

AI Index: PRE 01/619/2012  
16 December 2012

## **Ground-breaking ECOWAS Court judgment orders government to punish oil companies over pollution**

A judgment by the Economic Community of West African States Court of Justice (ECOWAS ) has been hailed as a key moment in "holding governments and companies to account for pollution", Amnesty International and the Socio-Economic Rights and Accountability Project (SERAP) said.

In the case, *SERAP v. Nigeria*, the Court unanimously found the Nigerian government responsible for abuses by oil companies and makes it clear that the government must hold the companies and other perpetrators to account.

The Court also found that Nigeria violated articles 21 (on the right to natural wealth and resources) and 24 (on the right to a general satisfactory environment) of the African Charter on Human and Peoples' Rights by failing to protect the Niger Delta and its people from the operations of oil companies that have for many years devastated the region.

According to the Court, the right to food and social life of the people of Niger Delta was violated by destroying their environment, and thus destroying their opportunity to earn a living and enjoy a healthy and adequate standard of living. The Court also said that both the government and the oil companies violate the human and cultural rights of the people in the region.

The Court ruled that the government's failure to enact effective laws and establish effective institutions to regulate the activities of the companies coupled with its failure to bring perpetrators of pollution "to book" amount to a breach of Nigeria's international human rights obligations and commitments.

The Court emphasized that "the quality of life of people is determined by the quality of the environment. But the government has failed in its duty to maintain a general satisfactory environment conducive to the development of the Niger Delta region".

"This judgment confirms the persistent failure of the Nigerian government to punish properly and effectively oil companies that have caused pollution and perpetrated serious human rights abuses, and is an important step towards accountability for government and oil companies that continue to prioritise profit-making over and above the well-being of the people of the region," said Femi Falana SAN, and Adetokunbo Mumuni for SERAP.

"This is a crucial precedent that vindicates the human right to a healthy environment and affirms the human right of the Nigerian people to live a life free from pollution. It also makes it clear that the government must hold the oil companies to account," said Michael Bochenek,

Director of Law and Policy at Amnesty International.

“The judgment makes it clear that the Nigerian government has failed to prevent the oil companies causing pollution. It is a major step forward in holding the government and oil companies accountable for years of devastation and deprivation.” said Bochenek.

The court affirmed that the government must now move swiftly to fully implement the judgment and restore the dignity and humanity of the people of the region.

“The judgment has also come at a time when oil is being discovered in the majority of the member states of the ECOWAS. It is vital that other states take heed of this judgement, which has laid down minimum standards of operations for government and oil companies involved in the exploitation of oil and gas in the region,” Falana and Mumuni also said.

“The time has come for the Nigerian government to stand up to powerful oil companies that have abused the human rights of the people of the Niger Delta with impunity for decades,” said Bochenek.

“We commend the ECOWAS Court for standing up for the rights and dignity of the people of the Niger Delta. We also acknowledge the important legal contribution of Dr Kolawole Olaniyan of Amnesty International, to the case,” said Falana and Mumuni.

The case was filed against the Federal Government and six oil companies over alleged violation of human rights and associated oil pollution in the Niger Delta. Specifically, the plaintiff alleged: “Violations of the right to an 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.”

SERAP also alleged “oil spills and waste materials polluting water 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.”

The Court dismissed the government’s objections that SERAP had no locus standi to institute the case; that the ECOWAS Court had no jurisdiction to entertain it; and that the case was statute-barred. The Court also rejected efforts by the government to exclude a 2009 Amnesty International report on oil pollution from being considered. The report was based on an in-depth investigation into pollution caused by the international oil companies, in particular Shell, and the failure of the government of Nigeria to prevent pollution or sanction the companies.

The suit number ECW/CCJ/APP/08/09 was argued by SERAP counsel, Femi Falana SAN, Adetokunbo Mumuni and Sola Egbeyinka.

The judgment was delivered by a panel of 6 judges: Justice Awa Nana Daboya, Justice Benefeito Mosso Ramos, Justice Hansine Donli, Justice Alfred Benin, Justice Clotilde Medegan and Justice Eliam Potey.

Article 15(4) of the ECOWAS Treaty makes the Judgment of the Court binding on Member States, including Nigeria. Also, Article 19(2) of the 1991 Protocol provides that the decisions of the Court shall be final and immediately enforceable. Furthermore, non-compliance with the judgment of the Court can be sanctioned under Article 24 of the Supplementary Protocol of the ECOWAS Court of Justice, and Article 77 of the ECOWAS Treaty.