

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

COMMUNICATION

Social and Economic Rights Action Center v. Nigeria

Pursuant

to Articles 55, 56 and 58 of the African Charter on Human and Peoples' Rights ("the African Charter" or "the Charter");

regarding

actions of the Federal Government of Nigeria, a member state of the African Union ("AU") and a state party to the African Charter, having ratified the African Charter on 22nd July 1983;

involving

the forced mass eviction of residents of the Maroko Community of Lagos State; the loss of lives, the destruction of homes, schools, religious institutions and businesses; the disruption of families and communities; the failure to follow legally mandated procedures or pay compensation; and the failure to provide alternative housing in violation of their rights to housing, property, health, family, education and dignity;

alleging

violations of Articles 2, 4, 5, 6, 7, 14, 15, 16, 17, 18, 22, and 24 of the African Charter and Article 16 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("the Protocol") 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 29 Oct. 1993);

International Convention on the Rights of the Child ("CRC"), U.N. Doc. A/RES/44/25 (1989) (ratified by Nigeria 19 Apr. 1991);

International Covenant on Civil and Political Rights ("ICCPR"), U.N. Doc. A/6316 (1966) (ratified by Nigeria 29 Oct. 1993);

seeking

consideration of this Communication by the African Commission on Human and Peoples' Rights ("the African Commission") under Articles 55 and 56 of the Charter, and special attention by the Assembly of Heads of State and Government of the AU and an in-depth study by the African Commission pursuant to Article 58, based on the serious and massive violations alleged;

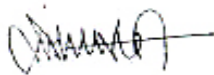
noting

that domestic remedies do not bar the Communication because (i) the Maroko evictees have pursued their claims in the Nigerian national courts for more than 18 years but have yet to obtain any relief, remedy or redress, making legal action in Nigeria both futile and unduly prolonged; (ii) the government of Nigeria continues to fail to provide any remedy for the violations of the African Charter; (iii) the people of Maroko and their families continue to suffer from inadequate housing, education, healthcare and employment opportunities and even now, some continue to live under threat of further eviction; and (iv) have no redress for the wrongs they have suffered;

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 (the "Applicant"), on behalf of the former residents of the Maroko district.

Respectfully submitted on this 3rd day of December 2008,



Felix C. Morka



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I. INTRODUCTION

1. On July 14, 1990, the military administration of Lagos State forcibly evicted approximately 300,000 residents of the Maroko district of Victoria Island from their homes and demolished their community. These evictions were carried out with no legal notice, consultation or process of law. The only warning of the impending destruction of their homes came in the form of press and radio reports appearing only days before the demolition. Some would not have seen those reports at all. Over the course of twelve days, the Lagos government destroyed the entire settlement of Maroko, including residential houses, religious institutions, schools, businesses, medical clinics, and community spaces. The demolition occurred at the peak of the rainy season, subjecting many evictees to exposure and the risk of disease. The demolition destroyed a vibrant community and local economy, as well as the family lives of the Maroko residents, and it disrupted the education of Maroko's children.

2. The evictions were extremely violent. Some evictees were killed when their homes were demolished before they were able to evacuate. Others report that the security personnel who carried out the evictions brutalized and raped many Maroko residents and looted their homes and property. In the 18 years since the demolition, the evictees have never been provided with adequate resettlement, nor have they been given any assistance by the government to remedy or ameliorate the extreme state of poverty that the Lagos government inflicted on them.

3. These actions were taken in utter disregard of the fundamental human rights of the Maroko evictees under Chapter IV of the 1979 Constitution of the Federal Republic of Nigeria, the African Charter, as well as other international instruments to which Nigeria is a party, including their rights to life, housing, property, health, family and education. Moreover, even after 18 years of effort by representatives of the evictees to secure a remedy for these violations of their rights, the government of Nigeria has failed to provide them with alternative housing or compensation for their lost property, and has done nothing to remedy the harm done to their families, health, education or human dignity. The evictees have faced almost two decades of delay in local courts and have still not had a single hearing on the merits of their case.

4. The events of the Maroko eviction have been examined by no less than five independent bodies, including three NGO's and two governmental bodies. Their conclusions have consistently confirmed that the demolition of Maroko and the eviction of its residents constituted serious violations of the evictees' human rights. In its 2004 report on housing in West Africa the Centre on Housing Rights and Evictions ("COHRE"), concluded that the Maroko evictees "were forcefully evicted

from their homes without proper notice or consultation, compensation, or provision of alternative accommodation.”¹ The report continued

*Furthermore, these evictions were carried out in a way that can only be described as criminal. Members of the armed forces who carried out the evictions in the Maroko community, for example, not only bulldozed houses and other property, but looted, raped and killed*²

COHRE therefore concluded that Nigeria had violated its obligations under both the ICESCR and the African Charter.

5. Each of these five bodies has recommended that the evictees be properly compensated and provided adequate housing and other restitution. Just as consistently, however, these conclusions and recommendations have been ignored by the Nigerian government. The government and the courts have failed to provide the evictees with any adequate remedy for the violations of their rights. Instead, the government of Nigeria has proceeded to engage in further violations of its human rights obligations with respect to the Maroko evictees.

6. Accordingly, SERAC, on behalf of the evictees, now appeals to this honourable Commission, requesting that it find that their human rights have been violated, that it refer this matter to the Assembly of Heads of State and Government of the African Union and that it urge the government of Nigeria to honour its obligations under the African Charter and remedy its violations of the rights of the Maroko evictees.

II. BACKGROUND

7. The Applicant has deliberately sought not to overburden the Commission at this preliminary stage with detailed factual submissions, evidence, and legal argument. Instead, the following paragraphs are intended to outline the Applicants’ case, so as to assist the Commission in its decision whether or not to seize this matter.³ The Applicant will supplement the factual and legal bases for its claims in due course, including at the admissibility and merits stages.⁴

¹ Centre on Housing Rights and Evictions, *Housing Rights in West Africa: Report of Four Fact-Finding Missions* (2004), at 27 (hereinafter “COHRE Report”).

² *Ibid.*

³ The facts asserted in this Communication are based primarily upon extensive interviews with victims of the demolition of Maroko and its aftermath, as well as legislative and judicial materials, media reports, scholarly research, and other secondary sources. This is by no means an exhaustive account of the demolition of Maroko and the subsequent 18 years of the Maroko evictees’ experience. At the appropriate time the Applicant will present further evidence and will

A. Historical Background

8. Before it was demolished, Maroko was a sprawling settlement on the outskirts of Lagos. It was a densely populated town, located adjacent to Victoria Island, the main business and financial area of Lagos, and Ikoyi, an upscale residential area and the former governmental centre of Nigeria. The majority of Maroko's residents were low-income earners working in unskilled, low-wage, and often informal sector jobs and trade.

9. By July of 1990, Maroko had grown to a town of approximately 300,000 people. Though largely poor, it was a fully functioning town with a middle class sector, businesses, schools, churches, mosques, a police station, and an active and organized civil society. Maroko had a thriving local economy, and many residents were engaged in some form of petty trading, mostly involving the sale of basic consumer items and agricultural produce. A few cottage industries operated in Maroko, including bakeries, cassava-grinding industries, handicrafts, and service industries such as mechanics, carpenters, welders, tailors, and others. In addition, the proximity of Maroko to the commercial nerve centres of Victoria Island and Lagos Island made it a common place for low-income earners employed in those areas to live.

10. Outside of Maroko, the population of Lagos had been increasing rapidly for years. By 1990, the relatively small areas of Victoria Island and Ikoyi were extremely crowded, and the land there had been partitioned and repartitioned to its limit. The Applicant contends that, under pressure from wealthy interests in Lagos, the Lagos State government, in collusion with the Oniru chieftaincy family, historical owners of the Maroko land, used the fact of a very wet rainy season to create a pretext for forcibly evicting the residents of Maroko from their homes. Even if that were not the motive, the breaches of human rights perpetrated would remain just as egregious and unremedied.

assist the Commission in any additional factual investigations that the Commission wishes to pursue.

⁴ Rule 117 (Additional Information) of the Rules of Procedures of The African Commission on Human and Peoples' Rights, states in relevant part: "The Commission or a working group set up under Rule 113, [may] request the State party concerned or the author of the communication to submit in writing additional information or observations relating to the issue of admissibility of the communication." Likewise, Rule 119 (Proceedings) provides that at the merits stage, "the author of the communication . . . may submit in writing additional information and observations within a time limit fixed by the Commission." *See also* Afr. Comm'n on Human & Peoples' Rights, Information Sheet No. 3: Communication Procedure, at 6 (indicating that after a Communication has been seized the state party and the party bringing suit will have 3 months in which to submit written or oral comments.)

B. The Eviction and Demolition

11. On July 6, 1990, an official working under Colonel Raji Rasaki, the Military Governor of Lagos State, stated during a press conference on the recent flooding in Lagos that the entire Maroko community had seven days to evacuate the Maroko area or it would face forced eviction. This news was published the following day in a back-cover story in a Lagos daily newspaper, the Daily Times. The purported justification for the demolition was that the Maroko lands were below sea level, that they were prone to flooding, and that the people had to be removed so that the government could sand-fill the land and improve its infrastructure. No community leaders had ever been consulted; no hearings or other public consultations or inquiries were held; no demolition notices were placed on the buildings scheduled for destruction, no individual notice to quit was ever provided to any Maroko resident, nor was any Maroko resident offered compensation or resettlement of any kind prior to the eviction. On July 9, 1990, Colonel Rasaki confirmed the story in an announcement over the radio, ordering the residents to vacate the area by July 14. Colonel Rasaki also declared that he would ignore any court order blocking the demolition should the evictees manage to secure one.

12. On July 14, 1990, the Lagos government staged a military assault on Maroko. The demolition force consisted of approximately 30 bulldozers and numerous trucks, supported by hundreds of fully armed soldiers and, according to some accounts, backed by military aircraft. The force was characterized by one of Rasaki's signature terror tools: trucks full of coffins were deliberately paraded throughout the area to intimidate and harass community members who were attempting to leave, suggesting that it was fully expected that residents might be killed if they attempted to stay.

13. The bulldozers simply rolled in and destroyed the Maroko community with no regard for the residents who were attempting to salvage their belongings. No safety measures were adopted during the demolitions to protect the people. As a consequence, the demolition was characterized by violence, chaos, and theft. In some cases, houses were destroyed while people were still in them. Many others sustained injuries as they scrambled to collect their belongings and escape the oncoming bulldozers. In the chaos of the demolition, the soldiers terrorized the fleeing Maroko residents, looting their property, beating them, and even killing them, while looters moved in to the area taking advantage of the disorder to steal the evictees' property.

14. A number of women among the Maroko evictees reported being raped by government forces during the demolitions. These accounts were confirmed by COHRE in the report cited at paragraph 4 above. Other women reported the use of physical violence against them as they tried to guard their homes and children or collect their belongings.

15. The demolition continued for 12 days. By the end of the exercise, the entire area of Maroko, extending five miles east of Victoria Island, had been

completely destroyed. All told, the Lagos military destroyed about 15,000 houses, shops, schools, churches, and other buildings, including approximately 10,000 residential structures. The only building that remained standing was the Maroko police station. Some 300,000 Maroko residents were rendered homeless. In total, at least 10,000 landowners lost their buildings, land, property and businesses as a result of the evictions, while another 290,000 persons lost the homes in which they had been living and in which many had spent their entire lives. None was offered compensation.

C. The Aftermath of the Eviction

16. No plan had been made for the relocation of the Maroko residents, and after the destruction of the community, the evictees scattered to anywhere they could find shelter.

17. A large group of evictees, including many of the community leaders fled east up the Lekki peninsula and settled at several half-built and abandoned government housing estates at Ilasan, Ikota and Epe. The government then mobilized its forces to stage *another* eviction, in August 1990, to remove the evictees from the half-built housing where they had taken refuge. With the assistance of pro bono counsel, however, the Maroko evictees were able to secure an injunction against this second attempt to remove them. Primarily in response to public outcry over the brutality of the demolition of Maroko and the government's attempts to evict the evictees a second time, the government abandoned this effort and purported to allocate to the Maroko evictees the Ilasan, Ikota, and Epe housing estates.

18. These estates were large enough to accommodate only a tiny fraction of the Maroko evictees, and although the government had labelled all of the Maroko residents squatters and had never offered compensation to any of them, the hastily set-up "resettlement committee" considered housing applications only from evictees who could establish that they had owned property in Maroko prior to 1972. Of the approximately 10,000 evictees who were property owners, only about 2,900 succeeded in securing housing allotments at Ilasan, Ikota or Epe. The remaining property owners were provided with no substitute housing or indeed restitution of any kind, nor were the hundreds of thousands of other former Maroko residents.

19. Finally, even among those who were granted allotments at Ilasan, Ikota and Epe, the vast majority were left with housing that was uninhabitable or, in some instances, with no housing at all. These government estates consisted of structures at varying levels of completion. Many "houses" were in fact nothing more than the foundation of an as yet unbuilt property; other structures had no plaster, doors, windows, roofs, electrical fittings, toilets or plumbing of any kind. In addition, some of those purportedly allocated housing were given flats that had not yet been built. All told, about 2,600 evictees out of the approximately 2,900 receiving allotments were allocated either non-existent or structurally incomplete, deficient and unsafe flats.

D. The Maroko Evictees Continue to Live Under Threat of Eviction

20. Local authorities in Nigeria continue to remove or threaten to remove even the inadequate housing that some evictees have secured. On October 22 and November 4, 5, 7 and 8, 2007, the Lagos government demolished structures built by former Maroko residents in the Ilasan estates. These structures had been built by evictees who were allocated non-existent flats in the estate by the Lagos State government after the demolition of Maroko. As a result of these demolitions, these evictees were once again rendered homeless.

21. To justify these actions, the government often uses the same purported rationale given by the military government of Lagos 18 years ago: that the land is prone to flooding, that the area is dangerous to live in, and that it needs to be developed properly. Most recently, residents of Ilasan learned of the existence of the Lagos Building Investment Company (“LBIC”), a private entity created and partly owned by the Lagos State government claiming ownership of the Ilasan lands and mandated to manage the affairs of the estate. The company was apparently charged with evicting the estate residents on the grounds of “upgrading” the estate, once again with no consultation or other legal process. According to the LBIC the residents must now move from the estate, because ‘the area is currently below sea level and unsafe for human habitation.’ The company has failed to justify its lack of attention to the deplorable conditions existing in the estate for the past 18 years.

22. The Ilasan residents’ legal efforts from March 2008 to the present date have temporarily forestalled the threatened evictions by the LBIC. However, sand-filling activities around the estate continue with at least the tacit approval of the Lagos State government, leading to incessant flooding. Moreover, the threat of eviction still remains.

E. The Social Impact of the Eviction

23. Beyond the violence of the eviction itself and the immediate loss of life and property, the demolition of Maroko has had a substantial and lasting human cost. In the medium and long-term, the loss of housing, social infrastructure and sources of income have taken a great toll on the lives, health and welfare of the former residents of Maroko over the last 18 years.

24. First, much of the housing that was allocated was, and still is, in a dangerous state of disrepair. The estates were missing many of the basic essentials necessary for safe human habitation. They lacked electricity, toilets, and potable water—evictees had to obtain their water from murky wells or purchase it from private suppliers at great expense. Many of these conditions persist today, 18 years later. The surrounding environment is exceptionally dangerous, particularly for children, with broken blocks of concrete, exposed rebar, and abandoned construction tools. The buildings themselves were so structurally unsound that some have actually collapsed, injuring or, according to some reports, killing their occupants. The estates are prone to flooding—ironic given that the government’s initial rationale for evicting

the Maroko residents was purportedly to protect them from flooding—and are particularly disease-ridden, in part from all of the resulting stagnant water. They also lack basic amenities including hospitals, markets, schools and postal services. Since this purported “allocation,” the government has done little to improve the housing situation of the Maroko evictees.

1. Health

25. The health condition of the evictees in the aftermath of the eviction has been abysmal. During the demolition, numerous clinics and other health care facilities were destroyed. Many of the Maroko evictees suffered physical and psychological trauma and succumbed to various illnesses following the brutality of the demolition and the resultant dislocation of the community. Eighteen years of poverty has further imperilled the health of the Maroko evictees: Most of the areas where they have sought shelter are prone to malaria, typhoid, and other infectious diseases. There is almost no access to health care of any kind in these areas—just one clinic in the Ikota estate. Malnutrition is rampant among Maroko children—the result of poverty and lack of education in the community. Finally, continuing evictions and demolitions have kept many Maroko evictees homeless, subjecting them to disease and leaving many, particularly women and children, vulnerable to violent crime.

2. Education

26. The education of the children of Maroko has been very seriously disrupted following the destruction of their schools and homes. Most of the places where evictees were forced to resettle were far from available schools, and children had to travel long distances in order to attend. In Ilasan Housing Estate, where the highest concentration of evictees was resettled, the government did not provide any schools until August 1993, three years after the demolition, and the nearest secondary school was in Ikoyi, Lagos, 30km away. High transportation costs prevented many from going to school, or led to erratic attendance.

27. Today, the lone public school in Ilasan must accommodate 120-150 students per classroom. In addition, the school makes use of makeshift classrooms and provides facilities for students only up to the junior secondary school level. All other education efforts have been community-driven. In or around 1995, in response to this inadequate learning environment provided by the government, the Maroko evictees took it upon themselves to construct their own private schools, which charge a more modest fee (N4,000, or approximately USD 34, per term) than other nearby private schools such as Lekki British International School. The community converted the Maroko Information Centre building into one such private school, with about 30 students per classroom. These schools are maintained and managed entirely by the communities themselves with no assistance from the government.

3. *Family Separation*

28. In the immediate aftermath of the demolition, many families were physically separated. Homes had been destroyed while children were at school and while family members were at work, and many families were not able to reunite for weeks or even months. Further, the long-term effect of the eviction has been to fragment extended families and local communities. The stress and economic pressures resulting from the evictions, and the fact that many breadwinners have been forced to leave their families altogether to seek work in distant places has meant that the years of homelessness and near-homelessness that followed the evictions have been characterized by the separation of the families of the Maroko evictees .

4. *Work and Poverty*

29. The eviction left many Maroko evictees without their source of livelihood. In addition to destroying the goods of market traders, stripping them of their source of income, the demolitions also forced evictees into far-flung areas that made commuting to their old jobs or serving their old customer bases practically impossible. From the office workers to the farmers, many Maroko residents had depended on their proximity to the commercial centres of Lagos for a living. The estates and other areas where many evictees were able to find shelter were located far from the economic and commercial nerve centres of Victoria Island and Ikoyi where many Maroko residents had been employed. Many were forced to either give up their previous jobs or to live apart from their families in order to keep their jobs.

F. The Evictees' Attempts to Secure a Local Remedy

30. During the years they have been struggling with the effects of the evictions, the Maroko evictees have sought in vain for relief from the government of Nigeria. Even before the demolitions began, the evictees appealed to the government and courts for a remedy, but to no avail. In addition to engaging in street protests and petitioning Nigeria's military government for relief prior to the evictions, the Maroko evictees sought local remedies in the courts, through Nigeria's post-dictatorship Human Rights Violations Investigation Commission, and via attempts to secure a legislative resolution.

1. *The Courts*

31. On July 11, 1990, nearly three full days before the eviction and demolition began, a group of Maroko residents brought a legal action in the High Court of Lagos State, seeking a declaration that the proposed demolition violated their fundamental rights and their rights to the enjoyment of their property and an interim injunction restraining the Lagos government from carrying out the demolition, and, later, seeking redress for the eviction and demolition after they had occurred.⁵ It has

⁵ Motion Ex-Parte, *Kokoro-Owo et al. v. Lagos State Gov. et al.*, Case No. M/394/90, July 11, 1990.

now been more than 18 years since the timely inception of the Maroko evictees' lawsuit. In those 18 years, the evictees have yet to receive a single hearing on the merits of their case, much less a remedy.

32. The High Court has failed seriously to address the claims and concerns of the Maroko evictees. The interim injunction application was assigned to a trial judge who was not scheduled to take the bench until July 16, *two days after* the deadline given by Colonel Rasaki for the eviction and demolition. This precluded any timely hearing on the injunction. On July 13, the Maroko residents submitted a further affidavit of urgency in support of their request for an injunction, but the High Court still took no action on their application.

33. When the application was finally heard on July 16, 1990, after the demolition had commenced, it was treated with the same lack of seriousness. The trial judge refused the application on formalistic procedural grounds, then dismissed the application for an injunction as moot, because the demolition had already taken place. The judge's opinion ignored the fact that the demolition was ongoing at the time of the ruling as well as the fact that the court had allowed the demolition to go forward through its own inaction.⁶ The judge's procedural ruling was eventually reversed by the Court of Appeals.⁷

34. Subsequently, the proceedings have been characterized by delay and a continued failure by the courts to make any serious effort to engage with, much less address, the claims of the Maroko evictees. Routine procedural matters are frequently adjourned numerous times while motions and appeals languish for years unaddressed. For example, although the government of Nigeria, acting through the Lagos State government, filed a Notice of Preliminary Objection in May 2003 seeking a determination that the suit was incompetent and not maintainable in law, the Nigerian government did not file its substantive motion for another 3 years and the High Court did not issue a ruling on this motion for yet another 17 months, notwithstanding that under Nigerian rules of procedure, pre-trial motions such as this are not permitted in cases seeking to enforce fundamental human rights. Even now, more than 18 years after the start of the litigation, the court has made no directions for the exchange of evidence and no directions concerning the trial itself. For the Maroko evictees to continue to wait for the courts to act is futile.

2. *The Oputa Panel*

35. In July 1999, a group of Maroko evictees petitioned the Human Rights Violations Investigation Commission of Nigeria (known as the Oputa Panel). After reviewing the evidence submitted by the petitioners, the Oputa Panel found that the

⁶ *Kokoro-Owo et al. v. Lagos State Gov. et al*, Case No. SC 153/1995 (Supreme Court of Nigeria 2001), at 3-4.

⁷ *Kokoro-Owo et al. v. Lagos State Gov. et al.*, Appeal No. CA/L/210M/90 (Court of Appeal at Lagos, May 4, 1995).

Lagos State government had violated the human rights of the Maroko evictees, and “should, on behalf of its predecessors, apologize to Maroko residents and publicly condemn the high-handedness of Colonel Rasaki’s government especially given that these innocent citizens went through this harrowing experience so as to satisfy the greed of a few elites whose residences have now sprung up in Maroko.”⁸ In addition, the panel recommended that the government should properly resettle the Maroko evictees in adequate housing.⁹ The government has never adopted any of the Oputa panel’s recommendations.

3. *Legislative Efforts*

36. In September 2004, the Maroko evictees filed a petition with the Lagos State House of Assembly Committee on Judiciary, Ethics and Privileges, Human Rights and Public Petitions over the government’s human rights abuses associated with the forced evictions. In response, the House of Assembly passed a resolution stating that the Maroko evictees are entitled to resettlement, and although it incorrectly found that the evictees given allotments at the three resettlement estates had been adequately compensated and resettled, it concluded that the Lagos State government should work to resettle the outstanding Maroko evictees.¹⁰ Again, the government of Lagos State has failed to carry out this directive.

* * * * *

37. Accordingly, and in light of the failure of the Nigerian courts and government to tackle the serious human rights violations represented by the demolition of Maroko, the evictees remain without an adequate remedy for the wrongs they have suffered. The Applicant therefore urges the Commission to remedy this injustice and assist the evictees in obtaining the remedy that they have so long been denied.

III. ADMISSIBILITY

38. This Communication satisfies the seven requirements of Article 56 of the African Charter relating to admissibility. Specifically, the Communication (1) identifies its author on its cover page, (2) alleges violations of the African Charter by Nigeria, a member of the African Union and a signatory to the African Charter, (3) does not use disparaging or insulting language and (4) is based on information obtained directly from the Maroko evictees and by SERAC’s own investigation and that of other NGOs and researchers, and not exclusively on news reports. Moreover,

⁸ Report Submitted by the Human Rights Violations Investigation Commission, May 2002, Vol. 7, at 61.

⁹ *Ibid.*

¹⁰ Lagos State House of Assembly, Report on the Petition from the Maroko Evictees, April 25, 2005, § 5.0.

as required under Article 56(7) this dispute has not been submitted to or resolved in any other international body or forum. Finally, as described below, this Communication satisfies Article 56(5) and (6) because the Maroko evictees have exhausted all available local remedies and have filed the Communication within a reasonable time after local remedies have been exhausted.

39. Under the African Charter, local remedies must be exhausted prior to submitting a Communication to the Commission.¹¹ Local remedies are considered to have been exhausted when the local procedures have been “unduly prolonged”¹² or if a remedy is “unavailable, ineffective or insufficient.”¹³ Given the Maroko evictees’ numerous and fruitless attempts to secure redress from the courts over the last 18 years, from the legislature, or from an independent human rights panel, or to even have their case heard, they clearly satisfy the exhaustion of local remedies requirement under these two exceptions.

40. Undue Delay. The evictees have sought to vindicate their rights in the national courts for more than 18 years and have made little progress, while the court and the government of Nigeria continue to delay the proceedings with numerous unnecessary adjournments, as described in ¶¶ 30-34, *supra*.¹⁴ The applicants contend that this is a clear case where local remedies have been unduly prolonged, and to pursue them further would be futile.

41. Ineffectiveness. The local remedy offered by the Nigerian government and courts is not available, effective or sufficient.¹⁵ The High Court, by its initial delay in hearing the emergency motion for an injunction, its subsequent refusals to prevent the transfer of the Maroko lands or the ongoing evictions and harassment of the former Maroko residents, and its continued failures to move the case forward or to hold the defendants accountable for gross violations of its own procedures, has unequivocally demonstrated an unwillingness to provide an effective or sufficient remedy. Likewise, the Lagos State House of Assembly’s finding that the evictees who were allocated overcrowded, unfinished or non-existing units at Ilesan, Ikota and Epe have been adequately compensated and rehoused, as well as the government’s failure to follow the recommendations of the House of Assembly or the Oputa panel demonstrate that no sufficient or effective remedy will be forthcoming from the Lagos State or the government of Nigeria.

¹¹ African Charter, Article 56(5).

¹² *Ibid.*

¹³ *See Ilesanmi v. Nigeria*, Comm. 268/2003 (ACHPR 2005), 18th Annual Activity Report, ¶ 45.

¹⁴ *See Afr. Comm’n on Human & Peoples’ Rights*, Information Sheet No. 3: Communication Procedure, at 6 (citing a pattern of unnecessary adjournments as an example of undue delay).

¹⁵ *See Ilesanmi*, Comm. 268/2003, ¶ 45.

42. Finally, the Communication is filed within a reasonable time after the evictees determined that the Nigerian national courts and the Nigerian government would not provide an effective or timely remedy. As recently as October 2008, as the evictees sought to pursue their local remedy, the government of Nigeria, by its dilatory actions in failing to file its pre-trial statement or appear for a scheduled pre-trial conference, and the High Court, by its failure to ensure a prompt hearing of the evictees claim, have conclusively demonstrated that no local remedy would be forthcoming. Similarly, after the publication of the Oputa report and the 2005 resolution of the House of Assembly, the Maroko evictees had hope that the violations of their rights would finally be addressed, only to find themselves, beginning in late 2007 and continuing through the present day, facing further evictions and demolitions.

43. Accordingly, this Communication satisfies all the requirements for admissibility under Article 56 of the African Charter.

IV. VIOLATIONS OF THE AFRICAN CHARTER

The applicants submit that the government of Nigeria has violated their rights under Articles 2, 4, 5, 6, 7, 14, 15, 16, 17, 18, 22 and 24 of the African Charter.

A. The Right to Life, Human Dignity and Security of the Person (Articles 4, 5 and 6)

44. The government of Nigeria has committed a massive violation of the Maroko evictees' rights to life, respect for the dignity inherent in a human being and security of the person guaranteed by Articles 4, 5 and 6, respectively, of the African Charter through the use of excessive and brutal force in effecting the eviction of the residents of Maroko and the destruction of their community.

45. Articles 4, 5 and 6 of the African Charter provide in relevant part:

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.

These rights go to the heart of the protections afforded by the African Charter.¹⁶

46. The Commission has stated unequivocally that the right to life “is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life.”¹⁷ There can be no more direct violation of this right than the intentional or reckless endangerment and destruction of life.¹⁸ Moreover, the right to life is violated not only by intentional deprivation, but also by subjecting persons to conditions which predictably lead to their deaths.¹⁹

47. In addition, Article 4 is breached where a state violates the integrity of the person through physical or psychological violence, even if death does not result.²⁰ Specifically, rape and sexual violence carried out by or on behalf of a State constitute violations of Article 4.²¹

48. Like the right to life and integrity of the person, the right to human dignity and to freedom from cruel, inhuman or degrading treatment guaranteed by Article 5 is central to the African Charter and to the enjoyment of other rights. This right encompasses acts that cause serious physical or psychological suffering,

¹⁶ The right to life is widely recognized by many of the world’s international instruments and institutions, to which Nigeria is a party. For example, the ICCPR provides in Article 6(1): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” ICCPR, Article 6 (1).

The United Nations Human Rights Commission has stated that the right to life is “the supreme right from which no derogation is permitted even in time of public emergency” and is a right that “should not be interpreted narrowly.” *See* Human Rights Comm., General Comment No. 6: The Right to Life (Sixteenth session, 1982).

¹⁷ *Forum of Conscience v. Sierra Leone*, Comm. 223/98 (ACHPR 2000), 14th Annual Activity Report, ¶ 19.

¹⁸ *See Malawi African Ass’n and Others v. Mauritania*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98 (ACHPR 2000), 13th Annual Activity Report, ¶¶ 12, 120.

¹⁹ *See Malawi African Ass’n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶ 120; *see also Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Comm. 155/96 (ACHPR 2001), 15th Annual Activity Report (the “Ogoni Case”), ¶ 67 (finding a violation of the right to life where the government polluted and destroyed lands on which the survival of the Ogoni people depended).

²⁰ *See Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*, Comm. 227/99 (ACHPR 2003), 20th Annual Activity Report, ¶¶ 79-80; *Mouvement Burkinabé des Droits de l’Homme et des Peuples v. Burkina Faso*, Comm. 204/97 (ACHPR 2001), 14th Annual Activity Report, ¶¶ 41-43; *Ogoni Case*, Comm. 155/96, ¶ 67.

²¹ *Democratic Republic of the Congo*, Comm. 227/99, ¶¶ 79-80.

including beatings and other physical violence.²² The Commission has also held that Article 5 also proscribes sexual violence and rape.²³

49. The Commission has held that the “right to enjoy a decent life, as normal and full as possible [is] a right which lies at the heart of the right to human dignity.”²⁴ Thus, Article 5 prohibits not only acts causing “serious physical or psychological suffering,” but also those which “*humiliate* the individual”²⁵ The Commission has found a violation of dignity where, as here, a State subjects an individual to deplorable living conditions²⁶ or “personal suffering and indignity.”²⁷ Further, the right to dignity is also violated by depriving an individual of his or her family.²⁸

50. In the present case, the government of Nigeria engaged in widespread physical violence against the Maroko evictees during the demolition of Maroko, killing or injuring numerous evictees. The COHRE report confirmed the accounts of deaths, rapes and injuries perpetuated by those carrying out the eviction. The government carried out the demolition without regard for the safety of the evictees, causing the death or injury of many. Furthermore, the Nigerian government’s destruction of the Maroko evictees’ homes placed the evictees in a situation of homelessness and extreme deprivation of the essentials of life that foreseeably led to many deaths. These actions, depriving many Maroko evictees of their lives either intentionally or through an intentional or reckless disregard for their lives, inherent

²² *Malawi African Ass’n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶¶ 115-118; *Constitutional Rights Project and Others v. Nigeria*, Comms. 140/94, 141/94, 145/95 (ACHPR 1999), 13th Annual Activity Report, ¶¶ 45-48.

²³ *Malawi African Ass’n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶¶ 117-118; *see also African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Guinea*, Comm. 249/2002 (ACHPR 2004), 20th Annual Activity Report (finding violations of Articles 4 and 5 where soldiers had raped Sierra Leonean refugees).

²⁴ *Purohit and Moore v. The Gambia*, Comm. 241/2001 (ACHPR 2003), 16th Annual Activity Report, ¶ 61.

²⁵ *International Pen and Others (on behalf of Saro-Wiwa) v. Nigeria*, Comms. 137/94, 139/94, 154/96, 161/97 (ACHPR 1998), 12th Annual Activity Report, ¶ 79 (emphasis added); *see also Purohit and Moore*, Comm. 241/2001, ¶ 58 (holding that the term “‘cruel, inhuman or degrading punishment and treatment’ is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental . . . [and] exposing victims to ‘personal suffering and indignity’ violates the right to human dignity”) (citing *Constitutional Rights Project*, Comms. 140/94, 141/94, 145/95 and *Modise v. Botswana*, Comm. 97/93 (ACHPR 1997), 10th Annual Activity Report); *Huri-Laws v. Nigeria*, Comm. 255/98 (ACHPR 2000), 14th Annual Activity Report, ¶ 40.

²⁶ *See Ouko v. Kenya*, Comm. 232/99 (ACHPR 2000), 14th Annual Activity Report, ¶¶ 23-24.

²⁷ *See Purohit and Moore*, Comm. 241/2001, ¶ 58.

²⁸ *See Modise*, Comm. 97/93, ¶ 32; *see also* § IV.F, *infra* (discussing the government of Nigeria’s violation of the right to family under Article 18).

human dignity, and the integrity and security of their persons, constitute a violation of their rights under Articles 4, 5 and 6 of the Charter.²⁹

B. The Right to Housing (Articles 14, 16, 18)

51. By forcibly evicting the Maroko residents, destroying their community, failing to provide for adequate alternative housing, and continuing to threaten to evict them from their current shelter, the government of Nigeria engaged in massive and systematic violations of the Maroko evictees' right to adequate housing as guaranteed by Articles 14, 16, and 18(1) of the African Charter and Article 16 of the Protocol, and other international human rights instruments.

52. The Commission has recognized that, taken together, Articles 14, 16 and 18(1) of the African Charter guarantee a right to housing or shelter.³⁰ This right, “[a]t a *very minimum*, . . . obliges the Nigerian government not to destroy the housing of its citizens.”³¹ The right to adequate housing “also encompasses the right to protection against forced evictions.”³² Similarly, the Protocol explicitly mandates that women have “access to adequate housing” and “acceptable living conditions in a healthy environment.”³³ Further, the right to housing is widely recognized by other international human rights instruments³⁴ and tribunals.³⁵

²⁹ See *Ogoni Case*, Comm. 155/96, ¶ 67; *Malawi African Ass’n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶ 120.

³⁰ *Ogoni Case*, Comm. 155/96, ¶ 60 (“The combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing.”).

³¹ *Id.* ¶ 61 (emphasis added).

³² *Id.* ¶ 63.

³³ Article 16 of the Protocol.

³⁴ Article 25(1) of the UDHR states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing.” UDHR, Art. 25(1). See also Article 17 of the ICCPR, which provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence . . . Everyone has the right to the protection of the law against such interference or attacks.” See also Article 11(1) of the ICESCR, which provides: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living . . . including adequate food, clothing and housing . . .”

³⁵ The jurisprudence from two legal systems recognized as leading authorities in human rights jurisprudence—the European Court of Human Rights and the South African Constitutional Court is instructive. The European Court of Human Rights has repeatedly found violations of other related rights in cases of forced eviction or expropriation; see, e.g., *Stanková v. Slovakia*, App. No. 7205/02 (2007) (finding that claimant’s Article 8 right to respect for home was violated when government forcibly evicted her but failed to ensure that she had adequate alternative accommodation); *Moldovan and others v. Romania*, App. Nos. 41138/98, 64320/01 (2005) (finding claimants’ Article 8 rights violated where government was involved in the destruction of a community, claimants were compensated only ten years later, and claimants’ replacement housing provided by the government was uninhabitable). The South African Constitutional Court

53. The government of Nigeria's intentional physical destruction of the housing of 300,000 of its citizens, the facts of which are not disputed, amount to a per se violation of the right to shelter on every level recognized by the Commission. Moreover, according to COHRE, "[l]ess than two percent of Maroko evictees have been resettled – and those who have, now live in an unfinished and unhealthy housing projects. They lack safe drinking water, drainage, waste-disposal systems, roads, and other basic government services."³⁶

54. By destroying the housing of the Maroko evictees, throwing them into homelessness, failing to adequately compensate them, and continuing to destabilize their housing situation with continued threats of eviction, the government of Nigeria is in flagrant violation of all of its duties to "respect, protect, promote and fulfil" the Maroko evictees' right to housing. There is simply no greater or more direct interference with housing than its unlawful destruction. If the right to housing in the African Charter is to be given substance, the African Commission must find that the government of Nigeria engaged in massive and systematic violations of the Maroko evictees' right to housing, in the form of the demolition of Maroko and their complete failure to remedy or ameliorate the homeless, poverty, and inadequate housing that have resulted.

C. The Right to Property (Article 14)

55. The government of Nigeria has engaged in a massive violation of the Maroko evictees' right to property guaranteed under Article 14 of the African Charter on Human and Peoples' Rights, by destroying their houses, businesses and other structures, and by forcibly evicting them from their homes and lands which they had owned, used, occupied and/or improved for many years and in which they held property interests as landlords, tenants and/or business owners and trades-people.

56. Article 14 provides that "[t]he 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." Under the Commission's jurisprudence, this provision protects a wide range of property

has held that Section 26 of the South African constitution creates both a positive obligation on the state to create conditions for access to adequate housing on a progressive basis, and a negative right, requiring the government to refrain from impairing the right of access to adequate housing. *See, e.g., Government of the Republic of South Africa and Others v. Grootboom* 2001 (1) SA 46 (CC) (S. Afr.) (requiring government to provide access to housing for those who are desperately in need); *Various Occupiers v. City of Johannesburg and Others* 2008 (3) SA 208 (CC) (S. Afr.) (striking down an eviction order based on health and safety concerns even though it was conditioned on providing alternative accommodation because government did not meet its obligation to meaningfully consult with residents); *President of the Republic of South Africa & Anor. V. Modderklip Boerdery & Ors.* 2005 (5) SA 3 (CC) (S. Afr.) (striking down an order to evict 40,000 illegal occupiers of a private farm because it would cause large-scale disruption); *Port Elizabeth Municipality v. Various Occupiers* 2004 (12) BCLR 1268 (CC) (S. Afr.) (finding an eviction only acceptable if reasonable alternative accommodation is available).

³⁶ COHRE Report at 57.

interests. Most importantly, it protects real and personal property from direct confiscation, expropriation and looting by the state.³⁷ It also applies where the state fails to prevent the looting or destruction of property by third parties.³⁸ In addition, Article 14 prohibits the state from interfering with the use of property in a manner that may fall short of outright confiscation.³⁹ Article 14 permits property to be taken only where it is shown to be in the public interest or required by public need and where compensation is paid.⁴⁰

57. With respect to the approximately 10,000 Maroko evictees who owned their land and houses in Maroko, the government of Nigeria violated Article 14 when it forcibly evicted them from the land, demolished their houses, and stripped them of title to their real property.⁴¹ The government of Nigeria likewise violated Article 14 with respect to all 300,000 residents of Maroko when its security forces destroyed or looted their personal property, trade goods, and business assets. Furthermore, Nigeria's failure to make adequate arrangements to allow for the removal of the evictees' property prior to the demolition and its failure to take action to prevent third parties from looting it also constitutes a violation of the evictees' right to property. These acts were carried out without any showing that the property was taken in the public interest and without payment of compensation for the property thus taken or destroyed.⁴²

³⁷ See, e.g., *Malawi African Ass'n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶¶ 17, 127-128; *Media Rights Agenda and Others v. Nigeria*, Comms. 105/93, 128/94, 130/94, 152/96, 12th Annual Activity Report (ACHPR 1998), ¶¶ 76-77; *Bakweri Land Claims Committee v. Cameroon*, Comm. 260/2002 (ACHPR 2004) (not yet reported in an official Activity Report), ¶¶ 7, 47.

³⁸ *Malawi African Ass'n*, Comms. 54/91, 61/91, 98/93, 164-96/97 and 210/98, ¶¶ 17, 127-128 (finding a violation of Article 14 where the state allowed third-parties to take or destroy the claimants' property).

³⁹ See, e.g., *Media Rights Agenda*, Comms. 105/93, 128/94, 130/94, 152/96, ¶¶ 76-77 (sealing publisher's business premises and preventing access violates Article 14).

⁴⁰ *Institute for Human Rights and Development in Africa v. Angola*, Comm. 292/2004 (2008), 24th Annual Activity Report, ¶ 73; *Bissangou v. Republic of Congo*, Comm. 253/2002 (ACHPR 2006), 21st Annual Activity Report, Recommendations ¶ 4; *Huri-Laws*, Comm. 225/98, ¶ 53.

⁴¹ See *Bakweri Land Claims Committee*, Comm. 260/2002, ¶¶ 5, 47 (allegation that government action resulted in the alienation of land to third parties is sufficient to establish a prima facie violation of Article 14).

⁴² Although the government claimed that the evictions and demolition were necessary to protect the residents of Maroko from flooding, in fact, the residents have received no benefit from the actions. Indeed, much of the land remains undeveloped, and that which has been developed has been for the benefit of a wealthy few who have constructed buildings such as the Lekki British International School and the Palms Shopping Mall.

D. The Right to Have One's Cause Heard (Article 7)

58. The government of Nigeria systematically violated the right of the Maroko evictees to have their cause heard in accordance with Article 7 of the African Charter by (1) failing to provide any opportunity for them to be heard prior to forcibly evicting them from their homes and destroying their houses and other property, (2) failing to pay compensation for the property that was taken and destroyed, (3) failing to follow the procedures mandated by Nigeria's constitution and laws for the taking of property in the public interest, and (4) failing to bring their cause implicating their fundamental right to housing for a hearing for more than 18 years.

59. The government of Nigeria violated Clause 7.1(a) by failing to afford the Maroko evictees an opportunity to be heard or to appeal to any governmental organ prior to evicting them and destroying their community. Clause 7.1(a), which guarantees "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," required that the government of Nigeria afford the Maroko evictees the right to challenge the evictions and the demolition of their homes as a violation of their fundamental rights.⁴³ In addition, as outlined in ¶ 21 of *The Practice of Forced Evictions: United Nations Comprehensive Human Rights Guidelines on Development-Based Displacement*, all persons facing the threat of eviction are entitled to "a fair hearing before a competent, impartial and independent court or tribunal," to "legal counsel," and to "effective remedies."⁴⁴ The evictees had seven days or less to evacuate their homes, and they had no possibility to request a longer period of time, to request or fix an amount of compensation, to determine whether the evictions complied with local law, or to object in any other way to the evictions or the demolition of Maroko.

60. The government of Nigeria has also violated Clause 7.1(d) of the Charter by failing to allow the evictees' national court claims to receive a hearing on the merits in more than 18 years since the case was filed. Clause 7.1(d), guarantees "The right to be tried within a reasonable time by an impartial court or tribunal." This provision applies to civil as well as to criminal matters, and it makes it a violation of the Charter for Nigeria's courts to delay unreasonably the resolution of the evictees' claims.⁴⁵ The national court case concerns the fundamental right to housing of the

⁴³ E.g., *Amnesty International v. Zambia*, Comm. 212/98 (ACHPR 1999), 12th Annual Activity Report, ¶¶ 38, 52-53.

⁴⁴ Expert Seminar on The Practice of Forced Evictions, June 11-13, 1997, *United Nations Comprehensive Guidelines on Development-Based Displacement*, E/CN.4/Sub.2/1997/7 (1997).

⁴⁵ See *Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development v. Zimbabwe*, Comm. 293/2004 (ACHPR 2008), 24th Annual Activity Report, ¶ 130; *Pagnouille (on behalf of Mazou) v. Cameroon*, Comm. 39/90 (ACHPR 1997), 10th Annual Activity Report; *Odjouriby v. Benin*, Comm. 199/97 (ACHPR 2004), 17th Annual Activity Report, ¶¶ 21, 24, 27-28 (finding five-year wait for a court decision to be a substantive violation of Article 7.1(d) as well as an "unduly prolonged" local remedy for purposes of admissibility).

evictees and they have been unable to secure adequate housing during the time the case has been pending. Given the life-or-death importance of the underlying rights at stake in this case, 18 years without a resolution or even a hearing on the merits constitutes a clear violation of the § 7.1(d).⁴⁶

61. In addition to violating Article 7 of the Charter directly, these extrajudicial actions also violated Nigerian local law, constituting a further breach of Article 7. Both Section 40 of the 1979 Constitution of the Federal Republic of Nigeria for compulsory acquisition of property and the Public Lands Acquisition Law Cap. 113, Laws of Lagos State, required the government of Nigeria to provide the evictees with compensation for the moveable and immovable property that was taken from them or with an opportunity to seek a determination of their interest in the Maroko land.

62. Furthermore, Section 6(6)(b) of the 1979 Constitution vested judicial powers in the courts to determine all matters between persons, or between government or authority and to any persons in Nigeria. This provision has been interpreted to require the government to get a court order before it can evict persons from their homes where those persons have objected to the evictions. Here, the Lagos State government violated this requirement of Nigerian law when it failed to obtain a court order prior to carrying out the eviction despite the public protests of the evictees and their institution of a court action to stop the eviction.

63. The government's failure to comply with local law in carrying out the eviction and destruction of property itself violates Article 7 of the Charter.⁴⁷

E. Right to Health (Article 16)

64. The government of Nigeria has engaged in a massive violation of the Maroko evictees' right to health by (1) destroying the healthcare facilities on which the community relied, (2) creating or failing to remediate the unhealthy, disease-ridden living conditions for those whom the demolition rendered homeless, and (3) purporting to resettle some members of the community in a dangerous and unhygienic area that is prone to periodic flooding and disease as well as other hazards.

65. The Commission has observed that “[e]njoyment of the human right to health . . . is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms.”⁴⁸ At its most fundamental level, this provision requires states “to desist from directly threatening

⁴⁶ See *Pagnouille*, Comm. 39/90, ¶ 19 (two years without a hearing violates Article 7.1(d) where the claimant's right to work in his profession was at stake).

⁴⁷ *Amnesty International v. Zambia*, Comm. 212/98, ¶¶ 36, 52-53.

⁴⁸ *Purohit and Moore v. The Gambia*, Comm. 241/2001 (ACHPR 2003), 16th Annual Activity Report, ¶ 80 (finding that the right to health includes the right to health facilities).

the health . . . of their citizens.”⁴⁹ At the very least, this principle obliges states not to destroy the health facilities upon which their citizens depend.⁵⁰

66. Additionally, the Commission has held that Article 16 of the Charter creates a positive obligation on the part of states to provide the basic essentials for public health. Thus, a “failure of the Government [of a state party] to provide basic services such as safe drinking water and electricity and the shortage of medicine . . . constitutes a violation of Article 16.”⁵¹

67. In the case of the Maroko demolition, the government of Nigeria breached both its “non-interventionist” obligation (namely refraining from “sponsoring or tolerating” any means that “violat[e] the integrity of the individual,”⁵² as well as its positive obligation to ensure the evictees had access to health care. First, the government of Nigeria intentionally destroyed medical facilities at Maroko, leaving a community of 300,000 people without access to healthcare. Additionally, in rendering the evictees homeless, the government subjected them to conditions in which their health was likely to suffer through exposure to disease, lack of clean drinking water, and other hazards. Moreover, the few who were provided housing at Ilasan and the other government estates were subjected to squalid living conditions in buildings in a dangerous state of disrepair with no access to clean drinking water and no electricity and far from existing medical facilities. That is, the government first took direct action that endangered the evictees’ health, and then it failed in its duty to take positive steps to ensure that they had access to basic services and health care. These actions and omissions breached Nigeria’s obligations under Article 16 of the Charter.

F. The Right to Family (Article 18)

68. The government of Nigeria violated the Maroko evictees’ right to family guaranteed by Articles 18 of the African Charter on Human and Peoples’ Rights, (1) by destroying their homes and thus interfering with their right to family life and to the protection of the family unit by the state; (2) by failing to provide alternative housing, thus forcing the Maroko evictees into a state of homelessness and near-homelessness, with significant consequential fragmentation and separation of families; and (3) by failing to take any action to assist the Maroko evictees in their pursuit of family life in the 18 years following the demolition.

⁴⁹ *Ogoni Case*, Comm. 155/96, ¶ 52.

⁵⁰ *Democratic Republic of the Congo*, Comm. 227/99 (ACHPR 2003), 20th Annual Activity Report (holding that the “stopping of essential services in the hospital” violates Article 16).

⁵¹ *Free Legal Assistance Group and Others v. Zaire*, Comms. 25/89, 47/90, 56/91, 100/93 (ACHPR 1995), 9th Annual Activity Report, ¶ 47.

⁵² *See Ogoni Case*, Comm. 155/96, ¶ 52.

69. The right to family prohibits states from taking actions that result in the break up of family structures. For example in *Modise v. Botswana*, the African Commission found that the repeated deportation of the complainant, which resulted in his separation from his family, violated his right to family under Article 18(1).⁵³

70. The Commission has held that the right to family life is intimately connected with housing: “when housing is destroyed, property, health, and family life are adversely affected.”⁵⁴ Similarly, the Commission has found that the family disruptions caused by the forced relocation of peoples constitutes a violation of the right to family.⁵⁵ Here, by forcing the people of Maroko from their homes, the government removed a fundamental foundation of family life and placed the evictees in circumstances that resulted in massive family disruption and separation. Accordingly, the Maroko eviction and demolition violated Article 18(1), which requires the State to protect the health of the family.

71. Moreover, the government has violated its obligation to “assist the families of the Maroko evictees under article 18(2) of the Charter, which sets forth a duty to assist the family which is the custodian of morals and traditional values recognized by the community.” Despite 18 years of advocacy and protest on the part of the Maroko evictees, Nigeria has provided no assistance of any sort to the families among the Maroko evictees. The government has been presented with evidence of the poor health of Maroko children and of the widespread separation of families in the wake of the demolition, yet they have taken no action to strengthen the ability of Maroko evictee families to stay healthy and united.

72. Accordingly, Nigeria has violated Article 18 both by actively interfering with the Maroko evictees’ right to family life by destroying their homes, communities, and livelihoods, and by failing to provide any assistance to the evictees in the years following the demolition.

G. The Right to Education (Article 17)

73. By destroying the community’s educational facilities and failing to offer or provide commensurate (or in many cases, any) alternative education opportunities to the Maroko evictees, and by increasing the burden and cost to families and children of attending school to the point where education was effectively unavailable to them, the government of Nigeria has violated the right to education of the children of Maroko as guaranteed by Article 17 of the African Charter.

⁵³ *Modise*, Comm. 97/93, ¶¶ 90, 92; see also *Amnesty International v. Zambia*, Comm. 212/98, ¶ 59; *Union Inter africaine des Droits de l’Homme et al. v. Angola*, Comm. 159/96 (ACHPR 1997), 11th Annual Activity Report, ¶ 17 (mass expulsion resulting in the separation of families violates the right to family).

⁵⁴ *Ogoni Case*, Comm. 155/96, ¶ 60.

⁵⁵ See *Democratic Republic of the Congo*, Comm. 227/99, ¶ 81 (holding that Article 18(1) “recognizes the family as the natural unit and basis of society.”).

74. In *Free Legal Assistance Group v. Zaire*,⁵⁶ the Commission found a violation of Article 17 where the government of Zaire had closed universities and secondary schools for two years. In the instant matter, the government of Nigeria did far more than simply close Maroko's schools: it destroyed them. Moreover, it did not only deny access to higher education, it took away the opportunity of the Maroko children to gain primary and secondary education, fundamental prerequisites for full civic participation. The guarantee of the right to education is surely violated by the destruction of an entire community's schools. The government of Nigeria runs afoul of Article 17's positive obligations as well: it has failed to provide educational opportunities commensurate even with the modest opportunities available to the evictees at Maroko.

H. The Right to Work (Article 15)

75. The government of Nigeria violated the Maroko evictees' right to work guaranteed under Article 15 of the African Charter on Human and Peoples' Rights by (1) forcing them into a state of homelessness or near-homelessness, thus causing them to lose their jobs or to live far from their former places of work, rendering it practically impossible for them to maintain their employment; and (2) by destroying their businesses, industries, and other sources of livelihood.

76. Article 15 of the Charter provides that "[e]very individual shall have the right to work under equitable and satisfactory conditions." At a minimum, this duty requires that states not destroy active businesses and local economies.⁵⁷

77. The destruction of Maroko forced many of the evictees into homelessness and others into shelters far from their places of work, making it difficult or impossible for them to maintain their employment. Others had their businesses, trade goods and places of work destroyed along with their homes. Nigeria, after destroying the evictees' sources of livelihood and rendering it virtually impossible for them to maintain their current employment, offered no assistance to enable them to secure new work or retain their existing positions, and it failed to provide any resources or compensation to those whose businesses had been destroyed. This harm to the Maroko evictees' ability to pursue their livelihoods caused by the mass evictions and demolition of Maroko constitutes a violation of the evictees' right to work under Article 15 of the African Charter.

I. Right to Development and a Healthy Environment (Articles 22 and 24)

78. The government of Nigeria has engaged in massive violations of the Maroko evictees' rights to development and a healthy environment by destroying not only the homes, lives and means of livelihood but also the important economic, social

⁵⁶ *Free Legal Assistance Group*, 25/89, 47/90, 56/91, 100/93, ¶ 48.

⁵⁷ See *Union Inter africaine des Droits de l'Homme*, Comm. 159/96, ¶ 17 (expulsion of the foreign citizens from their homes and communities violated these individuals' right to work).

and cultural institutions that had been the mainstay of the community. Further, those evictees fortunate enough to have found some shelter now live in unhealthy, dangerous, and cramped living quarters in communities that are at considerable distance from work opportunities, schools and healthcare services.

79. Articles 22 and 24 of the Charter “obligate governments to desist from directly threatening the health and environment of their citizens.”⁵⁸ These rights “recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual.”⁵⁹ The government of Nigeria’s destruction of the social and cultural fabric of Maroko which supported a thriving community and the subsequent abandonment of that community to homelessness and squalor or to housing estates in areas prone to flooding and disease and lacking in safety, access to work, education and adequate health facilities is a clear violation of the African Charter’s rights to development and a healthy environment.

V. REQUESTED RELIEF

80. The Applicant urges the Commission to place the violations described in this and other communications, in particular those relating to articles 2, 4, 5, 6, 7, 14, 15,16, 17, 18, 22 and 24 of the African Charter, before the Assembly of Heads of State and Government for consideration under Article 58. The Applicant further requests 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).

81. In addition, the Applicant requests the Commission to make the following recommendations to the Nigerian government to begin addressing the serious and massive violations of the rights to life, dignity, security of person, housing, property, health, due process, family, education, work and development:

- a. Immediately cease all pending or threatened removals of the Maroko evictees from the shelter they have secured since the destruction of their homes pending the resolution of this Communication by the African Commission;
- b. Immediately cease the destruction of housing in which the Maroko evictees are currently residing pending the resolution of this Communication by the African Commission;
- c. Provide all Maroko evictees with adequate housing;

⁵⁸ *Ogoni Case*, Comm. 155/96, ¶ 52.

⁵⁹ *Id.* ¶ 51.

- d. Compensate all Maroko evictees for the loss of lives of family members;
- e. Compensate all Maroko evictees for the loss of their homes, businesses, schools, religious institutions and other property;
- f. Ensure that all Maroko evictees are provided sufficient housing and resources to allow their families to stay together or to be reunited;
- g. Ensure that all children among the Maroko evictees have access to high-quality local schooling, and that all schools among the communities of Maroko evictees have adequate resources;
- h. Provide all Maroko evictees with access to adequate health facilities;
- i. Provide assistance to all Maroko evictees in securing employment and rebuilding their businesses;
- j. Provide compensation for the breaches of human rights caused by their actions which have not been compensated under the preceding heads.