

The Secretary
African Commission on Human and Peoples Rights
Kairaba Avenue
P.O. Box 673
Banjul
The Gambia

COMMUNICATION

pursuant

to Articles 55, 56 and 58 of the African Charter on Human and Peoples Rights;

regarding

actions of the Federal Military Government of Nigeria, a member state of the Organization of African Unity and a state party to the African Charter on Human and Peoples Rights, having ratified the Charter on 22nd July 1983;

involving

the widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals; and the climate of terror that has been visited upon the Ogoni communities in violation of their rights to health, a healthy environment, housing and food;

alleging

violations of Articles 2, 4, 14, 16, 18, 21, and 24 of the African Charter, in addition to violations of corresponding provisions of the:

- * Universal Declaration of Human Rights (UDHR) U.N. Doc. A/810, 71 (1948)
- * International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. A/6316 (1966) (*ratified by Nigeria Oct. 1993*)
- * the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), U.N.T.S. 195 (1966) (*ratified by Nigeria, Oct. 1967*)
- * Convention on the Elimination of All Forms of Discrimination Against Women, U.N. Doc. A/RES/34/180 (1980) (*ratified by Nigeria, June 1985*)
- * International Convention on the Rights of the Child (CRC), U.N. Doc. A/RES/44/25, 1989 (*ratified by Nigeria, Apr. 1991*);

seeking

consideration of the Complaint by the African Commission under Articles 55 and 56, and special attention by the Assembly of Heads of State and Government of the O.A.U. and an in-depth study by the African Commission pursuant to Article 58, based on the “series of serious” and “massive” violations alleged;

noting

that domestic remedies do not bar the communication because of the futility of legal action in Nigeria resulting from the operation of ouster clauses contained in military decrees removing jurisdiction of the courts from entertaining human rights cases (see e.g. Federal Military Government of Nigeria, Decree No. 114, 18th November, 1993, art. 13(1): “Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria, 1979, as amended, the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of this Decree”);

brought by

The Social and Economic Rights Action Center (SERAC), a non-governmental, non-partisan and voluntary initiative concerned with the promotion of economic and social rights in Nigeria, and **The Center for Economic and Social Rights (CESR)**, a New York-based, non-governmental organization devoted to the promotion of economic and social rights on a global scale.

Signed,

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date

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I. BACKGROUND

Nigeria has an estimated population of 88.5 million, comprising several hundred ethnic groups. One such group, the Ogoni, numbering approximately 500,000, are situated in the Niger Delta, in the Southeastern part of the country. Predominantly farmers and fisherfolk, their livelihood and welfare is intricately bound to the health of surrounding rivers, streams and soil. Over the past two decades, the environment and welfare of Ogoni communities have been seriously damaged by irresponsible oil development. The government has contributed to this harm through its dominant role in the oil industry and its violent response to Ogoni protests.

Ogoniland was the site of the first oil discovery in Nigeria, in 1958, and has remained at the center of the country's oil production ever since. Over the course of two decades, oil has generated \$210 billion and currently accounts for 90% of the country's foreign reserves. A joint venture between the Nigerian National Petroleum Corporation (NNPC), the majority partner with a 55% stake, and Shell Petroleum Development Corporation, has been responsible for developing oil in Ogoniland.

The NNPC-Shell consortium, with Shell as the operator, has caused massive and systematic environmental and social problems as a result of irresponsible operations and faulty infrastructure. According to the Economist Intelligence Unit, "infrastructure and facilities in the area are possibly the worst in the country and the environmental damage is widespread."

The soil and waterways in Ogoniland have been widely polluted by chronic oil spills and unlined toxic waste pits. From 1976 to 1991, 2,976 oil spills were reported in the Niger Delta, almost an average of 4 per week. Forty percent of Shell's recorded spills worldwide occurred in Nigeria, including 1.6 million gallons spilled in 27 separate incidents from 1982 to 1992. In one such spill in Ogoni, oil leaked from a Shell flow line for 40 days without repair. These extremely high spill rates are largely caused by corrosion, equipment failure, and poor maintenance. Pipelines have been laid with no regard for local communities, passing above ground through villages and criss-crossing lands was once used for growing food. This placement of pipes in such sensitive areas and the oil spills that have followed have rendered such lands infertile and economically useless.

Rather than treating or reinjecting oil production wastes, the NNPC-Shell consortium has simply dumped them into unlined pits from which they regularly flow into nearby lands and streams. In a rare, recent inspection of the Niger Delta, the World Bank estimates that contamination levels greatly exceed international averages: "Lumps from oil spillage can be directly observed and oil films cover the water surface. Concentrations of dissolved petroleum hydrocarbons have been found to be elevated near refineries in the region, which supports the inference that little or no wastewater treatment is performed." (I World Bank, at 35)

Oil companies have also contaminated the air near communities through excessive gas-flaring. The NNPC-Shell consortium has been flaring gas at some sites 24 hours a day for more than 30 years. As measured in 1993, Nigeria flares more gas than any other country in the world, 76% of

total production as opposed to a world-wide average of 4.8% (I World Bank, at 59) This flaring has destroyed wildlife and plant life in the surrounding areas and the resulting acidic rain has further contaminated waterways and soil. These problems have been particularly harmful because of the placement of the flares as close as a hundred meters from Ogoni homes.

The water, soil and air contamination caused by oil production in Ogoniland has endangered the life of plants, fish, crops and the local population. Local communities are exposed to a variety of water and air-borne contaminants linked to serious health problems. While few studies have been done of the region, communities report a range of illnesses associated with the pollution, including gastrointestinal problems, skin diseases, cancers and respiratory ailments. Contamination has also caused the death of most aquatic organisms and rendered much of the agricultural land infertile. Accordingly, communities that have long relied on fishing and farming have been deprived of their principal food sources.

The Nigerian government has contributed to these problems by failing to monitor or regulate oil companies. This neglect is hardly surprising given the government's direct role in oil operations. A recent World Bank study found that "there is no enforcement of environmental sanitation, pollution, forest reserve, or environmental impact assessment regulations." (I World Bank, at xiv). In explaining this failure, the World Bank pointed to the following problems:

- (i) the conflict of interest for the federal government -- being both a partner in oil activities and the regulatory body; (ii) no requirement for community participation in planning and development of oil activities; (iii) very limited ability of regulatory institutions to monitor pollution; (iv) low compensation rates for damage to property; and (v) lack of enforcement of environmental regulations.
- (I World Bank at 53)

Rather than focus on these problems, the government has responded to complaints about the oil industry with brutal repression. At the oil industry's request, the Rivers State Internal Security Task Force has routinely entered local communities to burn houses and crops, kill animals and terrorize the inhabitants. A memo signed by Lieutenant-Colonel Paul Okuntimo, commander of the Task Force, dated May 12, 1994, declares: "Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence.") The memo recommends "wasting operations during MOSOP and other gatherings making constant military presence justifiable; wasting operations coupled with psychological tactics of displacement; restriction of unauthorised visitors especially those from Europe to the Ogoni." (Government House Facts Sheet, at 1,2)

In line with these directives, the security forces have looted and destroyed whole villages -- houses, schools and farms -- in the area. During the month of October, 1993, government forces razed 27 villages, displacing 80,000 people. Over the summer of 1994, the military terrorized villages on a nightly basis, reportedly raiding at least 60 of them. These activities have spawned a

wave of Ogoni refugees, too scared to return to their former communities. Ogoniland remains heavily militarized and access is restricted to outside environmental or human rights monitors.

II. Violation of the Right to Health and the Right to a Healthy Environment

A. Summary of Violation

The Government of Nigeria has violated the right to health and the right to a healthy environment recognized under articles 16 and 24 of the African Charter on Human and Peoples' Rights.

B. Facts

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). The operations of this consortium have caused severe contamination of the environment and related health problems among the Ogoni people. The consortium exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing of toxic wastes into the air 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, and increased risk of cancers, and neurological and reproductive problems. These negative health impacts could have been avoided with minimal and standard precautions.

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 memo from the Rivers State Internal Security Task Force, calling for “ruthless military operations ... for smooth economic activities to commence,” is indicative. (Government House Facts Sheet, at 1) The government has allowed oil companies to operate with virtual impunity in the country, neither monitoring operations nor requiring safety measures that are standard procedure within the industry.

The government has also kept the Ogoni communities uninformed about the dangers created by oil activities and uninvolved in the decisions regarding the development of Ogoniland. The government has neither required the oil companies nor its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production and has even refused entry into the area by scientists and environmental organizations trying to do such studies. Despite the obvious health and environmental crisis in Ogoniland, no significant studies of the problem have been undertaken by the government or made public by oil companies.

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. The

Nigerian government makes no requirement of the oil companies to dialogue with communities before beginning operations, even if the operations pose direct threats to community or individual lands. After their study of oil operations in Ogoniland, the World Bank recently concluded that "local concerns and initiatives rarely filter up to decision-makers of their own accord... This policy failure is endemic in the Niger Delta; oil companies, parastatals, governments, development organizations have all succumbed to it." (I World Bank at 97)

C. Legal Foundation

The right to health and the right to a healthy environment are well established in international law, and, in particular, under the African Charter. Both rights recognize the importance of a clean and safe environment to a person's well-being. As declared by unanimous vote of the U.N. General Assembly, 24 years ago, "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." The African Charter grants individuals both "the right to enjoy the best attainable state of physical and mental health" (art. 16) and "the right to a generally satisfactory environment favourable to their development." (art. 24)

These rights impose clear obligations upon a government. Article 16 of the Charter requires governments to "take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick." As provided in other treaties to which Nigeria is a signatory, the right to health is more specific: the ICESCR obliges governments to take necessary steps for "the improvement of all aspects of environmental and industrial hygiene" (art. 12); the CRC obliges governments to provide all children with "adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution" (art. 24); CEDAW obliges governments to "ensure to women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply ..." (art. 14(2)(h)).

At their most basic level, the rights to health and a healthy environment serve to prohibit governments from directly threatening the health and environment of their citizens. Governments must also ensure that private parties, like corporations, do not pose such threats to their citizenry. Towards that end, international treaties and courts have insisted upon appropriate legislation and effective enforcement. (African Charter, art. 1) According to the Inter-American Court, a state violates the rights of its citizens "when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized..." (Velasquez Rodriguez Case, Inter-Am Ct. H.R. OEA/Ser. L/V/III.19, doc 13, ¶164 (Aug. 31, 1988)). The African Charter takes this requirement one step further by obliging governments "to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies." (art. 25)

Governments must also give effect to the rights to health and a healthy environment by providing citizens with necessary information about risks and the ability to participate in the development process. As made clear by the Rio Declaration on Environment and Development,

each individual shall have appropriate access to information concerning the environment ... including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making process. (Rio Declaration, 31 I.L.M. 874 U.N. (1992) princ. 10)

Compliance with this obligation must begin with the following duties: (a) allowing independent scientific monitoring of threatened environments, (b) requiring and making public environmental and social impact studies prior to any major industrial development, and (c) undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and, (d) providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

At a minimum, the rights to health and a healthy environment require the Nigerian government:

- * to take reasonable precautions to avoid contaminating the environment in a manner that threatens the physical, mental and environmental health of its citizens;
- * to ensure that private parties do not systematically threaten peoples' health and environment;

- * to provide citizens with information regarding environmental health risks, and with meaningful opportunities to participate in development decisions.

D. Legal Conclusions

The military government of Nigeria has violated articles 16 and 24 of the African Charter by failing to fulfill all three minimum duties required by these rights: 1. the government has directly participated in the contamination of air, water and soil thereby harming the health of the Ogoni population; 2. the government has not protected the Ogoni population from harms done by the NNPC-Shell consortium, but has instead used its security forces to facilitate and compound the damages; and 3. the government has not provided nor permitted studies of potential or actual environmental and health risks caused by oil operations and has ignored the concerns of Ogoni communities.

III. Violation of the Right to Housing

A. Summary of Violation

The military government of Nigeria has massively and systematically violated the right to adequate housing of members of the Ogoni community guaranteed under article 14 (the right to property) and implicitly recognized by articles 16 (right to health) and 18 (right to family) of the African Charter on Human and Peoples' Rights, by destroying their houses and other structures.

B. Facts

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 of 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 armored tanks and other sophisticated weapons. In other instances, the attacks have been conducted by unidentified gunmen, mostly at night. The military-type methods and the caliber of weapons used in such attacks strongly suggest the involvement of the Nigerian security forces. Moreover, the complete failure of the Government of Nigeria to investigate these attacks, let alone punish the perpetrators, further implicates the Nigerian authorities in the attacks.

Indeed, 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.” (Government House Facts Sheet at 1,2) At a public meeting recorded on video, Major Okuntimo, head of the Task Force, gave a vivid narrative of the repeated invasion of Ogoni villages by his troops -- he described how unarmed villagers running from the troops were shot from behind; how the homes of suspected MOSOP activists were ransacked and destroyed -- and restated his commitment to rid the communities of members and supporters of MOSOP. (see Catma Films, video “The Drilling Fields” shown on B.B.C., May 23, 1994).

C. Legal Foundation

The right to adequate housing is widely recognized as a human right under international law. According to the UN General Assembly,

the right to adequate housing is universally recognized by the community of nations... All citizens of all states, poor as they may be, have a right to expect their Governments ... to accept a fundamental obligation to protect and improve houses

and neighborhoods, rather than damage or destroy them. (The Global Strategy of Shelter to the Year 2000, Point 13, adopted by resolution 43/81 of December 20, 1988).

The African Charter supports the right to housing through article 14, guaranteeing the right to property; article 16, guaranteeing the right to physical and mental health; and article 18, guaranteeing the physical and moral health of the family. Rights to individual and family health are meaningless without the right to adequate housing.

This link is firmly established by all the major human rights treaties to which Nigeria is a signatory, including the UDHR (art. 25), the ICESCR (art. 11), the ICERD (art. 5(e)(iii)), and the CRC (art. 27(3)). Housing rights are further supported by the Vancouver Declaration on Human Settlements (sec. III (8)); the Declaration on the Right to Development (art. 8(1)); the Draft Declaration on the Rights of Indigenous Peoples (arts. 10, 11(c), 22,23,25,26,27 & 31); and the UN Sub-Commission on prevention of Discrimination and Protection of Minorities resolution 1994/8.

At a very minimum, the right to housing 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.

D. Legal Conclusions

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 housing.

IV. Violation of Right to Food

A. Summary of Violation

The government Nigeria has engaged in a massive violation of the right to food of the Ogonis, as recognized implicitly by article 4 (right to life) and article 16 (right to health) of the African Charter. The government has violated this right by destroying food sources, facilitating the destruction of food sources by private companies, and obstructing efforts of the Ogonis to feed themselves.

B. Facts

The Nigerian government has destroyed and threatened Ogoni food sources through a variety of means. As described in section II.A, the government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. Moreover, Nigerian security forces have conducted raids upon Ogoni villages, destroying crops and killing farm animals. The security forces have also created a continuing state of terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops and animals has created malnutrition and outright starvation among certain Ogoni communities.

C. Legal Foundation

While the right to food is not specifically enumerated in the African Charter, it is implicit 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). The right to food enjoys a privileged status among economic, social and cultural rights and is the only right labeled "fundamental" under the ICESCR. The Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the U.N. General Assembly, holds that "every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties." (General Assembly, RES 3348 (XXIX), Dec. 17, 1974)). It is undeniable that food is central to the enjoyment of such other rights as health, education, work and political participation.

Nigeria is bound by the African Charter and international law to protect and improve existing food sources and to ensure access to adequate food for all citizens. According to the ICESCR, "State Parties, recognizing the fundamental right of everyone to be free from hunger, shall take [necessary measures] to improve methods of production, conservation and distribution of food..." (art. 11(2)) The CRC reinforces this right by obliging states to provide all children with "adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution." (art. 24) Without touching on the duty to improve food production and to guarantee access, the right to food requires that the Nigerian government:

- * not destroy or contaminate food sources;
- * not allow private parties to destroy or contaminate food sources; and
- * not prevent peoples' efforts to feed themselves.

D. Legal Conclusions

The Nigerian government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has directly 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.

V. Requested Relief

Petitioners (SERAC and CESR) urge the Commission to place the violations described in this and other communications, in particular those relating to articles 16, 18 and 24 of the African Charter, before the Assembly of Heads of State and Government for consideration under article 58.

Petitioners further request that the Commission, with the approval of the Assembly, undertake an in-depth study of the situation and make a factual report with findings and recommendations as mandated by Article 58(2).

Towards a finding of "a series of serious or massive violations" as required by Article 58(1), it should be noted that the government of Nigeria has been directly involved in the contamination of Ogoniland by the NNPC and Shell consortium for [over 20 years] and has yet to investigate the environmental and health problems or to begin compensating affected communities. In addition, the government has made no effort to investigate or remedy the destruction of houses, crops and farm animals by state security forces, and has kept Ogoniland militarized and largely inaccessible to outsiders.

VI. Recommendations

Petitioners make the following recommendations to the Nigerian government to begin addressing the serious and massive violations of the rights to health, a healthy environment, housing and food:

1. lift the military siege of Ogoniland and stop all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force;
2. make Ogoniland freely accessible to citizens and independent investigators;
3. help convene a serious, independent investigation of the human rights violations described above;
4. prosecute officials of the security forces, NNPC and relevant agencies involved in human rights violations;
5. ensure adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government-sponsored raids;
6. undertake comprehensive remediation measures for lands and rivers damaged by oil operations;
8. ensure that appropriate environmental and social impact statements are prepared for any future oil development;

9. ensure the safe operation of any further oil development through effective and independent oversight bodies for the petroleum industry;
10. provide information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

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