

Netherlands. 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.

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 them in a way they find most appropriate to satisfy individual, family, household or community housing needs. 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 land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than a roof over one's head. It extends to embody the individual's right to be let alone and to live in peace- whether under a roof or not.

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 fulfill 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". 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 homelessness. 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.
64. The Communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Art. 4), the right to health (Art. 16) and the right to economic, social and cultural development (Art. 22). By its violation of these rights, the Nigerian Government trampled upon 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 fulfillment 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 integrity of the person respected. Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear 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 decisively deal with the Ogonis, which was illustrated by the wide spread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made it living in the Ogoni land 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 brutalities not only persecuted individuals in Ogoniland but also the whole of the Ogoni Community as a whole. They affected the life of the Ogoni Society as a whole. The Commission conducted a mission to Nigeria from the 7th – 14th March 1997 and witnessed first hand the deplorable situation in Ogoni land 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 Security Task Force and permitting citizens and independent investigators free access to the territory;
- Conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved 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 information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the out come 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

