

10 December 2010**Suit No: ECW/CCJ/APP/08/09; Rul. No: ECW/CCJ/APP/07/10****ECOWAS COMMUNITY COURT OF JUSTICE****THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS &
ACCOUNTABILITY PROJECT (SERAP)****v.****PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ORS****RULING**

BEFORE: PRESIDENT: M. Benfeito Ramos

JUDGES: Hansine N. Donli; Anthony A. Benin; Clotilde Medegan; Monsedjoueni Potey

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Citation: SERAP v. Nigeria, Ruling, Suit No: ECW/CCJ/APP/08/09 and RUL. No: ECW/CCJ/APP/07/10 (ECOWAS, Dec. 10, 2010)

RULING ON PRELIMINARY OBJECTIONS BY THE DEFENDANTS

1. The Plaintiff, the Socio- Economic Rights and accountability Project (SERAP), a Human Rights Non - governmental Organization registered under Nigerian Laws, and whose mandates and objectives include the promotion of respect for socio - economic rights of Nigerians, through litigations, research and publications, advocacy and monitoring filed on 24th July 2009 an application against the Defendants for alleged violation of Human Rights in the region of Niger Delta, Federal Republic of Nigeria.

2. The 1st Defendant is the President of the Federal Republic of Nigeria and Commander-in Chief of the Nigeria armed Forces. The 2nd defendant is the Attorney - General of the federation, and as such the Chief Law Officer of the Federation. The 3rd Defendant is a state – owned Nigerian National Petroleum Corporation (NNPC), which is the majority stakeholder in all joint ventures. The 4th defendant is Shell Petroleum Development Company (SPDC), a subsidiary of Royal Dutch Shell, is the main operator on land, and has 30% of oil joint ventures. The 5th Defendant is Elf Petroleum Nigeria Ltd, and has 10% of the joint ventures. He 6th Defendant is Agip Nigeria Plc, and has 5% of the joint ventures. The 7th Defendant is Chevron Oil Nigeria Plc. The 8th Defendant is Total Nigeria Plc. The 9th Defendant is ExxonMobil Corporation.

3. The complaint is based on violation of the right to adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and healthy environment; and to economic and social development - as a consequence of: the impact of - oil related pollution and environmental damage on agriculture and fisheries; oil spills and waste materials polluting used for drinking and other domestic purposes; failure to secure the underlying determinants of health, including a healthy environment and failure to enforce laws and regulations to protect the environment and prevent pollution.

NARATION OF THE FACTS

4. The applicant alleges that the Niger Delta, a region of federal Republic of Nigeria, has suffered for decades from oil spills, which occur both on land and offshore. Oil on land destroy crops and damage the quality and productivity of soil that the communities use for farming . Oil in water damages fisheries and contaminates water that people use for drinking and other domestic purposes. Widespread and unchecked Human Rights violation related to the oil industry have pushed many people deeper into poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration.

5. Hundreds of thousands of people are affected, particularly the poorest and other most vulnerable sector of the population, and those who rely on traditional livelihoods such as fishing and agriculture. However, the Human Rights implications have received little attention from the government of Nigeria or the oil companies, the Defendants herein.

6. Devastating activities of the oil industry in the Niger Delta continue to damage the health and livelihoods of the people of the area. The failure of the oil companies and regulators to deal with them swiftly and lack of effective clean - up greatly exacerbates the Human Rights and environmental impacts of such spills.

7. Both African Commission on Human and peoples' Right and the UN Human Rights Committee have expressed serious concern about pollution and called on the government of Nigeria to take urgent action to deal with the Human rights impacts of oil industry pollution and environmental degradation. However, the defendants have failed individually and/or collectively to remedy the situation.

8. On 14th November 2005, a Federal High Court of Nigeria ruled that gas flaring in the Iwerekhan Community of Delta State was a violation of the constitutional guaranteed rights to life and dignity, which include right to " a clean, poison - free, pollution - free, healthy environment." Niger Delta provides a stark case study of the lack of accountability of a government to its people and of multinational companies almost total lack of accountability when it comes to the impact of their operations on Human Rights.

9. The environmental damage that has been done, and continues to be done, as a consequence of oil production in the Niger Delta, has led to serious violations of Human rights. People living in the Niger Delta have to drink, cook and wash with polluted water; they eat fish contaminated with oil and other toxins and the land they use for farming is destroyed because of the lack of respect for the ecosystem necessary for their survival. After oil spills the air they breathes reeks of oil and gas

and other pollutants resulting in breathing problems, skin lesions and other health problems, but their common concerns are not taken seriously or addressed.

10. The Defendants individually and/or collectively are internationally obligated to respect, protect, promote, ensure and fulfill the right to an adequate standard of living in the Niger Delta.

11. The Federal Republic of Nigeria is a signatory to the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the African Charter on Human and Peoples' Right. The Federal Republic of Nigeria is also a signatory to the Revised Treaty of the Economic Community of West African States dated 24th July 1993.

12. Although the government of Nigeria has some regulatory systems in place, the evidence from the Niger Delta is that these do not work. By failing to deal adequately with corporate actions that harm Human Rights and the environment, the government of Nigeria has compounded the problem. A culture of impunity has been reinforced for oil companies in the Niger Delta because of lack of effective sanctions for bad practices that undermine Human Rights.

13. The failure of the government to allocate sufficient funding, via NNPC, to ensure safety and prevent pollution related to oil operations has contributed to violations of the Human Rights of the people of the Niger Delta. However, government's failure to protect rights does not absolve the non - state actors (Defendant herein) from responsibility for their actions and the human rights impact thereof.

14. When companies undermine or abuse Human Rights, it is sometimes the of genuine lack of knowledge, but more often it is a consequence of lack of due diligence and proper planning, or of deliberate actions. The defendants individually and/or collectively either actually caused the Human rights harms herein highlighted contributed to them significantly.

15. The 4th - 9th Defendant herein aided and abetted the 1st - 3rd Defendants in the violations of Human Rights highlighted above. The 4th - 9th Defendants are active participants in the serious violation of the Human Rights of the Niger Delta people.

ORDERS SOUGHT BY THE APPLICANT

16. A DECLARATION that anyone in the Niger Delta is entitled to the internationally recognized human right to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to clean and healthy environment, to socio - economic development and right to life and human security and dignity.

17. A DECLARATION that the failure and/or complicity and negligence of the Defendants individually and/or collectively to effectively and adequately clean up and remediate contaminated land and water; to address the impact of oil- related pollution and environmental damage on agriculture and fisheries; and to establish an effective system of monitoring the impact of oil on humans, is unlawful and a breach of international Human Rights obligations and commitments as it violates the International Covenant on Economic, social and cultural Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights.

18. AN ORDER directing the Defendants to ensure full enjoyment of the people of Niger Delta to an adequate standard of living, including adequate access to food, to health care, to clean water to clean and healthy environment; to socio - economic development, and the right to life and human security and dignity.

19. AN ORDER directing the 1st & 2nd Defendants to hold the 4th , 5th , 6th , 7th , 8th and 9th Defendants responsible for their complicity in the continuing serious Human Rights violations in the Niger Delta.

20. AN ORDER compelling the 1st and 2nd Defendants to solicit the views of the people of the area throughout the process of planning and policy - making on the Niger Delta.

21. AN ORDER directing the government of Nigeria to establish adequate regulations for the operations of multinationals in the Niger Delta, and to effectively clean - up and prevent pollutions and damage to Human rights.

22. AN ORDER the government of Nigeria to carry out a transparent and effective investigation into the activities of oil companies (3rd - 9th Defendant herein) in the Niger Delta and to bring to justice those suspected to be involved and/ or complicit in the violations of Human Rights highlighted above.

23. AN ORDE directing the Defendants individually and/ or collectively to pay adequate compensation of 1Billion Dollars(USD) (\$ 1 billion) to the victims of Human Rights violations in the Niger Delta, and other forms of reparation that the Honorable Court may deem fit to grant.

24. The Applicant in filling this application is relying on the following:

- a) African Charter on Human and People's Rights.
- b) The International Convention on Civil and Political Rights.
- c) The rules of the Community Court of Justice
- d) The Supplementary Protocol A/SP 1/01/05 amending the Protocol (A/P 1/7/91) relating to the Community Court of Justice.

25. The Initiating application was duly served on the Defendants who have filed their preliminary objections respectively, except the 1st and second Defendant who are yet to respond to the application.

PRELIMINARY OBJECTIONS BY DEFENDANTS

26. The 3rd Defendant began its defense by objecting to the competence of the plaintiff to institute this action alleging that the plaintiff does not have access to this Honourable Court. In addition to that, 3rd Defendant contents that that the jurisdiction given to yhe Court does not extend to dispute between individuals and therefore the Court lacks jurisdiction over the 3rd Defendant. The 3rd Defendant further states that the plaintiff does not have locus standi to institute the action for and on behalf of the people of Niger Delta. Finally the 3rd Defendant asks the Court to stop the Plaintiff from relitigating issues and claims which have been settled or pending before competent courts in Nigeria.

27. The 4th Defendant starts its preliminary objection contending that the Plaintiff is not a legal person Under Nigeria law and as such it has no capacity to institute proceedings before the Court.. The 4th Defendant aligns itself with the 3rd Defendant on the issue of jurisdiction saying that ECOWAS Court of Justice is not competent to adjudicate the dispute brought to it because it is neither a member of ECOWAS nor a Community Institution and is not otherwise subject to the jurisdiction of the Court.

28. Going further in its objection the 4th Defendant states that the instruments set out in section 8 of the application namely the ECOWAS Revised Treaty, African Charter on the Rights and Welfare of the Child, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Universal Declaration on Human Rights have not been incorporated into Nigerian domestic law and are therefore incapable of being sources of enforceable obligation on the part of the 4th Defendant who is a private legal person existing solely under Nigerian law. Moreover, although the African Charter on Human and Peoples' Rights has been incorporated into Nigerian law by the African Charter on Human and Peoples' Rights Act 1983, the ECOWAS Court is not one of courts specified under section 6(5) of the Nigerian Constitution 1999 as having jurisdiction to adjudicate in respect of alleged infractions of domestic Nigerian law.

29. In any event the 4th Defendant contends that the Plaintiff has no cause of action against it in respect of the matters the subject of these proceedings. The preliminary objection is concluded by the allegation that the claims asserted in the proceedings are statute barred pursuant to article 9(3) of the Protocol on the community Court of Justice as amended by Article 3 of the Supplementary Protocol of 2005 (A/SP.1/01/05), because the oil spills alleged in the application occurred prior to June 2006 and therefore more than three years before the commencement of these proceedings on 23rd July 2009.

30. The 5th Defendant bases its preliminary objection essentially on the same grounds invoked by the 3rd and 4th Defendants, that is lack of locus standi of the Plaintiff, absence of reasonable cause of action, incompetence of the Court to deal with the claims against the Defendants, action being statute barred, the non disclosure by the plaintiff of any authority to allow it institute the proceedings on behalf of any community in Niger Delta and finally that the Plaintiff is not a legal person under Nigerian law with capacity to lodge the suit.

31. The 6th Defendant apart from relying on the same objections raised by the 3rd and 5th Defendants contend that the rights alleged to be infringed by it are economic and social rights and therefore are not justiciable as to confer jurisdiction on the Court.

32. The 7th Defendant's objection is on the grounds that the Plaintiff has no cause of action against it as its activities are solely on shore, to wit, marketing of oil products, and not oil exploration or production. In addition to that the 7th Defendant aligns itself with the 3rd, 4th, 5th and 6th Defendants on the issues of limitation of action and locus standi.

33. The 8th and 9th Defendants align themselves with the issues raised by the other Defendants. The 9th Defendant also submits that the instruments relied on by the Plaintiff are unenforceable against it as a private person existing under the laws of the United States of America.

34. All Defendants who filed preliminary objection requested the Court to dismiss the proceedings against them with substantial costs against the Plaintiff.

PLAINTIFF'S RESPONSE TO THE PRELIMINARY OBJECTION BY THE DEFENDANTS

35. In response to the objection raised by those Defendants the Plaintiff contends that the arguments they presented are fundamentally flawed, based on mistaken principles of law, and cannot be sustained having regard to sound legal reasoning established by the Court's jurisprudence and other National and International jurisprudence.

36. The Plaintiff submits that, the 3rd, 5th, 6th, 8th & 9th Defendants' argument on its legal capacity before the ECOWAS Court cannot stand because it is based on the limited and outdated interpretation of standing, especially in matters of Human Rights. The Plaintiff pointed out that the doctrine of "locus standi" has since been relaxed in favour of public litigation. It relied on the case of Registered Trustees of the Socio - Economic Rights and Accountability Project (SERAP) vs. The Federal Republic of Nigeria & Anor. Suit No ECW/CCJ/APP/08/08.

37. On the issue of jurisdiction raised by the Defendants, the Plaintiff contends that the Competence and Jurisdiction of the Court is not limited to adjudication cases involving ECOWAS or Community Institutions. It submitted that the Court has both jurisdiction and the subject matter competence, to hear the present suit and that the Defendants are resident in the territory of a Member state of ECOWAS and therefore subject to the jurisdiction of this Honourable court.

38. The Plaintiff also contends that there is nothing in the Court's legal instruments to suggest that the 4th - 9th Defendants have to be Members of the ECOWAS or Community Institutions before it can be sued before an international court like this one.

39. The Plaintiff stated further that the fact that the Defendants are private persons does not lessen their responsibility for the violations of Human Rights as guaranteed under the African Charter which the Court has correctly stated that it has jurisdiction to interpret and apply. He relied on article 4(g) of the Revised Treaty of ECOWAS 1993, and the ruling in Registered Trustees of the Socio - Economic and accountability Project (SERAP) vs. Federal Republic of Nigeria & Anor(Supra). He also referred to the case of Alhaji Hummani Tijani vs. Federal Republic of Nigeria & 4 Ors. Suit No ECW/CCJ/APP/01/06 and the case of Chief Ebrimah Manneh vs The Republic of the Gambia Suit No ECW/CCJ/APP/03/08.

40. The Plaintiff also contends that under International Human Rights Law, people whose rights are violated should have access to effective remedy and that multinational corporations like the 3rd - 9th Defendants have obligation under International Law not to be complicit in Human Rights violations. He referred to article 10(c) of the Supplementary Protocol A/SP.1/01/05 amending the Protocol (A/P.1/7/91) relating to the Court.

41. In addition to that, the Plaintiff stated that the present suit is primarily based on the violations by the Defendants of the provisions of the African Charter on Human and Peoples' Rights, which has been ratified by the Nigerian government (a member of ECOWAS) and incorporated into Nigerian domestic laws, and therefore constitutes sufficient source of enforceable obligations on

Defendants.

42. On the question of whether this suit amounts to re-litigating issues and claims which have been settled or pending before the competent courts in Nigeria, the Plaintiff submits that the argument of the 3rd Defendant is misleading, as the present suit is distinctively different from any other previous cases, that this suit raises fresh, ongoing and continuing Human Rights violations in the Niger Delta. He relied on the case of ALHADJI HAMMANI TIDJANI (supra).

43. On the absence of reasonable cause of action raised by the Defendants the Plaintiff contends that given the weight of the information relied on its application to the Court, including the report on the Niger Delta published by the amnesty International in 2009, it is misleading to argue that the present suit has not disclosed a reasonable cause of action against them. He referred to the Nigerian case of Thomas vs. Olufosoye (2004) 49 WRN 37 S.C on the definition of "reasonable cause of action".

44. He further stated that the 4th, 5th, 7th and 9th Defendants continuous action of extraction, dredging in the Niger Delta, contributes to the serious violation of the Human Rights recognized and guaranteed by the African Charter on Human and Peoples' Rights.

45. On the issue of its capacity to institute this suit, the Plaintiff contends that it is duly legally registered under the Company and allied Matters Decree 1 of 1990 of the federal Republic of Nigeria with Certificate of Incorporation (CAC/IT/NO. 17206) attached and marked ANNEXURE 'A' in the Plaintiff's Brief of Argument. The Plaintiff further relied on its observer status with the African Commission, and also that the Court in the case of Registered Trustee of the Socio-Economic Rights and Accountability Project vs. The Federal Republic of Nigeria and Anor. Suit No ECW/CCJ/APP/08/08, correctly observed that the "Plaintiff (SERAP) is a Human Rights non-governmental organization registered under the Laws of Federal Republic of Nigeria".

46. In response to the Defendant's argument that the present suit is statute barred, the Plaintiff contends that through the "continuing violation" doctrine, Courts have recognized an exception to the rigid application of the statute of limitation. The Plaintiff referred to the case of ALHADJI HAMMANI TIDJANI (supra).

47. The Plaintiff urges the Court to dismiss the preliminary Objections in its entirety as it lacks merit, and pray the Court to entertain and determine the present suit.

CONSIDERATION OF THE GROUNDS AND ARGUMENTS OF THE PARTIES

APPLICABILITY OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, AND OTHER INTERNATIONAL HUMAN RIGHTS TREATIES.

48. Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS), 1993 provides for the applicability of the provisions of the African Charter on Human and Peoples' Rights to Member States of the ECOWAS.

Article 1 of the African Charter on Human Peoples rights provides that:

"The Member States of the organization of African Unity parties to the present Charter shall recognize the rights, duties and freedom enshrined in this Charter and shall undertake to adopt legislative or other means to give effect to them".

Article 2 of the Charter provides that:

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

49. In the same African Charter on Human and Peoples' Rights, Article 22 also provides that:

"(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 , individual or collectively, to ensure the exercise of the right to development".

Article 24 provides that:

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

50. Under International Human Rights Law, people whose rights are violated should have access to effective remedy. International Human Rights Treaties also require that States must take steps to protect peoples' economic, social and cultural rights from actions of non - state actors that would undermine the enjoyment of those rights.

ANALYSIS BY THE COURT

51. The issues raised by the Defendants that require analysis from the Court are the following: (a) the existence of the Plaintiff as a juridical person or legal entity under Nigeria law; (b) the capacity or locus standi of the Plaintiff to institute proceedings for alleged violation of human rights that affects people living in the region of Niger Delta; (c) the jurisdiction or competence of the Court to deal with the suit lodged against the Defendants who are not Member States of ECOWAS, Community Institutions or Community Officials; (d) the existence or absence of a reasonable cause of action for the Plaintiff to sue the Defendants; (e) whether the Plaintiff's claims are statute barred; (f) enforceability of economic and social rights.

(a) On the existence of the Plaintiff:

52. The issue of the existence of the Plaintiff to access the Court was raised by the 3rd Defendant who bases its objection on the fact that the Plaintiff filed the action on behalf of the people of Niger Delta who is not a person known to law, and therefore cannot sue or be sued. To buttress that argument the 4th Defendant also stated that the Plaintiff itself is not a legal person under Nigerian Law.

53. This Court holds that the consideration made about Niger Delta region or people from Niger Delta as a non-existing entity is based on the assumption that the action is a representative one, that is, the application was filed on behalf of people from Niger Delta. The assertion is not the people from Niger Delta but the Registered Trustees of the Socio-Economic Rights and accountability Project (SERAP), non-governmental organization acting on its own without claiming to represent anyone else.

54. With the respect to the existence of the Plaintiff itself and regularity of its constitution under Nigerian Law, what emerges from the evidence produced before the Court, is that the Plaintiff is entity duly and legally registered under the Company and Allied matters Decree 1 of 1999 of the Federal Republic of Nigeria with Certificate of Incorporation (CAC/IT/No. 17206), as confirmed by ANNEXURE A in the Plaintiff's Brief of Argument. Furthermore, Plaintiff's legal capacity was admitted by Court in a previous case involving the Plaintiff in Registered Trustees and Accountability Project vs. Federal Republic of Nigeria & Universal Basic Education Commission. In a ruling delivered on 27/10/2009 the Court stated thus "The Plaintiff (SERAP) is a human rights non-governmental organization registered under Laws of the Federal Republic of Nigeria". Consequently, in the absence of compelling evidence to the contrary, the Court holds that the Plaintiff is a legal entity duly constituted.

(b) On the locus standi of the Plaintiff

55. With respect to the alleged lack of locus standi by the Plaintiff, the analysis of the Court firstly rely on the nature of the dispute brought before it for adjudication. In fact, the claim presented in the application is related to the alleged violation of the Human Rights of the people who inhabit the Region of Niger Delta. The framework presented in the initiating application is no only of violation of an individual's rights, but of rights of entire communities as well as environmental devastation without sufficient and protective intervention from public authorities.

56. There is a large consensus in International Law that when the issue at stake is the violation of rights of entire communities, as in the case of the damage to the environment, the access to justice should be facilitated.

57. Article 2 (5) of Convention of "Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matter" defines the "public concerned" with environment protection as "public affected or likely to be affected by, or having an interest in the environment decision-making for the purposes of this definition nongovernmental organization promoting environment and meeting requirements under national law shall be deemed to have an interest". Article 9 of the same instrument confirms the access to justice to the public concerned as defined in Article 2 (5).

58. Although the convention is not a binding instrument on African States, its importance, as a persuasive evidence of an international communis opinio juris in allowing NGOs to access the Courts for protection of Human Rights related to the environment, cannot be ignored or underestimated by this court.

59. The capacity of NGOs to lodge complaints related to Human Rights is also recognized by The American Convention on Human Rights which provides in its Article 44 "that any person or group

of persons, or any non governmental entity legally recognized in one or more member states of the organization, may lodge petitions with the commission containing denunciations or complaints of violation of this Convention by a state party". This more liberal locus standi has been welcomed and recommended for the African Continent (Magnus Killander, the African Regional Human Rights system and Other regional Systems: A Comparative Analysis, in judiciary Watch Report, Publication from the Kenyan section of the International Commission of Jurist, pg 182)

60. Article 33 of the Rules of Procedure of African Court of Justice and Human Rights also opens the door of that Regional Court to non-governmental organizations which has observer status before the (African Commission) provided the requirements of Article 34 (3) of the Protocol are met. That is a solution that comes directly out of the African Commission on Human and Peoples' rights experience. In its decision I Social and Economic Rights Action Centre (SERAC) and Another vs. Nigeria (2001) AHRLR 60 (ACHPR 2001) the African Commission commended the role of NGOs and the usefulness of action popularis, which is wisely allowed under African Charter".

61. Based on those authorities, and taking into account the need to reinforced the access to justice for the protection of human and people rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State, and enjoying observer status before ECOWAS institutions, can file complaints against HumanRights violation in case that the victim is not just a single individual, but a large group of individuals or even entire communities.

62. Thus, in considering the social purposes of the Plaintiff and the regularity of its constitution it does not need any specific mandate from the people of Niger Delta to bring the present lawsuit to the Court for the alleged violation of human rights that affect people of that region.

(c) competence of the Court.

63. The Community Court of Justice, established by Article 15 of ECOWAS Treaty is the main judicial organ of the Community. The Supplementary Protocol (AP/SP.1/01/05) modified the ECOWAS Treaty and conferred on the Court competence to determine cases of Human Rights violation that occur in any Member State of the Community. The Protocol on Democracy and Good Governance imposes on the on the States the obligation to apply the African Charter on Human and Peoples' Rights as well as other International instruments in their respective territories. The Federal Republic of Nigeria signed the ECOWAS Treaty as well as other community instruments like the Protocols on Democracy and Good Governance and on the Competence of the Community Court of Justice. Therefore, there is no doubt with respect to the jurisdiction of the Court of justice to adjudicate any case of alleged violation of the Human Rights that occurs in the Federal Republic of Nigeria and for which it should be held accountable.

64. But the conclusion on the jurisdiction of the Court over the Federal Republic of Nigeria does not respond to the objection raised by the Defendants who contend that not being parties to the Treaty or other ECOWAS legal instruments, the cannot be sued before the Court.

65. That objection calls for the consideration by the Court of one of the most controversial issues in International Law which relates to the accountability of Companies, especially multinational

corporations, for violation or complicity in violation of Human Rights especially in developing countries. In fact, one of the paradoxes that characterize International Law presently is the fact that States and individuals can be held accountable internationally, while companies cannot.

66. This anomaly has been the reason for growing concern from Academia and institutions committed the promotion and protection of Human Rights around the world. In the article entitled "Separating Myth from Reality about Corporate Responsibility Litigation" published in the Journal of Economic Law (2004) 263, 265, Harold Hongju Koh makes the following observations with respect to the issue under discussion: "If states and individuals can be held liable under international law, then so too should be corporations for the simple reason that both states and individuals act through corporations. Given that reality, what legal sense would it make to let states and individuals immunize themselves from liability for gross violations of Human Rights through the mere artifice of corporate formation?."

67. The same concern is shared by the United Nations High Commissioner for Human Rights in its Report on Corporate Responsibility and by the Committee on Legal Affairs of the European Parliamentary Assembly in its Report on Human Rights and Business presented in September this year 2010.

68. This need to make corporations internationally answerable has led to some initiatives, namely the nomination of Special Representative of the Secretary General of the United Nations whose Report titled "Protect, Respect and Remedy: A framework for Business and Human Rights" (The Ruggie Report) is one of the greatest reference on the accountability of multinationals for Human Rights violation in the world.

69. Despite the campaigned launched advocacy organizations towards new developments, the bare truth, however, is that the process of codification of international Law has not yet arrived at a point that allows the claim against corporations to be brought before International Courts. Any attempts to do so have been dismissed on the basis that the Companies are not parties to the treaties that the international courts are empowered to enforce. This understanding is widely shared among regional courts with jurisdiction over Human Rights.

70. That being the current situation at the international level, the only available alternative left to those seeking for justice against corporations has been domestic jurisdictions, as in the case of the United States where under the Alien Tort Claims Act (1789), it has been possible to make the American companies operating abroad responsible for human rights abuses in developing countries in violation of the law of nations (International Law). Two leading examples of the disputes dealt with by American jurisdiction in this field of corporate liability are *Wiwa vs Shell*, 2009 U.S. 2d Cir, June 3, 2009, for facts that occurred exactly in the region of Niger Delta and *Doe vs Unocal Corporation* 248 F. 3d 915, 9th Cir. 2001, for facts that occurred in Burma. But it is worthy to leave clear that even in the United States, notwithstanding a few decisions supporting corporate liability, a recent ruling from 2nd Circuit in *Kiobel V. Royal Dutch Petroleum Co.* 2010 US App LEXIS 19382 (2d Cir. 2010) held that Alien Tor Act does not authorize jurisdiction to hear claims against corporations.

71. In the context and legal framework of ECOWAS, the court stands by its current understanding that only Member States and Community Institutions. Can be sued before it for alleged violation of

Human Rights, as laid down in Peter David v. Ambassador Ralph Uwechue delivered on the 11th day of June 2010.

72. In that decision the Court held that "As an International Court with jurisdiction over Human Rights violation, the Court cannot disregard the basic principles and the practice that guided the adjudication of the disputes on Rights at International level. Viewed from this angle, the Court recalls that the International bodies rely essentially on treaties to which States are parties as the principal subject of International Law. As a matter of fact, the international regime of Human Rights imposes obligations on States. All mechanisms established thereof are directed to the engagement of State Responsibility for its commitment or failure towards those international instruments. From what has been said, the conclusion to be drawn is that for the dispute between individuals on alleged violation of Human Rights as enshrined in the African charters on Human and Peoples' Rights, the natural and proper venue before which the case may be pleaded is the domestic court of the State party where the violation occurred is only when at the national level, there is no appropriate and effective forum for seeking redress against individuals, that the victim of such offences may bring an action before an international court, not against the individuals, rather against the signatory State for failure to ensure the protection and respect for the Human Rights allegedly violated. Within ECOWAS Community, apart from Member States, other entities that can be brought to this court for alleged violation of Human Rights are the institutions of the community because, since they cannot, as a rule, be sued before domestic jurisdiction, the only avenue left to the victims for seeking redress for grievance against those institutions is the Community Court of Justice.

73. The same reasoning expounded above to justify the lack of jurisdiction of the Court on individuals sued for human rights violation applies entirely in the cases, as the instant, where the alleged perpetrators of the violation are other non state actors like corporations. Neither individuals nor corporations are parties to the treaties that the international Tribunal with jurisdiction over human rights are empowered to enforce.

74. Having arrived at the conclusion that it does not have jurisdiction to entertain disputes for alleged violation of Human Rights perpetrated by the defendants, the Court does not need to go further in the analysis of the remaining issues raised in the preliminary objection.

DECISION

75. Whereas the existence of the Plaintiff has been established;

76. Whereas the Plaintiff has the requisite locus standi to initiate the present proceedings;

77. Whereas the Court has no jurisdiction over the Defendants who are corporations for alleged violation of Human Rights,

78. The Court sitting and adjudicating in public, in the Community Court of Justice, in Abuja hereby holds that it has jurisdiction to adjudicate on the case brought by the Plaintiff against the corporate defendants.

79. Pursuant to article 66(12) of the rules of Procedures of the Court which states that where the action does not proceed to judgment the costs shall be at the discretion of the Court and taking into

account the real nature of these proceedings and circumstances of the case, each party shall bear their own costs.

This Ruling is read in the open Court to the public this 10th day of December, 2010

Hon. Justice M. Benfeito Ramos
Presiding

Hon. Justice H. N Donli
Member

Hon. Justice Anthony A. Benin
Member

Hon. Justice Clotilde Medegan
Member

Hon. Justice E. Monsedjoueni Potey
Member