13-27 October 2001
Communication No. 155/96

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Thirtieth Ordinary Session
13-27 October 2001

THE SOCIAL AND ECONOMIC RIGHTS ACTION CENTER AND THE CENTER FOR ECONOMIC AND SOCIAL RIGHTS
v.
NIGERIA

DECISION

BEFORE: CHAIRPERSON: Kamel Rezag-Bara
VICE CHAIRPERSON: Jainaba Johm
COMMISSIONERS: A. Badawi El Sheikh, Andrew R. Chigovera, Vera M. Chirwa, Emmanuel V. O. Dankwa, Yasser Sid Ahmed El-Hassan, Angela Melo, N. Barney Pityana, Hatem Ben Salem, Salimata Sawadogo

Citation: Soc. and Econ. Rights Action Ctr. v. Nig, Comm. 155/96, 15th ACHPR AAR Annex V (2000-2001)
Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 333 (Malcolm D. Evans & Rachel Murray eds., 2009); (2001) AHRLR 60 (ACHPR 2001)

SUMMARY OF FACTS

1. The communication alleges that the military government of Nigeria has been directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people.

2. The communication alleges that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short- and long-term health impacts, including skin infections,

gastrointestinal and respiratory ailments, increased risk of cancers, and neurological and reproductive problems.

3. The communication alleges that the Nigerian government has condoned and facilitated these violations by placing the legal and military powers of the state at the disposal of the oil companies. The communication contains a memo from the Rivers State Internal Security Task Force, calling for 'ruthless military operations'.

4. The communication alleges that the government has neither monitored the operations of the oil companies nor required safety measures that are standard procedure within the industry. The government has withheld from the Ogoni communities information on the dangers created by oil activities. Ogoni communities have not been involved in the decisions affecting the development of Ogoniland.

5. The government has not required oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production, despite the obvious health and environmental crisis in Ogoniland. The government has even refused to permit scientists and environmental organisations from entering Ogoniland to undertake such studies. The government has also ignored the concerns of Ogoni communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders.

6. The communication alleges that the Nigerian government does not require oil companies to consult communities before beginning operations, even if the operations pose direct threats to community or individual lands.

7. The communication alleges that in the course of the last three years, Nigerian security forces have attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement of the Survival of Ogoni People (MOSOP). These attacks have come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil companies. Some of the attacks have involved uniformed combined forces of the police, the army, the air force, and the navy, armed with armoured tanks and other sophisticated weapons. In other instances, the attacks have been conducted by unidentified gunmen, mostly at night. The military-

1. type methods and the calibre of weapons used in such attacks strongly suggest the involvement of the Nigerian security forces. The complete failure of the government of Nigeria to investigate these attacks, let alone punish the perpetrators, further implicates the Nigerian authorities.

8. The Nigerian army has admitted its role in the ruthless operations which have left thousands of villagers homeless. The admission is recorded in several memos exchanged between officials of the SPDC and the Rivers State Internal Security Task Force, which has devoted itself to the suppression of the Ogoni campaign. One such memo calls for 'ruthless military operations' and 'wasting operations coupled with psychological tactics of displacement'. At a public meeting recorded on video, Major Okuntimo, head of the Task Force, described the repeated invasion of Ogoni villages by his troops, how unarmed villagers running from the troops were shot from behind, and the homes of suspected MOSOP activists were ransacked and destroyed. He stated his commitment to rid the communities of members and supporters of MOSOP.

9. The communication alleges that the Nigerian government has destroyed and threatened Ogoni food sources through a variety of means. The government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farm lands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni communities.

THE COMPLAINT

10. The communication alleges violations of articles 2, 4,14,16,18(1), 21 and 24 of the African Charter.

PROCEDURE

11. The communication was received by the Commission on 14 March 1996. The documents were sent with a video.

12. On 13 August 1996 letters acknowledging receipt of the communication were sent to both complainants.

13. On 13 August 1996, a copy of the communication was sent to the government of Nigeria.

14. At the 20th ordinary session held in Grand Bay, Mauritius, in October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria.

15. On 10 December 1996, the Secretariat sent a note verbale and letters to this effect to the government and the complainants respectively.

16. At its 21st ordinary session held in April 1997, the Commission postponed taking a decision on the merits to the next session, pending the receipt of written submissions from the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.

17. On 22 May 1997, the complainants were informed of the Commission's decision, while the state was informed on 28 May 1997.

18. At the 22nd ordinary session, the Commission postponed taking a decision on the case pending the discussion of the Nigerian mission report.

19. At the 23rd ordinary session held in Banjul, The Gambia, the Commission postponed consideration of the case to the next session owing to lack of time.

20. On 25 June 1998, the Secretariat of the Commission sent letters to all parties concerned informing them of the status of the communication.

21. At the 24th ordinary session, the Commission postponed consideration of the above communication to the next session.

22. On 26 November 1998, the parties were informed of the Commission's decision.

23. At the 25th ordinary session of the Commission held in Bujumbura, Burundi, the Commission further postponed consideration of this communication to the 26th ordinary session.

24. The above decision was conveyed through separate letters of 11 May 1999 to the parties.

25. At its 26th ordinary session held in Kigali, Rwanda, the Commission deferred taking a decision on the merits of the case to the next session.

26. This decision was communicated to the parties on 24 January 2000.

27. Following the request of the Nigerian authorities through a note verbale of 16 February 2000 on the status of pending communications, the Secretariat, among other things, informed the government that this communication was set down for a decision on the merits at the next session.

28. At the 27th ordinary session of the Commission, held in Algeria from 27 April to 11 May 2000, the Commission deferred further consideration of the case to the 28th ordinary session.

29. The above decision was communicated to the parties on 12 July 2000.

30. At the 28th ordinary session of the Commission held in Cotonou, Benin, from 26 October to 6 November 2000, the Commission deferred further consideration of the case to the next session. During that session, the respondent state submitted a note verbale describing the actions taken by the government of the Federal Republic of Nigeria in respect of all the communications filed against it, including the present one. In respect of the instant communication, the note verbale admitted the gravamen of the complaints but went on to describe the remedial measures being taken by the new civilian administration. They included:

• Establishing, for the first time in the history of Nigeria, a Federal Ministry of Environment with adequate resources to address environment-related issues prevalent in Nigeria and as a matter of priority in the Niger delta area

• Enacting into law the establishment of the Niger Delta Development Commission (NDDC) with adequate funding to address the environmental and social problems of the Niger delta area and other oil producing areas of Nigeria

• Inaugurating the Judicial Commission of Inquiry to investigate the issues of human rights violations. In addition, the representatives of the Ogoni people have submitted petitions to the Commission of Inquiry on these issues and these are presently being reviewed in Nigeria as a top priority.

31. The above decision was communicated to the parties on 14 November 2000.

32. At the 29th ordinary session held in Tripoli, Libya, from 23 April to 7 May 2001, the Commission decided to defer the final consideration of the case to the next session to be held in Banjul, The Gambia, in October 2001.

33. The above decision was communicated to the parties on 6 June 2001.

34. At its 30th session held in Banjul, The Gambia, from 13 to 27 October 2001, the African Commission reached a decision on the merits of this communication.

LAW ADMISSIBILITY

35. Article 56 of the African Charter governs admissibility. All of the conditions of this article are met by the present communication. Only the exhaustion of local remedies requires close scrutiny.

36. Article 56(5) requires that local remedies, if any, be exhausted, unless these are unduly prolonged.

37. One purpose of the exhaustion of local remedies requirement is to give the domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgments of law at the national and international levels. Where a right is not covered by domestic law, it is unlikely that the case will be heard. Thus the potential of conflict does not arise. Likewise, if the right is not acknowledged, there cannot be effective remedial action or any remedial action at all.

38. Another rationale for the exhaustion requirement is that a government should be notified of a human rights violation in order to have the opportunity to remedy such violation before being called to account by an international tribunal. (See the Commission's decision on communications 25/89, 47/90, 56/91 and 100/93 [Free Legal Assitance Group and Others v Zaire (2000) AHRLR 74 (ACHPR 1995)]). The exhaustion of domestic remedies requirement should be properly understood to ensure that the state concerned has ample opportunity to remedy the situation pertaining to the applicant's complaint. It is unnecessary here to recount the international attention that Ogoniland has received as proof that the Nigerian government has had ample notice and, over the past several decades, more than sufficient opportunity to rectify the situation.

39. Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance for cases for which an effective domestic remedy exists.

40. The present communication does not contain any information on domestic court actions brought by the complainants to halt the violations alleged. However, on numerous occasions the Commission brought the complaint to the attention of the government at the time, but no response was made to the Commission's requests. In such cases the Commission has held that in the absence of a substantive response from the respondent state it must decide on the facts provided by the complainants and treat them as given. (See communications 25/89, 47/90, 56/91, 100/93 [Free Legal Assistance Croup and Others v Zaire (2000) AHRLR 74 (ACHPR 1995)], 60/91 Constitutional Right Project (in respect of Akamu) v Nigeria [(2000) AHRLR 180 (ACHPR 1995)] and communication 101/93 Civil Liberties Organisation v Nigeria [(2000) AHRLR 186 (ACHPR 1995)]).

41. The Commission takes cognisance of the fact that the Federal Republic of Nigeria has incorporated the African Charter on Human and Peoples' Rights into its domestic law with the result that all the rights contained therein can be invoked in Nigerian courts including those

violations alleged by the complainants. However, the Commission is aware that at the time of submitting this communication, the then military government of Nigeria had enacted various decrees ousting the jurisdiction of the courts and thus depriving the people in Nigeria of the right to seek redress in the courts for acts of government that violate their fundamental human rights[FN1]. In such instances, and as in the instant communication, the Commission is of the view that no adequate domestic remedies are existent

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[FN1] See The Constitution (Suspension and Modification) Decree 1993.

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42. It should also be noted that the new government in their note verbale referenced 127/2000 submitted at the 28th session of the Commission held in Cotonou, Benin, admitted to the violations committed then by stating, there is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area.

The Commission therefore declared the communication admissible.

MERITS

43. The present communication alleges a concerted violation of a wide range of rights guaranteed under the African Charter for Human and Peoples' Rights. Before we venture into the inquiry whether the government of Nigeria has violated the said rights as alleged in the complaint, it would be proper to establish what is generally expected of governments under the Charter and more specifically vis-a-vis the rights themselves.

44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights — both civil and political rights and social and economic — generate at least four levels of duties for a state that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote and fulfill these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and should in no way imply the priority accorded to them. Each level of obligation is equally relevant to the rights in question. [FN2]

[FN2] See generally, Asbjorn Eide 'Economic, Social and Cultural Rights As Human Rights' in Asbjorn Eide, Catarina Krause and Allan Rosas (eds), Economic, Social, and Cultural Rights: A Textbook (1995) 21 -40.

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45. Firstly, the obligation to respect entails that the state should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. [FN3] With respect to socio-economic rights, this means that the state is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.

[FN3] Krysztof Drzewicki 'Internationalization of Human Rights and their Juridization' in Raija Hanski and Markku Suksi (eds), An Introduction to the International Protection of Human Rights: A Textbook (1999) 31.

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46. Secondly, the state is obliged to protect right-holders against other subjects by legislation and provision of effective remedies.[FN4] This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realise their rights and freedoms. This corresponds to a large degree with the third obligation of the state to promote the enjoyment of all human rights. The state should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.

[FN4[Drzewicki, ibid.

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47. The last obligation requires the state to fulfill the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the state to move its machinery towards the actual realisation of the rights. This also corresponds to a large degree with the duty to promote mentioned in the preceding paragraph. It could comprise the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security).[FN5]

[FN5] See Eide, in Eide, Krause and Rosas, op cit 38.

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48. Thus states are generally burdened with the above set of duties when they commit themselves under human rights instruments. Emphasising the all-embracing nature of the obligations, the International Covenant on Economic, Social and Cultural Rights, for instance, under article 2(1), stipulates explicitly that states 'undertake to take steps ... by all appropriate means, including particularly the adoption of legislative measures'. Depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. Sometimes the need meaningfully to enjoy some of the rights demands a concerted action from the state in terms of more than one of the said duties. Whether the government of Nigeria has, by its conduct, violated the provisions of the African Charter as claimed by the complainants is examined below.

49. In accordance with articles 60 and 61 of the African Charter, this communication is examined in the light of the provisions of the African Charter and the relevant international and regional human rights instruments and principles. The Commission thanks the two human rights NGOs which brought the matter under its purview: the Social and Economic Rights Action Centre (Nigeria) and the Centre for Economic and Social Rights (USA). This is a demonstration of the usefulness to the Commission and individuals of actio popularis, which is wisely allowed under the African Charter. It is a matter of regret that the only written response from the government of Nigeria is an admission of the gravity of the complaints which is contained in a

note verbale and which we have reproduced above at paragraph 30. In the circumstances, the Commission is compelled to proceed with the examination of the matter on the basis of the uncon-tested allegations of the complainants, which are consequently accepted by the Commission.

50. The complainants allege that the Nigerian government violated the right to health and the right to a clean environment as recognised under articles 16 and 24 of the African Charter by failing to fulfil the minimum duties required by these rights. This, the complainants allege, the government has done by:

• Directly participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population

• Failing to protect the Ogoni population from the harm caused by the NNPC Shell Consortium but instead using its security forces to facilitate the damage

• Failing to provide or permit studies of potential or actual environmental and health risks caused by the oil operations, article 16 of the African Charter reads:

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

Article 24 of the African Charter reads: 'All peoples shall have the right to a general satisfactory environment favourable to their development.'

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual.[FN6] As has been rightly observed by Alexander Kiss:

An environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development of personality as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.[FN7]

[FN6] See also General Comment no 14 (2000) of the Committee on Economic, Social and Cultural Rights.
[FN7] Alexander Kiss 'Concept and Possible Implications of the Right to Environment' in Kathleen E Mahoney and Paul Mahoney (eds), Human Rights in the Twenty-first Century: A Clobal Challenge, 553.

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52. The right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and

mental health enunciated in article 16(1) of the African Charter and the right to a generally satisfactory environment favourable to development (article [24]) already noted, obligate governments to desist from directly threatening the health and environment of their citizens. The state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the state; for example, to desist from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.[FN8]

[FN8] See Scott Leckie 'The Right to Housing' in Economic, Social and Cultural Rights, Eide, Krause and Rosas (eds), Martinus Nijhoff Publishers (1995).
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53. Government compliance with the spirit of articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

54. We now examine the conduct of the government of Nigeria in relation to articles 16 and 24 of the African Charter. Undoubtedly and admittedly, the government of Nigeria, through NNPC has the right to produce oil, the income from which will be used to fulfil the economic and social rights of Nigerians. However, the care that should have been taken as outlined in the preceding paragraph and which would have protected the rights of the victims of the violations complained of was not taken. To exacerbate the situation, the security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several Ogoni villages and homes.

55. The complainants also allege a violation of article 21 of the African Charter by the government of Nigeria. The complainants allege that the military government of Nigeria was involved in oil production and thus did not monitor or regulate the operations of the oil companies and in so doing paved the way for the oil consortiums to exploit oil reserves in Ogoniland. Furthermore, in all their dealings with the oil consortiums, the government did not involve the Ogoni communities in the decisions that affected the development of Ogoniland. The destructive and selfish role played by oil development in Ogoniland, along with repressive tactics of the Nigerian government, and the lack of material benefits accruing to the local population,[FN9] may well be said to constitute a violation of article 21. Article 21 provides:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages

derived from their national resources.

[FN9] See a report by the Industry and Energy Operations Division West Central Africa Department Defining an Environmental Development Strategy for the Niger Delta Volume 1 - paragraph Â (1.6 - 1.7) at page 2-3.
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56. The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation. The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore cooperative economic development to its traditional place at the heart of African society.
57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties (see Commission Nationale des Droits de I'Homme et des Liberties v Chad) [FN10] This duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case Velasquez Rodriguez v Honduras [FN11]. In this landmark judgment, the Inter-American Court of Human Rights held that when a state allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens. Similarly, this obligation of the state is further emphasised in the practice of the European Court of Human Rights, in X and Y v Netherlands.[FN12] In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

[FN10] Communication 74/92.
[FN11] See Inter-American Court of Human Rights, Velasquez Rodrigeuz case, judgment of 19 July
1988, Series C, no 4.
[FN 12] 91 ECHR (1985) (Ser A) at 32.
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58. The Commission notes that in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian government has given the green light to private actors, and the oil companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of article 21 of the African Charter.

59. The complainants also assert that the military government of Nigeria massively and systematically violated the right to adequate housing of members of the Ogoni community under article 14 and implicitly recognised by articles 16 and 18(1) of the African Charter. Article 14 of the Charter reads:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 18(1) provides: “The family shall be the natural unit and basis of society. It shall be protected by the state ...”

60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian government has apparently violated.

61. At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to him or her in a way he or she finds most appropriate to satisfy individual, family, household or community housing needs.[FN13] Its obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and landowners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.[FN14] The right to shelter even goes further than a roof over one's head. It extends to embody the individual's right to be left alone and to live in peace - whether under a roof or not.

[FN13] Scott Leckie 'The Right to Housing' in Eide, Krause and Rosas, op at, 107-123, at 113.
[FN14] /b/cM13-114.

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62. The protection of the rights guaranteed in articles 14, 16 and 18(1) leads to the same conclusion. As regards the earlier right, and in the case of the Ogoni people, the government of Nigeria has failed to fulfil these two minimum obligations. The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of articles 14, 16, and 18(1) of the African Charter.

63. The particular violation by the Nigerian government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term 'forced evictions' by the Committee on Economic, Social and Cultural Rights which defines this term as 'the permanent removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'[FN15]. Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail

losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths. Evictions break up families and increase existing levels of home-lessness.[FN16] In this regard, General Comment no 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing states that'... all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.' (E/1992/23, annex III, paragraph 8(a)). The conduct of the Nigerian government clearly demonstrates a violation of this right enjoyed by the Ogonis as a collective right.

[FN15] See General Comment No 7 (1997) on the right to adequate housing (article 11(1)): Forced Evictions.
[FN16] /b/d p 113.

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64. The communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (article 4), the right to health (article 16) and the right to economic, social and cultural development (article 22). By its violation of these rights, the Nigerian government disregarded not only the explicitly protected rights but also upon the right to food implicitly guaranteed.

65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.

66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and state oil company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

67. The complainants also allege that the Nigerian government has violated article 4 of the Charter which guarantees the inviolability of human beings and everyone's right to life and that the integrity of the person will be respected. Given the widespread violations perpetrated by the government of Nigeria and private actors (be it with its blessing or not), the most fundamental of all human rights, the right to life has been violated. The security forces were given the green light to deal decisively with the Ogonis, which was illustrated by the widespread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare. The survival of the Ogonis depended on their land and farms that were destroyed by the direct involvement of the government. These and similar atrocities not only persecuted individuals in Ogoniland but also the Ogoni community as a whole. They affected the life of the whole of the Ogoni society. The Commission conducted a mission to Nigeria from 7 - 14 March 1997 and witnessed firsthand the deplorable situation in

Ogoniland including the environmental degradation.

68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian government did not live up to the minimum expectations of the African Charter.

69. The Commission does not wish to fault governments that are labouring under difficult circumstances to improve the lives of their people. The situation of the people of Ogoniland, however, requires, in the view of the Commission, a reconsideration of the government's attitude to the allegations contained in the instant communication. The intervention of multinational corporations may be a potentially positive force for development if the state and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities. The Commission however takes note of the efforts of the present civilian administration to redress the atrocities that were committed by the previous military administration as illustrated in the note verbale referred to in paragraph 30 of this decision.

FOR THE ABOVE REASONS, THE COMMISSION

Finds the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights;

Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by:

• Stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securiies Task Force and perming citizens and ndependent investigators free access to the territory; - Conducting an nvestigation into the human rights violations described above and prosecung officials of the security forces, NNPC and relevant agencies nvolved in human rights violations;

• Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations;

• Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and

• Providing nformation on health and environmental risks and meaningful access to regulatory and decision-making bodies to communites likely to be affected by oil operations.

Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the outcome of the work of:

• The Federal Ministry of Environment which was established to address environmental and

environment related issues prevalent in Nigeria, and as a matter of priority, in the Niger Delta area including the Ogoni land;

• The Niger Delta Development Commission (NDDC) enacted into law to address the environmental and other social related problems in the Niger Delta area and other oil producing areas of Nigeria; and

• The Judicial Commission of Inquiry inaugurated to investigate the issues of human rights violations.

Done at the 30th Ordinary Session, held in Banjul, The Gambia from 13th to 27th October 2001.