

## 228/99 The Law Office of Ghazi Suleiman/Sudan

### Rapporteur:

25<sup>th</sup> Ordinary Session: Commissioner Pityana  
26<sup>th</sup> Ordinary Session: Commissioner Pityana  
27<sup>th</sup> Ordinary Session: Commissioner Pityana  
28<sup>th</sup> Ordinary Session: Commissioner Pityana  
29<sup>th</sup> Ordinary Session: Commissioner Pityana  
30<sup>th</sup> Ordinary Session: Commissioner Pityana  
31<sup>st</sup> Ordinary Session: Commissioner Pityana  
32<sup>nd</sup> Ordinary Session:  
33<sup>rd</sup> Ordinary Session: Commissioner Pityana

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### Summary of Facts:

1. The Complainant is a Law Firm based in Khartoum, Sudan. The complaint dated 1 January 1999 was received in the Secretariat on 29 January 1999
2. The Complaint is submitted on behalf of Mr. Ghazi Suleiman, the principal partner in the Law Firm of Ghazi Suleiman.
3. The Complainant alleges that Mr. Ghazi Suleiman was invited by a group of human rights defenders to deliver a public lecture on 3<sup>rd</sup> January 1999 in Sinnar, Blue Nile State. He alleges further that Mr. Ghazi Suleiman was prohibited from travelling to Sinnar by some security officials who threatened that if he made the trip, he would be arrested.
4. It is also alleged that this threat and the implied threat of repercussions for the group prevented him from embarking on the trip.

### Additional information

5. The Complainant claims that the following actions were directed against Mr Ghazi Suleiman in the period between January 1998 and May 2002 to which this communication pertains:
  - a. Threats by security officials of the government of Sudan preventing travel to Sinnar on 3 January 1999,
  - b. An arrest on 7 April 1999
  - c. An arrest 8 June 1999
  - d. An attack on his office and his person on 17 November 1999
  - e. An arrest on 26 March 2000
  - f. An arrest on 9 December 2000
  - g. An arrest on 9 May 2002

## **Complaint**

6. The Complainant alleges violations of Articles 9, 10, 11 and 12 of the of the Charter on Human and Peoples' Rights (the Charter) and that all these rights have been suspended under the national Security Act 1994, as amended in 1996.

## **Procedure:**

7. At its 25<sup>th</sup> Ordinary Session held from 26<sup>th</sup> April to 5<sup>th</sup> May 1999 in Bujumbura, Burundi, the African Commission on Human and Peoples' Rights (the Commission) was seized of the communication.
8. On 18<sup>th</sup> August 1999, the Secretariat of the African Commission notified the parties of this decision.
9. The African Commission considered the communication at its 26<sup>th</sup> Ordinary Session held from 1<sup>st</sup> to 15<sup>th</sup> November in Kigali, Rwanda and requested the Complainant to submit written submissions on the issue of exhaustion of local remedies. In addition, the parties were requested to furnish the African Commission with the relevant legislation and court decisions (in either English or French).
10. On 21<sup>st</sup> January 2000, the Secretariat of the African Commission wrote to the parties informing them of the decision of the African Commission.
11. At the 27<sup>th</sup> Ordinary Session held from 27<sup>th</sup> April to 11<sup>th</sup> May 2000 in Algiers, Algeria, the parties made oral submissions and the African Commission decided to consolidate this communication with all the other communications brought against Sudan. It requested parties to address it further on the issue of exhaustion of domestic remedies.
12. The above decision was communicated to parties on 30<sup>th</sup> June 2000.
13. At the 28<sup>th</sup> Ordinary Session held from 23<sup>rd</sup> October to 6<sup>th</sup> November 2000 in Cotonou, Benin, the African Commission decided to defer consideration of this communication to the 29<sup>th</sup> Ordinary Session and requested the Secretariat to incorporate the oral submissions made by the Respondent State and the Complainant into the draft decision to enable the African Commission take a reasoned decision on admissibility.
14. At the 29<sup>th</sup> Ordinary Session held in Tripoli, Libya, the African Commission noted that the Complainant had submitted a detailed brief on the case. It was therefore recommended that consideration of this communication be deferred to the 30<sup>th</sup> Session pending submission of a detailed response by the Respondent State.

15. On 19<sup>th</sup> June 2001, the Secretariat of the African Commission informed the parties of the above decision and requested the Respondent State to forward its written submissions within two (2) months from the date of notification of the decision.
16. During the 30<sup>th</sup> Session held from 13<sup>th</sup> to 27<sup>th</sup> October in Banjul, The Gambia, the African Commission heard the oral submissions from both parties. Following detailed discussions on the matter, the African Commission noted that the Respondent State had not responded to the issues raised by the Complainant. The African Commission therefore deferred consideration of these communications to the 31<sup>st</sup> Session, pending receipt of detailed written submissions from the Respondent State to those of the Complainant.
17. On 15<sup>th</sup> November 2002, the Secretariat of the African Commission informed the parties on the decision of the African Commission and requested Respondent State to forward its written submissions within two (2) months from the date of notification of its decision.
18. At its 31<sup>st</sup> Ordinary Session held from 2<sup>nd</sup> to 16<sup>th</sup> May 2002 in Pretoria, South Africa, the African Commission heard submissions from both parties and declared the communication admissible.
19. On 29<sup>th</sup> May 2002, the Respondent State and the Complainants were informed of the African Commission's decision.
20. At the 32<sup>nd</sup> Ordinary Session held from 17<sup>th</sup> to 23<sup>rd</sup> October 2002 in Banjul, The Gambia, the Representative of the Respondent State requested the African Commission orally and in writing to review its decision on admissibility relating to all the communications brought by the Complainant against the government of Sudan. The African Commission informed the Respondent State that the issue of admissibility of the communications had been settled and that the Respondent State should submit its arguments on the merits.
21. At its 33<sup>rd</sup> Ordinary Session held from 15<sup>th</sup> to 29<sup>th</sup> May 2003 in Niamey, Niger, the African Commission considered this communication and decided to deliver its decision on the merits.

## **LAW**

### **Admissibility**

22. Article 56(5) of the Charter stipulates that communications relating to human rights...received by the African Commission shall be considered if they...are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.
23. The Complainant alleges that no effective remedies existed at the time of the violation of human rights because the acts of security officers in Sudan were not

- subject to review by judicial authorities and furthermore, security officials were protected from prosecution by the National Security Act of 1994.
24. The Complainant alleges that the National Security Act of 1994, which was in effect at the time of Mr. Ghazi Suleiman's arrest, "by its terms, ensured that the security forces could and would operate completely outside the law". The result is that the threats of the security officials against Mr. Ghazi Suleiman, as well as their ability to carry them out, were acts conducted with impunity and against which Mr. Suleiman had no domestic remedy.
  25. The Complainant states that in practice, procedures that may exist for the redress of human rights abuses by the government of Sudan are often inaccessible to individuals whose human rights have been violated because the regular judicial and the administrative remedies have substantial obstacles that prevent their use.
  26. The Respondent State requested that this complaint be thrown out or withdrawn on the grounds that it is lacking in veracity, evidence or justification. It is submitted that the Complainant is trying to cause damage to the Sudanese judiciary on the basis of baseless allegations that bear no relationship to the substance of the complaint.
  27. The Respondent State submits that Ghazi Suleiman is a human rights advocate in Sudan and as such there is no way he could have failed to bring a complaint with respect to the threat if it had really taken place. The Respondent State further submits that the Complainant should have exercised his constitutional rights by instituting court proceedings against the law enforcement agencies for failure to comply with and violating the Constitution and the law.
  28. The Respondent State also submitted that the domestic remedies are effective and provided legislation and case precedents to support this claim.
  29. The rule of exhausting domestic remedies is the most important condition for admissibility of communications, there is no doubt therefore, in all communications seized by the African Commission, the first requirement considered concerns the exhaustion of local remedies in terms of Article 56 (5) of the Charter.
  30. In applying Article 56(5) of the Charter requires:" the exhaustion of all domestic remedies, if they are of a judicial nature, are effective and are not subordinate to the discretionary power of the public authorities" (*See para. 37 of Communications 48/90,50/91 and 89/93 Amnesty International & al. / Sudan*).
  31. Furthermore, the African Commission has held that:" a remedy is considered available if the Complainant can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint" (*See para. 32. of Communications 147/95 and 149/96 Sir Dawda K. Jawara/ The Gambia*).
  32. The Respondent State's assertion of non-exhaustion of domestic remedies will therefore be looked at in this light. The existence of a remedy must be sufficiently

- certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. In the present case, the Complainant submits that Ghazi Suleiman could not resort to the judiciary of Sudan because of a general fear for his life.
33. In order to exhaust local remedies within the spirit of Article 56(5) of the Charter, one needs to have access to those remedies, but if Mr. Suleiman is constantly threatened, harassed and imprisoned, ofcourse he would have no access to local remedies, they would be considered to be unavailable to him.
  34. The National Security Act of 1994 introduces an unfortunate aspect of the inexistence of remedies by stipulating that: “no legal action or appeal is provided for against any decision issued under this law”. This manifestly makes the procedure less protective of the victim.
  35. The right to an appeal is a right falling under the right to have one cause heard as provided under Article 7 of the Charter. The right of appeal is also a determinant for the fulfilment of the requirement of exhaustion of local remedies under Article 56(5) of the Charter.
  36. It should be noted that the actual application of the law was also made difficult due to the state of emergency obtaining in the country during this period. The Complainants had difficulty to obtain justice and exhaust existing local remedies due to the political situation of the country. In this case, “it is reasonable to assume that not only the procedure of local remedies will be unduly prolonged, but also that it will yield no results”. (*See Communication 129/94 Civil Liberties Organisation/Nigeria*)
  37. For the above reasons, the African Commission declares the communication admissible.
  38. The African Commission wishes to acknowledge the information brought to its attention by the Respondent State outlining the development that the Government of Sudan had undertaken in respect of the constitutional reforms to guarantee the civil liberties of its citizens and the judicial system of the country. The African Commission hopes that with these changes, the judicial system will be able to handle matters relating to human rights abuses expeditiously.

## Merits

39. Article 9 of the Charter provides: “*Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law*”
40. The African Commission affirms the “fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms”<sup>1</sup>.

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<sup>1</sup> Declaration of Principles on Freedom of Expression in Africa *adopted by the African Commission on Human and Peoples' Rights 32<sup>nd</sup> Ordinary Session Oct.2002.*

41. The African Commission also holds that Article 9 “reflects the fact 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” (*Communications 105/93, 128/94, 130/ 94 and 152/96 Media Agenda and Constitutional Rights Project/Nigeria*)
42. The communication alleges that Mr. Ghazi Suleiman was arrested, detained, mistreated, and punished for his promotion and encouragement of human rights, which the Respondent State claims are inconsistent with its laws. These activities consisted of speaking out about violations of human rights, encouraging the government to respect human rights, encouraging democracy in his public speeches and interviews, and discussing democracy and human rights with others. These activities have not been conducted secretly, but have been carried out in public by Mr. Ghazi Suleiman for many years.
43. It is alleged that Mr. Ghazi Suleiman was exercising his right to freedom of expression to advocate for human rights and democracy in Sudan and was stopped; or, he was contemplating the exercise of his human rights for the same reasons but was prevented from exercising these rights.
44. During the 27<sup>th</sup> Ordinary Session of the African Commission, the Representative of the Respondent State did not contest the facts adduced by the Complainant, however, he states that the 1998 Constitution of Sudan guarantees the right to freedom of movement (Article 23), right to freedom of expression (Article 25) and the right to freedom of association (Article 26). He did not provide any defence to the allegations of arrests, detentions and intimidation of Mr. Ghazi Suleiman.
45. The Respondent State did not submit arguments on the merits in respect of this communication. In the view of the foregoing, the African Commission shall base its argument on the elements provided by the Complainant and condemn the State’s failure not to submit arguments on the merits.
46. In adopting the Resolution on the Right to Freedom of Association, the African Commission noted that governments should be especially careful that “in regulating the use of this right, that the competent authorities should not enact provisions which would limit the exercise of this freedom...[and that]...the regulation of the exercise of the right to freedom of association should be consistent with State’s obligations under the African Charter on Human and Peoples’ Rights.”<sup>2</sup> Mr. Ghazi Suleiman’s speech is a unique and important part of political debate in his country.
47. Article 60 of the Charter provides that the African Commission shall draw inspiration from international law on human and people’s rights.

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<sup>2</sup> See Resolution on the Freedom of Association, *adopted* at the 11<sup>th</sup> Ordinary Session in Tunis from 2 to 9 March 1992.

48. The European Court on Human Rights recognises that “freedom of political debate is at the very core of the concept of a democratic society...”<sup>3</sup>
49. The African Commission’s view affirms those of Inter-American Court of Human Rights which held that: “ freedom of expression is a cornerstone upon which the very existence of a society rests. It is indispensable for the formation of public opinion. It is also a *condition sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”<sup>4</sup>
50. The Inter American Court states that -: “when an individual’s freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to “receive” information and ideas”.<sup>5</sup> It is particularly grave when information that others are being denied concerns the human rights protected in the African Charter as did each instance in which Mr. Ghazi Suleiman was arrested.
51. The charges levied against Mr. Ghazi Suleiman by the government of Sudan indicate that the government believed that his speech threatened national security and public order.
52. Because Mr. Suleiman’s speech was directed towards the promotion and protection of human rights, “it is of special value to society and deserving of special protection”<sup>6</sup>
53. In keeping with its important role of promoting democracy in the Continent, the African Commission should also find that a speech that contributes to political debate must be protected. The above challenges to Mr. Ghazi Suleiman’s freedom of expression by the government of Sudan and violate his right to freedom of expression under Article 9 of the African Charter. However, the allegations of arrests, detentions and threats constitute also a violation of Article 6 of the Charter.
54. Articles 10 of the Charter provides: “*Every individual shall have the right to free association provided that he abides by the law*”
55. Article 11 of the Charter provides: “*Every individual shall have the right to assemble freely with others. The exercise of this right shall be subjected only to necessary restrictions provided for by*

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<sup>3</sup> *Lingens v. Austria*, Judgment of the Eur. Crt.H.R. Series A. N. 236 (April 1992) and *Thorgeirson v. Iceland* Judgment of the Eur. Crt.H.R. Series A. N. 239 (June 1992).

<sup>4</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (arts 13 and 29 American Convention on Human Rights) Advisory Opinion OC-5/85, Serie A. N.5, November 1985 at para.70.

<sup>5</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 of the American Convention on Human Rights)* Advisory Opinion OC-5/85, November 13, 1985, Inter-Am.CourtH.R. Ser.A. N.5 at para.30.

<sup>6</sup> *Article 6* of the U.N. Human Rights Defenders’ Declaration



*the law, in particular those enacted in the interest of national security...and rights and freedoms of others.”*

56. By preventing Mr. Ghazi Suleiman from gathering with others to discuss human rights and by punishing him for doing so, the Respondent State had violated Mr. Ghazi Suleiman’s human rights to freedom of association and assembly which are protected by Articles 10 and 11 of the African Charter.
57. The right to freedom of movement is guaranteed by Article 12 of the Charter that reads in relevant paragraph 1: *“Every individual shall have the right to freedom of movement and residence within the borders of the State provided he abides by the law”*
58. The communication alleges that some security officials who prohibited Mr. Ghazi Suleiman from travelling to Sinnar, threatened him that if he made the trip, he would be arrested.
59. The Complainant states that Ghazi Suleiman was arrested and released after being convicted, sentenced and incarcerated. Before his release, he was made to sign a statement restraining his future freedom, which he refused to sign.
60. The Respondent State argues that Mr. Ghazi Suleiman has never been prohibited from delivering lectures on human rights. He indicates that Mr. Ghazi Suleiman was free to travel and he in fact participated in a Human rights Conference held in Milan, Italy without any intervention from the authorities. The Respondent State adds that there is no control of movement of the people within the national territory, which is in line with Article 12 of the African Charter on Human and Peoples’ Rights.
61. Mr. Ghazi Suleiman was acting to promote the protection of human rights in his country, Sudan. This is not only indicated by his longstanding record of human rights advocacy, but also by the events that transpired around the time of each arrest or act of harassment. These events always concerned actions or statements he made in support of human rights.
62. Such actions and expressions are among the most important exercises of human rights and as such should be given substantial protection that do not allow the State to suspend these rights for frivolous reasons and in a manner that is thus disproportionate to the interference with the exercise of these fundamental human rights.
63. The disproportionate actions of the government of Sudan against Mr. Ghazi Suleiman is evidenced by the fact that the government has not offered Mr. Ghazi Suleiman an alternative means of expressing his support for human rights in each instance. Instead the Respondent State has either prohibited Mr. Ghazi Suleiman from exercising his human rights by issuing threats, or punished him after summary trial, without considering the value of his actions for the protection and promotion of human rights.



64. By stopping Mr. Ghazi Suleiman from travelling to Sinnar, which is located in the Blue Nile State, a part within the country under the control of the government of Sudan, to speak to a group of human rights defenders, the government of Sudan violated Mr. Ghazi Suleiman's right to freedom of movement in his own country. This constitutes a violation of Article 12 of the Charter
65. The fact that Mr. Ghazi Suleiman advocates peaceful means of action and his advocacy has never caused civil unrest is additional evidence that the complained about actions of the Respondent State were not proportionate and necessary to the achievement of any legitimate goal. Furthermore, the actions of the government of Sudan not only prevent Mr. Ghazi Suleiman from exercising his human rights, but these actions have a seriously discouraging effect on others who might also contribute to promoting and protecting human rights in Sudan.
66. For the above reasons, the interference with Mr. Ghazi Suleiman's rights of freedom of expression, association and assembly cannot be justified.

**Therefore, the African Commission -:**

**Finds** the Republic of Sudan in violation of Articles 6, 9, 10, 11 and 12 of the African Charter on Human and Peoples' Rights,

**Requests** the government of Sudan to amend its existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.

*Done at 33<sup>rd</sup> Ordinary Session in Niamey, Niger  
from 15<sup>th</sup> to 29<sup>th</sup> May 2003.*