of distinction between civilian and military objects, and between civilians and combatants", in Amnesty International, '*Sudan's civilians in crisis: Indiscriminate attacks and arbitrary arrests pervade South Kordofan*', 11 December 2012, p.2.

Huri Laws v. Nigeria.²¹⁶ According to the ECHR torture is characterised by “deliberate inhuman treatment causing very serious and cruel suffering”.²¹⁷

80. SAF and PDF forces, as well as government militia and NISS agents, have targeted members of the Nuba, Ingessana and Uduk communities, UN personnel and journalists, and abused four UN peacekeepers, as well as beat and threatened Al Jazeera journalists. The SAF and other security forces used these methods to inflict severe pain and suffering as part of a campaign based on coercion and intimidation, punishment, as well as on ethnic and political discrimination in so far as persons belonging to the existing ethnic communities and persons accused of SPLM/A- North support were targeted because of their ethnicity or their perceived or real SPLM/A North support. The various acts committed by the Sudanese forces constitute a violation of Article 5.²¹⁸

b. Enforced disappearances

81. The enforced disappearance of identified and unidentified individuals in South Kordofan and Blue Nile constitute a violation of Article 5, both of the right of the person forcibly disappeared and the right of his or her family members to be free from torture or inhuman and degrading treatment.

82. The Commission has 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*,²¹⁹ 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 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.”²²⁰

83. Dozens of identified and unidentified individuals were forcibly disappeared by the SAF and PDF forces, as well as by government militias and NISS agents since the beginning of the conflict. As one witness from Kadugli recounted regarding the events of 8 June 2011, “[m]any of the Nuba tribe members have

²¹⁶ *Huri Laws v. Nigeria*, Communication No. 225/98 (2000), para.41.

²¹⁷ European Court of Human Rights, *Ireland v. UK*, Application no.5310/71, Judgment 18 January 1978, para.167.

²¹⁸ See above, Section F.

²¹⁹ *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Communication No. 204/97 (2001).

²²⁰ *Ibid.*, para. 44.

been arrested and were targeted just for being Nubian. Many have disappeared but there are no statistics."²²¹ The Commission itself has expressed its concern that the violence in South Kordofan and Blue Nile has led to the "forced disappearances of members of the indigenous tribes of these regions."²²²

c. Rape and other forms of sexual violence as torture

84. The rapes and other forms of sexual violence committed by the Respondent State's forces amount to a violation of Article 5 of the Charter.
85. The Commission has held that acts of rape, and the failure to prevent and respond to such acts, amounts to a violation of Article 5.²²³ The jurisprudence of other human rights treaty bodies confirm that rape by officials constitutes a form of torture.²²⁴ Successive UN Special Rapporteurs on Torture have also identified rape and sexual violence as a form of torture,²²⁵ as has the Committee on the Elimination of Discrimination Against Women.²²⁶
86. In the present case, local human rights monitors, national and international NGOs have documented how SAF and PDF soldiers as well as government militia have assaulted and mass raped women and girls in South Kordofan and Blue Nile. Women interviewed in refugee camps identified sexual violence as a pressing concern while fleeing their homes. The mass rapes and other assaults caused severe pain and suffering²²⁷ and were inflicted for a number of purposes: to intimidate women in the context of the Respondent State's forces' intimidation campaign of civilians; to discriminate on the grounds of gender, as well as ethnicity, as far as the women from Nuba and other ethnic groups targeted are concerned;²²⁸ and to degrade and humiliate the victims, given that rape draws considerable stigma in Sudanese society.

²²¹ African Centre for Justice and Peace Studies, 'On the Brink Again', p. 10.

²²² African Commission, *Resolution 207 on the General Human Rights Situation in Africa*, 5 November 2011, at <http://www.achpr.org/sessions/50th/resolutions/207/?prn=1>.

²²³ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, para.157; *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v Mauritania*, Communication Nos. 54/91, 61/91, 96/93, 98/93, 164/97, 196/97, 210/98, para.118; see also *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v Guinea*, Communication No. 249/02.

²²⁴ Human Rights Committee, General Comment No.28: *Equality of rights between men and women* (Article 3): 03/29/2000, CCPR/c/21/Rev.1/Add.10, para. 11; Inter-American Commission on Human Rights ('IACmHR'), *Raquel Marti de Mejia v Peru* (1996), Case 10.970, Report No. 5/96, Judgment of 1 March 1996; ECHR, *Aydin v Turkey* (1997) Application No. 57/1996/676/866, Judgment of 25 September 1997; Inter American Court of Human Rights ('IACtHR'), *Miguel Castro Castro Prison v Peru* (2006), Ser C, No. 160, Judgment of 25 November 2006.

²²⁵ See UN Docs. E/CN.4/1986/15, p. 26 (Pieter Kooijmans), E/CN.4/1995/34, paras 15-24 (Sir Nigel Rodley), A/HRC/7/3, para. 26 and 34-36 (Manfred Nowak).

²²⁶ Committee on the Elimination of Discrimination against Women, General Recommendation 19, *Violence against Women*, 11th Session, 1992, para. 7.

²²⁷ It is common jurisprudence of courts and human rights treaty bodies to recognise that the pain and suffering caused by an act of rape, both physical and psychological, is so severe as to constitute torture, see for instance, Inter-American Commission on Human Rights ('IACmHR'), *Raquel Marti de Mejia v Peru* (1996), Case 10.970, Report No. 5/96, Judgment of 1 March 1996; Inter American Court of Human Rights ('IACtHR'), *Miguel Castro Castro Prison v Peru* (2006); ECHR, *Aydin v Turkey* (1997), para.83.

²²⁸ See further below, Section IV.9 (b) and IV.10. (a) and (b).

d. Forced evictions, destruction of housing and displacement in violation of Article 5

87. The forced evictions, the destruction of homes and the poor living conditions endured by thousands of civilians as a result of forced displacement constitute ill-treatment in violation of Article 5.
88. The Commission has held that the term ‘cruel, inhuman and degrading punishment or treatment’ (‘ill-treatment’) “is to be interpreted so as to extend the widest possible protection against abuse, whether physical or mental.”²²⁹ This could include “exposing victims to personal sufferings and indignity”, which can take many forms, depending on the circumstances of the case.²³⁰
89. The Commission agreed with the UN Committee against Torture that “forced evictions and destruction of housing” can amount to ill-treatment.²³¹ “Forced eviction” is defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to appropriate forms of legal or other protection.”²³²
90. In assessing whether the forced eviction and destruction of homes amounts to ill-treatment the Commission will place a particular emphasis on the manner in which the evictions were carried out and how victims’ homes were destroyed, as well as the victims’ personal circumstances.²³³ The Commission has held in a previous case against the Respondent State, which also involved serious and massive violations that the latter had actively participated in the forced eviction of the civilian population, as it “targeted the civilian population, as part of its counter insurgency strategy. In the opinion of the Commission, this kind of treatment was cruel and inhuman and threatened the very essence of human dignity.”²³⁴ The UN Committee against Torture considered, in a case involving destruction of homes, that the acts were committed with a significant level of racial motivation, which contributed to its finding that the acts amounted to ill-treatment.²³⁵
91. In the present case, the Respondent State’s forces carried out indiscriminate bombings and shelling of civilian areas, resulting in the destruction of thousands of homes and of cultivated land. In addition, satellite images document how forces burned down hundreds of civilian homes. The burning of homes was frequently preceded by looting of residential homes. The documented attacks show that the Respondent State’s forces specifically targeted members of ethnic groups. In addition, satellite images and photographic evidence document how SAF forces systematically burned down hundreds of civilian homes, frequently after looting them.²³⁶

²²⁹ *Media Rights Agenda v Nigeria*, Communication 224/98, para.71.

²³⁰ *John Modise v Botswana*, Communication 97/93, para. 92.

²³¹ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para. 159; the Commission referred to the case of *Hajrizi Dezmajl et al. v Yugoslavia*, Communication No.161/2000, UN Doc. CAT/C/29/D/161/2000 (2002), para.9.2.

²³² Committee on Economic, Social and Cultural Rights, General Comment 7, *Forced evictions, and the right to adequate housing*, Sixteenth session, 1997, U.N. Doc. E/1998/22, para.4.

²³³ European Court of Human Rights, *Selcuk and Asker v Turkey*, Judgment of 24 April 1998, paras.27-30.

²³⁴ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para.164.

²³⁵ UN Committee against Torture, *Hajrizi Dezmajl et al. v Yugoslavia*, para.9.2.

²³⁶ See further above, Sections C (v).

92. The intensity of the indiscriminate bombing campaign, in combination with other large scale attacks on civilian homes, has forced civilians into hiding in bushes, caves and mountains, and forced hundreds of thousands from their homes and land. While fleeing, civilians reported that they were separated from their family members, and generally were in constant fear of being bombed due to the “bad security situation.” As a result, civilians were left homeless and destitute, and forced to live in dismal conditions.²³⁷

IV.3. The Respondent State is responsible for a violation of Article 6 (Right to Liberty and Security)

93. The arbitrary arrests of a large number of civilians, in particular members of ethnic groups such as Nuba and others believed to be SPLM/A –North sympathisers, as well as UN peacekeepers and journalists constitute a violation of Article 6 of the Charter. The forced displacement of a large number of persons amounts to a violation of the right to security guaranteed by Article 6. Further, the enforced disappearances of identified and unidentified individuals (see above at Section F) constitute violations of Article 6, providing that:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

a. *The right to liberty – arbitrary arrest and detention*

94. 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.²³⁸

95. As recognised by the Commission in *Article 19 v. Eritrea*, quoting the decision of the UN Human Rights Committee in the *Albert Mukong* case:²³⁹

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...²⁴⁰

96. An arrest is only lawful where it is based on reasonable suspicion. As held by the ECHR in the case of *Gusinskiy v. Russia*:

[T]he requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words “reasonable suspicion” mean the

²³⁷ See further above, at Sections F and G.

²³⁸ ‘Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa’, 2001, M (1) (b).

²³⁹ Human Rights Committee, *Albert Mukong v Cameroon*, Communication 458/1991, 10 August 1994, para.9.8.

²⁴⁰ *Article 19 v. Eritrea*, para. 93, Communication 275/2003.

existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32).²⁴¹

97. The SAF and NISS arrested large numbers of members of ethnic groups, SPLM political and civil society activists, civilians believed to support the SPLM/ A- North, UN personnel and journalists. The arrests and detention were made primarily on the basis of the individuals' perceived opposition to the government rather than on the grounds of a reasonable suspicion against them²⁴², which was also in violation of Sudanese laws.²⁴³ For example, in June 2011, 46 people in the area of Kadugli were arrested without charge during the first weeks of the conflict in South Kordofan.²⁴⁴ In November 2012, 60 civilians from the "Oncho" tribe (part of the Nuba ethnic group) were arbitrarily arrested in Dilling, South Kordofan. They were eventually transferred to Kadugli, where they were held without charge and denied access either to their families or to lawyers.²⁴⁵
98. The cases of arbitrary arrest and detention highlighted above (Section F) illustrate a complete disregard of due process in violation of Article 6 requirements. The SAF and other forces failed to inform individuals for the reason of their arrest, to charge those detained and to grant access to a lawyer and to their families. No cases are known in which those arrested and detained in violation of Article 6 were able to challenge their arrest or detention before a judicial officer or judge. In a large number of cases, individuals detained were released, often months later, without ever having been charged and often only after their relatives had paid prison officials to secure their release.

b. The Respondent State's failure to protect civilians in violation of Article 6

99. The Commission has considered that the right to security of the person obliges the State to protect the physical integrity of its citizens from abuse by official authorities, as well as from abuse by other citizens.²⁴⁶
100. The Respondent State's forces committed, and continue to commit, a wide range of human rights violations against civilians in the context of the conflict in South Kordofan and Blue Nile. The Respondent State failed to take any steps to protect the physical integrity of its citizens, in violation of Article 6.

c. The right to liberty and security of the person - forced displacement as a violation of Article 6

101. The Commission has considered that the right to liberty as enshrined in Article 6 complements the right to freedom of movement under Article 12 of the Charter. Where individuals cannot "move

²⁴¹European Court of Human Rights, *Gusinskiy v. Russia*, (Application no. 70276/01, 19 May 2004), para.53.

²⁴² See above, Section F.

²⁴³ Article 68(2) of the Sudanese Criminal Procedure Act 1991; see also Article 50 of the National Security Act; Chapter II, Article 5 (h) of the Emergency and Protection of Public Safety Act of 1997', at http://www.pclrs.org/1997_Emergency_Act_2.pdf, both of which, however, have raised concerns as they provide broad grounds for arrest and detention.

²⁴⁴ African Centre for Justice and Peace Studies, "On the Brink again", pp.9-11.

²⁴⁵ ARRY, 'Urgent Action: 60 Nuba Civilians detained in Dillanj', 27 November 2012, at <http://arry.org/?p=611>.

²⁴⁶ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para. 175.

freely to their homes”, for instance because of insecurity or because their homes have been destroyed, “then their liberty and freedom is proscribed.”²⁴⁷

102. In the present case, victims of the Respondent State’s indiscriminate bombing and shelling campaign testified how they could not return to their homes and their land, mainly due to a fear of further attacks by the Respondent States forces. The majority of those displaced from their homes and villages have not returned. By August 2013, 695, 000 people remained internally displaced, while 225, 000 were staying in refugee camps in South Sudan or Ethiopia. Testimonies of displaced persons confirmed that they are subjected to further human rights violations, including rape, inside the camps. The majority of the displaced persons have been unable to return safely. The forced displacement and eviction of civilians into refugee camps and camps for displaced people therefore constitutes a violation of Article 6.²⁴⁸

IV.4. Violation of the right to a remedy enshrined in Article 7 (1) (a) of the African Charter

103. The Respondent State failed to provide victims of the human rights violations alleged in the present case with access to justice in violation of Article 7 (1) (a), which provides:

(a) [T]he right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

104. The Commission held that “[i]f there appears to be any possibility of an alleged victim succeeding at a hearing, the applicant should be given the benefit of the doubt and allowed to have their matter heard.”

105. The Principles and Guidelines on the Right to a Fair Trial and legal Assistance provide further that

(a) [E]veryone has the right to an effective remedy by competent national tribunals for acts violating the rights guaranteed by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.”

(b) The right to an effective remedy includes:

1. access to justice;
2. reparation for the harm suffered;
3. access to the factual information concerning the violations.²⁴⁹

106. Conversely, the Guidelines stipulate that:

[E]very state has an obligation to ensure that any person, whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body.²⁵⁰

²⁴⁷ Ibid, para. 177.

²⁴⁸ See above, Sections F and G.

²⁴⁹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001, C.

107. The Respondent State is responsible for serious and massive human rights violations resulting in a large number of victims in South Kordofan and Blue Nile. Victims have not had any access to a remedy and reparation to date.²⁵¹ The Respondent State has yet to respond to the Commission's two requests for provisional measures and to take the necessary steps to investigate the alleged violations, prosecute and punish those responsible, and provide reparation to victims in South Kordofan and Blue Nile. No cases are known where soldiers of the SAF or members of the security forces have been held accountable for human rights violations alleged to have been committed in both states since the outbreak of hostilities on 5 June 2011 and September 2011 respectively.

IV.5. Violation of the right to information guaranteed in article 9 (1) of the African Charter

108. The Respondent State restricted the right of individuals to receive information by effectively closing the region of South Kordofan and Blue Nile state to national and international media, and by preventing national media from reporting on the violations committed by the Respondent State in both states.²⁵² These measures constitute a violation of Article 9(1), which provides that:

Every individual shall have the right to receive information.

109. The Commission has underscored that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the African Charter and "important components for the promotion of participation, accountability and democracy on the continent."²⁵³ It has 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 due regard to the rights of others, collective security, morality and common interest"²⁵⁴ [quotes within quote omitted].

110. The Commission recognised in its Concluding Observations on the Respondent State's 4th & 5th Periodic Report that "[M]edia practitioners are often arrested, imprisoned, beaten and tortured for doing their jobs."²⁵⁵ As outlined above,²⁵⁶ this is also true for journalists seeking to report on the conflict in South Kordofan and Blue Nile. These practices, as well as the de-facto blanket ban on national and international media from accessing South Kordofan and Blue Nile to report on the conduct of hostilities, 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.

²⁵⁰ Ibid.

²⁵¹ See 'Submission on Admissibility', 15 August 2013, paras. 21-27.

²⁵² Human Rights Watch, 'UN, AU: Urge End to Sudanese Abuses in S.Kordofan', 10 June 2011.

²⁵³ Resolution 166 on 'the Deteriorating Situation of Freedom of Expression and Access to Information in Africa', adopted by the African Commission at its 47th Ordinary Session, 12-26 May 2010.

²⁵⁴ *Kenneth Good v Republic of Botswana*, Communication 313/05, para.189.

²⁵⁵ African Commission on Human and Peoples' Rights, 'Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan', adopted at the 12th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held from 29 July to 4 August 2012, Algiers, Algeria, para.45.

²⁵⁶ See above, Section H.

IV.6. Violation of the right to Freedom of movement and residence guaranteed in article 12 of the African Charter

111. The Respondent State, by forcibly displacing civilians and by failing to ensure their safe return, has violated the right to residence and freedom of movement as enshrined in Article 12 of the African Charter.
112. 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”²⁵⁷ and considered that “[f]reedom of movement and residence are two sides of the same coin.”²⁵⁸
113. The Commission has further considered that any restriction of the right on the enjoyment of residence and freedom of movement should be “proportionate and necessary to respond to a specific public need or pursue a legitimate aim.”²⁵⁹ States are required to adhere to international law, including human rights and humanitarian law, so as to prevent or avoid situations that might lead to displacement.²⁶⁰ The prohibition of arbitrary displacement included displacement “in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand”.²⁶¹
114. The SAF’s campaign of violence, in particular indiscriminate bombing of civilians and civilian areas, forced hundreds of thousands to flee from their chosen residence. 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.²⁶² The Respondent State has failed to take steps to ensure their return in safety and dignity.²⁶³

IV.7. Deliberate destruction of civilian property in violation of Article 14 of the African Charter

115. The SAF’s indiscriminate air and ground attacks on civilian life caused the destruction of churches, houses and other property, the abandonment of homes and the loss of livestock and other resources. These attacks violated Article 14 of the African Charter, which provides that:

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.

116. The African Commission considers that Article 14 of the African Charter entails, *inter alia*, the following:

²⁵⁷ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para.187.

²⁵⁸ *Ibid*, para.188.

²⁵⁹ *Ibid*, para.187.

²⁶⁰ Commission on Human Rights, ‘*Guiding Principles on Internal Displacement*’, E/CN.4/1998/53/Add.2, 11 February 1998, principle 5.

²⁶¹ *Ibid*, principle 6 (2) (b).

²⁶² See also Amnesty International, ‘*Sudan: Authorities force people to return to danger zones in South Kordofan*’, 29 June 2011, at http://www.amnesty.org.uk/news_details.asp?NewsID=19545.

²⁶³ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para.177.

1. Protection from arbitrary deprivation of property;
 2. Equitable and no-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women;
 3. Equitable and non-discriminatory access to affordable loans for the acquisition of property;
 4. Peaceful enjoyment of property;
 5. Equal access to housing and to acceptable living conditions in a healthy environment.²⁶⁴
117. According to the Commission’s jurisprudence, the right to property as enshrined in Article 14 of the African Charter includes a right to land as well as housing. The role of the State is to respect and protect this right “against any forms of encroachment.”²⁶⁵ This obligation to respect and protect the right to property also applies in times of “disturbances and armed conflict.”²⁶⁶ The burden is on the State to prove that property was “confiscated for public interest, or in accordance with any established law”²⁶⁷ or to demonstrate that it established conditions, and provided the means, to ensure the protection of both life and property.²⁶⁸
118. The SAF carried out an indiscriminate bombing campaign on civilians and civilian areas.²⁶⁹ This campaign destroyed civilian homes and buildings, including hospitals, as well as livestock and cultivated land. Satellite imagery and eyewitness reports confirm that SAF forces burned hundreds of civilian structures to the ground. In addition, the Respondent State’s forces in South Kordofan and Blue Nile looted and burned churches, houses, crops and other properties of individuals believed to belong to the political opposition as well as property belonging to the Episcopal Church and the United Nations. The Respondent State’s campaign in Blue Nile and South Kordofan frequently included the theft of civilian property in areas where local residents have fled or been displaced.²⁷⁰ The frequency of attacks on civilian homes and property since the outbreak of hostilities indicates that they have become a regular feature of the Respondent State’s campaign in South Kordofan and Blue Nile.
119. In interpreting Article 14 of the African Charter, the Commission furthermore “finds great persuasive value” in the ‘United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons’ (‘Pinheiro Principles’), which provide, *inter alia*, that:

²⁶⁴ Pretoria Declaration on Economic, Social and Cultrual Rights in Africa, para.5, 2004; see also *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l’Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l’Homme v Mauritania*, Communication Nos. 54/91, 61/91, 96/93, 98/93, 164/97, 196/97, 210/98, para.127; Endorois case, para.185; Serac Case. Para. 61; *Resolution 231 on the right to adequate housing and protection from forced eviction*, October 2012.

²⁶⁵ *Interights, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l’Homme v Mauritania*, Communication 373/06, para.45.

²⁶⁶ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, para.201; see also decision by the European Court of Human Rights in *Akdivar and Others v Turkey*,

²⁶⁷ *INTERIGHTS, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l’Homme v Mauritania*, Communication 373/06, para.45.

²⁶⁸ *Ibid*, para.46.

²⁶⁹ See above, Section C.

²⁷⁰ See above, Section C (v).

Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of lands as a punitive measure or a means of methods of war.

States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors.²⁷¹

120. The Respondent State's indiscriminate bombing campaign, in combination with widespread human rights violations committed on the ground, has resulted in hundreds of thousands of persons being forced to leave behind their lands, houses and other property.²⁷² The Commission, in a previous case against the Respondent State, which related to similar fact patterns and concerned massive violations committed against civilians in the context of the conflict in Darfur, found that these acts had amounted to a violation of Article 14 of the African Charter.²⁷³

IV.8. Violation of the right to health enshrined in Article 16 of the African Charter

121. The attacks on civilians, subsequent displacement and failure of the Respondent State to provide basic services violated Article 16 of the African Charter, which provides that

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

122. In interpreting Article 16 of the African Charter, the Commission held that the destruction of homes, livestock and farms can expose victims to serious health risks, and that the failure of a government to provide basic services such as safe drinking water, electricity and medicine constitutes a violation of Article 16.²⁷⁴
123. The indiscriminate bombing campaign by the Respondent State led to the widespread destruction of homes and livestock and caused hundreds of thousands of persons to be cut off from drinking water, electricity and any medical aid and constituted a violation of Article 16 of the African Charter. 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

²⁷¹UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 'Housing and property restitution in the context of the return of refugees and internally displaced persons- Final report of the Special Rapporteur, Paulo Sergio Pinheiro, Principles on housing and property restitution for refugees and displaced persons', E/CN.4/Sub.2/2005/17, 28 June 2005, Principles 5.1 and 5.3, at <http://unispal.un.org/UNISPAL.NSF/0/577D69B243FD3C0485257075006698E6>.

²⁷² See above, Section C (v).

²⁷³ Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, para.201.

²⁷⁴ Fee Legal Assistance Group, Lawyers Committee for Human Rights, Union Interfricaine des Droits de l'Homme, Les Temoins de Jehovah v DRC', Communications 25/89-47/90-56/91-100/93, para.46; Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, para.212.

attainable standard of health.²⁷⁵ The African Commission may draw inspiration from the International Covenant on Economic Social and Cultural Rights which the Respondent acceded to on 18 March 1986²⁷⁶ to find that there has been a violation of an 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.²⁷⁷

124. The Respondent State created “precarious humanitarian conditions which had a profoundly negative impact on civilians, depriving them of food, medicine and supplies, including vaccines against preventable disease like smallpox.”²⁷⁸ This condition has also had “severe implications for people’s access to clean water, which also has health repercussions.”²⁷⁹
125. Further, 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 humanitarian UN flights and by the erection of roadblocks to prevent humanitarian supplies from reaching areas where displaced people were in need of medical aid.²⁸⁰

IV.9. Violation of the rights guaranteed in Article 18 of the African Charter

a. *The Respondent State failed to protect the family in violation of Article 18 (1) of the African Charter*

126. The forced displacement of hundreds of thousands of civilians as a result of the Respondent State’s indiscriminate bombing campaign and other human rights violations resulted in a violation of Article 18 (1) of the African Charter, which provides that

[t]he 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.

127. The Commission has previously considered that “the family unit is the core of society” and held the Respondent State responsible for a violation of Article 18 when its forces in Darfur forcefully evicted the victims from their homes, as a result of which, “some family members were killed, others fled to

²⁷⁵ 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.

²⁷⁶ 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 Organisation 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”.

²⁷⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 15; ‘*The Right to Water*’ para 21.

²⁷⁸ Human Rights Watch, ‘*Under Siege*’, at 31.

²⁷⁹ Amnesty International, ‘*Sudan: Civilians Caught in Unending Crisis in South Kordofan*’ (2013), 14, at www.amnesty.nl/sites/default/files/public/1304_rap_zuidkordofan.pdf.

²⁸⁰ UN Office for the Coordination of Humanitarian Affairs, ‘*Sudan: Poor transportation severely limits humanitarian access to the displaced*’, 17 June 2011, at <http://www.unocha.org/sudan/top-stories/sudan-poor-transportation-severely-limits-humanitarian-access-displaced>.

different places, inside and outside the territory of the Respondent State.”²⁸¹ It further confirmed that the “massive forced expulsion [whether in peace time or war time] of population has a negative effect on the enjoyment of the right to family.”²⁸²

128. In the present case, the United Nations estimates that, “[i]n South Kordofan and Blue Nile, well over a million people have been displaced or severely affected by conflict since 2011.”²⁸³ Women and children “constitute the majority” of this population.²⁸⁴ Of these, the UN estimates that 376,596 are children under the age of 5 from South Kordofan, and 270,656 are children under the age of 5 from Blue Nile.²⁸⁵ According to the United Nations Children’s Fund (“UNICEF”), “some 11,000 school-age children, out of whom 10,000 have been displaced from Abu Kershola and surrounding villages in South Kordofan, are currently in El Rahad locality, North Kordofan.”²⁸⁶ UNICEF reports that more than 10,000 children have required “psychosocial support in the locality” after being displaced from their homes by government violence.²⁸⁷
129. The Respondent State is responsible for forcefully displacing hundreds of thousands of persons in South Kordofan and Blue Nile. Its indiscriminate bombing campaign and other human rights violations led to many civilians being killed, tortured and forcibly disappeared. Fearing aerial bombardment, civilians testified that they were forced to leave behind family members, including children as well as elderly.²⁸⁸

b. *The Respondent State is in violation of the prohibition of discrimination under Article 18 (3) of the African Charter*

130. The Respondent State’s forces and authorities have specifically targeted women and girls and have committed widespread acts of sexual violence in violation of Article 18(3) of the Charter, which provides that:

[t]he State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

131. In defining “discrimination” under Article 18(3) of the African Charter, the Commission has looked to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the “Women’s Protocol”),²⁸⁹ as well as the Convention for the Elimination of Discrimination Against

²⁸¹ Ibid, para. 216.

²⁸² *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, para. 215.

²⁸³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), ‘Sudan: Humanitarian Snapshot’, 31 July 2013.

²⁸⁴ OCHA, ‘Sudan: United Nations and Partners Workplan 31 May 2013’, at 28, published 22 July 2013, at https://docs.unocha.org/sites/dms/CAP/MYR_2013_Sudan_Workplan.pdf.

²⁸⁵ *Id.* at 40.

²⁸⁶ OCHA, ‘Humanitarian Bulletin Sudan’, 9 June 2013, at [https://docs.unocha.org/sites/dms/Sudan/Reports/OCHA_Sudan_Weekly_Humanitarian_Bulletin_Issue_23_\(3-9_June_2013\).pdf](https://docs.unocha.org/sites/dms/Sudan/Reports/OCHA_Sudan_Weekly_Humanitarian_Bulletin_Issue_23_(3-9_June_2013).pdf).

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ ‘Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa [Maputo Protocol], CAB/LEG/66.6, entered into force’, November 25, 2005. Sudan signed ‘The Women’s Protocol’ on 30 June 2008, but has

Women (“CEDAW”).²⁹⁰ As recognized by the African Commission, and stated by the CEDAW Committee, there is a “correlation between discrimination against women and gender-based violence.”²⁹¹ The Women’s Protocol defines violence against women as:

All acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life.²⁹²

132. The African Commission “holds the same view with the CEDAW which held that violence against women affects compromises or destroys the enjoyment and exercise by women of their fundamental and human rights in different spheres of life.”²⁹³ It is therefore “a form of discrimination against them.” The Commission has stated further that “[t]he concept of human rights is based on a typical recognition that every human being is equal and also recognizes the inherent dignity and worth of every human being.”²⁹⁴
133. The Respondent State’s forces specifically targeted female Sudanese civilians. The violations “are gender-specific in the sense that the victims were subjected to acts of sexual harassment and physical violence that can only be directed to women.”²⁹⁵ The accounts received to date have come overwhelmingly from women and girls, leaving “no doubt that [they] were targeted in this manner due to their gender.”²⁹⁶

IV.10. Discriminatory treatment in violation of Article 2 of the African Charter

134. The Respondent State is responsible for discriminatory treatment of civilians in South Kordofan, Blue Nile as well as other areas in Sudan on the basis of sex, colour, race and ethnicity and political opinion. The violations of the African Charter outlined above have been committed in a discriminatory fashion in violation of Article 2 of the African Charter, which guarantees that:

Every individual shall have the right to the enjoyment of the rights and freedoms recognised in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status.

135. The Commission emphasised the “non-derogable” character of Article 2, laying “down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating

yet to ratify it, at <http://www.africa-union.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>.

Nonetheless, pursuant to Article 18 of the Vienna Convention on the Law of Treaties, Sudan “is obliged to refrain from acts which would defeat the object and purpose of [that] treaty.” 155 U.N.T.S. 331, *entered into force* Jan. 27, 1980, Article. 18.

²⁹⁰ *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. No. 323/06, paras.121-122.

²⁹¹ *Ibid*, para. 123, citing *The United Nations Committee on the Elimination of Discrimination against Women*, General Recommendation No. 19 (1992), para. 6.

²⁹² Women’s Protocol at Art. 1(j). *See also* ‘*Egyptian Initiative*’, Comm. No. 323/06, para. 121.

²⁹³ *Ibid*, para. 165.

²⁹⁴ *Ibid*, para.155.

²⁹⁵ *Ibid*, para.144.

²⁹⁶ *Ibid*.

discrimination in all its guises.”²⁹⁷ The Charter does not define the term ‘discrimination’, yet the Commission has referred to other human rights treaties and conventions, including for instance the Convention on the Elimination of All Forms of Racial Discrimination, stipulating that ‘racial discrimination’ shall mean “any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, and equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”²⁹⁸

136. The Commission has held that “a violation of of the principle of non-discrimination [under Article 2] arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) if there is no proportionality between the aim sought and the means employed.”²⁹⁹

a. Discrimination on the basis of sex

137. The Respondent State is responsible for mass rape and other forms of sexual violence committed by SAF forces and state authorities against women.³⁰⁰ This amounts to gender-based violence, as it was specifically directed against women because they are women and because it affected them disproportionately.³⁰¹ The rapes and other forms of sexual violence therefore constituted a violation of Article 2.

b. Discrimination on the basis of colour and ethnicity

138. In examining alleged violations of Article 2, the Commission considers whether any violations have occurred on the basis of the victims’ nationality or ethnicity. According to the Commission, “[t]he denial of numerous rights to individuals on account of their nationality or membership of a particular ethnic group clearly violates Article 2.”³⁰²
139. The Commission has also confirmed that “for a country to subject its own indigenes to discriminatory treatment only because of the colour of their skin is an unacceptable discriminatory attitude and a violation of the very spirit of the African Charter and of the letter of its Article 2.”³⁰³

²⁹⁷ *Purohit and Moore v The Gambia*, Communication 241/2001, para.49.

²⁹⁸ International Convention on the Elimination of All Forms of Racial Discrimination, ‘General Assembly resolution 2106 (XX)’, 21 December 1965, Article 1.

²⁹⁹ *Kenneth Good v Botswana*, para. 219. “These requirements have been expressly set out by international human rights supervisory bodies, including the European Court of Human Rights, the Inter-American Court of Human Rights and the [United Nations] Human Rights Committee,” (citing *Marckx v. Belgium* (6833/74) [1979] ECHR 2 (13th June 1979); *Proposed Amendments to the Naturalisation Provisions of the Constitution of Costa Rica*, Inter American Court of Human Rights, Advisory Opinion Oc-4/84, 19 January 1984, Ser. A No. 4, para 57; General Comment No. 18, Non-Discrimination CCPR (1989) para 13).

³⁰⁰ See above, Section F.

³⁰¹ *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. No. 323/06, paras.137-139; See above at IV.9 (b)); see also CEDAW Committee, General Recommendation No.19 (11th Session, 1992);

³⁰² *Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme v Rwanda*, Communications 27/89-46/91-49/91-99/93, para.2.

³⁰³ *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme v Mauritania*, Communications 54/91-61/91-96/93-98/93-164/97_196/97-210/98, para.131.

140. Numerous victims and witnesses testified that militias and government forces in Blue Nile killed civilians, including children and women, “because they are black,”³⁰⁴ i.e. belong to the Nuba ethnic group (or groups).³⁰⁵ Similarly, in South Kordofan, witnesses recalled how soldiers “said that they want to finish off the black people; they said they want to kill them all.”³⁰⁶ According to a witness of the SAF’s campaign of arrests of ethnic Nuba and perceived or actual supporters of the SPLM/A-North in the first month of the conflict in Kadugli, arrests were accompanied by targeted killings:

*Many of the Nuba tribe members have been arrested and were targeted just for being Nubian. Many have disappeared but there are no statistics. Some are being killed in front of their families. Some of the perpetrators were wearing civilian clothes and were carrying Kalashnikovs. They looked like militias. Central Reserve Forces have committed many crimes and are responsible for what’s happened. No trial, just shooting. On June 7, I saw many dead bodies around Kadugli on the ground. On June 8, the medical assistant in Kadugli hospital named al-Shreif was killed in front of the hospital by militia members. The militias mainly targeted the Nuba.*³⁰⁷

141. The Respondent State’s forces and authorities killed or arbitrarily arrested, detained, tortured and ill-treated persons belonging to ethnic groups such as the *Nuba* in South Kordofan as well as the *Ingessana* and *Uduk* in Blue Nile.³⁰⁸
142. Sudanese forces and authorities deliberately targeted civilians on account of the colour of their skin, their membership of a particular ethnic group, including the Nuba, Ingessane and Uduk ethnic groups. It is submitted that this constitutes unequal treatment amounting to discrimination that is not objective and cannot be reasonably justified, and therefore clearly violates Article 2.

³⁰⁴ Enough Project, ‘*Field Dispatch: Refugees from Blue Nile Recount Atrocities, Government’s Targeting of Civilians*’, p.2, 1 November 2011.

³⁰⁵ For example, “[t]he Nuba as people have had their identity defined by outsiders. They are themselves a cluster of more than fifty different ethnic groups, thrown together by a common experience of oppression and discrimination by outsiders, most notably the ruling elite of Sudan.” African Rights, ‘*Facing Genocide: The Nuba of Sudan*’, 11-12 (1995). Likewise, the Sudanese Civilians in Blue Nile state come from a variety of “ethnic groups such as the Uduk, the Ingessana and the Jumjum that are perceived [by the Government of Sudan] as supporting the insurgency.” Amnesty International, ‘*We Had No Time to Bury Them: War Crimes in Sudan’s Blue Nile State*’, p. 15. But “[t]he evolving case law [in international law] has moved from defining ethnicity by objective characteristics such as shared language and culture to subjective self-identification (we Tutsis are an ethnic group if we think of ourselves as one)—and, crucially, to identification as an ethnic group by others, namely the persecutors.” William A. Schabas, ‘*Genocide, Crimes Against Humanity, and Darfur: The Commission of Inquiry’s Findings on Genocide*’, 27 *Cardozo L. Rev.* 1703, 1717 (2006). That is what has occurred in Sudan. Indeed, the U.N.’s Commission of Inquiry in Darfur concluded that “[r]ecent developments have led members of African and Arab tribes to perceive themselves and others as two distinct ethnic groups. . . . The tribes . . . supporting rebels have increasingly come to be identified as ‘African’ and those supporting the Government as ‘Arabs.’” ‘*UN, International Commission of Inquiry on Darfur [ICID]*’, Report to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564, P630, U.N. Doc. S/2005/60, 25 January 2005, at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf. The same is true in South Kordofan and Blue Nile. Thus, “whether or not there is an ‘objective’ distinction between victim and perpetrator groups in [Sudan] is increasingly irrelevant from the perspective of [international law].” Beth Van Schaack, ‘*Darfur And The Rhetoric of Genocide*’, 26 *Whittier L. Rev.* 1101, 117 (2005) (citing International Criminal Tribunal for Rwanda, *The Prosecutor v Jean-Paul Akayesu*, ICTR-96-4-T, Judgment, para.271, 2 September 1998).

³⁰⁶ Nicholas D. Kristoff, ‘*In Sudan, Seeing Echoes of Darfur*’, N.Y. Times, 18 February 2012, at <http://www.nytimes.com/2012/02/19/opinion/sunday/kristof-in-sudan-seeing-echoes-of-darfur.html>

³⁰⁷ See above, Section D.

³⁰⁸ See above, Section F.

c. Discrimination on the basis of political opinion

143. The Respondent State's campaign against actual and perceived SPLM/A– North supporters constitutes discriminatory treatment on the basis of political opinion. The Commission has “reaffirmed the protection extended under the Charter to the principle of non-discrimination particularly on the basis of political opinion.”³⁰⁹ According to the Commission, Article 2 imposes an “obligation on the ...Government to secure the right protected in the African Charter to all persons within its jurisdiction irrespective of political or any other opinion.”³¹⁰ The Respondent State's forces and authorities singled out individuals in and outside South Kordofan and Blue Nile on the basis of their perceived or actual relationship to the SPLM - North. Where SAF forces and other Respondent State authorities believed an individual to be a member or supporter of the SPLM – North, it subjected the individual to a variety of violations, including arbitrary arrest and detention, torture and ill-treatment. Civilians who were not (perceived to be) members of the SPLM-North were not subjected to the same treatment. The only reason for the difference in treatment, therefore, was a perceived or actual support of the SPLM-North.
144. There was no justification for the Respondent State in treating the victims differently. The Commission considered that “national security reasons” may justify the different treatment of persons. However, even if there were genuine national security reasons, this principle cannot apply to treatment, such as arbitrary arrest, torture, ill-treatment and other violations, which are in breach of the African Charter. The Commission emphasised that “[t]he African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations.” Thus, even a conflict “cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter.”³¹¹

IV.11. Failure to provide equal protection of the law in violation of Article 3 (2) of the African Charter

145. The Respondent State has violated Article 3(2) of the African Charter, which provides that “[e]very individual shall be entitled to equal protection of the law.” Article 3 “guarantees fair and just treatment of individuals within a legal system of a given country.”³¹² The Sudanese Constitution guarantees that “[e]veryone has the right to life and liberty and security of person in accordance with the law. Everyone shall be free and no one shall be held in slavery or servitude or degraded or tortured.”³¹³ It also guarantees the rights, *inter alia*, to property,³¹⁴ to the sanctity of the home,³¹⁵ to be free from arbitrary arrest and detention,³¹⁶ to an effective remedy,³¹⁷ and to due process.³¹⁸

³⁰⁹ *Kenneth Good v Botswana*, para.220; *Amnesty International v Zambia*, para.52.

³¹⁰ *Rencontre africaine pour la defense des droits de l'Homme v Zambia*, paras.21,22.

³¹¹ *Commission Nationale des Droits de l'Homme et des Libertes v. Chad* Communication 74/92, paras. 18-23.

³¹² *Purohit and Moore*, Communication 241/01 para. 49.

³¹³ Republic of Sudan, Constitution, Art. 20.

³¹⁴ *Ibid*, Art. 28.

³¹⁵ *Ibid*, Art. 29.

³¹⁶ *Ibid*, Art. 30.

³¹⁷ *Ibid*, Art. 31.

³¹⁸ *Ibid*, Art. 32.

146. The Respondent State is responsible for large scale human rights violations in the context of the conflict in South Kordofan and Blue Nile. None of the victims of the Respondent State's violations has been able to enjoy or enforce the rights enshrined in the Respondent State's legal framework. It is submitted that the Respondent State's legal framework did not, and still does not, provide protection.

IV.12. Violation of collective rights enshrined in the African Charter: Articles 19, 20, 21, and 23 of the African Charter

147. The Respondent State's assault on members of the Nuba ethnic group violates their collective rights as a "people" under the African Charter. Specifically, the Respondent State is responsible for violations of the Nuba people's right to equality in Article 19; their right to existence and self-determination in Article 20; their right to freely dispose their wealth and natural resources in Article 20 (1) and (2); and their right to peace in Article 23 (1) of the African Charter.

148. The Nuba constitute a people for the purposes of the African Charter.

149. According to the Commission, the "drafters of the Charter refrained deliberately from defining the term 'people'"³¹⁹ yet in emphasizing 'Peoples' Rights' in Articles 19-24, the drafters wanted to show that "beside civil and political rights, economic, social and cultural rights should be given the important place they deserve."³²⁰

150. In its jurisprudence, the Commission therefore underlined that peoples' rights are as important as individual rights and "deserve, and must be given protection." In determining the term 'people', the Commission has been guided by the study commissioned by the UN Educational Scientific and Cultural Organization (UNESCO) on "The concept of the rights of peoples." The study stipulates that "[W]here a group of people manifest some of the following characteristics: a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered to be a 'people.'"³²¹

151. The Nuba are "distinct people living in their own historic territory", namely the Nuba Mountains in South Kordofan. While made up of ethnically and religiously diverse tribes, the Nuba share "a common identity as 'Nuba' through their shared mountain homeland, common culture and traditions, and a history of shared oppression."³²² The classification of the Nuba as a people is also

³¹⁹ *Kevin Mgwanga Gunme et al v. Cameroon*, Communication 266/03, para. 169.

³²⁰ *Kevin Mgwanga Gunme et al v. Cameroon*, para. 173, quoting from Justice Hassan B. Jallow, *The Law of the African Charter on Human and Peoples' Rights*, 2007.

³²¹ *Kevin Mgwanga Gunme et al v. Cameroon*, para. 170; also see UN Educational Scientific and Cultural Organisation (UNESCO), *International Meeting of Experts on further study of the concept of the rights of peoples*, SHS- 89/CONF.602/7, Paris, 22 February 1990.

³²² Amin Mekki Medani, *Crimes against international humanitarian law in Sudan- 1989-2000*, p.133; Alex de Waal, *Averting Genocide in the Nuba Mountains, Sudan*, pp.1-2; Minority Rights Group International, *Profile of the Nuba*, at <http://www.minorityrights.org/?lid=4011>; Mohamed Suliman, *Resource Access: A major cause of armed conflict in the Sudan. The case of the Nuba Mountains*, Institute for African Alternatives, London.

supported by the identification of the Nuba by others, and the consequences such identification entails for individual Nuba in relation to non-Nuba.³²³

152. Historically, the Nuba were “long regarded as second-class citizens by the dominant classes of Sudan.”³²⁴ This included a history of discrimination in the provision of education and development. The Nuba have a “historic vulnerability to marginalization and group targeted violence”, particularly during civil wars in South Kordofan in the mid-1980s and throughout the 1990s.³²⁵ When the government “declared jihad in 1992”,³²⁶ the then UN Special Rapporteur on the situation of human rights in the Sudan noted that “all these practices [referring to mass violations committed during the war in Nuba Mountains in the early 1990s, and in particular slavery] have a pronounced racial aspect, as the victims are exclusively southerners and persons belonging to the indigenous tribes of the Nuba Mountains.”³²⁷ Many Nuba were forced into “peace camps in government-controlled areas, and large tracts of emptied land were rapidly incorporated into new commercial agricultural schemes.”³²⁸ By the time the warring parties agreed to a ceasefire in 2002, “[T]he Nuba Mountains were largely emptied of their population.”³²⁹

Article 19 of the African Charter

153. The Respondent State continues the history of targeted violations committed against the Nuba during the more recent conflict in South Kordofan where serious and massive human rights violations are specifically targeting the Nuba people. Numerous victims and witnesses testified that militias and government forces in South Kordofan killed individuals because they belonged to the Nuba.³³⁰ The Respondent State has denied the Nuba their fundamental rights enshrined in the Charter, including their right to life, to be free from torture and ill-treatment, to liberty and security of the person.³³¹ It is therefore submitted that the Nuba cannot enjoy the same respect and the same rights as others in Sudan in violation of Article 19.

Article 20 of the African Charter

154. The scale of the human rights violations committed by the Respondent State’s forces against the Nuba people threatens their existence as a people in violation of Article 20. The Commission’s Working Group on Indigenous Populations/ Communities in Africa has considered that where States dispossess indigenous peoples of their land, in addition to discriminating against them and denying

³²³ See Mohamed Suliman, *Resource Access: A major cause of armed conflict in the Sudan. The case of the Nuba Mountains*, Institute for African Alternatives, London.

³²⁴ Alex de Waal, *Averting Genocide in the Nuba Mountains*, Sudan, p.1.

³²⁵ Amin Mekki Medani, *Crimes against international humanitarian law in Sudan- 1989-2000*, p.133; see pp. 134-156 for an overview of the violations committed specifically against Nuba from 1989 - 2000; Alex de Waal, *Averting Genocide in the Nuba Mountains, Sudan*, p.1; according to de Waal, the violence against the Nuba by State forces included mass rape as an instrument of policy; establishment of death squads to target Nuba community leaders; forced resettlement of Nuba out of the Nuba mountains, a policy of famine, see pp.2-3.

³²⁶ International Crisis Group, *Sudan’s Spreading Conflict (I): War in South Kordofan*, at p.6.

³²⁷ UN General Assembly, *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives- Situation of human rights in the Sudan*, A/50/569, 16 October 1995, para.33.

³²⁸ International Crisis Group, *Sudan’s Spreading Conflict (I): War in South Kordofan*, at p.6.

³²⁹ *Ibid.*

³³⁰ See above, IV.10, analysis of Article 2; see also Sections D and F above; see further, Nicholas D. Kristoff, *In Sudan, Seeing Echoes of Darfur*, N.Y. Times, February 18, 2012.

³³¹ *Ibid.*

them their rights, these peoples are denied their right to existence and self-determination. Indeed, “many marginalized indigenous peoples in Africa are denied the right to exist as peoples and to determine their own development.”³³²

155. The Respondent State’s indiscriminate bombing campaign frequently targeted rebel held areas in the Nuba Mountains, forcing Nuba people living in the Nuba Mountains off their land.³³³ In addition, the Nuba have been subjected to extrajudicial killings, enforced disappearances, torture and other targeted violations. The resulting large-scale loss of life, destruction and displacement threatens the existence of the Nuba as a distinctive people living in the Nuba Mountains.

Article 21 of the African Charter

156. The Respondent State’s forces destroyed wealth and natural resources in the Nuba Mountains without providing any compensation to the Nuba People in violation of Article 21 (1) and (2) of the African Charter. Article 21 is intended to complement, and should be read in conjunction with the right to property under Article 14.³³⁴ Accordingly, Article 21 guarantees the right of a people to freely dispose of their wealth, to recover their property and the right to adequate compensation for its loss or destruction.³³⁵

The conduct of the Respondent State in the Nuba Mountains violated all of these rights. The destruction of thousands of homes and cultivated land in the Nuba Mountains has effectively denied the inhabitants their right to dispose of their own wealth. The Respondent State’s bombing campaign has left fields unfit for cultivation and driven survivors into caves and refugee camps and made it impossible for the Nuba people to benefit from the land and its natural resources.³³⁶ The Respondent State has not provided any compensation to the Nuba people whose homes and land it destroyed.

Article 23 of the African Charter

157. The Respondent State is furthermore responsible for violating the Nuba peoples’ right to national peace and security. The Commission decided previously that unprovoked attacks on villages by state forces constitute a denial of the right to live in peace and security.³³⁷
158. Article 23 states, in relevant part, that “[a]ll peoples shall have the right to national and international peace and security”. The Commission’s decision in the *Mauritania* case expressly applied this Article to “unprovoked attacks on villages” by state forces, finding that such attacks “constitute a denial of the right to live in peace and security.”³³⁸ The Commission further explained that it was immaterial whether the destruction of Mauritanian villages was carried out by state-controlled forces or “rebel

³³² African Commission, ‘*Report of the African Commission’s Working Group on Indigenous Populations/ Communities*’, adopted by the African Commission on Human and Peoples’ Rights at its 28th Ordinary Session, pp.51-52.

³³³ See further above, Section C.

³³⁴ See Kolawole Olaniyan, ‘*Group Rights*’, in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE, 1986-2006*, at 265-66 (Malcolm Evans and Rachel Murray, eds., 2d ed. 2008).

³³⁵ *Ibid.*

³³⁶ See above, Section C.

³³⁷ *Malawi Africa Assoc., et al., v. Mauritania*, Comm. Nos. 54/91, 61/91, 96/93, 98/93, 164/97, 210/98, at para. 140.

³³⁸ See *Malawi Africa Association, et al. v. Mauritania*, at para. 140.

forces,” and found that under Article 23 “the responsibility for protection is incumbent on the . . . State.”³³⁹

159. In the present case, the Respondent State’s indiscriminate bombing campaign and other large-scale human rights violations committed against the Nuba people deny them the right to live in peace and security and are in violation of Article 23.

IV.16. Failure to adopt measures to give effect to the African Charter in violation of Article 1 of the African Charter

a. Failure to protect

160. In addition to its responsibility for violations committed by its forces and authorities in regards to the conflict in South Kordofan and Blue Nile, the Respondent State is responsible for a failure to take reasonable and necessary steps to prevent and to respond to these violations in conformity with Article 1 of the African Charter. This includes the lack of a prompt, impartial and effective investigation of any of the alleged violations and the failure to provide any remedies to the victims thereof.
161. The African Charter specifies in its Article 1 that States parties shall recognise the rights, duties and freedoms adopted by the Charter, and “undertake.....measures to give effect to them”. Article 1 therefore obliges States parties to respect, protect, promote and fulfil the rights enshrined in the Charter.³⁴⁰ Accordingly, a State party must:
- a. refrain from doing anything to violate the rights enshrined in the Charter;
 - b. guarantee that private individuals do not violate these rights;
 - c. prevent and punish violations of the Charter (committed by private individuals as well as State officials), including through investigations and prosecutions of those responsible;
 - d. provide reparation to victims of violations.³⁴¹
162. The Commission has clarified in its jurisprudence that the obligations imposed by Article 1, in particular the obligation to protect, is an obligation of result, rather than diligence.³⁴² While a State party enjoys discretion as to the means it may employ to ensure protection of the rights enshrined in the Charter, the measures must be capable of “implementing the provisions prescribed by the Charter.”³⁴³

³³⁹ Ibid.

³⁴⁰ *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, Communication 272/03, para.87; *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication 245/2002, para.143; the Commission also recognised that, under Art. 1 of the Charter, a State Party may be found to be responsible for violations committed by private parties, including violations of Article 5, if it fails to provide security and stability in the country, thereby allowing serious violations of the rights protected by the Charter.

³⁴¹ *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, para.89

³⁴² Ibid, paras. 93-112; referring to European Court of Human Rights, *Colozza v Italy*.

³⁴³ *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, para. 107.

163. The positive obligation to protect applies under all circumstances. In *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, a case concerning various massive and severe violations of the rights protected by the African Charter (including killings, disappearances and torture) in Chad in the context of the civil war between national armed forces and other groups, the Commission stated:

The African Charter- unlike other human rights instruments does not allow for State parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad, cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter.³⁴⁴

[...]

In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the Government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.³⁴⁵

164. A number of witnesses and victims testified that forces of the SAF and PDF, government militia such as the 'match battalion', NISS agents and other State authorities committed the violations outlined above.³⁴⁶ The Respondent State did not protect civilians from the violations committed by its forces and authorities. Neither did it conduct any investigations into the violations. Victims have not received any reparation for the violations committed.

b. Failure to respond to Provisional Measures request

165. The Commission had requested the Respondent State to adopt provisional measures to "prevent irreparable harm" to the victims on 7 November 2011 and August 2012. However, the Respondent State did not provide the Commission with any information on steps taken to comply with these requests (contrary to Rule 98(4) of the African Commission's Rules of Procedure) while massive human rights violations continued being committed in South Kordofan and Blue Nile following the Commission's two requests for provisional measures.
166. The Commission has held that ignoring obligations pursuant to a request for provisional measures constitutes a separate violation of Article 1.³⁴⁷ The Respondent State failed to respond to the Commission request in violation of the obligation enshrined in Article 1.

³⁴⁴ *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, para.21.

³⁴⁵ *Ibid*, paras. 18-23.

³⁴⁶ See above, Sections C-I.

³⁴⁷ *International Pen and Others v. Nigeria*, African Commission on Human and Peoples' Rights, Communication 137/94, 139/94, 154/96 and 161/97, *dispositif*.

IV. Remedies and Reparation

167. At the outset, the Applicants request the Commission:

1. To treat the situation in South Kordofan and Blue Nile as a situation of emergency according to Rule 80 of the Commission's Rules of Procedure and to draw the attention of the Assembly of Heads of State and Government to the situation;
2. To re-iterate its request for provisional measures to prevent irreparable harm to civilians in accordance with Rule 98;

168. The Applicants further request the Commission:

1. To recognise violations of Articles 1,2,3,4,5,6,7 (1) (a), 9 (1), 12, 14, 16, 18, 19, 20, 21 and 23 of the Charter;
2. To request the Respondent State to guarantee all the violated rights detailed in this Submission;
3. To accept a separate submission on remedies and reparation and to allow for a hearing on reparation if it has found the Respondent State to be in violation of the African Charter. The magnitude of the violations committed and the large number of victims affected requires complex individual and collective measures of reparation, and are a "matter pertinent to the Communication" in line with Rule 99 (3) (d) of the Commission's Rules of Procedure. The Applicants therefore submit that such a hearing is merited in accordance with Rule 99 (3) (d) of the Commission's Rules of Procedure. Such a hearing would allow the Commission to address the following in detail:
 - i. appropriate forms of reparation as provided for by *the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the victims of these violations, including for the next of kin of those who were unlawfully killed by SAF, PDF, or other state forces and authorities, 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;
 - ii. appropriate collective measures of reparation to repair collective or group harm caused by the Respondent State's campaign of massive and serious human rights violations;
4. In addition, to request the Respondent State to set up an independent inquiry to carry out prompt, effective and impartial investigations 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;

5. To call on the Respondent State to:

- a. immediately release all arbitrarily detained civilians and ensure that those detained on a lawful basis enjoy full due process rights;
- b. urgently facilitate unimpeded access by humanitarian aid groups to deliver assistance to civilians in all parts of Southern Kordofan and Blue Nile;
- c. allow full and effective access for international monitors, including human rights officers, to Southern Kordofan and Blue Nile states;
- d. provide appropriate housing and basic needs to the displaced persons in accordance with the UN Guiding Principles on Internal Displacement and the AU Convention for the protection and assistance of internally displaced persons in Africa;]
- e. ensure the safe return of the displaced persons to their communities after the unrest has ceased;
- f. reform its national legislation so that it provides:
 - i. 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;
 - ii. 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, including torture and ill-treatment, enforced disappearances and rape, are effectively recognised as a criminal offence under the law in Sudan;
 - iii. For criminal accountability of officials responsible for violations, including by removing immunity legislation for such crimes that officials enjoy under Sudanese legislation.
- g. ensure training in international human rights and international humanitarian law to law enforcement and military personnel and NISS agents.

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