Excerpts from the:

Preamble


Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights"

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples"

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights ia a guarantee for the enjoyment of civil and political rights

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex. language, religion or political opinions

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations
Firmly convinced of their duty to promote and protect human and people's rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

Part I: Rights and Duties

Chapter I -- Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

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

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:

   (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
(c) the right to defence, including the right to be defended by counsel of his choice;
(d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8
Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9
1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10
1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11
Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 12
1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.
Article 13
1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 14
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 15
Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16
1. 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 17
1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18
1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19
All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. 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 practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

   (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
(b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

**Article 24**

All peoples shall have the right to a general satisfactory environment favorable to their development.

**Article 25**

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

**Article 26**

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

### Chapter II -- Duties

**Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

**Article 28**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

**Article 29**

The individual shall also have the duty:

1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;

2. To serve his national community by placing his physical and intellectual abilities at its service;

3. Not to compromise the security of the State whose national or resident he is;

4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Part II: Measures of Safeguard

Chapter I -- Establishment and Organization of the African Commission on Human and Peoples' Rights

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity. . . .

Article 41

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services. . . .

Chapter II -- Mandate of the Commission

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
   
   (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

   (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
(c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter III — Procedure of the Commission

Article 46
The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication From States

Article 47
If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48
If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49
Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50
The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.
Article 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Other Communications

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:
1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and

7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV -- Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.
Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter. . . .

African Commission on Human and Peoples' Rights, May 27, 2002

by

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... Acting on Communication 155/96--a petition filed by two nongovernmental organizations on behalf of the people of Ogoniland, Nigeria--the African Commission on Human and Peoples' Rights (Commission) found Nigeria to have breached its obligations to respect, protect, promote, and fulfill rights guaranteed by the African Charter on Human and Peoples' Rights (Charter). ... The Communication alleged: that the military government of Nigeria was involved in oil production through NNPC in consortium with SPDC and that the operations produced contamination causing environmental degradation and health problems; that the consortium disposed of toxic wastes in violation of applicable international environmental standards and caused numerous avoidable spills near villages, consequently poisoning much of the region's soil and water; that the government aided these violations by placing the state's legal and military powers at the disposal of the oil companies; and that the government executed Ogoni leaders and, through its security forces, killed innocent civilians and attacked, burned, and destroyed villages, homes, crops, and farm animals. ... The Commission first assessed the claimed violations of the rights to health (Article 16) and to a general satisfactory environment (Article 24). ... The decision not only sees environmental degradation as leading to the violation of other rights, but as a human rights violation in itself because of its impact on the quality of life. ...

HIGHLIGHT: Right to environment--economic, social, and cultural rights--implied rights--state responsibility for conduct of foreign corporations--exhaustion of local remedies

[*937] Acting on Communication 155/96--a petition filed by two nongovernmental organizations on behalf of the people of Ogoniland, Nigeria--the African Commission on Human and Peoples' Rights (Commission) found Nigeria to have breached its obligations to respect, protect, promote, and fulfill rights guaranteed by the African Charter on Human and Peoples' Rights (Charter). n1 In Decision Regarding Communication 155/96, n2 Nigeria was found to have violated the right to enjoy Charter-guaranteed rights and freedoms without discrimination (Article 2), the right to life (Article 4), the right to property (Article 14), the right to health (Article 16), the right to housing (implied in the duty to protect the family, Article 18(1)), the
right to food (implicit in Articles 4, 16, and 22), the right of peoples to freely dispose of their wealth and natural resources (Article 21), and the right of peoples to a "general satisfactory environment favorable to their development" (Article 24). Most of the violations stemmed from actions taken by or involving the Nigerian National Petroleum Development Company (NNPC) in a consortium with Shell Petroleum Development Corporation (SPDC).

The Communication, filed March 14, 1996, was an actio popularis that the Commission described as useful and as "wisely allowed under the African Charter." n3 The Communication alleged: that the military government of Nigeria was involved in oil production through NNPC in consortium with SPDC and that the operations produced contamination causing environmental degradation and health problems; that the consortium disposed of toxic wastes in violation of applicable international environmental standards and caused numerous avoidable spills near villages, consequently poisoning much of the region's soil and water; that the government aided these violations by placing the state's legal and military powers at the disposal of the oil companies; and that the government executed Ogoni leaders and, through its security forces, killed innocent civilians and attacked, burned, and destroyed villages, homes, crops, and farm animals. The Communication also alleged that the government failed to monitor the activities of the oil companies, provided no information to local communities, conducted no environmental impact studies, and prevented scientists from undertaking independent assessments.

On August 13, 1996, the Commission transmitted a copy of the Communication to the Nigerian government, which failed to respond. The government maintained its silence until the return of civil authority, when it admitted the violations in a note verbale delivered during the Commission's November 2000 session, and asserted that it was taking remedial measures. n4 Despite the lack of official communication in the four-year interim, the Commission conducted a weeklong mission to Nigeria in March 1997 "and witnessed first hand the deplorable situation in Ogoniland including the environmental degradation." n5

The only issue of admissibility concerned the requirement that local remedies be exhausted. The Commission noted that the Communication contained no information on domestic court actions to halt the violations even though Nigeria has incorporated the Charter into its domestic law, thus allowing all Charter rights to be invoked in Nigerian courts. The Commission took judicial notice, however, that the military government had enacted various decrees ousting the jurisdiction of the courts; n6 therefore, no adequate domestic remedies could be said to exist. In addition, the failure of the government to respond to the Communication, despite numerous requests by the Commission, allowed the case to proceed on the presumed truth of the allegations. The Commission found that none of the rationales for requiring exhaustion of local remedies justified finding the case inadmissible: first, if there were no effective domestic remedies, it was pointless to afford domestic courts an opportunity to address violations, thereby "avoiding contradictory judgements of law at the national and international levels"; n7 and second, since international attention to the problems of Ogoniland had given the Nigerian government "ample notice and, over the past several decades, more than sufficient opportunity to give domestic remedies" for human rights violations, it was not premature to call the government to account before an international tribunal. n8

On the merits, the Commission first analyzed what is generally expected of governments under the Charter. It acknowledged four separate, but overlapping, duties with respect to guaranteed rights: to respect, protect, promote, and fulfill them. According to the Commission,
"These obligations universally apply to all rights and entail a combination of negative and positive duties." n9

*Respect* entails refraining from interference with the "enjoyment of all fundamental rights." n10 With regard to socioeconomic rights, in particular, respect 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. n11

*Protection* of rights requires legislation and provision of effective remedies to ensure that rights holders are protected "against other subjects" and "political, economic and social interferences." n12 *Promotion* involves such actions as "promoting tolerance, raising awareness, and . . . building infrastructures." n13 Finally, *fulfillment* of rights and freedoms requires the state to move its "machinery" toward the actual realization of rights—for example, by directly providing, as necessary, "basic needs such as food or resources that can be used for food (direct food aid or social security)." n14 Since states are "generally burdened" with the four above duties in committing themselves to human rights instruments, n15 it was incumbent on the Commission to take these duties into account in assessing the Communication's allegations in relation to the African Charter and "the relevant international and regional human rights instruments and principles." n16

The Commission first assessed the claimed violations of the rights to health (Article 16) and to a general satisfactory environment (Article 24). In coupling the two rights, the Commission—quoting an article by Alexandre Kiss on the "right to environment" n17—recognized that a "clean and safe environment . . . is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual." n18 It found that the right to a general satisfactory environment "imposes clear obligations upon a government," requiring 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." n19 Moreover,
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. n20

Applying these obligations to the facts of the case, the Commission concluded that although Nigeria had the right to produce oil, it had not protected the Article 16 and Article 24 rights of those in the Ogoni region.
The benefits of developing the oil reserves were also in question in the case. The Commission found that, taken together, the lack of involvement of the Ogoni people, the destructive role played by oil development, the repressive tactics of the government, and the lack of material benefits accruing to the local population "may well be said" to constitute a violation of the Ogoni people's Article 21 rights concerning the disposal and use of wealth and natural resources. n21 The Commission traced the origin of this provision to the aftermath of colonial exploitation, which, it said, left Africa's resources and people vulnerable to foreign misappropriation. Article 21 thus requires the government to protect its citizens from damaging [*940] acts by private parties. n22 The Nigerian government failed to protect as required, and fell short of the minimum conduct expected of governments: it "facilitated the destruction of the Ogoniland" by "giving the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis." n23

The Commission read the guarantees of the African Charter broadly to find implicit rights to housing and to food. Reasoning that "when housing is destroyed, property, health, and family life are adversely affected," the Commission deemed the right to housing, or at least the right to be free from the "wanton destruction of shelter," to be the corollary of combining the right to health, the right to property, and the protection accorded to the family. n24 Thus, at a minimum, the state must neither destroy housing nor obstruct efforts by individuals to rebuild lost homes. Further, the state's obligation to respect housing rights requires it to abstain from carrying out, sponsoring, or tolerating any practice, policy, or legal measure that interferes with an individual's ability to use material and other resources available to satisfy individual, family, household, or community housing needs. n25 It requires the state both to prevent nonstate actors, including property developers, from violating any individual's right to housing, and to provide access to legal remedies if such violation occurs. The right to adequate housing also encompasses the right to protection against forced evictions. n26

The Commission found that the government, by destroying Ogoni houses and villages, and by then obstructing and harassing those who attempted to return and rebuild their homes, engaged in "massive violations of the right to shelter." n27 It also found that the government engaged in forced evictions in violation of this right, which is one "enjoyed by the Ogonis as a collective right." n28

In a manner that paralleled its analysis of the right to housing, the Commission deemed the right to food to be implicitly guaranteed by the African Charter--inseparably linked to the dignity of human beings and therefore essential for the enjoyment and fulfillment of other rights, such as health, education, work, and political participation. The "minimum core" of the right to food, held violated by Nigeria in this case, requires that the government not destroy or contaminate food sources, allow private parties to do so, or through terror create significant obstacles to peoples' efforts to feed themselves. n29

Finally, the Commission found that the government and the oil companies violated the Article 4 right to life by engaging in widespread "terrorisations and killings." n30 In addition, [*941] "the pollution and environmental degradation to a level humanly unacceptable has made living in [Ogoniland] a nightmare" n31 not only for specific individuals, but for the whole of the Ogoni community.

The Commission concluded its analysis by emphasizing that collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa, that the
Commission intended to apply them, and that "there is no right in the African Charter that cannot be made effective." n32 While governments may labor under difficult circumstances in trying to improve the lives of their peoples, they must reconsider their relationships with multinational corporations if these relationships fail to be mindful of the common good and of the rights of individuals and communities. The Commission called on the Nigerian government to stop all attacks on Ogoni communities; to allow independent investigators free access to the territory to conduct an investigation into the human rights violations that occurred; to prosecute those responsible for any such violations; to ensure adequate compensation for victims of violations, including a comprehensive cleanup of lands and rivers damaged by oil operations; to ensure that appropriate environmental and social assessments are prepared for future oil operations and that effective and independent oversight bodies exist for the petroleum industry; and, for communities likely to be affected by oil operations, to provide information on health and environmental risks, and meaningful access to regulatory and decision-making bodies.

* * * *

The African Charter on Human and Peoples' Rights was the first international human rights treaty to integrate civil, political, economic, social, and cultural rights in a single instrument. It was also the first to include the right to a "general satisfactory environment" among its guarantees. n33 It thus seems appropriate that the African Commission should be the first human rights body to decide a contentious case involving violations of nearly all categories of rights and particularly the right to a general satisfactory environment. The case is a landmark not only in this respect, but also in the Commission's articulation of the duties of governments in Africa to monitor and control the activities of multinational corporations. The Commission took other innovative steps in inferring rights not expressly included in the Charter, and also in further liberalizing the requirement that local remedies be exhausted before a case can be heard by an international tribunal. The Commission took pains to support its analysis and findings through numerous references to the decisions of other global and regional human rights bodies. n34 The result is a sweeping decision on the duties of African states to ensure respect for economic, social, and cultural rights. While it may be cause for regret that it took the Commission five years to reach its decision, the delay enabled the Commission to secure the cooperation of the new Nigerian government, which indicated its willingness to take measures to redress the violations that had occurred. This cooperation might have been less forthcoming had the Commission rushed forward without an on-site visit and subsequent exchanges with the government.

[*942] The decision not only sees environmental degradation as leading to the violation of other rights, n35 but as a human rights violation in itself because of its impact on the quality of life. The Commission quotes with approval Alexandre Kiss's 1993 article on the right to environment, stating that he "rightly observes" that "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health." n36 This suggestion of a broadly justiciable right to environment is reinforced by the Commission's final suggestion that all rights in the Charter may be applied and enforced. The Commission gives the right to environment meaningful content by requiring the state to adopt various techniques of environmental protection, such as environmental impact assessment, public information and participation, access to justice for environmental harm, and
monitoring of potentially harmful activities. The result offers a blueprint for merging environmental protection, economic development, and guarantees of human rights. n37

It is noteworthy that the instant petition to the African Commission is not the only avenue that has been pursued in recent years in order to seek redress for human rights violations in the Ogoni region. In addition to this case, in which the government was held liable for the acts of the multinational oil corporations with whom it operates, efforts have been made to hold the corporations liable for some of the violations that have taken place. Invoking the Alien Tort Claim Act, n38 the family of executed Ogoni leader Ken Saro-Wiwa and others filed suit in the United States against Royal Dutch Petroleum Company and Shell Transport and Trading Company, alleging that the companies directed and aided the Nigerian government in committing crimes against humanity and in violating the rights to life and to be free from torture and cruel, inhuman, and degrading treatment. An initial dismissal on the basis of forum non conveniens was reversed on appeal. n39 On remand, the district court largely denied a motion to dismiss the action for failure to state a claim, n40 finding that plaintiffs had alleged sufficient "joint action" between the corporations and the state that, if proven, would result in corporate liability. Hence, both the state and the companies may be held responsible for human rights violations to the degree that they are found to have acted in concert, enhancing the possibility that the victims will be afforded redress.

The Commission decision that all rights in the African Charter are enforceable and may be subject to the system's communication procedure advances the African system well ahead of other regional systems--which have moved tentatively toward allowing petitions for economic, social, and cultural rights, and which only partially recognize a right to environment. The United Nations has shown even less willingness to progress in either respect. If the Nigerian government acts to implement the recommendations of the Commission, the decision has the potential to have an impact on human rights law and practice well beyond Africa.

Most notes omitted, some incorporated.
In an assessment report released on the eve of African Heads of State and Government summit in Khartoum, Sudan, the Coalition of African Jurists, National Human Rights Institutions, and NGOs yesterday declared that the process of electing judges for the proposed African Court on Human and Peoples' Rights is substantially flawed.

The Khartoum Summit, which begins on Monday, 23 January, is scheduled to elect 11 judges of the African Human Rights Court.

The report concludes that selection of candidates under consideration for election as judges of the African Court was not transparent and failed to comply with the AU guideline.

Amadou Ali Kane, Head of Advocacy for the Coalition in Francophone Africa added: With the atrocities in Darfur, Khartoum was always a dodgy venue for this Summit. This report confirms that it is not the appropriate place to elect judges of the African Court. Nigerian human rights lawyer, Maxwell Kadiri, one of the principal authors of the assessment report, commented: The African Human Rights Court is one of the most important institutions ever to be established in this continent. The real issue is whether the pool of candidates we have is good enough for the important work the Court will do. On the current evidence, we don’t think so.


The Protocol entered into force on 25 January 2004. In July 2004 the African Union decided to merge the Court with the Court of Justice of the African Union and, pending the merger, to postpone the establishment of the Court. In July 2005, the African Union decided to go ahead with establishment of the Court. The Court will be made up of 11 judges. 21 countries (Algeria, Burkina Faso, Burundi, Cote d'Ivoire, the Comoros, Gabon, the Gambia, Ghana, Kenya, Lesotho, Libya, Mali, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa, Togo, and Uganda) have so far ratified the African Court Protocol.

Article 11 of the Protocol requires that judges of the African human rights court should be elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial, or academic competence and experience in the field of human and peoples rights and no two judges shall be nationals of the same State. Based on the Protocol, the AU in April 2004 adopted Guidelines and Principles to ensure the election of qualified and impartial judges. These Guidelines are Mandatory. The AU Guidelines on the Nomination of Judges of the African Court require that candidates for judgesship of the African Court:

(i) shall be jurists of high moral character and of recognised practical, judicial, or academic competence and experience in the field of human and peoples rights;

(ii) should reflect the diversity of the principal legal systems, of the regions, and gender balance between the men and women of Africa; and

(iii) shall not hold office or be involved in activities incompatible with the independence and impartiality of a judge and should, therefore, not be a member of government, minister, under-secretary of state, diplomatic representative, director in a ministry, or government legal advisor.

(iv) in addition, the procedure for nomination shall be open and transparent and, at the minimum, comparable to that for appointments to the highest judicial office in the nominating countries, and should encourage participation by professional and civil society groups.
HOW THE JUDGES OF THE AFRICAN COURT EMERGED

BYLINE: Chidi Anselm Odinkalu

On Sunday 21 January 2006, the night preceding the beginning of the controversial and quite eventful 6th Summit of the Heads of State and Government of the African Union in Khartoum, Sudan, the Executive Council of the African Union, comprising Foreign Ministers of the 53 member countries of the organization, elected eleven judges to pioneer the Bench of the African Court on Human and Peoples' Rights.

Nearly two years after the entry into force of the Protocol establishing the Court and 25 years after the adoption of the African Charter on Human and Peoples' Rights, we now know the identities of the men and women that will define the limits of Africa's willingness to guarantee basic dignities to its people. The elected judges, nine men and two women in all are:

- Mr. Fatsah Ouguergouz (Algeria)
- Mr. Jean Emile Somda (Burkina Faso)
- Mr. Gerard Niyungeko (Burundi)
- Ms. Sophia Akuffo (Ghana)
- Mrs. Kelello Justina Masafo-Guni (Lesotho)
- Mr. Hamdi Faraj Fanoush (Libya)
- Mr. Modibo Tounty Guindo (Mali)
- Mr. Jean Mutsinzi (Rwanda)
- Mr. El Hadji Guisse (Senegal)
- Mr. Bernard Ngoepe (South Africa)
- Mr. George Kanyiehamba (Uganda).

The AU elected these judges from an initial list of 21 candidates nominated by 16 countries. That list included five women and sixteen men. The Protocol establishing the African Court requires that the judges should be "jurists of high moral character and of recognised practical, judicial, or academic competence and experience in the field of human and peoples' rights." To assist the countries in selecting and compiling their nominations, the AU had in April 2004 put forward a set of Guidelines setting out the standards and processes that the States had to meet. Among other things, these Guidelines emphasised the values of independence of the nominees and the need for a transparent process of nomination. In particular, the Guidelines required that
"The candidates should not be a member of government, a minister or under-secretary of a state, a diplomatic representative, a director of a ministry or one of its subordinates, or a legal advisor to a foreign office."

In a report released on the eve of the elections assessing the slate of candidates on offer and the process by which they were selected, the Coalition for an Effective African Court on Human and Peoples’ Rights, a regional organisation with more than 70 member organisations across Africa concluded that the selection of candidates under consideration for election as judges of the African Court was not transparent and "failed to comply with the AU guidelines."

At the time of the election, 22 out of 53 African countries had ratified the Protocol establishing the Court, namely: Algeria, Burkina Faso, Burundi, Cote d'Ivoire, the Comoros, Gabon, the Gambia, Ghana, Kenya, Lesotho, Libya, Mali, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa, Togo, and Uganda. Each of these countries was entitled to nominate up to three candidates to be considered for election as judges of the Court. Prior to the elections in Khartoum Gambia and Mauritius announced that they will not be nominating any candidates: Gambia because it did not have many judges of its own and Mauritius because it wanted to focus on its campaign to host the Court. In addition, Gabon, Mozambique, Niger, and Togo also failed to nominate candidates, leaving a slate of 21 candidates nominated by only 16 countries.

By the beginning of the elections that Sunday evening in Khartoum, the list had been pared down to sixteen candidates. A female nominee from Kenya was withdrawn because of allegations of judicial malfeasance in her home country. The 16 nominating countries were then invited to put forward one name each. Libya withdrew one of its nominees from the list, leaving only one Libyan nominee who eventually got elected. Similarly, Burundi stepped down a female nominee whom it had put forward for election while Mali withdrew two of the three candidates it had put forward, including another woman. This left 16 candidates from whom the Ministers had to elect 11 judges. The final list of candidates that went forward included only two women, one each from Ghana and Lesotho. Both of them easily got elected in the first round of voting.

The Ministers concluded the elections over three rounds of voting. In the first round, the Ministers elected ten of the judges. From the list of six nominees remaining, they had to elect one more to complete the Bench of 11. At this stage, it became a straight fight between the candidates from Burkina Faso and Nigeria. Burkina Faso had nominated Jean Emile Somda, a Ministerial adviser. Nigeria's nominee was Timothy Oyeyipo, who retired from the High Court Bench at the end of 2005 upon attaining the mandatory retirement age of 65 years, the last 21 years of which he served as the Chief Judge of the north-Central State of Kwara. In the ensuing second round of voting, the candidate from Burkina Faso received 26 votes, one short of the absolute majority of 27 needed to win election onto the Court. The Nigerian received a mere 13 votes. This necessitated a third round. Prior to the third round of voting, however, Nigeria withdrew its candidate when it became obvious it could not muster enough votes to get him beyond the tipping point of 27 votes. In the third round, the Ministers easily ratified the election of Mr. Somda.

To ensure continuity of the Court, four of the newly elected judges, as drawn by lot, were elected for two years, another four were elected for four years, while three will serve a full term of six years. Each of them will be eligible for re-election.
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Distributed by AllAfrica Global Media. (allafrica.com)
An African court to deal with gross human rights violations on the continent is ready to start hearing cases, South Africa's foreign affairs minister Nkosazana Dlamini-Zuma told the media here yesterday.

She was briefing the media after the closing session of the sixth ordinary session of the African Union Heads of State and Government Summit.

The minister explained that although the 53-member body had not finalised where the African Court on Human and People's Rights would be based, they had already elected judges.

The court will be expected to hear cases of human rights violations, including genocide.

It will also have the power to render an opinion, at the request of a member state on any legal matter relating to any other applicable African human rights instruments.

"The court is ready to function," Dr Dlamini-Zuma said and confirmed that a South African judge was elected to the panel of judges for the court.

The heads of state have requested member states to submit their comments on the "draft single legal instrument" by writing to the AU Commission.

The closing date for submissions is 31 March.

The draft single legal instrument is a document containing recommendations on the merger of the African court of human and people's rights and the court of justice of the organisation.

The union has further decided the merger document should be submitted to a joint meeting of the People's Rights Commission (PRC) and legal experts from member states for finalisation.

The final draft will be submitted and presented for review at the next 7th ordinary session of the Executive Council and Assembly to take place in Bujumbura, Burundi, in July.

The 11 judges of the court were elected yesterday. However their election has to be ratified by the Assembly of Heads of State after the final draft has been scrutinized and approved into law.

They include South Africa's Judge President of Transvaal Bernard Ngoepe.

Their term of office ranges from two to six years.