

Big oil, socio-economic rights and sustainable development in Africa: Implications of *SERAP vs. Federal Republic of Nigeria* (ECOWAS Court) 2012

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Introduction

As new discoveries of minerals, oil and gas spring out throughout Africa, mixed feelings of jubilation and caution fill the air. Will Africa, by virtue of the new enormous mineral deposits rise and claim its place or could these new developments spur Africa's demise or re-conquest? It has to be noted that at the heart of these new developments are the usual large multinational corporations from the west, but in addition emerging large economies such as China and India are also pushing to claim a share of their prize in order to supply their own rising demand. As the west slows down and the east rises quickly, Africa will become the next frontier. It seems Africa's arable land, water, forestry, and numerous deposits are once again up for grabs. This realisation needs to spur quick, strategic and responsible reactions from African governments and their policy makers, otherwise Africa's natural endowments will never contribute to its sustainable development.

It seems the court of the economic community of West African Community was under a similar realisation when it rendered an interesting, but novel decision. On 14th December 2012 the Court of Justice of the Economic Community of West African States arrived at a ground breaking decision that could re-invent determination of liability for private actors towards economic, social and environmental damages within African.ⁱⁱ This case has the potential of placing a larger responsibility on the relevant governments to ensure that existing regulatory frameworks are adequate and that they are being enforced accordingly. The complaint was lodged in July 2009 by the registered trustees of the socio-economic rights and accountability project (SERAP) against the President of the Federal Republic of Nigeria, the Nigerian National Petroleum Company, Shell Petroleum Development Company, ELF Petroleum Nigeria Ltd, AGIP Nigeria PLC, Chevron OIL Nigeria PLC and Exxon Mobil.

Allegations including those based on contravention of article 1 and 24 of the African Charter on Human and Peoples Rights (ACHPR) were addressed. The attitude of the government of Nigeria seemed to be in contravention of the provision of article 24 which required that 'all peoples shall have a right to a general satisfactory environment favourable to their development'. It also contravened article 1 which required that 'member states to the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt "legislative" or "other measures" to give effect to them'. Nigeria by virtue of being an ECOWAS member state and party to the African Charter was bound by the said articles. The duty assigned by article 1 and 24 of the African Charter was both an obligation to stipulate regulations, provide structural, financial support and other measures, as well as an obligation to diligently and vigilantly ensure necessary compliance and accountability by oil corporations in addressing oil spills.

Nigeria had a responsibility to set up the requisite legal and regulatory framework, and hold accountable those who caused such environmental degradation as well as ensuring that adequate and timely reparation was provided. In terms of addressing the said spills, the Nigerian government enacted the necessary legislative frameworks and development agencies were set up, but all these

measures fell short of preventing the continuous environmental degradation within the region. Actual accountability by the concerned corporations was inadequate due to lack of legislation enforcement by relevant regulatory authorities. The ECOWAS court concluded that by continuously failing or omitting to deal adequately with corporate actions that harmed human rights and the environment, the government of Nigeria had compounded the problem. This in turn rendered it responsible for aiding and abetting oil companies who committed such violations and in essence contravening article 1 and 24 of the ACHPR.

This case represents a novel attempt by a regional tribunal to indirectly ensure that businesses carried out in Africa are socially conscious and responsible for the environment and economic as well as social development of the communities within which they operate. With numerous recent mineral, oil and gas discoveries in various areas in Africa,ⁱⁱⁱ it has become imperative that strict measures must be undertaken by governments and the necessary agencies to protect the well being of communities where extraction takes place. At the same time, this calls for the extraction industry to take responsibility for the communities within which they operate. The ECOWAS court seems to have taken a bold step in guaranteeing that where governments by omission fail to ensure compliance with international best practices in terms of business, human rights and the environment, then they bear the responsibility for harm and human rights violations resulting from actions of corporations. By invoking article 1 and 24 of the ACHPR together and stretching it to include not only regulatory and structural provision, but also vigilance and diligence in ensuring compliance with such provisions, the ECOWAS court has put a higher level of responsibility on member state governments. They are now expected to ensure that multinationals responsible for prospecting in Africa are brought to task whenever environmental or social damage is done. The decision in this case has the potential of changing the way private sector responsibility towards individual citizens is addressed, as well as setting precedent in bringing responsible governments to task whenever they independently fail to enforce such responsibility.

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ⁱⁱ *SERAP vs. Federal Republic of Nigeria The Court of Justice of the Economic Community of West African States (ECOWAS) Ibadan, Nigeria 14th December 2012 Judgement No. ECW/CCJ.JUD/18/12*

ⁱⁱⁱ Mozambique, Uganda, additional areas in Ghana, Kenya, Tanzania, Sierra Leone and various other places in Africa