COMMUNICATION 577/15

Hassan Ishag Ahmed (representedbyAfricanCentre for Justice and Peace Studies and others)

V

The Republic of Sudan

Adopted by the

African Commission on Human and Peoples' Rights
During the 68th Ordinary Session held virtually from 14 April to 04 May 2021,

.....

Hon. Commissionner Idriesa Sow
Chairperson to the African Commission on Human and Peoples' Rights

.....

Ms. Abiola Idowu-Ojo
Executive Secretary to the African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights
31 Bijilo Annex Layout, Kombo North District, West Coast Region
Phone: (220) 230 4361 Fax: (220) 441 05 04
Email: au-banjul@africanunion.org
https://achpr.au.int/

Communication 577/15: Hassan Ishag Ahmed (Represented by African Centre for Justice and Peace Studies & Ors.) v Republic of The Sudan

Summary of the Complaint:

1. The Complaint was received by the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 13 October 2015. It is filed by the African Centre for Justice and Peace Studies, the Media Legal Defence Initiative and the East and Horn of Africa Human Rights Defenders Project (altogether the legal representatives), on behalf of Mr. Hassan Ishag Ahmed (the Complainant), against the Republic of The Sudan[1] (the Respondent State).

2. The Complainant, who is a 31 year-old Sudanese journalist, avers that he currently lives in exile in Nairobi, Kenya following his arbitrary arrest and detention by the Sudanese authorities. He avers that he worked as a journalist for *Al Gareeda* newspaper in Khartoum at the time of his arrest on 10 June 2014, and that he wrote articles on political developments in the Respondent State, as well as articles on the human rights situation in the country, citing as examples, his articles on the experiences of students in the Darfur region, and on the state of press freedom in the country.

3. He submits that on 07 June 2014, he had been assigned by *Al Gareeda* newspaper to cover a symposium that was to be held by the opposition party, the Sudanese Congress Party (the SCP), in al-Nuhood city, West Kordofan State, Sudan; and that, whilst attending the symposium, he was hosted by the President of the SCP, Mr Ibrahim El-Shiekh, at his home in al-Nuhood. He alleges that during the symposium, Mr. El-Shiekh spoke critically of what he believed to be abuses committed by the Rapid Support Forces, the government-aligned militia deployed in conflict areas of the Sudan including Darfur.

4. He claims that following the event, and on 08 June 2014, joint forces of the National Intelligence and Security Services (the NISS) and the police arrested Mr El-Sheikh at his home, and that he (the Complainant) then published the arrest on social media platforms, including Facebook and WhatsApp, and shared news of the arrest with his newspaper. He submits that Mr El-Sheikh was subsequently charged with six crimes, including Article 50 (undermining the constitutional system) and Article 62 (inciting feelings of unrest among disciplined forces and abetment of disturbing disorder), under the Criminal Act of Sudan (1991); and was detained at al-Nuhood prison.

[1] The Republic of The Sudan ratified the African Charter on Human and Peoples' Rights on 14 March 1986.

5. The Complainant claims that two days later, on 10 June 2014, he had travelled with two colleagues to visit Mr El-Sheikh in prison, and that on his way to the prison, he was approached by four plain clothes security personnel from the NISS, one of whom ordered him to follow them to the al-Nuhood police station close to al-Nuhood prison. He claims that he was targeted by the security personnel because of his coverage of Mr El-Sheikh's speech, and referred to a statement to this effect, made by Ashraf Abd al-Aziz, *Al Gareeda*'s editorial director.

6. He submits that at the police station, he was asked to identify himself, after which he was interrogated about his presence in al-Nuhood as well as on his personal background. He claimed that he had informed them that he was in al-Nuhood to cover the SCP symposium, and that when asked what his religion was, he had replied that he was "Sudanese", in reaction to which the four security personnel proceeded to beat him and kick him for this response. He alleges that the beatings caused him to fall over and hit his head on a metal bench, following which he then lost consciousness. When he regained consciousness, he found himself in the compound of the police station, where the security personnel later resumed his interrogation, and during which one of them ordered him to quit the journalism profession.

7. Following the above, he was transferred to al-Nuhood prison, where a prison guard informed him that he was being detained under the Emergency Law, which meant that he was under the jurisdiction of the Governor of the State. He explained that under the Emergency and Public Safety Bye-law (1998) (Emergency Law), the Governor of the State holds the discretionary power to arrest individuals suspected of involvement in crimes relating to the declaration of emergency made by the President. Also, he states that while the Emergency and Public Safety Bye-law (1998) stipulates that an arrest pursuant to this power is made provisionally, the law does not set any time limits for the detention or provide for judicial oversight. As a result, he claims that he did not know for how long he might be detained.

8. The Complainant submits that he was then detained in an overcrowded cell with poor ventilation which was holding twice its capacity of inmates, and that the sanitary conditions at the prison were very poor, as there were no toilet or washroom facilities in the cell, there was a constant foul smell due to human waste, and there were no beds to sleep on, causing him to sleep on the cold floor which worsened his injuries sustained from the beating of 10 June 2014.

9. He alleges that for the first week of his detention, he was denied medical attention despite his repeated requests to see a doctor, and his deteriorating health. He claims that he often complained about the pain he suffered as a result of the beating of 10 June 2014; his left leg was swollen; he had migraines which intensified at

night and prevented him from sleeping; and that he experienced fatigue and was not able to eat or drink for several days. He also submits that although a visiting lawyer subsequently intervened on his behalf and requested the prison authorities to take him to see a doctor, the Prison Director only gave permission for him to see a doctor after he fell unconscious while walking around the prison. He was subsequently accompanied by two prison officers to the hospital, where a doctor sent him for a urine test and thereafter prescribed him malaria medication and painkillers. He states that he had asked for an X-ray, but the doctor refused. Also, no medical report was issued.

10. Furthermore, he claims that on 26 June 2014, the Sudanese Journalist Network organized a protest outside the offices of the National Council of Press and Publications in Khartoum, and lodged a memorandum demanding his release, but he continued to be held in detention.

11. The Complainant alleges that after 20 days of detention in al-Nuhood prison, he was, on 1 July 2014, transferred to El-Obeid prison, North Kordofan State. He alleges that at El-Obeid prison, he was informed by the officer who received him that he was still being detained under the Emergency Law, and was also ordered "not to stir up trouble" among the other prisoners. He claims that he made further requests to see a doctor for the headache and body pain which he still suffered from the beating of 10 June 2014, but that these were denied, despite the intervention of a local lawyer from El-Obeid who had requested that the prison authorities let him see a doctor.

12. He submits that on 19 September 2014, after three months in detention without charge and without being told how long he would be detained for, he was released, but was never informed of any charges against him. He then returned to work following his release, but was treated as a "troublemaker" by his colleagues and he found himself continually isolated. He claims that the hostile treatment he received in Sudan following his detention led him to flee the country to Nairobi, Kenya on 09 November 2014. He also claims that he still experiences mental distress and anguish following his treatment by the Sudanese authorities, which is heightened by the fact that he remains separated from his friends and family in Sudan. He is also no longer able to rely on income from his journalistic work following his release.

13. The Complainant submits that the circumstances of his arrest and detention amount to a violation of his rights under the Charter; in particular the prohibition against torture and cruel, inhuman and degrading treatment (Article 5), right to personal liberty and protection from arbitrary arrest (Article 6), right to have his cause heard (Article 7), right to freedom of expression (Article 9), right to health (Article 16) and a violation of the Respondent State's obligation to recognise and give effect to these rights (Article 1).

14. The Complainant submits that he is not obliged to exhaust local remedies because, under the domestic laws of the Respondent State, there are no available, effective or sufficient local remedies to redress the violations that are the basis of the Complaint.

15. He also submits that, in the circumstances of the case, this Complaint has been submitted within a reasonable time in accordance with Article 56 (6) of the Charter.

Articles alleged to have been violated

16. The Complainant alleges that the Respondent State has violated Articles 1, 5, 6, 7, 9 and 16 of the African Charter on Human and Peoples' Rights (African Charter).

Prayers

17. The Complainant prays the African Commission on Human and Peoples' Rights (African Commission) to:
    a) Find that the alleged violations did indeed take place.

    b) Make a declaration that the Complainant's arrest, beating, and arbitrary detention in inhumane conditions, constitute multiple violations of his right to be free from torture and cruel, inhuman and degrading treatment, as protected by Article 5 of the African Charter;

    c) Make a declaration that the Complainant's arrest, beating, and arbitrary detention constitute multiple violations of his right to liberty and security of person, as protected by Article 6 of the African Charter;

    d) Make a declaration that the Complainant's arrest and arbitrary detention without charges constitute multiple violations of his right to be heard, as protected by Article 7 of the African Charter;

    e) Make a declaration that the Complainant's arrest and arbitrary detention for reporting on the arrest of Mr. El-Sheikh constitute multiple violations of his right to freedom of expression, as protected by Article 9 of the African Charter;

    f) Make a declaration that the Complainant's beating and denial of medical attention constitute multiple violations of his right to health, as protected by Article 16 of the African Charter;

    g) Make a declaration that Sudan's national security laws, emergency laws, and Sudan's failure to pass laws that meaningfully prevent

torture, state-sponsored violence, arbitrary detention, detention in inhumane conditions, detention without recourse to the courts, and denial of medical attention while in detention, constitute multiple violations of his right to domestic laws enforcing the provisions of the African Charter, as protected by Article 1 of the African Charter;

h) Make a recommendation that Sudan make reparations to the Complainant, consisting of, amongst others, lost income, medical expenses, and compensation for physical and emotional suffering; and

i) Make a declaration that the 2010 National Security Act and the Emergency and Protection of Public Safety Act (1997) violate Sudan's obligations under international law.

Procedure

18. The Complaint was received at the Secretariat of the African Commission 13 October 2015, and receipt was acknowledged on 14 October 2015.

19. The Commission was seized of the Communication during its 57th Ordinary Session which took place from 04 to 18 November 2015, and this decision was communicated to the Parties through Note Verbale and letter dated 18 November 2015. The Complainant was requested to submit on admissibility within two months.

20. On 26 November 2015 the Complainant wrote to the Commission requesting for an extension of sixty (60) days within which to submit on admissibility, and further follow up correspondences on 12 and 15 January 2016. The Secretariat responded on 18 January 2016 indicating that a one month extension was granted from the deadline for the admissibility submissions.

21. The Complainant's submissions on admissibility were received at the Commission on 18 February 2016. On 22 March 2016 the Complainant's submissions were transmitted to the Respondent State, which was requested to submit on admissibility within two months.

22. On 06 May 2016 the Secretariat informed the Parties that consideration of the Communication had been deferred during the 58th Ordinary Session, pending submissions on admissibility by the Respondent State.

23. The submissions of the Respondent State were transmitted to the Complainant on 22 November 2016, and the Complainant was requested to submit any additional observations on admissibility within one month, the same was

submitted by the Complainant on 05 January 2017, following a request for an extension submitted in December 2016.

24. On 28 April 2017 the Secretariat acknowledged receipt of the additional observations and transmitted it to the Respondent State. On 12 June 2017 the Secretariat observed that the Complainant raised a preliminary objection in their additional observations and wrote to the Respondent State, requesting the latter to respond to the preliminary objection within one month in line with Rule 103(2).

25. The Secretariat informed the Parties that consideration of the Communication was deferred during the 60th Ordinary Session and 22nd Extra-Ordinary Session.

26. On 30 October 2017 the Complainant indicated that the Respondent State was out of time to respond to the preliminary objection and requested the Commission to make a determination on the preliminary objection.

27. During its 23rd Extra-Ordinary Session, which took place 13 to 22 February 2018, the Commission considered the preliminary objection and decided to reject it.

28. The Commission declared the Communication admissible during its 24th Extra-Ordinary session, which took place from 30 July to 8 August 2018.

29. On 4 September 2018, the Secretariat informed the parties of the decision on admissibility, and the Complainant was requested to submit on the merits within sixty (60) days of notification, in accordance with Rule 108 (1) of the Commission's Rules of Procedure (2010).

30. On 15 November 2018, the Secretariat received the Complainant's submissions on the merits of the Communication which was duly acknowledged and transmitted to the Respondent State on 6 December 2018. The Respondent State was requested to forward its merit submissions/observations on the Complainant's submissions within sixty (60) days of notification, in accordance with Rule 108 (1) of the Commission's Rules of Procedure (2010).

31. On 8 March 2019, the Secretariat informed the Parties that during its 25th Extra-Ordinary session which took place from 19 February to 5 March 2019, the Commission had decided to grant an extension of thirty (30) calendar days to the Respondent State to make its submissions on the merits, failing which the Commission will proceed to make a determination on the information before it in accordance with Rule 113 (2) of the Commission's Rules of Procedure (2010).

32. On 24 June 2019, the Secretariat informed the Parties that the consideration of the Communication was deferred at the Commission's 64th Ordinary Session

which took place from 24 April to 14 May 2019, to a later session. The Secretariat also indicated that the extended deadline for the Respondent's written submissions on the merits had expired on 14 April 2019, and therefore it was no longer possible for the Respondent State to make submissions on the merits of the Communication.

33. On 30 October 2020, the Secretariat received a correspondence from the Respondent State requesting that the Secretariat furnish a detailed reference of the Communication. On 16 November 2020, the Secretariat acknowledged receipt and indicated the Note Verbales earlier transmitted to the Respondent State.

34. A decision on the merits was deferred from the 65th Ordinary Session to 31st Extra-ordinary Session of the Commission.

Determination on the Preliminary Objection

35. The Complainant in its additional observations on the admissibility submissions of the Respondent State raised a preliminary objection to the permissibility of the Respondent State's admissibility submissions. The assertion of the Complainant is that in accordance with Rule 103(1) of the Commission's Rules of Procedure, submissions should be made within two months, but that the State only submitted on admissibility five months after this deadline had expired. The Complainant submits that this is an abuse of process and that the State's submissions on admissibility should not be considered.

36. The Commission considered this objection, and determined that in line with its the current practice, where the Communication is still pending before the Commission for whatever reason, and the State submits, even if it is outside of the provided time limits, that it would view this as an indication of political will on the side of the State to participate in the Communications process, and that the submissions would be allowed. Contrarily, where a State is out of time to submit, and the Commission had already proceeded to make a determination on the said Communication, the submissions of the State would not be considered. In the current case the Respondent State submitted some months outside of the given timeframe, however, since the Commission had not yet made a determination on admissibility at that point, this would not result in the Commission disregarding the State's submissions on admissibility.

37. This allowance is made on the basis of the view of the Commission that, firstly, it is in the interest of justice to hear the versions of both Parties to the Communication. Secondly, as seen from the record of the decisions of the Commission, the Commission has in the past struggled to engage States in the Communications process, and the Commission thus appreciates efforts by

States who do decide to engage. Finally, given that the submissions of States are not allowed in all cases, but only in cases where the Commission had not yet proceeded to make a determination on the facts before it, following the deadline for the submission, the Commission views the benefit of allowing the submissions in such a case as outweighing the potential harm.

38. For these reasons, the Commission decided to dismiss the preliminary objection and admit the admissibility submissions of the Respondent State.

Admissibility

The Complainant's Submissions on Admissibility

39. The Complainant submits that the Communication meets all the cumulative criteria of admissibility as set out in Article 56 of the African Charter, and therefor requests the Commission to declare the Communication admissible.

40. On Article 56(1) the Complainant submits that the authors of the Communication have been identified, being the organisations authorised to act as legal representatives of the Complainant, as set out in paragraph 1 above. The Complainant further submits that an address had been provided for correspondence with the authors. In addition, the Complainant himself, Mr Hassan Ishag Ahmed has also been identified and is not requesting that his identity be withheld from the Respondent State. He submits that thus Article 56(1) has been met.

41. On Article 56(2), the Complainant submits that the Communication is compatible with the Charter, citing previous decisions of the Commission setting out the three criteria for this requirement as being that the Communication must be brought against a State Party to the Charter by someone who is competent to do so, that the violation complained of should have occurred or continued after ratification of the Charter by the State and that the Communication must allege prima facie violations of rights protected in the Charter.

42. In response to the first requirement, the Complainant submits that he is a national of the Respondent State, and that the Respondent State is a State Party to the Charter, and that therefore the Complaint was brought by someone who was competent to do so. Secondly, the Complainant submits that the violations took place during 2014, which is after the date of ratification by the Respondent State on 18 February 1986. Finally, the Complainant submits that the Commission in respect of *prima facie* violations has held that "one is presumed to have presented a *prima facie* case [...] when the facts presented in the Complaint show that a human rights violation has likely occurred". The

Complainant proceeds to set out the ways in which he alleges his rights under Articles 1, 5, 6, 7, 9 and 16 had been violated, including through indefinite detention without being heard by a judicial authority, beatings sustained during his interrogation, the conditions of his detention, among others, submitting that this makes a prima facie case for violation of his rights in that they are specific enough and the Commission already found in its seizure decision that there had been prima facie violation. He thus submits that he meets the requirements under Article 56(2).

43. The Complainant submits that he meets the requirements under Article 56(3) in that the language used is respectful and balanced.

44. The Complainant further submits that the Communication is based on the Complainant's own experience, and is thus not based exclusively on news disseminated through the mass media, noting that the facts presented in the Complaint were transmitted to the legal representatives through Skype and telephone correspondence, thereby meeting the requirement of Article 56(4).

45. On the question of exhaustion of local remedies under Article 56(5) the Complainant submits that he does not have to exhaust this requirement, since there are no available, effective and sufficient remedies in this case, making reference to the Commission's jurisprudence in *Amnesty International and Others v Sudan;*[2] *Monim Elgak, Osman Hummeida and Amir Suleman (represented by FIDH and OMCT) v. Sudan*[3] amongst other decisions, as well as decisions of the African Court on Human and Peoples' Rights.[4] The Complainant submits that 1) there is no effective remedy available for arbitrary arrest and detention; 2) there is no effective and sufficient remedy to challenge the human rights abuses of the NISS and 3) that the Respondent State has failed to provide a remedy or investigate the allegations despite ample notice and time to do so.

46. In relation to the first argument, the Complainant submits that the Commission has held in its jurisprudence that the normal remedy for arbitrary arrest and detention is a writ of *habeas corpus*, so that a court may order the State authorities to produce and individual and justify his imprisonment.[5] The Complainant states that on this ground the Commission has found that where a remedy of *habeas corpus* does not exist at local level, there are no available remedies for the victims of arbitrary arrest and detention to resort to.[6]

---

[2] Communication 48/90, 50/91, 52/91, 89/93.

[3] Communication 379/09, para 58.

[4] Application 009/2011 & 011/2011, *Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania* (2013) para 82; Application 004/2013, *Lohé Issa Konaté v Burkina Faso* (2014), paras 96 & 108.

[5] Communication 153/96 – *Constitutional Rights Project v Nigeria*, para 8.

[6] As above, para 10.

47. The Complainant avers that the statutory legal framework in Sudan for emergencies is set out in the Emergency and Protection of Public Safety Act(1997), which does not provide for a right to *habeas corpus*, and additionally, if read with Section 15 of the Emergency and Public Safety Bylaw, 1998, "permits preventive arrest and detention on the basis of vague grounds and with no provision limiting the duration of detention or providing for judicial oversight", thus authorising prolonged or even indefinite detention without charge or judicial review.

48. The Complainant submits that he was detained between 10 June 2014 and 19 September 2014 without charge, and that at no time during his arrest or detention was he brought before a judicial authority; that no right to *habeas corpus* was made available to him; and that he was detained pursuant to the Emergency Law of West Kordofan State, placing his release at the sole discretion of the governor of this State; that he was not provided with his own lawyer and not given the opportunity to contact his family until his final days of detention. Therefore, he submits that he was unable to challenge the legality of his detention before the domestic courts while he was in detention.

49. In relation to the second argument, namely that there are no effective or sufficient remedies to challenge the actions of the NISS, the Complainant refers to previous decisions in which the Commission had recognised that the broad immunities provided to the NISS in Sudan render ineffective any local remedies that theoretically exist in this regard, through preventing effective investigation and prosecution of violations by NISS officials.[7] The Complainant refers to Article 52(3) of the National Security Act, which provides that "no civil or criminal procedures may be brought against a member or association unless upon the approval of the Director [of the NISS]," stating further that there is no way for an individual to petition the Sudanese courts to compel the Director of the NISS to lift the immunities of his officers. He alleges, in addition, that there is no way for a person or court to initiate a judicial review of a decision not to lift immunities.

50. In relation to the third argument, the Complainant states that the Respondent State failed to initiate criminal investigations and prosecutions despite ample notice, noting the jurisprudence of the Commission which has held that enabling the Respondent State to deal with the alleged violation under its own law is one of the main purposes for the exhaustion of local remedies requirement. The Complainant refers to the jurisprudence of the Commission which had held that if a State Party had ample notice and time within which to remedy alleged violations and the State Party has not taken appropriate steps to do so, domestic remedies are necessarily either not available or are not

[7] Including Communication 401/11 *Hawa Abdalla v Sudan, para 60; Communication 379/09 Monim Elgak, Osman Hummeida and Amir Suliman (Represented by FIDH and OMCT) v Sudan*, para 68.

effective or sufficient to redress the violations alleged.[8] The Complainant also notes that with regard to a criminal violation the Commission has held that the obligation is on the State Party to investigate and bring the accused person to court, and that one cannot demand of the Complainants to exhaust domestic remedies in such a case.[9]

51. As evidence that the State had ample notice and time, the Complainant makes reference to complaints he made to the prison authorities about the abuse suffered at the hands of the NISS; international and national media reports about his alleged arrest, detention, torture and ill treatment, a protest outside the offices of the National Council of Press and Publications; public advocacy for his release; and a complaint filed on his behalf with the National Commission of Human Rights. The Complainant submits that despite being sufficiently aware, the Respondent State failed to take steps to provide the Complainant with a remedy for these violations, that there is no indication of a formal investigation having been or to be carried out.

52. Based on these three arguments the Complainant submits that the requirement to exhaust local remedies must be dispensed with.

53. The Complainant submits that he has complied with the requirement under Article 56(6) in that the Complaint is submitted within a reasonable period. The Complainant notes that in the jurisprudence of the Commission, cases where local remedies could and were exhausted are treated differently from cases where remedies were found to be unavailable, ineffective or insufficient, in the latter case assessing timeliness as from the time of the Complainant's notice of the unavailability, ineffectiveness or insufficiency of the remedies. [10] Circumstances which the Commission had in the past taken as relevant include the relocation of the Complainant to another jurisdiction; the complexities of getting representation and challenges of communication systems in Africa.[11]

54. On the facts of the case the Complainant submits that he filed the Complaint with the Commission approximately 13 months after he was released from prison and 11 months after he fled to Kenya. He further submits that he had found it challenging to settle in Kenya due to mental distress and anguish at being separated from his family and friends and no longer having an income, and thus that given the circumstances, the Complaint was submitted within a reasonable time.

---

[8] Communication 257/03 – *Article 19 v Eritrea*, para 77; Communication 38/90, 50/91, 52/91, 89/93 – *Amnesty International and others v Sudan*, para 33.

[9] Communication 245/02 – *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, paras 69-70.

[10] Communication 322/06 – *Tsikata v Ghana* para 37.

[11] Communication 307/06 – *Obert Chinhamo v Zimbabwe*, para 89; Communication 334/06 - *Egyptian Initiative for Personal Rights and Interrights v Egypt*, para 99.

55. The Complainant confirms that in compliance with Article 56(7), the Complaint has not been submitted to any other procedure of international investigation or settlement. In conclusion he thus submits that he has satisfied all the criteria under Article 56 and that the Commission should find the Communication admissible.

The Respondent State's Submissions on Admissibility

56. In its response to the admissibility submissions of the Complainant, the State first raised a number of factual issues, firstly alleging that the Complainant was not arrested by the NISS, but rather by the police, in accordance with Section 5 of the Emergency and Public Safety Protection Act of (1997) on suspicion of involvement in an act which contravenes the proclamation of the state of emergency declared in line with Article 210 of the Interim National Constitution of the Republic of Sudan and in response to security instability and armed conflict in the area. They further submit that the Complainant had been informed of the reasons for his arrest and treated in accordance with the provisions of the Criminal Procedure Act of 1991. Thirdly, the Respondent State states that in response to the complaint filed with the National Human Rights Commission (NHRC), the police administration had formed an inquiry committee which summoned the Complainant for a hearing, but that the Complainant failed to appear before the committee, and that the inquiry record is still open.

57. The Respondent State submits that the Complaint does not comply with the requirement under Article 56(2) of the African Charter, since the Complainant was detained in accordance with due process of law, under a national law enacted in compliance with the Constitution and satisfying the requirements of the International Covenant on Civil and Political Rights as well as the African Charter; and for specific suspicion and reasons of which he was duly informed. In addition, the State submits that the allegations of maltreatment during detention are unsubstantiated allegations which lack the *prima facie* evidence required to establish a cause of action under the Charter.

58. The Respondent State further submits that the Communication falls short of the requirements under Article 56(5), firstly, because the Complainant admits that he has done nothing to exhaust the available domestic remedies. The State refers to the jurisprudence of the Commission which held that it is incumbent on the Complainant to take all necessary steps to exhaust or attempt to exhaust local remedies, and that it is not enough for the Complainant to cast aspersions on the ability of domestic remedies to succeed based on isolated incidents.[12]

[12] Communication 263/02 – *Kenyan Section of International Commission of Jurists v Kenya.*

Further referring to the principle that the Respondent State must first have an opportunity to redress the alleged wrong within its own legal system.

59. The Respondent State further asserts that the judicial system of Sudan is easily accessible, effective and independent, as guaranteed by the Constitution, stating that the Complainant is thus casting unfounded aspersions in respect of the availability and effectiveness of local remedies. In addition, the State asserts that contrary to the submission by the Complainant that there is no provision in the law for the remedy of *habeas corpus,* the Constitutional Court Act of 2005 in Section 16 provides for the Court to have the power "to make an order to anybody or person requiring him to bring before the court the arrested or detained person to consider the constitutionality of the arrest or detention", and further that Section 24 makes the decisions and orders of the Court binding on all levels of government, the national and state organs as well as the entire public.

60. The State submits that the only action taken by the Complainant to exhaust local remedies was the complaint filed on his behalf with the NHRC. The State submits that while the NHRC is independent of the judiciary it is competent to consider human rights violations, but that the Complainant failed to appear before the police administration inquiry committee "established to investigate his complaint within the process of the NHRC's consideration of his case", which record is still open. The State thus submits that the Complainant cannot be considered to have exhausted or attempted to exhaust local remedies.

61. The State in addition submits that contrary to the assertions of the Complainant, ill-treatment during detention or custody is prohibited and criminalised, and that the police immunity referred to in the Complaint is procedural only and does not extend to unauthorised or unlawful acts, and thus that it is common practice to lift such immunities in cases of violations of human rights, noting that more than 300 instances of lifting of immunities of police and NISS members took place in the last two years.

62. The Respondent State submits that the Complainant did not file the Complaint within a reasonable time as required under Article 56(6) of the Charter, stating that he had remained free in his country for two months after his arrest and thereafter of his free will left the country, filing the Complaint only eleven (11) months later. The State submits that the Complainant has not provided a manifestly reasonable justification for this delay.

63. The Respondent State therefore requests the Commission to declare the Communication inadmissible for not satisfying the requirements under Article 56(2), (5) and (6) of the Charter.

Complainant's Response to the Respondent State's Submissions on Admissibility

64. In its additional observations on the admissibility submissions of the State, and in relation to Article 56(2) of the Charter, the Complainant reiterates the three requirements set out by the Commission in *Mgwanga et al. v Cameroon* for a communication to be compatible with the Charter, as set out in paragraph 33 above. The Complainant submits that the first argument of the State under Article 56(2), namely that the Complainant was detained in accordance with due process of law, and was duly informed of the reasons for his arrest, does not relate to any of the three requirements and is rather an attempt to argue the merits at the admissibility stage.

65. The Complainant submits that the second argument of the State under Article 56(2), namely that the allegations of maltreatment in detention are unsubstantiated allegations which do not amount to a *prima facie* violation is rebutted not only by the Complainant's submissions but also the Commission's decision on seizure, which determined that there is a *prima facie* case. The Complainant submits that the Respondent State did not dispute compliance with the other requirements under Article 56(2), and thus states that the Commission should find that these requirements were also met, and thus that the Complaint meets the requirements under Article 56(2).

66. The Complainant reiterates the three grounds on the basis of which he avers that local remedies under Article 56(5) do not have to be exhausted, namely i) the Respondent State failed to provide the Complainant with the right to *habeas corpus*, thus there was no effective remedy for arbitrary arrest and detention; ii) the immunity provisions in domestic law made remedies in relation to violations committed by the NISS officers and/or police inadequate and ineffective; and iii) the inaction of the State in terms of taking investigative measures into the alleged abuses rendered local remedies ineffective.

67. In responding to the State's assertion that the Complainant has done nothing to exhaust local remedies and is merely casting aspersions on the ability of domestic remedies to succeed, the Complainant reiterates the meaning given by the Commission in its decision of *Dawda Jawara v The Gambia* to 'available', 'effective' and 'sufficient', respectively meaning that it must be possible to be pursued without impediment, must offer a prospect of success and must be capable of addressing the complaint.[13]

68. The Complainant reiterates his arguments above that while in detention the Complainant had no opportunity to access any remedies, since he was unable to effectively challenge the legality of his detention. In addition he submits that he was unable to make a complaint against the NISS and the police on the basis

[13] Communication 147/95-149/96.

that they are immune from suit, and was denied the right to *habeas corpus*, thus asserting there are legal impediments which prevented him from seeking a remedy before the domestic courts. The Complainant also reiterates that the State had knowledge of the alleged violations since it was published in the media and known to the UN Independent Expert on the Human rights situation in Sudan, amongst others, from the early stages of his detention.

69. In relation to the assertion of the State that an investigation is ongoing, the Complainant submits that the State does not provide sufficient information about the terms of reference of the investigation, whether witnesses had been heard, which evidence had been produced and whether there had been any findings. In addition, the Complainant submits that neither he nor his lawyer were aware of or contacted in relation to the investigations, stating that even if there is such an investigation, it does not provide an effective remedy.

70. The Complainant in addition submits that while the State refers to a number of judicial bodies, including the Constitutional Court, and states that these are easily accessible, effective and independent, in the case of *Article 19 v Eritrea*, the Commission has held that to demonstrate the availability, effectiveness and sufficiency of the remedies, the State cannot just list "*in abstracto* the existence of remedies without relating them to the circumstances of the case and without showing how they might provide effective redress in the circumstances of the case."[14]

71. In relation to the submission of the State that *habeas corpus* was an available remedy, the Complainant submits that the State misrepresented the argument of the Complainant. The Complainant submits that while he never contested that *habeas corpus* exists under Sudanese law, the Complainant had argued that the legal framework under which he was arrested, namely the Emergency and Protection of Public Safety Act, did not provide for *habeas corpus*, permitting preventative arrest and detention without judicial oversight. In addition he submits that there was no record of his arrest or detention, making it impossible to establish who was responsible for his arrest and detention, and that he had no access to a lawyer for more than 20 days of his arrest and that he was at no point brought before a judge, and given that *habeas corpus* cases need to be dealt with promptly, he submits that this failed to serve as an effective remedy. He further submits that the State had failed to relate the provision of the Constitutional Court Act providing for *habeas corpus* with the Emergency laws and the current facts.

72. The Complainant further submits that there is no obligation on him to make an application to the NHRC for the purpose of exhausting domestic remedies, since the remedies to be exhausted are judicial remedies.

[14] Communication 275/03, para 73.

73. In addition, the Complainant responds to the assertions of the State that the law criminalises ill-treatment during detention and that it is easy for the immunities to be lifted where there is an accusation of a violation of human rights. The Complainant notes that such immunities apply to police and NISS respectively and thus the dispute in fact between which was responsible for the arrest does not affect this argument. The Complainant refers to previous jurisprudence of the Commission which found that these immunities are an impediment to initiating action against the NISS or police and that they render remedies ineffective and inadequate. They further submit that the impunity provisions sustain a culture of systemic impunity, rendering al possible remedies discretionary and extraordinary.

74. In relation to the argument of the ease with which immunities can be lifted, the Complainant states that this is irrelevant to the question of whether there were remedies, and refers to jurisprudence in which the Commission had decided that "when a remedy is discretionary, extraordinary and of a non-judicial nature, the Complainants are not require to pursue it as part of the requirement of exhaustion of local remedies"[15] and "it would be improper to insist on the Complainant seeking remedies from a source which does not operate impartially and has no obligation to decide according to legal principles".[16] They further reiterate the decision of the Commission in a previous case that it is implausible to think that the heads of the police and NISS would lift the immunities, and also noting that there is no procedure in legislation for lifting these immunities, thus making them discretionary. The Complainant thus submits that the Commission should find Article 56(5) has been complied with.

75. In relation to the arguments of the State on Article 56(6) that the Complainant had not shown manifested reasonable justification for the delay in filing the Complaint and that eleven months is not a reasonable time, the Complainant states that the State did not respond with adequate specificity as to the factors which determine whether there was a reasonable period, thus failing to demonstrate that these factors did not amount to a reasonable justification for the lapse of time.

76. In addition, the Complainant states that in taking eleven months as the relevant period, the State appears to submit that the period should be measured from the date when the Complainant departed from the Respondent State. However, the Complainant states that the Commission has held that the relevant period is from when the Complainant realises that domestic remedies would be ineffective, and that relocation should be taken into account. The State averred that the Complainant left the State "upon his free will", however, according to

[15] Communication 379/09 – *Monim Elgak* para 67.

[16] Communication 87/93 - *Constitutional Rights Project v Nigeria*, para 8.

the Complainant whether the Complainant was in another country of free will or under duress is irrelevant, the relevant consideration being that he was residing in another country at the time of filing the complaint.

77. The Complainant further submits that it is in line with the Commission's decision in *Obert Chinhamo v Zimbabwe* to find that 11 months from relocation is a reasonable period under article 56(6), since he needed time to settle in Nairobi and consider his position, which was also challenging given that he was separated from his family and friends and no longer had an income from journalism. The Complainant also reiterated the considerations in the Commission's jurisprudence of complexities of getting representation before an international body and the challenges of communication systems in Africa.

78. The Complainant submits that he met his legal representatives for the first time on 15 May 2015, and that they were based in Uganda, which made it difficult for them to obtain instructions, but that they interviewed to Complainant again on 12 June, 21 July and 10 September 2015, and filing the complaint with five (5) months after his initial meeting with his legal representatives. The Complainant also referred to the jurisprudence of the UN Human Rights Committee and the Inter-American Commission of Human Rights, which, like the Commission do not provide fixed timeframes for submissions where the Complainant was not required to exhaust domestic remedies. Drawing from this the Complainant submits that the Commission should take into account the political instability in the Respondent State at the time, as evidenced by the declaration of the state of emergency. The Complainant in addition submits that the State has not submitted nor is there any evidence that the State had suffered prejudice because of the time taken in filing the Communication. The Complainant thus reiterates that he has complied with the requirements under Article 56(6).

79. For these reasons, the Complainant maintains that the requirements under Article 56 have been met and the Communication should be found admissible.

Commission's Analysis on Admissibility

80. Article 56 of the African Charter outlines seven (7) conditions which must all be met for a Communication to be declared admissible. Failure to comply with one or several of these conditions renders the Communication inadmissible.

81. In relation to Article 56(1), which requires that the author of the Communication should be indicated, the Complainant submits that the authors of the Communication have been identified. The Respondent State has not contested this ground, and the Commission agrees that the author had in fact been indicated. The Commission thus finds that the Communication complies with Article 56(1).

82. Article 56(2) requires that the Communication must be compatible with the Charter of the O/AU or the African Charter. The Complainant relies on previous jurisprudence of the Commission in in *Mgwanga et al. v Cameroon* which unpacks this provision as having three requirements, namely 1) it must be brought against a State Party to the Charter by someone who is competent to do so, 2) that the violation complained of should have occurred or continued after ratification of the Charter by the State and 3) that the Communication must allege prima facie violations. The Complainant provides justification for why he has complied with the first two requirements in paragraphs 33 and 34 above. In relation to the submission that there was a *prima facie* violation, he set out the rights purported to have been violated and the actions which constituted these violations, and noted that the Commission had already found under the seizure phase that there was a *prima facie* violation.

83. The Respondent State on the other hand maintains that the arrest was carried out in accordance with due process of the law and that the allegations of maltreatment during detention were unsubstantiated, and therefore that these do not amount to *prima facie* violations. The Commission reconfirms the three requirements under Article 56(2) as set out in *Mgwanga et al. v Cameroon* and notes that the Respondent State had not contested the first two requirements. On the facts, the Commission agrees that these first two requirements were met.

84. In relation to the third requirement, namely that there must be a *prima facie* violation, the Commission has held in a number of cases that *prima facie* violation of the provisions of the Charter is said to have occurred "when the facts presented in the Complaint show that a human rights violation has likely occurred".[17] The Commission has further held that a failure to "show a link between the Articles of the African Charter allegedly violated and the account of act or situation complained of" would result in a failure to prove a prima facie violation,[18] and that stating an allegation in a general manner is not enough.[19] In *Nixon Nyikadzino (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe* the Commission further held that because the Complainant "succinctly narrates how the Victim allegedly suffered", "tries to show how the alleged acts of the Respondent State violate Articles [of the Charter]," and

---

[17] Communication 306/05 - *Samuel T. Muzerengwa and 110 Others (represented by Zimbabwe Lawyers for Human Rights) v Zimbabwe* (2011) ACHPR para 56; 1. Communication 340/07 – *Nixon Nyikadzino (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe*, para 69. See also Communication 57/91 and 1/88, where failure to prove a prima facie violation rendered the Communication inadmissible.

[18] Communication 464/14 – *Uhuru Kenyatta and William Ruto (represented by Innocence Project Africa) v. Republic of Kenya*, para 20.

[19] Communication 63/92.

"attached some documentary evidences to corroborate its allegations", the Commission found that a prima facie case was proved.[20]

85. In the current case, the Complainant has in paragraphs 6 to 9 above set out the alleged ways in which he suffered and in paragraph 13 above related the alleged violations to the provisions of the Charter. The Commission is therefore convinced that this establishes a clear link between the events and the rights allegedly violated, and the alleged violation is not merely stated in a general manner. The Commission does not require documentary evidence in order to establish a *prima facie* violation, but would only require evidence or proof at the merit stage, in order to establish violations on a preponderance of probability. Therefore, the Commission finds that the Complainant has satisfied the requirements under Article 56(2) of the African Charter.

86. Article 56(3) requires that a Communication must not be "written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity (now African Union)." The Complainant submits that he meets the requirements under Article 56(3) in that the language used is respectful and balanced, and the State has not offered any contrary view on this point. The Commission has in reading the Complaint not come across anything which would amount to disparaging or insulting language. The Commission therefore finds that the requirements of Article 56(3) have been met.

87. Article 56(4) of the Charter requires that the Communication must not be based exclusively on news disseminated through the mass media. The Complainant submits that the Communication is based on his own experience and were transmitted to the legal representatives through Skype and telephone correspondence. The State did not raise any objections on this ground, and the Commission finds that the requirements of Article 56(4) have been met.

88. On the question of exhaustion of local remedies under Article 56(5) the Complainant submits that he does not have to exhaust this requirement, since there are no available, effective and sufficient remedies in this case, stating that 1) there is no effective remedy available for arbitrary arrest and detention; 2) there is no effective and sufficient remedy to challenge the human rights abuses of the NISS and 3) that the Respondent State has failed to provide a remedy or investigate the allegations despite ample notice and time to do so.

89. In relation to the first argument, the Complainant submits that *habeas corpus* is the only remedy available to a person while in detention, and that since it was not available under the Emergency laws of Sudan, he had no remedy while in detention. The State asserts that contrary to the submission by the Complainant,

[20] Paras 70 & 71.

there is provision in the law for the remedy of *habeas corpus*. The Complainant in response submits that while he never contested that *habeas corpus* exists under Sudanese law, the Complainant had argued that the legal framework under which he was arrested, namely the Emergency and Protection of Public Safety Act, did not provide for *habeas corpus*, permitting preventative arrest and detention without judicial oversight, and thus that there is no effective remedy available for arbitrary arrest and detention in the Complainant's case.

90. The Commission notes that its jurisprudence to which the Complainant referred which found that domestic remedies did not have to be exhausted in cases where *habeas corpus* was not available, were cases in which the Victims were held in detention without access to lawyers *at the time when the Complaint was submitted to the Commission*.[21] Since in the current case the Complainant had been released and had been present in his country for two months thereafter, the circumstances are completely different from the above scenario. Thus the argument in relation to *habeas corpus* does not apply in the current case, as the Complainant had the possibility, following his release, to exhaust local remedies in other ways, which will be assessed below. For this reason, the Commission finds that this argument does not prove that it was not necessary/possible to exhaust local remedies.

91. The Complainant raises a second argument, namely that there is no effective and sufficient remedy to challenge the human rights abuses of the NISS/police,[22] as "no civil or criminal procedures may be brought against a member or association unless upon the approval of the Director [of the NISS]," that there is no way for an individual to petition the Sudanese courts to compel the Director of the NISS to lift the immunities of his officers and that there is no way for a person or court to initiate a judicial review of a decision not to lift immunities.

92. In response, the State submits that ill-treatment during detention or custody is prohibited and criminalised, and that the police immunity referred to in the Complaint is procedural only and does not extend to unauthorised or unlawful acts, and thus that it is common practice to lift such immunities in cases of violations of human rights, noting that more than 300 instances of lifting of immunities of police and NISS members took place in the last two years. The State in addition submits that the judicial system of Sudan is easily accessible, effective and independent.

---

[21] See Communication 153/96 - *Constitutional Rights Project v Nigeria*, para 2.

[22] The latter was added in the further observations following the submission by the State that the Complainant was in fact arrested by the police. However the Complainant submits that this does not change the facts as the same immunities apply to NISS and the police.

93. In his additional observations, the Complainant refers to previous jurisprudence of the Commission which found that these immunities are an impediment to initiating action against the NISS or police and that they render remedies ineffective and inadequate, as they sustain a culture of systemic impunity, rendering al possible remedies discretionary and extraordinary, referring also to jurisprudence of the Commission which held that "when a remedy is discretionary, extraordinary and of a non-judicial nature, the Complainants are not required to pursue it as part of the requirement of exhaustion of local remedies" and that "it would be improper to insist on the Complainant seeking remedies from a source which does not operate impartially and has no obligation to decide according to legal principles". They further reiterate the decision of the Commission in a previous case that it is implausible to think that the heads of the police and NISS would lift these immunities.

94. It is a well-established principle of the Commission's jurisprudence that only those remedies which are "ordinary remedies of common law that exist in jurisdictions and normally accessible to people seeking justice" have to be exhausted. [23] The Commission, as mentioned above, has thus held that discretionary and extraordinary remedies do not have to be exhausted. In addition, the Commission as well as the African Court on Human and Peoples' Rights, have held that ordinary remedies do not include instances where the review of a decision is at the discretion of a court,[24] where the Complainant has to request the Attorney General to prosecute or undertake private prosecution,[25] where there is a duty on the State to conduct criminal investigation and prosecution,[26] or where an authority, such as the President has a discretion to grant a remedy. Nor is there a duty on the Complainant to submit cases to national commissions, even if they can grant remedies, such as a national human rights institution (NHRI), as they are "non-judicial institutions".[27]

95. In previous decisions against Sudan, where National Intelligence Security Service (NISS) members were immune from prosecution and disciplinary action under the National Security Act of 2010 in Sudan, and where private individuals

---

[23] Communication 242/01 -*Interights, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l'Homme v Mauritania*, 4 June 2004, para 27. *Kennedy Owino Onyachi and Others v. United Republic of Tanzania*, App. No. 003/2015, Judgment of 28 September 2017, para 56.

[24] Communication 375/09 - *Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya*, 7 November 2011, para 54; *Alex Thomas v Republic of Tanzania*, App. No.005/2013, Judgment on Merits, 20 November 2015, para 65.

[25] Communication 245/02 - *Zimbabwe Human Rights NGO Forum v Zimbabwe*, 15 May 2006, para 70.

[26] Communication 245/02 - *Zimbabwe Human Rights NGO Forum v Zimbabwe*, 15 May 2006, para 70.

[27] Communication 221/98 - *Alfred B. Cudjoe / Ghana*, 5 May 1999, para 14. Communication 375/09 - *Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya* , 7 November 2011, para 56. *African Commission on Human and Peoples' Rights v. Republic of Kenya*, App. No. 006/2012, 26 May 2017, para 97; Communication 268/03 : *Ilesanmi v Nigeria*, 11 May 2005, para 42.

could not bring lawsuits against government officials under Article 27 of the Criminal Procedure Act, the Commission held that this did not provide an effective remedy for the victim. [28] The Commission has held that such immunities restrict the exhaustion of domestic remedies, unless a preliminary investigation was undertaken, noting that by failing to conduct this investigation, any remedies which theoretically existed were rendered redundant, and neither adequate nor effective.[29] The Commission has also held that a state of emergency may render it impossible for the victim to exhaust domestic remedies.[30]

96. From the submissions of the Parties it is clear that there has been no substantive change in the approach of the law in Sudan in relation to the immunities of police and the NISS since these previous decisions of the Commission. The State attempts to prove the contrary through the provision of information that 300 cases in the preceding two years in which immunities were in fact lifted, however, given the uncontested submissions of the Complainant that the lifting of immunities in law remain at the discretion of the police authorities and that there is no procedure for the courts to review this decision, this renders this remedy discretionary, which cannot guarantee an impartial process and which does not function on the basis of legal principles. Also, since the reported violation had allegedly been committed by the police/NISS, it is improbable to expect that a further report to the authorities, apart from the one already submitted to the prison authorities, would result in any further action on the part of these same state organs who are accused of perpetrating the violations.

97. In addition, in his original Complaint the Complainant indicated that under the Emergency Law, the Governor of the State holds the discretionary power to arrest individuals suspected of involvement in crimes relating to the declaration of emergency, and that while arrest pursuant to this power is made provisionally, the law does not set any time limits for the detention or provide for judicial oversight. The State has not refuted this statement. The Commission is thus of the view that even if there had been a possibility for the lifting of the immunities, this would still not have resulted in an adequate remedy, as the applicability of the Emergency law means that there is no legal basis to contest the arbitrary arrest, which is one of the violations complained of. This thus refutes the argument of the State that the judicial system of Sudan is easily effective, since the alleged violations are not protected under the applicable law and thus not enforceable/remediable by the judicial system.

---

[28] Communication 386/10 - *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan*, 18 October 2013, para 60.

[29] Communication 368/09 – *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, 4 June 2014, para 48.

[30] Communication 386/10 - *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan*, 18 October 2013, para 54. In this case the victim was unable to approach the courts as a 1989 decree which governed his arrest and detention set out that no reasons for the arrest needed to be given, they had no right to contact their family or lawyer, nor the ability to challenge its legality before the courts.

98. In relation to his third argument, the Complainant notes that with regard to a criminal violation the Commission has held that the obligation is on the State Party to investigate and bring the accused person to court, and that one cannot demand of the Complainants to exhaust domestic remedies in such a case. In this regard he states that the Respondent State had failed to initiate criminal investigations and prosecutions despite ample notice, [31] noting the jurisprudence of the Commission which has held that if a State Party had ample notice and time within which to remedy alleged violations and the State Party has not taken appropriate steps to do so, domestic remedies are necessarily either not available or are not effective or sufficient to redress the violations alleged.

99. The Respondent State had not provided any response specific to this argument. However, the State avers that the only action taken by the Complainant to exhaust local remedies was the complaint filed on his behalf with the NHRC. In addition stating that the Complainant refused to appear before the police administration committee established to investigate his complaint within the process of the NHRC's consideration of his case.

100. The Complainant submits that there is no obligation on him to make an application to the NHRC for the purpose of exhausting domestic remedies, since the remedies to be exhausted are judicial remedies. In relation to the assertion of the State that an investigation is ongoing, the Complainant submits that the State does not provide sufficient information about the terms of reference of the investigation, whether witnesses had been heard, which evidence had been produced and whether there had been any findings. In addition, the Complainant submits that neither he nor his lawyer were aware of or contacted in relation to the investigations, stating that even if there is such an investigation, it does not provide an effective remedy.

101. The Commission in this regard reiterates its jurisprudence that in respect of a criminal violation the duty is on the State to investigate the alleged violation, and that there is no duty on the Complainant to bring a civil claim or pursue private prosecution in such a case in order to exhaust local remedies. [32] However, it is a logical conclusion that where a State is not aware of the alleged violation it cannot be expected to take any action to investigate and address such an alleged violation. Therefore, in order to show that the State had the

[31] As evidence that the State had ample notice and time, the Complainant makes reference to complaints he made to the prison authorities about the abuse suffered at the hands of the NISS; international and national media reports about his alleged arrest, detention, torture and ill treatment, a protest outside the offices of the National Council of Press and Publications; public advocacy for his release; knowledge by the UN Independent Expert on the Human rights situation in Sudan and a complaint filed on his behalf with the National Commission of Human Rights.

[32] Communication 245/02 - *Zimbabwe Human Rights NGO Forum v Zimbabwe*, para. 70.

opportunity to investigate, the Complainant must prove that the violations had been brought to its attention in a sufficient manner. In its jurisprudence the Commission has held that the notice of the allegations to the State must be "ample".[33]

102. While the remedies which have to be exhausted are local judicial remedies, there is no requirement that the actions to bring the violations to the attention of the State in the case of criminal violations necessarily have to be only through judicial avenues. The Complainant states that he informed the prison authorities of the alleged violations, that it was disseminated through international and national media, that a protest took place outside the offices of the National Council of Press and Publications followed by the submission of a memorandum for his release, that there was public advocacy for his release, and a complaint was filed on his behalf with the National Commission of Human Rights. The Commission finds that these steps were sufficient to satisfy the requirement of ample notice to the State for purposes of institution of investigations by the State, particularly given that the matter was reported to the prison authorities, and therefore finds that there was a duty on the State to investigate, and that failure to do so would render local remedies unavailable.

103. The next question which arises is whether the State had taken sufficient steps to address the violations once they were brought to its attention. In its jurisprudence the Commission has held that "a State which has received allegations of violations will have a duty to investigate them and if it fails to do so, then it will forfeit its prerogative to deal with the matter domestically".[34] In the current case, there is no evidence that the State had responded to the reporting of the violations to the prison authorities, which demonstrates a failure on the part of the State to investigate. The State however submits that following the submission of the complaint to the NHRC, the police administration had formed an inquiry committee which summoned the Complainant for a hearing, but that the Complainant failed to appear before the committee, and that the inquiry record is still open.

104. The Commission in its jurisprudence has held that that one must consider not just whether a body is termed a court or judicial body at the national level, but rather whether it has the 'competence to adjudicate complaints/disputes' and the remedy "must primarily conform to and operate in accordance with certain fundamental legal principles". It must operate in strict observance of the procedural guarantees of a fair hearing by a competent, independent and impartial organ. It must be based on enforceable law from which the relief it offers earns its mandatory or coercive force, as opposed to being merely

[33] Communication 368/09 – *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, 4 June 2014, para 47.
[34] Communication 368/09 – *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, 4 June 2014, para 47.

discretionary'.[35] If it does not satisfy these criteria then it will not have to be exhausted.

105. In relation to the Police Administration Committee there is very little information provided by the State. No information is provided regarding the legal basis on which it was established, the processes before the committee, including whether there are procedural guarantees, and the kinds of remedies that it is able to provide. For these reasons, in addition to the submission by the Complainant that neither himself nor his legal representative had been informed about this process and the absence of proof to the contrary, the Commission finds that this would not have resulted in an effective remedy. In any case the procedure before the NHRC is not a judicial procedure, as the Commission has held before, and thus processes before it need not be exhausted.[36]

106. On the basis of these conclusions, the Commission thus finds that the Complainant did not have to exhaust local remedies, as they were not available, effective and sufficient.

107. Article 56(6) requires that a Complaint must be "submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter". The Complainant notes that in the jurisprudence of the Commission, where remedies were found to be unavailable, ineffective or insufficient, timeliness would be assessed from the time of the Complainant's notice of the unavailability, ineffectiveness or insufficiency of the remedies,[37] noting that the relocation of the Complainant to another jurisdiction; the complexities of getting representation and challenges of communication systems in Africa are factors which are relevant in relation to timelines.[38] The Complainant submits that he filed the complaint approximately 13 months after he was released from prison and 11 months after he fled to Kenya, indicating that he had in addition found it challenging to settle in Kenya.

108. The Respondent State to the contrary argues that because the Complainant had remained free in his country for two months after his arrest and thereafter of his free will left the country, the Complainant had not provided a manifestly reasonable justification for this delay. In response the Complainant states that the State did not respond with adequate specificity as to the factors which determine whether there was a reasonable period, thus failing to demonstrate

---

[35] Communication 445/13- *Human Rights Council and Others v. Ethiopia*, 19 May 2016, para 59.

[36] *Cudjoe v Ghana* (2000) AHRLR 127 (ACHPR 1999) para 13.

[37] Communication 322/06 – *Tsikata v Ghana* para 37.

[38] Communication 307/06 – *Obert Chinhamo v Zimbabwe*, para 89; Communication 334/06 - *Egyptian Initiative for Personal Rights and Interrights v Egypt*, para 99.

that these factors did not amount to a reasonable justification for the lapse of time.

109. In relation to the State's submission that the Complainant left of his own free will, the Complainant submits that this is irrelevant, the relevant factor being that the Complainant was residing in another country, and that the Commission had in the past held that 11 months after relocation was reasonable. The Complainant sets out the process which he had followed to bring the Complaint before the Commission in order to stress the difficulties in communicating in Africa and the fact that his representatives were based in a different country. The Complainant submits that further factors which the Commission should take into account in determining the timeliness include the political instability in the Respondent State at the time, as evidenced by the declaration of the state of emergence and the lack of evidence submitted by the State to show that it suffered prejudice because of the time taken in filing the Communication.

110. The Commission has held in its jurisprudence that the purpose of the requirement under Article 56(6) is to require the Complainant to "be vigilant and to discourage tardiness." [39] In addition, where there is a delay, the Complainant has to provide reasons [40] and these must be a "good and compelling reason" which requires the African Commission to consider the case in the interests of fairness and justice. [41] In *Obert Chinhamo v Zimbabwe* the Complainant stated that the delay in submitting the case to the Commission was due to the fact that he needed to settle in his new country, and in this case the Commission considered that ten months, where the Complainant was now in another country, would "for the sake of fairness and justice" be considered to be reasonable. [42]

111. On the submissions by the Complainant as to the reasons for the delay, it is clear that it cannot be said that he was being tardy, since he provides strong justifications for the delay, including his resettlement in a different country, his mental state during this time, as well as the relative difficulty posed by communicating with his legal representatives who were in a different country. The Commission takes note of the point raised by the State that the Complainant had been in the country for two months after his release and then left his country of his own free will, but does not see how this would make the period within which the Complaint was submitted unreasonable. Since his legal representatives were not in his country of origin, he would have faced the same

---

[39] Communication 310/05 - *Darfur Relief and Documentation Centre v Sudan*, para 78.

[40] Communication 333/06 - *Southern Africa Human Rights NGO Network and Others v Tanzania*, 26 May 2010, para 76.

[41] Communication 310/05 : *Darfur Relief and Documentation Centre v Sudan*, 25 November 2009, para 78; Communication 375/09 - *Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya* , 7 November 2011, para 60.

[42] Communication 307/05 - *Obert Chinhamo v Zimbabwe*, 28 November 2007.

difficulties in contacting them had he remained in Sudan, as he did from his location in Kenya.

112. Furthermore, without going into the question as to whether he had left the country of his free will, as he had been warned prior to his arrest to discontinue his work as a journalist (see paragraph 6 above), it is likely that he would have suffered mental distress on this account even if he had remained in Sudan. For these reasons, the Commission finds that submitting the Complaint within 13 months of his release and 11 months of his resettlement is not an unjustifiable delay in this case. Therefore, the Commission finds that the Complainant had complied with the requirement under Article 56(6).

113. The Complainant indicates that in compliance with Article 56(7), the Complaint has not been submitted to any other procedure of international investigation or settlement. The Respondent State did not provide any contrary argument. The Commission thus finds that the requirement under Article 56(7) has been complied with.

114. For these reasons, the Commission is satisfied that the Complainant has complied with all the requirements for admissibility as set out under Article 56.

Decision of the Commission on Admissibility

115. In view of the above, the Commission declared the Communication admissible.

Merits

The Complainant's Submissions on Merits

Alleged violation of Article 5 of the African Charter

116. The Complainant submits that the Respondent State violated Article 5 of the African Charter when he was beaten by NISS officers at the al-Nuhood Police Station on 10 June 2014, detained in an overcrowded and unsanitary prison condition, refused necessary medical care, subjected to mental trauma as a result of being held indefinitely without notice as to the cause of his arrest and detention; and the failure of the Respondent State to investigate these abuses and provide redress for injuries incurred.

117. The Complainant refers to the definition of 'torture' as contained in Article 1 of the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (UN Convention Against Torture), and submits that the Commission has repeatedly explained that Article 5 is aimed at the protection of both the physical and mental integrity of the individual, and its interpretation should be afforded the widest possible protection against abuse.

118. The Complainant submits that the Respondent State is under an obligation to put in place procedural safeguards in order to prevent detainees from being subjected to abuse, and where the abuse occurs, States are obligated to initiate a prompt and impartial investigation in order to bring perpetrators to justice as well as afford to redress the victim.

119. The Complainant states that on 10 June 2014, he was violently beaten by four NISS officers at the al-Nuhood Police Station. He was violently kicked, dragged outside and beaten using fists and sticks. The beating lasted for approximately 20 minutes, and resulted in the Complainant hitting his head against a metal bench and losing consciousness. The Complainant avers that as a result of the abuse, he suffered injuries to his head and left leg.

120. The Complainant submits that beating a detainee to the point of unconsciousness amounts to torture, inhumane and degrading punishment. The Complainant cites in support of his argument *Monim Elgak, Osman Hummeida and AmirSuliman (represented by FIDH and OMCT) v Sudan*,[43] where the Commission considered similar conducts by NISS officers and found a violation of Article 5.

121. The Complainant submits that the conditions of his detention violate the provisions of Article 5 of the African Charter. He states that he was held for 20 days in a holding cell which was severely overcrowded, unsanitary and he was forced to sleep on the cold ground, which worsened the pain of the injuries inflicted on him from the beating of 10 June 2014. He submits that he had difficulties sleeping, eating or drinking and his repeated requests to see a doctor and a lawyer were denied. The Complainant refers to *Abdel Hadi & Others v Republic of Sudan*, where the African Commission observed that "...holding a person in detention under conditions that are not in keeping with his dignity and pose a threat to his health amounts to cruel, inhuman and degrading treatment or punishment."[44]

122. The Complainant contends that the nature of his arrest, interrogation, abuse and detention reveals the clear intention of the Respondent State to punish him for his journalistic coverage of the SCP symposium. The Complainant argues that he was being punished for publishing articles regarding Mr El-Sheikh's speech about violence committed by the Rapid Support Forces and for publishing articles on his arrest. Further stating that this intention is evident, as his arrest was effected while he was on his way to visit Mr El-Sheikh, this was shortly after he shared news of Mr El-Sheikh's arrest with his newspaper and on his Facebook account.

---

[43] **Communication** 379/09 *Monim Elgak, Osman Hummeida and AmirSuliman (represented by FIDH and OMCT) v Sudan para 75 – 76.*

[44] **Communication** 368/09 – *Abdel Hadi, Ali Radi & Others v Republic of Sudan* para 74.

123. The Complainant submits that the abuse suffered left him with a chronic pain on the left side of his head, as well as mental and emotional trauma that still persist years after the events occurred. The Complainant further submits that the Sudanese authorities have failed to take necessary measures to investigate the abuse he suffered, and no mechanism exists under the laws of Sudan to which he may seek redress. Accordingly, the Complainant submits that the Respondent State has violated its obligation under Article 5 of the African Charter.

Alleged violation of Article 6 of the African Charter

124. Article 6 of the African Charter provides for the right to liberty and to the security of the person. The Complainant submits that in identifying whether an arrest and detention violates Article 6, the African Commission must first assess whether the measure was carried out in accordance with domestic law. He contends that if this criterion has been observed, the African Commission must then assess whether the domestic law meets the requisite international standards. The Complainant cites in support of his argument the criteria as elaborated in the African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.[45] He further refers to the case of *Monim Elgak & Others v Sudan* in which the African Commission found an arrest effected by the NISS to be arbitrary, as the victims were not formally arrested with a warrant nor were any charges brought against them in the course of their detention.[46]

125. The Complainant submits that throughout his detention period he was never informed of the reason for his arrest, or how long he would be detained. He contends that he was never formally charged, but was rather informed by prison authorities that he was being detained under provisions of the Emergency law. The Complainant submits that an arrest under the Emergency law which permits detention without charges constitutes a violation of Article 6. Further contending that merely stating that an arrest is made under the Emergency law is akin to stating that an arrest was made "for public safety" or "to protect the state" – and these do not constitute charges.

126. The Complainant draws the Commission's attention to a requirement of the Emergency law. He states that the law grants the Governors the discretionary power to arrest individuals suspected of involvement in offenses relating to the declaration of emergency made by the President. The Complainant submits that the arrest and detention violated the Emergency law in three respects: i) he was

[45] African Commission on Human and peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003 para M (2).
[46] Communication 379/09 – *Monim Elgak* para 104.

never informed of the crime that the authorities purported to suspect he was involved; ii) he was detained for 101 days, therefore his detention cannot be characterized as "provisional", as the Sudanese Criminal Procedure Code provides for a maximum of three days detention for purposes of inquiry and up to two weeks without charge; iii) he was never brought before any court, not even before the Special Court in which those arrested under the law are to be tried. These facts the Complainant submits amounts to a clear violation of Article 6 of the African Charter.

Alleged violation of Article 7 of the Africa Charter

127. The Complainant submits that the Respondent State violated Article 7 of the African Charter by failing to bring his cause before a court of law during his period of detention. The Complainant refers to the African Commission's decisions in *Abdel Hadi & Others v Republic of Sudan* and *Purohit and Moore v The Gambia* wherein the Commission held that anyone deprived of their liberty through arrest or detention must be presented with the opportunity to challenge the matter of their detention before a judicial body, and such judicial body must without delay decide on the lawfulness of the arrest or detention.[47]

128. The Complainant further submits that the right to *habeas corpus* is not obtainable under the Emergency and Protection of Public Safety Act (1997), therefore he had no means to challenge the basis for his detention. The Complainant explains that the Emergency law grants the NISS officers the sole discretion to determine the length of his detention. He points out that this is a clear violation of Article 7 as held by the Commission in *Interights, ASADHO and Madam O. Disu v Democratic republic of Congo.*[48]

Alleged violation of Article 9 of the African Charter

129. The Complainant submits that the Respondent State violated his right to freedom of expression as prescribed under Article 9 of the African Charter. He avers that the arrest, beating and detention were done with the aim of punishing him for his journalistic work and to further intimidate him and other journalists from future reporting on sensitive issues.

130. The Complainant elaborates on the obligation of the Respondent State as prescribed in the African Commission's Declaration of Principles on Freedom

---

[47] Communication 368/09 – *Abdel Hadi, Ali Radi & Others v Republic of Sudan* para 86; Communication 241/01 – *Purohit and Moore v The Gambia* para 72.

[48] Communication 274/03 and 282/03 – *Interights, ASADHO and Madam O. Disu v Democratic Republic of Congo* para 66.

of Expression in Africa.[49] The Complainant argues that the African Commission has confirmed the fundamental importance of the right to freedom of expression in many of its decision, citing as examples: *Constitutional Rights Project, Civil Liberties Organization and Media Rights Agenda v Nigeria,*[50] *Amnesty International v Zambia,*[51] *and Scanlen & Holderness v Zimbabwe.*[52]

131. The Complainant contends that the right to freedom of expression constitutes an essential foundation of a democratic society and one of the basic conditions for its progress and for an individual's self-fulfilment is that the right may only be restricted in certain circumstances, and in conformity with international human rights standards. In support of this argument, the Complainant cites the decision of the African Court on Human and Peoples' Rights (African Court) in *Konaté v Burkina Faso,* wherein the African Court held that a three-part test should be applied in cases where freedom of expression is restricted: i) whether the restriction was provided by law; ii) whether the restriction served a legitimate purpose; and iii) whether the restriction was necessary to achieve the set objective.[53]

132. The Complainant submits that the restriction on his freedom of expression was not provided by law, and failed to meet the requirements under Article 9 of the African Charter and Article 39 of the Constitution of Sudan. Further submitting that his work highlighted instances of corruption and abuse by State agents, as such the lack of a formal charge against him is in itself evidence to show that his arrest and detention was not done in pursuit of any legitimate aim. Consequently, the Complainant submits that his arrest and detention were not provided by law, did not serve a legitimate purpose and was not necessary or proportionate.

Alleged violation of Article 16 of the African Charter

133. The Complainant submits that the beating suffered, the inadequate care and treatment he received and the inappropriate conditions of detention harmed his physical and mental health in violation of Article 16 of the Charter. The Complainant argues that the United Nations Committee on Economic, Social and Cultural Rights in General Comment 14 directs States to ensure that detainees are afforded timely and appropriate healthcare.

---

[49] African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa 2002 art 16.

[50] Communication 105/93-128/94-130/94-152/96 *Constitutional Rights Project, Civil Liberties Organization and Media Rights Agenda v. Nigeria* para 54.

[51] Communication 212/98 – *Amnesty International v Zambia* para 54.

[52] Communication 297/05 – *Scanlen & Holderness v Zimbabwe* para 110.

[53] Application 004/2013 – *Konaté v. Burkina Faso* para 12.

134. To further support his argument, the Complainant refers to the African Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. He contends that the document introduces the concept of minimum core obligations which are non-derogable and exist regardless of available resources. The Complainant refers the Commission to its findings in: *Media Rights Agenda and Others v Nigeria,*[54] *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria*[55] *and Malawi African Association and Others v Mauritania,*[56] wherein the Commission found that conducts endangering a prisoner's health amounts to a violation of Article 16 of the African Charter. Accordingly, the Complainant submits that the Respondent State must be held to the same standards.

Alleged violation of Article 1 of the African Charter

135. Article 1 of the African Charter provides that State Parties *shall recognise* the rights, duties and freedoms enshrined therein and shall undertake to adopt legislative and other measures to give effect to them. The Complainant refers to *Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) v Sudan* wherein the African Commission held that a rights violation implies a violation of Article 1, insofar as the Respondent State failed to prevent the violation.[57]

136. The Complainant alleges that the National Security Act created the circumstances that allowed the NISS and State security apparatus to abuse the Complainant. He therefore submits that the Respondent State's failure to prevent the violations of the provisions of the African Charter, and its reliance on vague provisions of the National Security Act and Emergency Law to justify the abuse constitutes a violation of Article 1 of the African Charter.

137. In support of these allegations, the Complainant has snbmitted three documents as exhibits. They include: documentation of counselling therapy sessions undertaken and two witness statement of the facts alleged.

Commission's Analysis on the Merits

138. As indicated above, the Respondent State failed to submit its observation on the merits, despite the opportunity accorded it in accordance with Rule 113 (2)

---

[54] Communication 105/93-128/94-130/94-152/96 – *Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project v Nigeria.*

[55] Communication 137/94-139/94-154/96-161/97 – *International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights (on behalf of Ken Saro-Wiwa Jr.) v Nigeria.*

[56] Communication 54/91-61/91-98/93-164/97- 196/97-210/98 – *Malawi African Association and Others v. Mauritania.*

[57] Communication 279/03-296/05 – *Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) v Sudan* para 227.

of the Commission's Rules of Procedure (2010). In the present circumstances, and in accordance with the practice of the Commission, the following analysis relies principally on the submissions of the Complainant and the Jurisprudence of the Commission.

139. The Commission is called upon to determine whether the actions of the Respondent State as described by the Complainant constitutes a violation of Article 1, 5, 6, 7 and 16 of the African Charter.

Alleged Violation of Article 5

140. Article 5 of the Charter reads:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

141. The Commission has held that Article 5 of the African Charter is aimed at the protection of both human dignity and the physical and mental integrity of the individual.[58] In *Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) v Sudan*, the Commission adopted the definition of torture contained in Article 1 of the United Nations (UN) Convention Against Torture which states:[59]

> [T]he term "torture" means 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 or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, 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.

142. According to the above definition, four constitutive elements must be taken into account in qualifying an act as torture, these include: i) the nature of the act; ii) the intention of the perpetrator; iii) the purpose; and iv) the involvement of public officials.

143. The Commission in *Huri-laws v Nigeria* noted the reasoning of the European Court of Human rights in *Ireland v United Kingdom* and concluded that treatment impugned as torture or cruel, inhuman or degrading treatment must attain a

[58] (As above) Communication 279/03-296/05 para 155.
[59] As above.

minimum level of severity.[60] Ascertaining this minimum level of severity is relative, as it is dependent on several variables, such as the duration of the treatment, its physical or mental effect, the age, sex and state of health of the victim.[61] The Commission notes the Complainant submission in paragraphs 118 and 119 above, that on 10 June 2014, he was invited for questioning at al-Nuhood police station, where he was severely beaten by four NISS officers for twenty (20) minutes, and in the process, he fell over, hitting his head against a metal bench and lost consciousness. He avers that the aim of the abuse was to punish him for his journalistic coverage of the SCP symposium.

144. It is a well-established jurisprudence of the Commission that where allegations go unrefuted, it will proceed to decide on the facts presented,[62] however, in relying on the information provided by the Complainant, the Commission must test the veracity or reliability of the Complainant's evidence.[63] The question that thus arises is whether the Complainant's allegations have been sufficiently substantiated. It is within the practice of the Commission to rely on sworn testimonies and a medical certificate as proof of torture. In *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, the Commission relied on sworn testimonies and a medical certificate in establishing a case of torture.[64] Similarly, in *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*, the African Commission went one step further and relied solely on the Complainants' submissions of testimonies of the victims to prove sexual molestation which qualified as a violation of Article 5 of the Charter.[65]

145. In the present Communication, the Commission observes that the Complainant's written testimony describes in clear details the act of torture which resulted in the Complainant sustaining injuries to his head and left leg, and the testimony of his former colleague who visited him during his period of detention at El-Obeid prison described his state as '...frail, complained about back pains as a result of the beatings and constant headaches because they had taken away his eyeglasses for weeks'.[66] The psychosocial therapy report submitted in support of his averments describes the Complainant mental state as traumatized "... lacking confidence, afraid, not trusting and rather flat. He demonstrated minimal emotional stimulation. He was still going through trauma and needed a lot of help..."

---

[60] Communication 225/98 - *Huri-laws v Nigeria* para 41.
[61] *Ireland v. United Kingdom*, App No 5310/71 Final, Eur. Ct. H.R. (13 December 1977) para 162.
[62] Communication 137/94, 139/94, 154/96, 161/97 – *International PEN & Others v Nigeria* para 81.
[63] Communication 251/02 – *Lawyers of Human Rights v Swaziland* para 42.
[64] Communication 379/09, *Monim Elgak* para 100.
[65] Communication 323/06, para. 131-136.
[66] Complainant witness testimony para 8.

146. The Commission considers that psychosocial treatments (interventions) include structured counseling, motivational enhancement, case management, care-coordination, psychotherapy, and relapse prevention.[67] As such, this amounts to a valid medical report or certificate in the sense that it was made by a mental health professional. Similarly, in the case of *Dhaou Belgacem THABTI v Tunisia* the United Nations Committee Against Torture (UNCAT) noted that "in support of [the Complainant's] claims of torture and the effects of torture, the complainant submit[ed] a certificate from a Swiss physiotherapist, a report by a neurological specialist in Fribourg and a *certificate of psychiatric treatment* from the medical service of a Swiss insurance company"[68]; these formed part of the evidence on the basis of which the respondent state was found in violation of the provisions of the Convention Against Torture and Other Cruel Inhumane and Degrading Treatment. Therefore, for the purposes of assessing the mental state of a person who has been tortured, such report is valid and can be used as direct evidence, especially in the Complainant's circumstance where physical evidence of torture may no longer exist.

147. The Commission in *Egyptian Initiative for Personal Rights and Interights v Egypt* has held that 'when a person is injured in detention or while under the control of security forces, there is a strong presumption that the person was subjected to torture or ill-treatment.[69] In determining whether physical injuries were indeed inflicted on a Complainant by State agents, the Commission has noted that the prompt access to medical personnel becomes critical.[70] In this regard, the Commission notes the Complainant's submission in paragraph 9 above that after numerous requests, he was subsequently accompanied by two prison officers to the hospital to seek treatment for the injuries inflicted on him from the beating of 10 June 2014. He submits that he was refused an x-ray by the doctor on-call and subsequently prescribed malaria medication and pain killers, but no medical certificate was issued.

148. Paragraph 20 of the **Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa** (the **Robben Island Guidelines**) provides for basic safeguards for those deprived of their liberty, all of which shall apply from the moment when a person is first deprived of their liberty. An essential safeguard against torture being 'the right to an independent medical

---

[67] National Alliance of Mental illness 'https://www.naminh.org/education/recovery-from-mental-illness/psychosocial-treatments/' accessed 25 February 2021.

[68] Communication 187/2001 - *Dhaou Belgacem THABTI v Tunisia* (2003) para 2.9.

[69] Communication 334/06 – *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt* para 168.

[70] (As above) para 173

examination'.[71] The Istanbul Protocol further provides that 'A medical examination should be undertaken regardless of the length of time since the torture, but if it is alleged to have happened within the past six weeks, such an examination should be arranged urgently before acute signs fade.'[72] It is evident from the facts before the Commission that the Respondent State failed in its obligation to put in place these procedural safeguard.

149. As earlier noted, the Respondent State is responsible for the security of any person it holds in detention and, when an individual in detention shows signs of injury, it is incumbent on the State to produce evidence showing that it is not responsible. In the absence of satisfactory evidence or explanations to the contrary presented by the State, the Commission shall consider the facts as presented by the Complainant as established.[73] The course of event as described by the Complainant shows that the treatment was inflicted by security agents acting in their official capacity, with the intent to punish the Complainant for his publication on the SCP symposium, particularly on the speech made by Mr. El-Sheikh, as he was accused of misinforming the public, spreading lies and associating with rebel groups, during the interrogation process.[74] The Commission considers that this treatment was of such a cruel nature that it attained the threshold of severity to amount to torture.

150. Further, Article 5 of the African Charter prohibits not only torture but cruel, inhuman and degrading treatment. The Commission notes the Complainant's submission that during his period of detention at al-Nuhood prison, he was held in a narrow, damp, dirty and overcrowded cell with 12 to 16 other detainees. He submits that there was not enough space for one to sleep comfortably, as such he slept on the cold floor, which worsened the pain from the injuries inflicted on him. The Commission also notes his submissions on the poor sanitary conditions of the detention facility and the unhygienic conditions of the food, which contained insects and dirt, making it inedible.

151. The Commission reiterates that the term cruel, inhuman or degrading treatment includes not only actions which cause serious physical or

---

[71] Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) 2002 sec 20(b).

[72] Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 August 1999 (reproduced as OHCHR, Professional Training Series No. 8/Rev. 1, UN Doc. HR/P/PT/8/Rev.1, available at http://www.irct.org/Default.aspx?ID=2701), para. 104.

[73] Communication 48/90, 50/91, 52/91 and 89/93 - *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* para. 52 and Communication 227/99 – *Democratic Republic of Congo v Burundi, Rwanda, Uganda*para 96

[74] Complainant's Submission on the Merits para 48.

psychological suffering, but must be interpreted to extend to the widest possible protection against abuses.[75] The Commission has also held in *Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi* that holding prisoners under conditions of overcrowding, acts of beating, poor sanitary conditions and extremely poor quality of food contravenes Article 5 of the African Charter.[76] The Commission therefore holds that the action of the Respondent State constitutes multiple violations of Article 5 of the African Charter.

Alleged violation of Article 6

152. Article 6 of the Charter reads:

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.

153. The Complainant submits that he was detained by NISS officers without charge for 101 days, and only informed by the prison authorities at al-Nuhood prison and subsequently El-Obeid prison that he was being detained under the Emergency and Public Safety Bye-law (1998). The Respondent State has not contested this claim, in fact, it has failed to respond to the Secretariat's request even after repeated notifications. In this circumstance, the Commission must decide on the facts of the Complainant as the facts of the case.[77]

154. The Commission has held that the right to liberty has two arms. The first arm is simply the freedom from restraint, an individual's ability to do as he/she pleases, provided it is done in accordance with the law.[78] The second arm deals with the right to security of the person.[79] In determining the parameters of the limitation to the right to liberty, the Commission has stressed that the clause 'laid down by law' does not provide a blanket approval of any domestic law regardless of its effect.[80] In *Amnesty International and Others v Sudan* the Commission held that "Article 6 must be interpreted in such a way as to permit arrests and detention only in the exercise of powers normally granted to the

[75] Communication 292/04 – *Institute for Human Rights and Development in Africa v Angola* para 52.
[76] Communication 64/92, 68/92, 78/92_8AR - *Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi* para 7.
[77] Communication 105/93, 128/94, 130/94, 152/96 – *Media Rights Agenda & Others v Nigeria* para 86; Communication 232/99 – *John Ouko v Kenya* para 21.
[78] (N 58 above) Communication 279/03-296/05 paras 172 - 173.
[79] As above.
[80] Communication 275/03 – *Article 19 v Eritrea* para 92.

security forces in a democratic society."[81] Competent authorities should not be able to negate the rights conferred upon individuals by the Charter and guaranteed by international human rights standards. The clause therefore constitutes a reference to international law, as such, only restrictions on rights which are consistent with the African Charter and with States Parties' international obligations should be enacted by the relevant national authorities.[82]

155. The **Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa** (the **Luanda Guidelines**) expounds on the obligation of States and the procedural standards to be adopted with regards to arrests, police custody and pre-trial detention. Accordingly, Principle 4 provides for rights which must be afforded persons under arrest, these include amongst others : the right to be informed of the reasons for their arrest and any charges against them; the right of access without delay to a lawyer of his or her choice; the right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court; the right to challenge promptly the lawfulness of their arrest before a competent judicial authority; and the right to freely access complaints and oversight mechanisms.[83] Further, Principle 35 of the Luanda Guidelines provides that "All persons in police custody and pre-trial detention shall have the right, either personally or through their representative, to take proceedings before a judicial authority, without delay, in order to have the legality of their detention reviewed. If the judicial authority decides that the detention is unlawful, individuals have the right to release without delay."[84]

156. The Commission observes that pursuant to the Emergency and Protection of Public Safety Act of 1997 (Act No. 1 1998), the President of the Republic of the Sudan may issue a declaration of a state of emergency all over Sudan or in any part of it.[85] Subsequent to the declaration, a competent authority may arrest persons suspected of participating in crimes related to the declaration.[86] Section 79 of the Criminal Procedure Code of the Republic of the Sudan (2003) provides that, a person arrested by the police may remain in detention for a period not exceeding twenty-four (24) hours, this may be renewed by the Prosecution Attorney for a period not exceeding three (3) days, and upon the report of the

---

[81] Communication 48/90-50/91-52/91-89/93 – *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* para 59.

[82] Communication 339/2007 – *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda* para 108.

[83] Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) 2014 principle 4 (b) (d) (i) (j) & (k).

[84] (As above) principle 35.

[85] Emergency and Protection of Public safety Act of 1997 (Act No. 1 1998) sec 4.

[86] (As above) sec 5 (h).

Prosecution Attorney, a Magistrate may order the continued detention of the arrested person, for the purpose of inquiry, every week for a period not exceeding in total two weeks. The Commission notes that the Emergency and Protection of Public Safety Act of 1997 does not stipulate any such time frame but rather contemplates a special court in which persons arrested pursuant to the Emergency Law may be arraigned and tried.[87] A recourse which was never made accessible to the Complainant.

157. It is therefore important to reiterate that the African Charter does not allow State Parties to derogate from their treaty obligations during emergency situations.[88] Thus, the guarantees contained in Article 6 must be effectively enforced at all times, even in public emergencies threatening the life of the nation. This comprise, in particular, the right of anyone arrested or detained on a criminal charge to be informed, at the time of arrest, of the reasons for his/her arrest, the charges brought against him/her and must be brought promptly before a competent judicial authority.[89] In the circumstance, it cannot therefore be considered that the Respondent State displayed the required diligence in ensuring that its law enforcement agents upheld and protected the rights enshrined in the African Charter in the exercise of their power of arrest.

158. The Commission in the case of *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda,* held that the right to liberty serves as a substantive guarantee that 'any arrest or detention will not be unlawful or arbitrary'.[90] In defining arbitrariness in the context of arrest and detention, the Commission referred to the decision of the United Nations Human Rights Committee in *Rafael Marques de Morais (represented by the Open Society Institute and Interights) v Angola* where it noted that arbitrariness also includes "elements of inappropriateness, injustice, lack of predictability and due process of law".[91] Hence, the Complainant's prolonged remand without affording him the opportunity to challenge the lawfulness of his detention was arbitrary and unlawful, and therefore outside the permissible limitations to the right to personal liberty.[92] For these reasons, the Commission finds the Respondent State in violation of Article 6 of the African Charter.

---

[87] (As above) sec 6 (2) provides: The president of the republic, or any person he delegates, may set, in consultation with the chief justice, special courts (trial and appellate) to try any accused under this act and he may specify the procedures of these courts.

[88] (N 80 above) Communication 275/03 para 98.

[89] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003 art 1 and 2; and the Robben Island Guidelines paras25,26 and 27.

[90] Communication 339/2007 – *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda* para 107.

[91] Communication 1128/2002 -*Rafael Marques de Morais (represented by the Open Society Institute and Interights) v Angola* (2005) Human Rights Council, para 6.1.

[92] Communication 232/99 - *Ouko v. Kenya* (2000) AHRLR135 (ACHPR 2000) paras 20-21; Communications 25/89, 47/90, 56/91 and 100/93 – *Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995) para 42.

Alleged Violation of Article 7

159. The Complainant avers that the Respondent State violated the provisions of Article 7 (1) (d) of the African Charter. This provision guarantees the right to be tried within a reasonable time by an impartial court or tribunal. The Commission has clearly established in its Resolution on the Right to recourse and Fair Trial that anyone deprived of his/her liberty through arrest or detention shall be brought promptly before a judicial authority and shall be entitled to trial within a reasonable time or to be released.[93]

160. The Complainant was arrested on 10 June 2014 and held in detention for 101 days without charge. The Commission in *Constitutional Rights Project v Nigeria* has held that 'in a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimise the negative effects on the life of a person who, after all, may be innocent'.[94] To guarantee expeditious access to justice for persons in detention, the Commission's **Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa** provides that "judicial bodies shall at all times hear and act upon petitions for *habeas corpus*...or similar procedures. No circumstances whatever must be invoked as a justification for denying the right to *habeas corpus*..."[95]

161. A review of the Emergency and Protection of Public Safety Act 1997 reveal that there exist no effective right to *habeas corpus* under the Emergency law, thereby preventing the Complainant from having the opportunity of inquiring into the lawfulness of his detention. The Commission therefore finds that 101 days (approximately 3 months) in custody without charges being filed or even an opportunity to challenge the detention is an unreasonable delay, and thus constitutes a violation of Article 7 (1) (d) of the African Charter.

Alleged violation of Article 9 of the African Charter

162. Article 9 (2) of the Charter reads:
Every individual shall have the right to express and disseminate his opinions within the law.

163. Accordingly, dissemination of opinions may be restricted by law. However, the Commission has held in *Constitutional Rights Project and Others v Nigeria* that this should not be interpreted to mean that "national law can set aside the right to express and disseminate one's opinions guaranteed at the international

[93] ACHPR/Res.4 (XI) 92 Resolution on the Right to Recourse and Fair Trial; Communication 368/09 – *Abdel Hadi & Others v Republic of Sudan* para 86.
[94] Communication 153/96 – *Constitutional Rights Project v Nigeria* para 19.
[95] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa principle 5 (e).

level", as this would make the protection of the right illusory.[96] As such, the Commission found that Article 27(2) of the African Charter provides for the only legitimate reasons for limitations of the rights and freedoms contained in the Charter.[97] In this regard, Article 27(2) provides that the rights of the African Charter "shall be exercised with due regard to the rights of others, collective security, morality and common interest".

164. The Complainant alleges that upon his arrest on 10 June 2014 he confirmed his identity to the NISS officers, presented his credentials as a journalist and provided a copy of the *Al Gareeda* newspaper that contained the article he had written on the symposium. The Commission notes the Complainant's assertion that he was accused of having associations with rebel groups, and for misinforming the public and spreading lies about the comments made by Mr. El-Sheikh in his speech, which he expressly denied.[98] Consequent to which he was detained pursuant to the Emergency Law for 101 days.

165. The Respondent State has not provided evidence that the restriction on the Complainant's right to freedom of expression was for any of the reasons prescribed in Article 27(2) of the African Charter. The Commission however notes the conflict situation that continue to plague the Southern Kordofan and Blue Nile regions, displacing tens of thousands.[99] Hence, necessitating the proclamation of the state of emergency declared in the south and central states of Kordofan at the time. Regardless, it has been stressed in the Commission's jurisprudence that the Charter contains no derogation clause.[100] In *Amnesty International and others v Sudan*, the Commission indicated that this "...can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law."[101] States must strive to attain a balance between human security and humane counter-terrorism, to ensure that measures adopted are not inimical to human rights.

166. In the present Communication, there is no substantive evidence that the Complainant's publication threatened the collective security of the State,

---

[96] Communication 140/94, 141/94, 145/95 – *Constitutional Rights Project and Others v Nigeria* para 40.
[97] (As above) para 41.
[98] Complainants' submission on the Merits para 48.
[99] International Crisis Group 'Sudan's spreading conflict (II): war in Blue Nile' 18 June 2013 available at https://www.crisisgroup.org/africa/horn-africa/sudan/sudan-s-spreading-conflict-ii-war-blue-nile (accessed 24 February 2021); British Broadcasting Corporation 'Will Sudan ever find peace in Darfur, South Kordofan and Blue Nile?' 8 December 2014 available at https://www.bbc.com/news/world-africa-30354614 (accessed 24 February 2021).
[100] Communication 48/90, 50/91, 89/93 – *Amnesty International & others v Sudan* para 79; Communication 140/94, 141/94, 145/95 – *Constitutional Rights Project & Others v Nigeria* para 41; Communication 105/93, 128/94, 130/94, 152/96 – *Media Rights Agenda and Constitutional Rights Project v Nigeria* paras 67-69.
[101] (As above) Communication 48/90, 50/91, 89/93 para 79.

morality or public order. If perhaps the Complainant's publication contained libellous statements, a civil suit could have been instituted against the Complainant and *Al Gareeda* newspaper his employer, demanding a retraction of the article, in accordance with the principles anchoring the right to freedom of expression. The Commission recalls that the **Declaration of Principles on Freedom of Expression and Access to Information in Africa** (the **Declaration**) adopted in 2019 obliges states to: i) repeal laws that criminalise sedition, insult and publication of false news; ii)amend criminal laws on defamation and libel in favour of civil sanctions which must themselves be necessary and proportionate; and that the imposition of custodial sentences for the offences of defamation and libel are a violation of the right to freedom of expression.[102]

167. The justification for a limitation or restriction to a right must be strictly proportionate and necessary for the legitimate aim pursued.[103] The Commission in *Media Rights Agenda and Others v Nigeria* has held that "freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country."[104] As such, any law which permits the imprisonment of persons whose views contradicts those of the Government's is contrary to the spirit of Article 9 and cannot qualify as a justifiable limitation to the right to freedom of expression.[105] Hence, the Commission has held that, the imprisonment of journalists "deprives not only journalists of their rights to freely express and disseminate their opinions, but also the public, of the right to information."[106] In light of the above, the Commission finds the Respondent State in violation of Article 9 (2) of the African Charter.

Alleged violation of Article 16 of the African Charter

168. Article 16 of the Charter reads:

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

169. The Complainant contends that the Respondent State's significant delay in providing him with medical assistance and the subsequent insufficient medical

[102] Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 principle 22 (2) (3) (4).
[103] (N 100 above) Communication 140/94, 141/94, 145/95 para 42.
[104] Communication 105/93, 128/94, 130/94, 152/96 – *Media Rights Agenda and Others v Nigeria* para 53.
[105] Communication 275/03 – *Article 19 v Eritrea* para 105.
[106] (As above) Communication 275/03 para 106; Communication 147/95, 149/96 – *Sir Dawda K. Jawara v The Gambia* para 65.

care provided, constitutes a violation of his right to the best attainable state of health as provided in Article 16 of the African Charter. He further avers that the conditions of his detention severely affected his mental well-being in ways that continue to impact him even after his release on 9 September 2014.

170. The Commission notes that the facts establish that the Complainant sustained injuries to his head and left leg as a result of the abuse of 10 June 2014. The Complainant further submits that these injurie were worsened by the deplorable conditions of detention at al-Nuhood prison, where he was remanded for a period of twenty (20) days. These condition as highlighted above include: detention in a severely overcrowded prison cell, the absence of adequate sanitary facilities, poor food and nutrition and the psychological toll of being held indefinitely without charge.[107]

171. The right to health implies not only the freedom from diseases, but the complete physical, mental and social wellbeing of a person.[108] As a result, the interpretation of the right to health is not limited to medical care but must be construed as inclusive of access to food, water, sanitation and the basic conditions of living that are determinants of health.[109] This principle was substantiated by the Commission in *Purohit and Moore v The Gambia* where it held that the right to health is "... crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind."[110]

172. The Commission notes the Complainant's submissions that he had migraines which intensified at night, and he was unable to eat, drink or sleep for several days due to the pain. However, his persistent requests to visit a doctor were rejected, and he was only taken to a hospital seven (7) days after his detention, upon the intervention of a visiting lawyer. The Complainant also submits that his request for a full body examination was refused, and he was subsequently prescribed malaria and pain medication after undergoing a urine and blood test. These averments have not been contested by the Respondent State.

173. Regarding the denial of medical care, the Commission recalls its jurisprudence in *International PEN and Others (on behalf of Ken Saro-Wiwa Jnr) v Nigeria* wherein it held that State responsibility is heightened in cases where an individual is in its custody, as the detainee's well-being and integrity is completely dependent

---

[107] Witness Statement of Hassan Ishag Ahmed paras 23 – 28.

[108] D Tarantola 'A Perspective on the History of Health and Human Rights: From the Cold War to the Gold War' (2008) 29 *Journal of Public Health Policy* 42 at 43.

[109] United Nations Committee on Economic, Social and Cultural Rights, General Comment 14 (Committee on ESCR General Comment 14) para 4.

[110] Communication 241/01 – *Purohit and Moore v The Gambia* para 80.

on the actions of the State authorities.[111] In this regard, the Luanda Guidelines provide for the right of an arrested person to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.[112] Therefore, as a minimum core obligation the Respondent State is required to respect and fulfil the right to health by refraining from denying or limiting equal access to healthcare, and adopting measures to ensure physical accessibility for all persons, particularly vulnerable and disadvantaged groups, including detainees.[113]

174. Regarding the inadequacy of the medical care, it is observed from the Complainant's testimony that the treatment administered did not relieve his pain, as he persisted in his request to visit a hospital even after his transfer from al-Nuhood to El-Obeid prison, and subsequently notified his lawyer that his requests had been rejected by the prison authorities.[114] The Commission therefore finds that in the absence of any indication that the Complainant's condition had improved after his initial visit to a doctor, or that his state of health had been properly reassessed, it was incumbent on the Respondent State to take necessary measures to protect his health, given that he was held in the custody of the State authorities.[115] Consequently, the Commission finds a violation of Article 16 of the African Charter.

Alleged violation of Article 1

175. The Complainant has submitted that the Respondent State's failure to prevent the Charter violations, and its reliance on the overbroad and vague provisions of the National Security Act and the Emergency Law constitutes violations of Article 1 of the African Charter.

176. Article 1 of the African Charter stipulates that "...parties to the [] Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall adopt legislative or other measures to give effect to them".

---

[111] Communication 137/94, 139/94, 154/96, 161/97 - *International PEN & Others (onbehalf of Ken Saro-Wiwa Jnr) v Nigeria* para 112; Communication 379/09 - *Monim Elgak & Others (represented by FIDH and OMCT) v Sudan* para 136; Communication 105/93, 128/94, 130/94, 152/96 - *Media Rights Agenda & Constitutional Rights Project v Nigeria* para 91.

[112] Luanda Guidelines (n 84 above) principle 4 (g).

[113] Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights paras 67 (y) and 1 (e); Communication 379/09 (n 112 above).

[114] Witness Statement of Hassan Ishag Ahmed paras 30 - 31.

[115] Communication 379/09 (n 111 above); *Vladimir Vasilyev v Russia*, App No 28370/05 Final, Eur. Ct. H.R. (10 January 2012) para 68.

177. The Commission reiterates its decision in *Sudan Human Rights Organization and Centre on Housing Rights and Eviction v Sudan* that Article 1 imposes a general obligation on States to respect, protect and fulfil the rights enshrined in the African Charter, as such, States are required to adopt measures to give effect to those rights.[116] A failure to uphold this obligation constitutes a violation of Article 1.The Commission has reached a conclusion that the Respondent State failed to protect the Complainant from being subjected to torture and other ill-treatment; and failed to respect his right to liberty, access to justice, right to adequate medical care and his right to freedom of expression and dissemination of information. As a consequence, the Commission finds that the Respondent State in violation of Article 1 of the Charter.

Decision of the Commission on Merits

178. Based on the above reasons, the African Commission on Human and Peoples' Rights holds as follows:

i. That the Respondent State - the Republic of the Sudan has violated Articles 1, 5, 6, 7(1) (d), 9 (2) and 16 of the African Charter on Human and Peoples' Right;

ii. Requests the Republic of the Sudan to:
   a. Pay adequate compensation for, among others lost income, medical expenses and physical and emotional suffering, to the Complainant named in the present Communication in accordance with the domestic law of the Republic of the Sudan for the rights violated;
   b. Promptly and independently investigate, prosecute, and punish all State actors responsible for the illegal detention and torture of the Complainant;
   c. Reform of the Respondent State's laws including the National Security Act (2010), the Emergency and Protection of Public Safety Act (1997) and the Emergency and Public Safety Bye-law (1998), in addition to policies and practices incompatible with the African Charter and international law such as prolonged arbitrary detention and remand, and denial of the opportunity to challenge the lawfulness of detention, and further urges the State to adopt and implement procedural safeguards for the prevention of torture and other forms of ill-treatment as required under the **Robben Island Guidelines**;
   d. Train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture.

iii. In accordance with Rule 112 (2) of the Commission's Rules of Procedure (2010), the Respondent State should notify the Commission of the measures

[116] Communication 279/03, 296/05 – *Sudan Human Rights Organization and Centre on Housing Rights and Evictions (COHRE) v Sudan* para 227.

taken to implement the present decision, within one hundred and eighty days (180) of the notification.

Done Virtually, at 68th Ordinary Session, held from 14 April to 04 May 2021