

COMMUNICATION SUBMITTED TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS BY THE ENOUGH PROJECT¹ FOR VIOLATIONS OF THE AFRICAN CHARTER WITH RESPECT TO SUDANESE CIVILIANS IN SOUTH KORDOFAN AND BLUE NILE STATES

Dr. Mary Maboreke
The Secretary
African Commission on Human and Peoples' Rights
P.O. Box 673
Banjul, the Gambia

April 19, 2012

Re: Human Rights Violations Against Sudanese Civilians in South Kordofan and Blue Nile States

Filed against: The Republic of Sudan

Pursuant to Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the "Charter") read with Rule 102 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the "Commission"), the Enough Project; Mark Quarterman, Research Director and Omer Ismail, Advisor (hereinafter in such capacity, "Enough" or "the Enough Project") submit this Complaint against the Government of the Republic of Sudan (also referred to herein as the "Government" or the "Republic of Sudan") in connection with the Government's treatment of civilians in South Kordofan and Blue Nile States within the Republic of Sudan (the "Sudanese Civilians").

Submitted by:

The Enough Project
1333 H St. NW, 10th Floor
Washington, DC 20005
Phone (202) 481-8206
Facsimile (202) 682-1867
<http://www.enoughproject.org/>

The Enough Project is represented by:

Paul F. Enzina
Mark H. Tuohey III
James P. Bair
Lauren E. Curry
BROWN RUDNICK LLP
601 13th St. NW, Suite 600
Washington, DC 20005
Phone (202) 536-1732
Facsimile (617) 289-0512

¹ The Enough Project; Mark Quarterman, Research Director and Omer Ismail, Advisor are referred to jointly herein as "Enough" or "the Enough Project" and are located at: 1333 H St. NW, 10th Floor; Washington, DC 20005. Omer Ismail is a citizen of Sudan; Mark Quarterman is a citizen of the United States.

I. INTRODUCTION

The Enough Project hereby submits this communication under Article 55 of the African Charter on Human and Peoples' Rights ("the Charter") against the Republic of Sudan, a State Party to the Charter, and its agents, in respect to the Government's treatment of the Sudanese Civilians in South Kordofan and Blue Nile states who have suffered and continue to suffer from severe human rights abuses, including aerial and other assaults, at the hands of the Government and its agents. These actions violate the rights to life and property under Articles 4 and 14 of the Charter, as well as other rights guaranteed under Articles 1, 2, 3, 6, 7(1)(a), 12(1), 16, 18, 19, 20, 21 and 23. Further, the Government has blocked humanitarian and food aid from reaching the Sudanese Civilians, in violation of Articles 4, 16, 18 and 23.

II. FACTUAL BACKGROUND

Starting on June 5, 2011, the Sudanese Armed Forces ("SAF") and militia groups, under the control of the Government of the Republic of Sudan,² launched a series of assaults against civilians in South Kordofan.³ On September 1, 2011, a similar pattern of attacks began against civilians in Blue Nile state. Attacks in both states continue to this day. As of January 2012, the United Nations Office for the Coordination of Humanitarian Affairs ("UN OCHA") estimated that approximately 366,000 individuals had been internally displaced or severely affected by the violence in the two states.⁴ Since June 2011, more than 140,000 refugees fled South Kordofan or Blue Nile to either Ethiopia or South Sudan.⁵

² The Government of the Republic of Sudan is led by President Omar al-Bashir, for whom the International Criminal Court ("ICC") has issued an arrest warrant for war crimes, crimes against humanity, and genocide in Darfur, where the Government employed many of the same tactics it is now using in South Kordofan and Blue Nile. The Governor of South Kordofan, Ahmad Haroun, is also the subject of an ICC arrest warrant for crimes against humanity and war crimes in Darfur. Most recently, the ICC issued an arrest warrant for the Republic of Sudan's Minister of National Defense, Abdel Hussein, for crimes against humanity and war crimes in Darfur. See website of the International Criminal Court: *ICC-02/05: Situation in Darfur, Sudan*. Available at: <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200205/> (last visited April 18, 2012).

³ See Maps of South Kordofan and Blue Nile states, included in supplemental appendix.

⁴ UN Office for the Coordination of Humanitarian Affairs, *Sudan (the): Sudan Humanitarian Update – 4th Quarter 2011*, December 31, 2011. Available at: http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-473790.pdf (last visited April 18, 2012).

⁵ U.S. Department of State, Letters to the Community 2012: *The New Sudanese Refugee Influx*, Catherine Wiesner, Deputy Assistant Secretary of State for Population, Refugees and Migration, April 13, 2012. Available at: <http://www.state.gov/j/prm/releases/letters/2012/187988.htm> (last visited April 18, 2012).

The Government of the Republic of Sudan has justified its assaults under the guise of targeting the Sudan People's Liberation Movement-North ("SPLM-N"), an organized armed group that has been active in these two areas. But the assaults on Sudanese Civilians have nothing to do with military operations. The Government and its agents have deliberately bombed civilian homes, schools and medical facilities, causing untold losses of life, massive displacements, injuries and damage to property. Aerial bombardments have been coupled with targeted ground assaults against civilian populations and extra-judicial killings of suspected supporters of the SPLM-N. The assaults coincided with the planting and harvest seasons, and as a result, the Sudanese Civilians have been left without a harvest, driven from their homes, and are now on the brink of starvation. Compounding the suffering, the Government has refused to allow international organizations to deliver humanitarian aid, including food and medical supplies, into the affected areas. In November 2011, the Famine Early Warning Systems Network estimated that areas of southern Blue Nile and South Kordofan were approaching emergency levels of food insecurity; this is one level short of famine.⁶ These same areas have seen the vast majority of the Republic of Sudan's aerial bombardments in the two states.

Throughout nine months of attacks, the predominantly Arab Government has made clear its intention to cleanse South Kordofan and Blue Nile states of the ethnic and racial groups who live there. Just this month, Al Jazeera published a video of Ahmad Haroun, the governor of South Kordofan, against whom the International Criminal Court has issued an arrest warrant for crimes against humanity and war crimes in Darfur, telling SAF soldiers deploying to the Nuba Mountains, in South Kordofan, to "take no prisoners . . . hand over the place swept, rubbed, crushed."⁷ As detailed below, these actions of the Government and its agents violate multiple provisions of the Charter.

⁶ Famine Early Warning Systems Network ("FEWS NET"), *SUDAN Food Security Outlook Update*, November 2011. Available at: http://www.fews.net/docs/publications/sudan_fsou_2011_11_final.pdf (last visited April 18, 2012).

⁷ Al Jazeera, *Sudan Governor to Troops: 'Take No Prisoners,'* March 31, 2012. Available at: <http://www.aljazeera.com/news/africa/2012/03/2012331114433519971.html> (last visited April 18, 2012).

III. VIOLATIONS OF THE CHARTER

a. The Republic of Sudan Has Failed to Give Effect to Charter Rights

The Republic of Sudan ratified the Charter on February 18, 1986.⁸ As a State Party to the Charter, the Republic of Sudan is responsible for protecting human rights in its territory. Not only has the Government failed to adopt measures to ensure respect for the human rights of its citizens in South Kordofan and Blue Nile, but the State itself has repeatedly violated those rights. This breaches the Republic of Sudan's obligation under Article 1 of the Charter.

b. The Government of the Republic of Sudan Has Deliberately and Illegally Targeted and Attacked the Sudanese Civilians

Since June of 2011, the Government of the Republic of Sudan has bombed Sudanese Civilians on a monthly, sometimes daily, basis. More than 31 attacks have been documented since the assaults began.⁹ Among them are the June 26, 2011 bombing of the market in Kurchi,¹⁰ South Kordofan, which killed 13 civilians¹¹ and injured more than 20 others, most of whom were women and children.¹² Earlier in June, the SAF went door-to-door in Kadugli, South Kordofan, killing any Sudanese Civilians suspected of links to the SPLM-N.¹³ Eyewitnesses in Tilo, South Kordofan report that the SAF sealed the doors of civilian homes and then set fire to the structures, burning alive the civilians who were trapped inside.¹⁴ Further reports, which are corroborated by satellite imagery, show that on or about June 8, 2011, the SAF

⁸ *List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on African Charter on Human and Peoples' Rights*. Available at:

http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf (last visited April 18, 2012).

⁹ Eric Reeves, *They Bombed Everything That Moved: Aerial military attacks on civilians and humanitarians in Sudan, 1999-2012*, updated January 12, 2012. Available at:

<http://www.sudanbombing.org/files/Update%20to%20bombing%20report-Jan%2012,%202012.docx> (last visited April 18, 2012).

¹⁰ The village of Kurchi is occasionally referred to as "Kuchi" in some publications.

¹¹ See Photograph of elderly woman killed by SAF bombs in Kurchi, South Kordofan, June 26, 2011.

¹² Amnesty International, *Sudan: End Bombings and Allow Humanitarian Access Into Conflict Regions*, February 16, 2012. Available at: <http://www.amnesty.org/en/for-media/press-releases/sudan-end-bombings-and-allow-humanitarian-access-conflict-regions-2012-02-1> (last visited April 18, 2012). See also Kuchi Bombing Interviews at Germany Emergency Doctor's Hospital in Lewere, June 27, 2011, with photographs.

¹³ See Photographs of civilian victims and property destruction in Kadugli, South Kordofan, Sudan, June 15, 2011.

¹⁴ Satellite Sentinel Project, *Crime Scene: Evidence of Mass Graves in Kadugli, Sudan*, July 14, 2011. Available at: <http://www.satsentinel.org/report/crime-scene-evidence-mass-graves-kadugli-sudan> (last visited April 18, 2012).

removed the bodies of slain Sudanese Civilians from the Tilo and El Gardud villages in South Kordofan and placed them in mass graves that had been freshly dug for that purpose.¹⁵

The pattern has been the same in Blue Nile state. On September 1, 2011, SAF forces attacked Damazin, the capital of Blue Nile. Refugees recount that Government war planes were “targeting the civilian areas,” and that “soldiers with small arms were chasing civilians” who fled the attacks.¹⁶ Agents of the Government “captured some of the civilians and slaughtered people.”¹⁷ The SAF refused to spare even children and pregnant women.¹⁸ Precise casualty numbers are unavailable, because the Government of the Republic of Sudan has prevented independent observers from accessing the war zones in either South Kordofan or Blue Nile.¹⁹

On February 7, 2012, three bombs were dropped on Alabo in South Kordofan’s Nuba Mountains, where “civilians had fled to escape previous airstrikes.”²⁰ On March 8, 2012, satellite imagery confirmed SAF bombing of civilian structures in and around the village of Angarto, South Kordofan.²¹ There were no military units or infrastructure present in these areas.²² The assaults continue to this day.

More than 140,000 Sudanese Civilians²³ have become refugees since the bombing began – fleeing their homes to seek shelter in South Sudan, Ethiopia and elsewhere.²⁴ The death and displacement caused by the Government’s bombing campaign violates several provisions of the African Charter,

¹⁵ *Id.*; see also, Satellite Sentinel Project, *Cover-Up: New Evidence of 3 Mass Graves in South Kordofan*, August 17, 2011. Available at: <http://www.satsentinel.org/imagery/cover-new-evidence-3-mass-graves-south-kordofan> (last visited April 18, 2012); Satellite Sentinel Project, *Special Report: Evidence of Burial of Human Remains in Kadugli, South Kordofan*, August 24, 2011. Available at: <http://www.satsentinel.org/report/special-report-evidence-burial-human-remains-kadugli-south-kordofan> (last visited April 18, 2012).

¹⁶ The Enough Project, *Field Dispatch: Refugees from Blue Nile Recount Atrocities, Government’s Targeting of Civilians*, November 1, 2011. Available at: http://www.enoughproject.org/files/Overview%20Sherkole_0.pdf (last visited April 18, 2012).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Amnesty Int., *Sudan: End Bombings and Allow Humanitarian Access Into Conflict Regions*, *supra* note 12.

²¹ Satellite Sentinel Project, *Impact: Indiscriminate Bombardment by a SAF Antonov, South Kordofan, Sudan (Report)*, March 15, 2012. Available at: <http://satsentinel.org/report/impact-indiscriminate-bombardment-saf-antonov-south-kordofan-sudan> (last visited April 18, 2012).

²² *Id.*

²³ U.S. Department of State, *The New Sudanese Refugee Influx*, *supra* note 5.

²⁴ United Nations High Commissioner for Refugees, *UNHCR Seeking \$145 Million in Urgent Funds for Sudanese Exodus*, February 10, 2012. Available at: <http://www.unhcr.org/4f35133b9.html> (last visited April 18, 2012).

including the right to life under Article 4, the right to liberty and security of person under Article 6, the right to due process under Article 7, the right to physical and mental health under Article 16(1), the protection of the family guaranteed under Article 18, the right to existence and self-determination under Article 20, and the right to international peace and security under Article 23.

c. Destruction of Civilian Property

The methods and munitions employed by the SAF virtually guarantee that destruction from these assaults will be widespread. The SAF air force used in these attacks consists mainly of converted Russian cargo planes, from which makeshift bombs, usually oil drums filled with explosives and incendiaries, have been dropped.²⁵ Use of unguided munitions in civilian areas has led to the destruction of hundreds or even thousands of homes and civilian buildings. In addition, the SAF has also employed MiG aircraft, QLZ87 grenade launchers and air-to-ground rockets, all of which are capable of more precise targeting, to intentionally attack the Sudanese Civilians.²⁶ By April 19, 2011, satellite imagery and witness reports confirmed that at least 356 civilian structures had been destroyed in the town of el-Faid in South Kordofan alone. In November 2011, SAF forces bombed the village of ‘Amara, in Blue Nile state.²⁷ Government forces in ‘Amara deliberately razed more than a third of civilian structures in the village, burning them completely to the ground.²⁸ Attacks have occurred across the region, including: a hand pump used to draw drinking water in Kurchi, South Kordofan which was bombed on June 26, 2011,²⁹ a Bible school,³⁰ which was bombed on the first day of classes on February 3, 2012; and a health clinic in Kurchi, South Kordofan, which was bombed on February 6, 2012.³¹ These bombings violate the right to

²⁵ Eric Reeves, *They Bombed Everything That Moved*, *supra* note 9.

²⁶ Amnesty International, *Sudan: No End to Violence in Darfur; Arms Supplies Continue Despite Ongoing Human Rights Violations*, February 9, 2012 at 17-20 (discussing munitions used in South Kordofan). Available at: <http://www.amnesty.org/en/library/info/AFR54/007/2012> (last visited April 18, 2012).

²⁷ Satellite Sentinel Project, *Blue Nile Burning: Evidence of the Destruction of ‘Amara Village*, December 1, 2011. Available at: <http://www.satsentinel.org/sites/default/files/SSP%2023%20Blue%20Nile%20Burning.pdf> (last visited April 18, 2012).

²⁸ *Id.*

²⁹ See Kuchi Bombing Interviews at Germany Emergency Doctor’s Hospital, *supra* note 12.

³⁰ New York Times, *Sudan: U.S.-Built Bible School Bombed*, February 3, 2012. Available at: <http://www.nytimes.com/2012/02/04/world/africa/sudan-us-built-bible-school-bombed.html> (last visited April 18, 2012).

³¹ Amnesty Int., *Sudan: End Bombings and Allow Humanitarian Access Into Conflict Regions* *supra* note 12.

property in Article 14 and the right to compensation for despoiled property under Article 21 of the Charter.

d. The Republic of Sudan Intentionally Targeted Civilian Food Sources

In addition to civilian dwellings, schools and hospitals, the SAF also targeted fields used for civilian food cultivation. Because these assaults took place during the planting season, Sudanese Civilians will be left without a harvest this year, creating grave food insecurity.³² In certain parts of Blue Nile state, it is estimated that only 15% of arable land was planted.³³ When Amnesty International visited South Kordofan in August 2011, it found that “many of the displaced had abandoned their fields during prime cultivation time, and were living off dwindling food supplies that included wild fruits.”³⁴ On February 14, 2012, the United Nations Security Council warned that “food insecurity in some areas of Southern Kordofan and Blue Nile States . . . could reach emergency levels if not addressed immediately.”³⁵ This targeting of civilian food sources violates the right to life under Article 4, the right to property under Article 14, and the right to free use of a people’s natural resources under Article 21.

e. The Republic of Sudan Is Blocking Humanitarian Aid to the Sudanese Civilians

By its targeting of civilian villages and fields, as well as its continued blockage of humanitarian aid, the Government of the Republic of Sudan has created “emergency levels of food insecurity,” in South Kordofan and Blue Nile.³⁶ It has exacerbated civilian suffering by refusing to allow international humanitarian aid groups to reach the affected areas. The United Nations High Commissioner for Refugees has warned that the attacks have created “a humanitarian disaster of enormous proportions.”³⁷ In an effort to prevent further suffering, the United Nations, the African Union, and the League of Arab States crafted a “Tripartite Proposal” that would have facilitated the delivery of international

³² FEWS NET, *SUDAN Food Security Outlook Update*, November 2011, *supra* note 6.

³³ U.S. Department of State, Special Briefing: *Humanitarian Situation in Sudan and South Sudan*, April 2, 2012. Available at: <http://www.state.gov/j/prm/releases/remarks/2012/187317.htm> (last visited April 18, 2012).

³⁴ Amnesty Int., *Sudan: End Bombings and Allow Humanitarian Access Into Conflict Regions* *supra* note 12.

³⁵ SC/10543, AFR/2336, 14 February 2012. Available at: <http://www.un.org/News/Press/docs/2012/sc10543.doc.htm> (last visited April 18, 2012)

³⁶ FEWS NET, *SUDAN Food Security Outlook Update*, November 2011, *supra* note 6 at 3.

³⁷ *UNHCR chief appeals for massive humanitarian support for South Sudan*, January 9, 2012. Available at: <http://www.unhcr.org/4f0b23c98.html> (last visited April 18, 2012).

humanitarian assistance to populations throughout South Kordofan and Blue Nile, but the Government has refused to sign it.³⁸ On February 14, 2012, the United Nations Security Council separately called on the Republic of Sudan to permit international humanitarian aid into the area, but the Government has steadfastly refused to do so.³⁹ Incredibly, and defying all evidence, the acting governor of Blue Nile, Lieutenant General Al-Hadi Bushra, denied the existence of any food insecurity, claiming, “our bellies are full, and are in good health, and our children are in schools.”⁴⁰ Yet, the Famine Early Warning Systems Network predicts that, “if limits on humanitarian access and food access continue, parts of Blue Nile and South Kordofan could reach Emergency (IPC Phase 4) levels in early 2012.”⁴¹ The Government’s attempts to starve the Sudanese Civilians violates the right to life under Article 4, the right to physical and mental health under Article 16, and the State’s duty to protect the family under Article 18.

f. The Sudanese Civilians Are Physically Unable to Escape the Government’s Attacks

Nor can the Sudanese Civilians necessarily find safety in refugee camps. Some who have risked the bombings and ventured out of the caves in which they have been hiding in the Nuba Mountains of South Kordofan have been met with SAF roadblocks where soldiers have fired on and killed anyone attempting to flee.⁴² Even those who make it out of the Republic of Sudan are not safe. In November 2011, the SAF bombed the Yida refugee camp in Unity state, South Sudan, which is home to many of those displaced from South Kordofan.⁴³ This violates both the right to life under Article 4 and the right to freedom of movement and residence under Article 12(1) of the Charter.

³⁸ See *African Union / League of Arab States / United Nations Joint Proposal for Access to Provide and Deliver Humanitarian Assistance to Affected Civilians in South Kordofan and Blue Nile States* (“Tripartite Proposal”), February 9, 2012.

³⁹ SC/10543, AFR/2336, 14 February 2012, *supra* note 35.

⁴⁰ Sudan Vision, *Blue Nile Governor Announces Rejection of Opening Humanitarian Corridors*, February 19, 2012. Available at: <http://news.sudanvisiondaily.com/details.html?rsnpid=206763> (last visited April 18, 2012).

⁴¹ FEWS NET, *SUDAN Food Security Outlook Update*, *supra* note 6 at 2.

⁴² New York Times, *In Sudan, Seeing Echoes of Darfur*, February 18, 2012. Available at: <http://www.nytimes.com/2012/02/19/opinion/sunday/kristof-in-sudan-seeing-echoes-of-darfur.html> (last visited April 18, 2012).

⁴³ BBC News, *Sudan ‘bombs refugees’ in South Sudan’s Unity state*, November 11, 2011. Available at: <http://www.bbc.co.uk/news/world-africa-15678261> (last visited April 18, 2012).

g. The Republic of Sudan's Actions Are Motivated by Ethnic and/or Racial Hatred

Ethnic and racial discrimination motivates the Government's policies in South Kordofan and Blue Nile. A woman who was kidnapped in December 2011 by uniformed members of the SAF recalled that the soldiers "said that they want to finish off the black people; they said they want to kill them all."⁴⁴ Recently, Al Jazeera published a video in which Ahmad Haroun exhorts SAF soldiers to "take no prisoners."⁴⁵ "You must hand over the place clean," he continues, "Don't bring them back alive. We have no space for them."⁴⁶ The Government's attempt to ethnically and/or racially cleanse South Kordofan and Blue Nile violates the guarantees of non-discrimination under Article 2 and the right to respect of the dignity inherent in a human being under Article 3 of the Charter. More fundamentally, it also violates the protections of Article 20, which guarantees that "all peoples have the right to existence," and Article 19, which states that "all peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another."

IV. ADMISSIBILITY

a. The Communication Satisfies the Requirements of Article 56

This communication fulfills all of the requirements of Article 56 of the Charter. The authors are clearly identified, and the communication is in no way incompatible with the African Charter on Human and Peoples' Rights or the Charter of African Unity. The communication contains no disparaging language,⁴⁷ is not based entirely on media reports,⁴⁸ has been brought within a reasonable time, and has not been otherwise settled.

⁴⁴ New York Times, *In Sudan, Seeing Echoes of Darfur*, *supra*, note 42.

⁴⁵ Al Jazeera, *Sudan Governor to Troops: 'Take No Prisoners'*, *supra* note 7.

⁴⁶ *Id.*

⁴⁷ Pointing out, as other admissible petitions have done in the past, that the Sudanese government has "inflict[ed] gross injustice and suffering among a vulnerable segment of the Sudanese citizens' does not constitute 'disparaging or insulting language' within the meaning of Article 56(3)." *Darfur Relief and Documentation Center v. Sudan*, Com. No. 310/05 at para. 66 (2009) (internal citation omitted).

⁴⁸ Much of the material supporting this Complaint comes from independent interviews and reports prepared by the Enough Project and other NGOs, rather than mass media sources. Moreover, "[w]hile it would be dangerous to rely exclusively on news disseminated from mass media," the Commission has reminded parties that "it would be equally damaging if the Commission were to reject a communication simply because some aspects of it are based on news

b. Exhaustion of Local Remedies is Impossible

Exhaustion of local remedies under Article 56(5) is not required in this case. First, the Government of the Republic of Sudan has already had ample notice of the violations. Second, the sheer number of victims and the extent of the violations make such remedies effectively non-existent. Finally, the impending rainy season and the threat of continuing attacks by the SAF⁴⁹ mean that “it is obvious that [any local remedies would be] unduly prolonged.”⁵⁰

i. The Republic of Sudan Has Had Ample Notice of the Offenses

“The requirement of exhaustion of local remedies is founded on the principle that a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body.”⁵¹ In this case, the Government of the Republic of Sudan “has had ample notice of the violation.”⁵² *First*, Government officials have made a number of public statements indicating that the Government is aware of the attacks. *Second*, organizations such as the United Nations, the African Union, and the Arab League have all appealed to the Republic of Sudan to permit the Sudanese Civilians access to humanitarian aid. *Third*, the sheer scope and scale of the violations perpetrated by the SAF has generated worldwide attention, and it is implausible that the Government is unaware of these atrocities. As this Commission wrote in condemning the Government’s past human rights violations, “[f]or nearly [two] decade[s], the domestic situation has focused national and international attention on Sudan.”⁵³ Indeed, the Republic of Sudan's current President and Defense Minister, as well as the governor of South Kordofan, are all wanted by the ICC for crimes related to the genocide in Darfur.⁵⁴ “Even where no domestic legal action has been brought by the alleged victims, the

disseminated through the mass media. This is borne out of the fact that the Charter makes use of the word ‘exclusively.’” *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Comm. No. 245/02 at ¶43 (2006).

⁴⁹ Satellite Sentinel Project, *Siege: Evidence of SAF Encirclement in the Kauda Valley*, January 25, 2012. Available at: <http://www.satsentinel.org/report/siege-evidence-saf-encirclement-kauda-valley> (last visited April 18, 2012).

⁵⁰ African [Banjul] Charter on Human and Peoples’ Rights, 1520 UNTS 217 at Art. 56(5) (1982).

⁵¹ *Id.* at ¶36. (1995)

⁵² *Id.* at ¶38.

⁵³ *Amnesty International and Others v. Sudan*, Comm. No. 48/90, 50/91, 52/91, 89/93 at ¶33 (1999).

⁵⁴ See website of the International Criminal Court: *ICC-02/05: Situation in Darfur, Sudan, supra* note 2.

Government has been sufficiently aware to the extent that it can be presumed to know the situation prevailing within its own territory as well as the content of its international obligations.”⁵⁵

For nearly a year, nations and international bodies have called attention to the attacks in Blue Nile and South Kordofan. In August 2011, shortly after the bombing began in South Kordofan, the United Nations High Commissioner for Human Rights and the United Nations Mission to Sudan issued a joint report condemning the “extrajudicial killings, arbitrary arrests and illegal detention, enforced disappearances, attacks against civilians, looting of civilian homes and destruction of property,” as well as the massive displacement that had taken place in South Kordofan.⁵⁶ The Government of the Republic of Sudan, plainly aware of the allegations, issued a formal rebuttal to the report on August 18, 2011.⁵⁷

With each day that passes, time is running out for the Sudanese Civilians. On February 14, 2012, the United Nations Security Council expressed its “deep and growing alarm with the rising levels of malnutrition and food insecurity” in South Kordofan and Blue Nile and called upon the Government of the Republic of Sudan to immediately allow humanitarian access in the two areas.⁵⁸ Demonstrating blatant disregard for the lives of his citizens, President Bashir spoke the next day before the Al-Dawa Islamic Organization in Khartoum, where he vowed to block all international aid.⁵⁹ Also in February, the United Nations, the African Union and the Arab League – three organizations of which the Republic of Sudan is a member – jointly presented a proposal for allowing humanitarian access to South Kordofan and Blue Nile.⁶⁰ As of the date of submission of this communication, the Government has refused to accept the terms of the proposal, violating its Charter obligation to ensure respect for human rights.

⁵⁵ *Amnesty International and Others v. Sudan*, *supra* note 53.

⁵⁶ Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan; Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011. Available at: http://www.ohchr.org/Documents/Countries/13thSouth_Kordofan_report.doc (last visited April 18, 2012).

⁵⁷ Sudan Tribune, *Sudan Submits Rebuttal to UN Security Council Over S. Kordofan Abuses*, August 18, 2011. Available at: <http://www.sudantribune.com/Sudan-submits-rebuttal-to-UN,39879> (last visited April 18, 2012).

⁵⁸ SC/10543, AFR/2336, 14 February 2012, *supra* note 39.

⁵⁹ Sudan Tribune, *Bashir Reiterates Sudan's Rejection to "Biased" Aid Groups*, February 16, 2012. Available at: <http://www.sudantribune.com/Bashir-reiterates-Sudan-s,41617> (last visited April 18, 2012).

⁶⁰ Tripartite Proposal, *supra* note 38.

Because the Government has been given “ample notice of the violation[s],”⁶¹ the conditions of Article 56(5) of the Charter have been satisfied, and the communication is admissible.

ii. The Number of Victims and Violations Renders Domestic Remedies Unavailable

This communication is brought to stop the Government from violating the rights of more than 360,000 Sudanese Civilians remaining in South Kordofan and Blue Nile who face constant SAF bombing, the fear of being kidnapped or burned alive, and impending starvation.⁶² The Government’s conduct also impacts the more than 140,000 Sudanese Civilians who have become refugees and are no longer located in the territory of the Republic of Sudan. The African Commission repeatedly has recognized that in such situations, remedies in the domestic courts are effectively unavailable. Indeed, “[t]he Commission has never held the requirement of local remedies to apply literally in cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each violation.”⁶³ Given the “vast and varied scope of the violations alleged and the general situation prevailing”⁶⁴ in South Kordofan and Blue Nile, it is impossible for the Sudanese Civilians to avail themselves safely of the local courts, or for the courts to hear their claims. Thus, no effective remedy exists.⁶⁵ In such circumstances, the Commission has consistently found that there is no need to exhaust local remedies.⁶⁶

iii. Because of Impending Violence and Starvation, Any Domestic Remedies Would Be Unduly Prolonged

Finally, the dire humanitarian situation in Blue Nile and South Kordofan means that any theoretical local remedies in the Republic of Sudan would be “unduly prolonged” within the meaning of

⁶¹ *Legal Assistance Group, Lawyers’ Committee for Human Rights and Others v. Zaire*, Comm. No. 25/89, 47/90, 56/91, 100/93 at ¶38 (1995).

⁶² See OCHA, *Sudan: Humanitarian Snapshot (as of 29 Feb 2012)*, noting a total of 360,000 “internally displaced or severely affected people” in South Kordofan and Blue Nile. Available at: <http://reliefweb.int/node/482103> (last visited April 18, 2012).

⁶³ *Legal Assistance Group*, *supra* note 61 at ¶36.

⁶⁴ *Id.* at ¶37.

⁶⁵ See *Sir Dawda K. Jawara v. the Gambia*, Comm. No. 147/95, 149/96 at ¶32 (2000) (“A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint”).

⁶⁶ *Legal Assistance Group*, *supra* note 61 at ¶38.

Article 56(5). “In a situation of grave and massive violations,” the sheer number of violations and victims “renders the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process is ‘unduly prolonged.’”⁶⁷ The impending and very real risk of starvation, coupled with the constant and ongoing campaign of violence against the Sudanese Civilians, also makes domestic remedies inadequate. The rainy season in the Republic of Sudan typically begins in April and renders what roads exist in South Kordofan and Blue Nile largely impassible. This, in turn, will further inhibit the movement of the Sudanese Civilians and severely impede the ability of international aid organizations to access them, even if the Government were to permit those organizations to operate in the two states. Finally, credible evidence suggests that the SAF may be preparing for a final assault on the region before the rains begin.⁶⁸ There is simply no time to pursue an action in the domestic courts, as many of the Sudanese Civilians could very well die before such proceedings even commence.

⁶⁷ *Malawi African Association and Other v. Mauritania*, Comm. No. 54/91, 61/91, 98/93, 164/97, 210/98 at ¶¶79, 85 (2000).

⁶⁸ Satellite Sentinel Project, *Siege: Evidence of SAF Encirclement in the Kauda Valley*, *supra* note 49.

V. REMEDIES REQUESTED

The Enough Project hereby requests that:

1. The Commission take “provisional measures,” pursuant to Rule 111 “to avoid irreparable damage being caused to the victim[s];”
2. The Commission exercise its authority under Article 58 of the Charter to draw the attention of the Assembly of Heads of State and Government to this special case, which evidences “the existence of a series of serious or massive violations of human and peoples’ rights;”
3. The Chairman of the Assembly of Heads of State and Government request an in-depth study into violations of the Charter occurring in South Kordofan and Blue Nile states;
4. The Commission declare that the Government of the Republic of Sudan has violated the rights of the Sudanese Civilians under Articles 1, 2, 3, 4, 6, 7(1)(a), 12(1), 14, 16, 18, 19, 20, 21 and 23 of the African Charter on Human and Peoples’ Rights.
5. The Commission recommend that the Republic of Sudan award the Sudanese Civilians due compensation for the violations described herein; and
6. The Commission take any other action to protect and/or compensate the Sudanese Civilians that it deems appropriate.

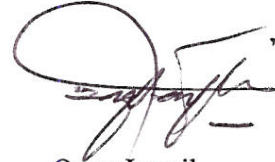
VI. CONCLUSION

In view of the above, and without prejudice to any facts, points of law, and evidence which may be introduced at later stages, the Enough Project requests the Commission to be seized of this complaint. The Enough Project will make further submissions when invited to do so.

ON BEHALF OF THE ENOUGH PROJECT:



Mark Quarterman
Research Director



Omer Ismail
Advisor

THE ENOUGH PROJECT
1333 H St. NW, 10th Floor
Washington, DC 20005
Phone (202) 481-8206
Facsimile (202) 682-1867
<http://www.enoughproject.org/>



Paul F. Enzinna



Mark H. Tuohey III

Paul F. Enzinna
Mark. H. Tuohey III
James P. Bair
Lauren E. Curry
BROWN RUDNICK LLP
601 13th St. NW, Suite 600
Washington, DC 20005
Phone (202) 536-1732
Facsimile (617) 289-0512

Counsel for The Enough Project