



**THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN
STATES (ECOWAS)**

**HOLDEN AT IBADAN, IN NIGERIA
THIS 14 DAY OF DECEMBER 2012**

Between

SERAP

*Lawyers : A. A. Mumuni
Sola Egbeyinka*

Applicant

And

Federal Republic of Nigeria

Lawyer : T.A. Gazali

Defendant

GENERAL LIST N°ECW/CCJ/APP/08/09

JUDGMENT N° ECW/CCJ/JUD/18/12

Before their Lordships

Hon. Justice Benfeito Mosso Ramos - Presiding

Hon. Justice Hansine Donli - Member

Hon. Justice Anthony Alfred Benin - Member

Hon. Justice Clotilde Médégan Nougbodé - Member

Hon. Justice Eliam Potey - Member

Assisted by Tony Anene-Maidoh - Chief Registrar

Delivers the following Judgment:

PARTIES

1. The Plaintiff, the Socio-Economic Rights and Accountability Project, SERAP, is a non governmental organization registered in Nigeria with Office at 4 Akintoye Shogunle Street Off Awolowo Way Ikeja, Lagos, Nigeria. The Plaintiff is represented by Mr. A. A. Mumuni with Sola Egbeyinka.
2. The First Defendant is the Federal Republic of Nigeria while the Second Defendant is the Attorney General of the Federation and the Chief Law Officer of the Federation. The First and the Second Defendants are represented by Mr. T.A. Gazali.

PROCEDURE

3. This case originated from a complaint brought on 23 July 2009 by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) pursuant to Article 10 of the Supplementary Protocol A/SP.1/01/05 against the President of the Federal Republic of Nigeria, the Attorney General of the Federation, Nigerian National Petroleum Company, Shell Petroleum Development Company, ELF Petroleum Nigeria Ltd, AGIP Nigeria PLC, Chevron Oil Nigeria PLC, Total Nigeria PLC and Exxon Mobil.
4. The Plaintiff alleged violation by the Defendants of the rights to health, adequate standard of living and rights to economic and social development of the people of Niger Delta and the failure of the Defendants to enforce laws and regulations to protect the environment and prevent pollution
5. The Application was served on the Defendants in line with the provisions of Articles 34 of the Rules of Procedure of this Court.
6. Upon receipt of the Application, the 3rd to 9th Defendants raised Preliminary Objections to the jurisdiction of this Court to entertain the Application on various grounds.

7. After careful consideration of the issues raised in the Preliminary Objections, the Court, in Ruling No. ECW/CCJ/APP/07/10 delivered on 10 October 2010, ruled that the Plaintiff is a legal person and has the locus standi to institute this action.
8. The Court also held that it has no jurisdiction over the 3rd to 9th Defendants who are corporations and struck out their names in the suit.
9. Consequently the Plaintiff on the 11th of March 2011 filed with the leave of court an amended application against the President of the Federal Republic of Nigeria and The Attorney General of the Federation.
10. On the 10th day of March 2011, the Defendants filed a joint statement of defence to the suit to which the Plaintiff replied on the 8th of July 2011.
11. Both parties subsequently filed and exchanged written addresses of counsel. The Plaintiff for the first time attached a copy of the Amnesty International report to its address and the Defendant objected to the admissibility of that report on the ground that it is too late and not in accordance with the rules. The Court then asked both parties to address it on the admissibility of the report and reserved its ruling for judgment.

THE FACTS OF THE CASE

12. The Plaintiff contended that Niger Delta has an enormously rich endowment in the form of land, water, forest and fauna which have been subjected to extreme degradation due to oil prospecting.
13. It averred that Niger Delta has suffered for decades from oil spills, which destroy crops and damage the quality and productivity of soil that communities use for farming, and contaminates water that people use for fishing, drinking and other domestic and economic purposes. That these spills which result from poor maintenance of infrastructure, human error and a consequence of deliberate vandalism or theft of oil have pushed many people deeper into

poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration.

14. It further contended that the devastating activities of the oil industries in the Niger Delta continue to damage the health and livelihoods of the people of the area who are denied basic necessities of life such as adequate access to clean water, education, healthcare, food and a clean and healthy environment.
15. The Plaintiff submitted that although Nigerian government regulations require the swift and effective clean-up of oil spills this is never done timorously and is always inadequate and that the lack of effective clean-up greatly exacerbates the human rights and environmental impacts of such spills.
16. It admitted that though some companies have engaged in development projects to help communities construct water and sanitation facilities and some individuals and families received payments these were inadequate.
17. It submitted that government's obligation to protect the right to health requires it to investigate and monitor the possible health impacts of gas flaring and the failure of the government to take the concerns of the communities seriously and take steps to ensure independent investigation into the health impacts of gas flaring and ensure that the community has reliable information, is a breach of international standards.
18. It averred specifically that:
 - In 1995 SPDC Petroleum, admitted that its infrastructure needed work and that the corrosion was responsible for 50 per cent of oil spills.
 - On 28 August 2008, a fault in the Trans-Niger pipeline resulted in a significant oil spill into Bodo Creek in Ogoniland. The oil poured into the swamp and creek for weeks, covering the area in a thick slick of oil and killing the fish that people depend on for food and for livelihood. The oil spill has resulted in death or damage to a number of species of fish that provide the protein needs in the local community. Video footage of the

site shows widespread damage, including to mangroves which are an important fish breeding ground. The pipe that burst is the responsibility of the Shell Petroleum Development Company (SPDC). SPDC has reportedly stated that the spill was only reported to them on 5 October of that year. Rivers State Ministry of Environment was informed of the leak and its devastating consequences on 12 October. A Ministry official is reported to have visited the site on 15 October. However, the leak was not stopped until 7 November.

- On 25 June 2001 residents of Ogbobo in Rivers State heard a loud explosion from a pipeline, which had ruptured. Crude oil from the pipe spilled over the surrounding land and waterways. The community notified Shell Petroleum Development Company (SPDC) the following day; however, it was not until several days later that a contractor working for SPDC came to the site to deal with the oil spill. The oil subsequently caught fire. Some 42 communities were affected as the oil moved through the water system. The communities' water supply, which came from the local waterway, was contaminated. SPDC brought ten 500-litre plastic tanks of water to Ogbodo, but only after several days. Although SPDC refilled the tank every two to three days, 10 tanks are insufficient for their needs, and are emptied within hours of refilling.
- People in the area complained of numerous symptoms, including respiratory problems. The situation was so dire that some families reportedly evacuated the area, but most had no means of leaving
- Though companies have engaged in development projects to help communities construct water and sanitation facilities and some individuals and families have received payments however, some of these development projects and compensations have been criticised as inadequate and poorly executed.
- Hundreds of thousands of people are affected, particularly the poorest and other most vulnerable sectors of the population, and those who rely on traditional livelihoods such as fishing and agriculture.

ORDERS SOUGHT BEFORE THE COURT

19. The Plaintiff prays the Court to make the following orders:

- a) A Declaration that everyone in the Niger Delta is entitled to the internationally recognised human right to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to clean and healthy environment; to social and economic development; and the right to life and human security and dignity.
- b) A Declaration that the failure and /or complicity and negligence of the Defendants to effectively and adequately clean up and remediate contaminated land and water; and to address the impact of oil-related pollution and environmental damage on agriculture and fisheries 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.
- c) A Declaration that the failure of the Defendants to establish any adequate monitoring of the human impacts of oil-related pollution despite the fact that the oil industry in the Niger Delta is operating in a relatively densely populated area characterised by high levels of poverty and vulnerability, is unlawful 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.
- d) A Declaration that the systematic denial of access to information to the people of the Niger Delta about how oil exploration and production will affect them, is unlawful 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.

- e) An Order directing the Defendants to ensure the full enjoyment of the people of Niger Delta to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to clean and healthy environment; to socio and economic development; and the right to life and human security and dignity.
- f) An Order directing the Defendants to hold the oil companies operating in the Niger Delta responsible for their complicity in the continuing serious human rights violations in the Niger Delta.
- g) An Order compelling the Defendants to solicit the views of the people of the area throughout the process of planning and policy-making on the Niger Delta.
- h) 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 pollution and damage to human rights.
- i) An Order directing the government of Nigeria to carry out a transparent and effective investigation into the activities of oil companies in the Niger Delta and to bring to justice those suspected to be involved and /or complicit in the violation of human rights highlighted above.
- j) An Order directing the Defendants individually and/or collectively to pay adequate monetary compensation of 1 Billion Dollars (USD) (\$1 billion) to the victims of human rights violations in the Niger Delta, and other forms of reparation that the Honourable Court may deem fit to grant.

20. The Federal Republic of Nigeria maintains that the Court has no jurisdiction to examine the alleged violations of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It equally asks the Court to make a declaration that it is not competent to sit on the case, for, as it contends, the Plaintiff failed to annex to its Application, the report by Amnesty International; in so doing, it violates the provisions of the Rules of the Court and deliberately infringes on

the rights of the Defendant. It adds that if in any extraordinary manner, the Court holds that it has jurisdiction to examine the case, it will nevertheless have to conclude that the report adduced by the Plaintiff does not meet the universally accepted criteria for it to be admitted in evidence.

21. Besides, the Federal Republic of Nigeria affirms that the Plaintiff does not have locus standi to bring the instant action and maintains, moreover, that by virtue of the provisions of the new Article 9(3) of the Protocol on the Court as amended by the 19 January 2005 Protocol, certain facts brought by the Plaintiff have come under the three-year statute bar, and therefore its action is foreclosed.
22. The Federal Republic of Nigeria therefore concludes that the Plaintiff's Application is not founded and must be dismissed.

IN LAW

23. The Court considers that certain issues raised by the Federal Republic of Nigeria, notably – (1) that the Court lacks jurisdiction to examine the alleged violations of the said Covenants ; (2) lack of locus standi on the part of the Plaintiff ; (3) the Plaintiff's failure to produce the Amnesty International report at the time of lodgment of the substantive application; and (4) that certain facts pleaded by the Plaintiff have come under a three-year statute bar. These questions present a preliminary aspect which touches on the jurisdiction of the Court and the admissibility of the Application. The Court therefore intends to analyse them before any analysis is made on the merits of the case.

I- PRELIMINARY QUESTIONS

- (i) *Whether the Court lacks jurisdiction to examine the alleged violations of the said Covenants*

24. The Federal Republic of Nigeria argues notably, that the Constitution of Nigeria only recognises the jurisdiction of the domestic courts of Nigeria, as far as competence to examine violation of the rights contained in the ICCPR is

concerned, and that ICESCR did not provide that the rights contained in the said instrument were justiciable. The Federal Republic of Nigeria added that the Court has jurisdiction to adjudicate only in cases regarding the treaties, conventions and protocols of the Economic Community of West African States.

25. The new Article 9(4) of the Protocol on the Court as amended by Supplementary Protocol A/SP.1/01/05 of 19 January 2005 provides: ***“The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State”***.
26. This provision, which gives jurisdiction to the Court to adjudicate on cases of human rights violation, results from an amendment made to the 6 July 1991 Protocol A/P1/7/91 on the Community Court of Justice. The *raison d’être* of this amendment is Article 39 of the 21 December 2001 Protocol A/SP1/12/01 on Democracy and Good Governance, which provides: ***“Protocol A/P1/7/91 adopted in Abuja on 6 July, 1991 relating to the Community Court of Justice, shall be reviewed so as to give the Court the power to hear, inter-alia, cases relating to violations of human rights...”***.
27. When the Member States were adopting the said Protocol, the human rights they had in view were those contained in the international instruments, with no exception whatsoever, and they were all signatory to those instruments. Thus attests the preamble of the said Protocol as well as paragraph (h) of its Article 1, which stipulates the principles of constitutional convergence common to the Member States, which provides: ***“The rights set up in the African Charter on Human and Peoples’ Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States ; each individual or organisation shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights”***.
28. Thus, even though ECOWAS may not have adopted a specific instrument recognising human rights, the Court’s human rights protection mandate is exercised with regard to all the international instruments, including the African

Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, etc. to which the Member States of ECOWAS are parties.

29. That these instruments may be invoked before the Court reposes essentially on the fact that all the Member States parties to the Revised Treaty of ECOWAS ***have renewed their allegiance to the said texts, within the framework of ECOWAS***. Consequently, by establishing the jurisdiction of the Court, they have created a mechanism for guaranteeing and protecting human rights within the framework of ECOWAS so as to implement the human rights contained in all the international instruments they are signatory to.
30. This reality is consistently held in the Court's case law [See Judgment of 17 December 2009, Amouzou Henri v. Republic of Côte d'Ivoire § 57 to 62; Judgment of 12 June 2012, Aliyu Tasheku v. Federal Republic of Nigeria §16].
31. As to the justiciability or enforceability of the economic, social and cultural rights, this Court is of the view that instead of a generalistic approach recognizing or denying their enforceability, the appropriate way to deal with that issue is to analyse each right in concrete terms, try to determine which specific obligation it imposes on the States and Public Authorities, and whether that obligation can be enforced by the Courts.
32. Indeed there are situations in which the enjoyment of the economic, social and cultural rights depends on the availability of State resources. In those situations, it is legitimate to raise the issue of enforceability of the concerned right. But there are others in which the only obligation required from the State to satisfy such rights is the exercise of its authority to enforce the law that recognises such rights and prevent powerful entities from precluding the most vulnerable from enjoying the right granted to them.
33. In the instant case, what is in dispute is not a failure of the Defendants to allocate resources to improve the quality of life of the people of Niger Delta, but rather a failure to use the State authority, in compliance with international

obligations, to prevent the oil extraction industry from doing harm to the environment, livelihood and quality of life to the people of that region.

34. The Court notes that behind the thesis developed by the Federal Republic of Nigeria is the principle contained in its own Constitution that the economic, social and cultural rights, being mere policy directives, are not justiciable or enforceable.

35. But it should also be noted that the sources of Law that the Court takes into consideration in performing its mandate of protecting Human Rights are not the Constitutions of Member States, but rather the international instruments to which these States voluntarily bound themselves at the international level, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

36. As held by the jurisprudence of this Court, in the Ruling of 27 October 2009, *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*, once the concerned right for which the protection is sought before the Court is enshrined in an international instrument that is binding on a Member State, the domestic legislation of that State cannot prevail on the international treaty or covenant, even if it is its own Constitution.

37. This view is consistent with paragraph 2, Article 5 of the International Covenant on Economic, Social and Cultural Rights which Nigeria is party to by adhesion since 29 July 1993 which provides:

“No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent”.

38. In these circumstances, invoking lack of justiciability of the concerned right, to justify non accountability before this Court, is completely baseless.

39. It is thus evident that the Federal Republic of Nigeria cannot invoke the non justiciability or enforceability of ICESCR as a mean for shirking its responsibility in ensuring protection and guarantee for its citizens within the framework of commitments it has made vis-à-vis the Economic Community of West African States and the Charter.

40. The Court adjudges that it has jurisdiction to examine matters in which applicants invoke ICCPR and ICESCR.

ii) That the Plaintiff lacks locus standi

Argument advanced by the Federal Republic of Nigeria

41. The Federal Republic of Nigeria maintained that SERAP has no *locus standi* because its Application was filed without the prior information, accord and interest of the People of Niger Delta, and that SERAP acts in its own name, with no proof that it is acting on behalf of the people of Niger Delta.

Argument advanced by the Plaintiff

42. The Plaintiff countered this plea-in-law by citing Ruling N°ECW/CCJ/APP/07/10 delivered by the Court on 10 December 2010 on the preliminary objections raised by the oil companies who were summoned to appear in court.

Analysis of the Court

43. The Court recalls that this issue has already been examined in the above-cited ruling among the numerous preliminary objections raised by the oil companies and it concluded that the NGO known as SERAP has locus standi in the instant case (see §62 of the Ruling).

44. However, the Court notes that the Federal Republic of Nigeria did not take part in the proceedings relating to the said objections. But, by virtue of the relative effect of the decisions of the Court, the 10 December 2010 decision affect only the parties who pleaded their cases during that hearing. The authority of that decision cannot therefore be applied to the Federal Republic of Nigeria.

Consequently, the Court declares that this argument advanced by the Federal Republic of Nigeria is admissible.

45. Nevertheless, the Court does not find in the arguments advanced by the Federal Republic of Nigeria any determining factor capable of compelling it to set aside the previous decision. Consequently, the Court adjudges that SERAP, in the instant case, has locus standi.

iii) As to the admissibility of the report by Amnesty International

Argument advanced by the Federal Republic of Nigeria

46. The Federal Republic of Nigeria maintained that at the time of lodgment of the initial application, and even the amended application, the Plaintiff did not produce the report by Amnesty International, which it had listed among the annexed schedule of exhibits. By acting in such manner, and deliberately so, the Plaintiff violated the provisions of Article 32 of the Rules of Procedure – particularly paragraphs 1, 4, 5 and 6 – which it was bound to respect, and thus violated its right to defence. It added that the Plaintiff thus contributed to a systematic denial of fair hearing in the suit.

Argument advanced by the Applicant

47. Plaintiff counsel maintained that the admissibility of the document is at the discretion of the Court, and urged the Court to discountenance the argument brought by the Defendant, which falls under technicality, to the detriment of substantial justice. Moreover, the Plaintiff argued that the report is a piece of evidence he intended to rely on. He added that the failure to produce the report is due to an omission on the part of counsel to the Plaintiff, which should not result in injury to the Plaintiff. He prayed the Court to admit the said document.

Analysis of the Court

48. Paragraphs 1, 4, 5 and 6 of Article 32 of the Rules of Procedure of the Court provides:

“1. The original of every pleading must be signed by the party’s agent or lawyer. The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Court and a copy for every other party to the proceedings. The party lodging them in accordance with Article 11 of the Protocol shall certify copies.

4. To every pleading there shall be annexed a file containing the documents relied on in support of it, together with a schedule listing them.

5. Where in view of the length of a document only extracts for it are annexed to a pleading, the whole document or a full copy of it shall be lodged at the Registry.

6. Without prejudice to the provisions of paragraphs 1 to 5, the date on which a copy of the signed original of a pleading, including the schedule of documents referred to in paragraph 4, is received at the Registry by telefax or any other technical means of communication available to the Court shall be deemed to be the date of lodgment for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in the second subparagraph of paragraph 1 above, is lodged at the Registry no later than ten days thereafter.”

49. The Court recalls that it is not for the parties to indicate the procedure to be followed by the Court and that parties are required to abide by the provisions of the Court’s Protocol and Rules of Procedure. The lawyers and counsels are under obligation to assist the parties with all the diligence and professionalism required.

50. The Court is of the view that failure to produce an exhibit in evidence is akin to the situation provided for in paragraph 6, Article 33 of the Rules of Procedure thus:

“If the application does not comply with the requirements set out in paragraphs 1 to 4 of this Article, the Chief Registrar shall prescribe a period not more than thirty days within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the above-mentioned documents. If the applicant fails to put the application in order or

to produce the the required documents within the time prescribed, the Court shall, after hearing the Judge Rapporteur, decide whether the non-compliance with these conditions renders the application formally inadmissible”.

51. Thus, the sanctioning of any failure to comply with the provisions of Article 32 of the Rules of Procedure comes under the discretionary power of the Court and the latter exercises that power in accordance with the provisions of the texts of the Court and the dictates of an efficient administration of justice.

52. In that regard, paragraph 1 of the new Article 15 of the Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol A/SP.1/01/05, and Articles 51 and 57(1) of the Rules of the Court provide respectively as follows :

Article 15.1 : *“At any time, the Court may request the parties to produce any documents and provide any information or explanation which it may deem useful. Formal note shall be taken of any refusal.”*

Article 51 : *“The Court may request the parties to submit within a specified period all such information relating to the facts, and all such documents or other particulars as they may consider relevant. The information and/or documents provided shall be communicated to the other parties.”*

Article 57(1) : *“The Court may at any time, in accordance with these rules, after hearing the parties, order any measure of inquiry to be taken or that a previous inquiry be repeated or expanded.”*

53. The Court recalls that as soon as it noticed that the Amnesty International report was produced along with the Plaintiff’s final written submission and that an objection had been raised by the Defendant, it decided to reopen the oral procedure, under Article 58 of its Rules of Procedure, to allow the Parties to address that issue.

54. After receiving oral and written submissions of the Parties on the admissibility and content of that report, the Court reserved its decision for the judgment.

55. Consequently, the Court concludes that even if Plaintiff Counsel failed to produce the report initially, he made up for that omission in accordance with the Rules of the Court, and that in the instant case, it cannot be successfully

maintained that there has been infringement on the Defendant's rights to fair hearing. The Court adjudges, without prejudice to the authenticity of the report, that the Amnesty International report, as produced by the Plaintiff, is admissible.

iv) That certain facts brought by the Plaintiff have come under a three-year statute bar

Argument advanced by the Federal Republic of Nigeria

56. The Federal Republic of Nigeria maintained that the facts which occurred before 1990, in 1995, on 25 June 2001 (oil spill in Ogbodo), on 3 December 2003 (oil spill in Rukpokwu, Rivers State), in June 2005 (oil spill in Oruma, Bayelsa State), on 28 August 2008 and on 2 February 2009 (oil spills in Bodo, Ogoniland), have come under a three-year statute bar in line with the new paragraph 3, Article 9 of the 19 January 2005 Supplementary Protocol A/SP.1/01/05 which provides :

« any action by or against a Community Institution or any member of the Community shall be statute barred after three (3) years from the date when the right of action arose »

Argument advanced by the Plaintiff

57. Conversely, the Plaintiff affirmed that "the Defendants' arguments are fundamentally flawed, based on outdated or mistaken principles of law and cannot be sustained having regard to sound legal reasoning established by the ECOWAS Court's own jurisprudence, and other national and international legal jurisprudence". The Plaintiff argued that the position of the Federal Republic of Nigeria conceals the cumulative effect of the various causes of pollution experienced by the Niger Delta region for decades. It stressed that there is a considerable difference between an isolated event of pollution or of environmental damage and the continuous and repeated occurrence of the same event in the same region for years. It further contended that in regard to the facts it is relying on, notably the recent report by Amnesty International (2009), the Federal Republic of Nigeria cannot validly argue that the current events and situation have come under a three-year statute bar. It is the view of

the Plaintiff that the violations are still continuing as a result of the unceasing nature of the oil spills and the damage done to the environment. The Plaintiff concluded that Article 9(3) does not apply to the instant case.

Analysis of the Court

58. In the instant case, the issue of statute of limitation raised by the Defendants based on facts that took place more than three years before the complaint was filed with the Court may be analysed in line with the date of the enactment of the ECOWAS 2005 Protocol which entrusted the Community Court of Justice with jurisdiction to entertain cases of human rights violation.
59. The facts that occurred before the Protocol of 2005 came into force cannot be taken into consideration in this case for the simple reason that the said Protocol cannot be applied retroactively.
60. As for the facts that occurred after the enactment of that instrument, their subjection to the statute of limitation depends on their characterisation as an isolated act or as a persistent and continuous omission that lasted until the date the complaint was filed with the Court.
61. Indeed, in the application lodged by the Plaintiff, the Federal Republic of Nigeria is faulted for omission over the years in taking measures to prevent environmental damage and making accountable those who caused the damage to the environment in the Niger Delta Region.
62. It is trite law that in situations of continued illicit behaviour, the statute of limitation shall only begin to run from the time when such unlawful conduct or omission ceases. Therefore, the acts which occurred after the 2005 Protocol came into force, in relation to which the Federal Republic of Nigeria had a conduct considered as omissive, are not statute barred.

II-CONSIDERATION OF THE ALLEGED VIOLATIONS

63. The Plaintiff alleged violation of Articles 1, 2, 3, 4, 5, 9, 14, 15, 16, 17, 21, 22, 23 and 24 of the Charter, Articles 1, 2, 6, 9, 10, 11, 12.1, 12.2, 12.2(b) of the International Covenant on Economic, Social and Cultural Rights, Articles 1, 2, 6, 7 and 26 of the International Covenant on Civil and Political Rights, Article 15 of the Universal Declaration of Human Rights. The Plaintiff particularly brings claims in respect of violation of the right to an adequate standard of living – including adequate food – and the violation of the right to economic and social development.

Argument advanced by the Plaintiff

64. Plaintiff argues that Article 11 of the International Covenant on Economic Social and Cultural Rights establishes “the right of everyone to an adequate standard of living-- including adequate food”. The right to adequate food requires States to ensure the availability and accessibility of food. Availability includes being able to feed oneself directly from productive land or other natural resources. They submit that the Nigerian government has clearly failed to protect the natural resource upon which people depend for food in the Niger Delta, and has contravened its obligation to ensure the availability of food in that thousands of oil spills and other environmental damage to fisheries, farmland and crops have occurred over decades without adequate clean-up. They referred to African Commission’s decision in the Ogoni case to the effect that Nigeria had violated the right to food by allowing private oil companies to destroy food sources and submitted that several years after this decision, the government of Nigeria has continued to violate its obligations under the Covenant and the African Charter by failing to take effective measures to enforce laws to prevent contamination and pollution of the food sources (both crops and fish) by private oil companies in the Niger Delta.

65. They submit that Article 6 of the ICESCR obliges State Parties to recognize the right of everyone to the opportunity to earn their living by work and as such the Government of Nigeria is obliged to take all necessary measures to prevent infringements of the right to earn a living through work by third parties.

66. On the right of everyone to an adequate standard of living they submit that it is linked with the rights to food and housing, as well as the right to gain a living by work and to the right to health.
67. On the right to health they refer to Articles 16 and 24 of the African Charter and Article 12.1 of the ICESCR and submit that the government of Nigeria has failed to promote conditions in which people can lead a healthy life due to its failure to prevent widespread pollution as a consequence of the oil industry which has directly led to the deterioration of the living situation for affected communities in the oil producing areas of the Niger Delta.
68. Frequent oil spills are a serious problem in the Niger Delta. The failure of the oil companies and regulators to deal with them swiftly and the lack of effective clean-up greatly exacerbates the human rights and environmental impacts of such spills.
69. Clean-up of oil pollution in the Niger Delta is frequently both slow and inadequate, leaving people to cope with the ongoing impacts of the pollution on their livelihoods and health.
70. There has been no effective monitoring by the Defendants of the volumes of oil-related pollutants entering the water system, or of their impacts on water quality, fisheries or health.
71. The Federal Government is yet to put in place modalities and logistics for the protection of the Niger Delta people as well as laws that will regulate activities in the Niger Delta and has not acted with due diligence to ensure that foreign companies operating in the Niger Delta do not violate human rights.
72. Plaintiff submits that by failing to deal adequately with corporate actions that harm human rights and the environment, the government of Nigeria has not only compounded the problem but has aided and abetted the oil companies operating in the Niger Delta in the violation of human rights.

Argument advanced by the Federal Republic of Nigeria

73. The Defendants deny all the material allegations of fact put forward by the Plaintiff and required the strictest proof of the averments contained therein.
74. In denying the allegation that the oil spill led to poverty in the area, the Defendants contend that the oil exploration has no direct relation with poverty in the region and that the allegations thereof are speculative.
75. The Defendants, while admitting oil spillage, aver that most of the spillage is caused by the errant youths of the Niger Delta who vandalise the oil pipelines and kidnap expatriates and oil workers thereby making it difficult for the government to function there.
76. Defendants deny the allegation of avoidance to pay compensation by the oil companies and state that these companies had on many occasions paid compensation to identified victims of leakages and pollution on account of court orders or out of court settlements.
77. The Defendants further aver that compensation had always been paid to victims and any delays in the payments are brought about by internal disagreement among claimants.
78. While denying the Plaintiff's allegation of neglect, Defendants aver that by the provisions of the Constitution of the Federal Republic of Nigeria, 13% of the oil revenue goes to the oil producing areas.
79. They also aver that the Federal Government established OMPADEC (Oil Minerals Producing Area Development Commission) which later crystallised into NDDC (Niger Delta Development Commission) with the responsibilities among others to ***formulate policies ,implement projects and programmes, liaise with the various oil mineral producing companies on all matters of pollution prevention and control, tackle ecological and environmental problems that arise from the exploration of oil mineral and advise the Federal***

Government on the prevention and control of oil spillages, gas flaring and environmental pollution of the Niger-Delta area.

80. The Federal Ministry of works also issues contracts for the construction of roads, bridges and other essentials of life in the Niger Delta.
81. The Federal Government established the Ministry of Niger Delta saddled with the responsibility of catering for the basic needs of the people of the Niger Delta and has put in place necessary legal tools for the protection of the Niger Delta Region as well as avenues for compensation to any inevitable victim of oil spill or pollution through various legislations which include the Oil Pipeline Act 1956, Petroleum Regulation Act 1967, Oil in Navigable Waters Regulation 1968, Petroleum Act 1969, Petroleum (drilling and production) Regulations 1969, Federal Environmental Protection Act 1988, Impact Assessment Act 1992, Oil and Gas Pipeline Regulations, 1995, Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2006, The Environmental Guidelines and Standards for the Petroleum industry 2002, National Oil Spill Detection and Response Agency (Establishment) Act 2006, Harmful Waste Special Criminal Provision Act 1990 among others.
82. That it is the responsibility of a holder of a licence to take all reasonable steps to avoid damage and to pay compensation to victims of oil pollution or spill and any delays in payment of compensation are on account of challenges in courts as to who are rightly entitled to compensation.
83. They conclude that the Plaintiff has not established any of the allegations levelled against them as they are not in breach of any of their international obligations.
84. The Defendants also deny all the allegations by the Plaintiff on Defendants' lack of concerted effort to check the effect of pollution and recounted the legal frameworks put in place for the enforcement of rights by persons injured, regulation of the activities of oil prospectors and of sanctioning defaulters all in an effort to ensure a safe environment.

85. They point out that the Environmental Impact Assessment Act 1992 was adopted and applied towards assessing the possible impact of any planned activity before embarking on it. They referred to section 20 of the Nigerian Constitution which provides for the protection of the environment and submit that Defendants have put in place adequate legislative framework.
86. They submit that Article 2(1) of ICESCR lays down the basis for determining States' non compliance with the provisions of the Covenant. In that regard, the Defendant by virtue of section 13 of the Constitution adopted policies aimed at implementation of the provisions of the Covenant. That through the instrumentality of the Niger Delta Development Commission, the people of Niger Delta have been enjoying the rights contained in the Covenant and that the Defendants have discharged their obligations under the Covenant.
87. They refer to Plaintiff's allegation of violations of Article 16 of the African Charter and Article 12(1) of ICCPR and submit that in so far as Plaintiff made no prayers on them and led no evidence in proof, they are deemed abandoned.
88. On Plaintiff allegation of pollution, they submit that the existence of pollution needs to be proved by expert evidence or at least evidence of people affected supported by medical report; that having failed to so prove the Plaintiff's averments remain mere allegations.
89. They admit oil spillage but aver that as admitted by the Plaintiff, the spills are mainly as a result of vandalisation of pipelines and sabotage by youths of Niger Delta.
90. They refer to the Land Use Act which vests ownership of land in the Federal Government and submit that the issue of infringement of Article 14 of the African Charter does not therefore arise.

Analysis of the Court on the merits

91. The Court notes that the Plaintiff alleges violation of several articles of the African Charter on Human and Peoples' Rights, the International Covenant on

Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Court finds that considering all the instruments invoked, including the Universal Declaration of Human Rights, 29 articles were alleged to have been violated.

92. The success of an application for human rights protection does not depend on the number of provisions or international instruments the applicant invokes as violated. When various articles of different instruments sanction the same rights, the said instruments may, as far as those specific rights are concerned, be considered equivalent. It suffices therefore to cite the one which affords more effective protection to the right allegedly violated.
93. At any rate, it is incumbent upon the Court to shape out the dispute along its essential lines and examine no more than the violations which, in regard to the facts and circumstances of the suit, appear to it to constitute the heart of the grievances brought.
94. For the Court, the heart of the grievances is to be looked for in relation to the facts of the case it considers as established. In that light, although the report produced by Amnesty International may be in the public domain and may contain well known facts reported by other numerous sources (international organisations, the media, etc.), the Court is of the view that this report cannot on its own, alone, be considered as conclusive evidence. The report, as well as other well-known facts, constitutes for the Court a kaleidoscope of elements and indices that may specifically help enlighten it on the actual existence and scope of the problem. In the instant case, the Court upholds as decisive and convincing the facts on which there is agreement among the parties or those on which one of the parties does not raise objection while in a position to do so.
95. From the submissions of both Parties, it has emerged that the Niger Delta is endowed with arable land and water which the communities use for their social and economic needs; several multinational and Nigerian companies have carried along oil prospection as well as oil exploitation which caused and continue to cause damage to the quality and productivity of the soil and water;

the oil spillage, which is the result of various factors including pipeline corrosion, vandalisation, bunkering, etc. appears for both sides as the major source and cause of ecological pollution in the region. It is a key point that the Federal Republic of Nigeria has admitted that there has been in Niger Delta occurrences of oil spillage with devastating impact on the environment and the livelihood of the population throughout the time.

96. Though the Defendant's contention is that the Plaintiff allegations are mere conjectures, this Court highlights and takes into account the fact that it is public knowledge that oil spills pollute water, destroy aquatic life and soil fertility with resultant adverse effect on the health and means of livelihood of people in its vicinity. Thus in so far as there is consensus by both parties on the occurrence of oil spills in the region, we have to presume that in the normal cause of events in such a situation, to wit, consequential environmental pollution exist there. [Cf. Torrey Canyon (1967), Amoco Cadiz (1978), Exxon Valdez (1989), Erika (1999), Prestige (2002), Deepwater Horizon (avril 2010)]
97. In the face of this finding, the question as to the causes or liability of the spills is not in issue in the instant case. What is being canvassed is the attitude or behaviour of the Defendant, as ECOWAS Member State and party to the African Charter. Indeed, it is incumbent upon the Federal Republic of Nigeria to prevent or tackle the situation by holding accountable those who caused the situation and to ensure that adequate reparation is provided for the victims.
98. As such, the heart of the dispute is to determine whether in the circumstances referred to, the attitude of the Federal Republic of Nigeria, as a party to the African Charter on Human and Peoples' Rights, is in conformity with the obligations subscribed to in the terms of Article 24 of the said instrument, which provides: *"All peoples shall have the right to a general satisfactory environment favourable to their development"*.
99. The scope of such a provision must be looked for in relation to Article 1 of the Charter, which provides: *"The Member States of the Organization 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. "

100. Thus, the duty assigned by Article 24 to each State Party to the Charter is both an obligation of attitude and an obligation of result. The environment, as emphasised by the International Court of Justice, *"is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn"* (Legality of the threat or use of nuclear arms, ICJ Advisory Opinion of 8 July 2006, paragraph 28). It must be considered as an indivisible whole, comprising the *"biotic and abiotic natural resources, notably air, water, land, fauna and flora and the interaction between these same factors"* (International Law Institute, Resolution of 4 September 1997, Article 1). The environment is essential to every human being. The quality of human life depends on the quality of the environment.
101. Article 24 of the Charter thus requires every State to take every measure to maintain the quality of the environment understood as an integrated whole, such that the state of the environment may satisfy the human beings who live there, and enhance their sustainable development. It is by examining the state of the environment and entirely objective factors, that one judges, by the result, whether the State has fulfilled this obligation. If the State is taking all the appropriate legislative, administrative and other measures, it must ensure that vigilance and diligence are being applied and observed towards attaining concrete results.
102. In its defence, the Federal Republic of Nigeria exhaustively lists a series of measures it has taken to respond to the environmental situation in the Niger Delta and to ensure a balanced development of this region.
103. Among these measures, the Court takes note of the numerous laws passed to regulate the extractive oil and gas industry and safeguard their effects on the environment, the creation of agencies to ensure the implementation of the legislation, and the allocation to the region, 13% of resources produced there, to be used for its development.

104. However, compelling circumstances of this case lead the Court to recognise that all of these measures did not prevent the continued environmental degradation of the region, as evidenced by the facts abundantly proven in this case and admitted by the very same Federal Republic of Nigeria.
105. This means that the adoption of the legislation, no matter how advanced it may be, or the creation of agencies inspired by the world's best models, as well as the allocation of financial resources in equitable amounts, may still fall short of compliance with international obligations in matters of environmental protection if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered.
106. As stated before, as a State Party to the African Charter on Human and Peoples' Rights, the Federal Republic of Nigeria is under international obligation to recognise the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative or other measures to give effect to them.
107. If, notwithstanding the measures the Defendant alleges having put in place, the environmental situation in the Niger Delta Region has still been of continuous degradation, this Court has to conclude that there has been a failure on the part of the Federal Republic of Nigeria to adopt any of the "other" measures required by the said Article 1 of African Charter to ensure the enjoyment of the right laid down in Article 24 of the same instrument.
108. From what emerges from the evidence produced before this Court, the core of the problem in tackling the environmental degradation in the Region of Niger Delta resides in lack of enforcement of the legislation and regulation in force, by the Regulatory Authorities of the Federal Republic of Nigeria in charge of supervision of the oil industry.
109. Contrary to the assumption of the Federal Republic of Nigeria in its attempt to shift the responsibility on the holders of a licence of oil exploitation (see paragraph 82), the damage caused by the oil industry to a vital resource of such

importance to all mankind, such as the environment, cannot be left to the mere discretion of oil companies and possible agreements on compensation they may establish with the people affected by the devastating effects of this polluting industry.

110. It is significant to note that despite all the laws it has adopted and all the agencies it has created, the Federal Republic of Nigeria was not able to point out in its pleadings a single action that has been taken in recent years to seriously and diligently hold accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region.
111. And it is precisely this omission to act, to prevent damage to the environment and to make accountable the offenders, who feel free to carry on their harmful activities, with clear expectation of impunity, that characterises the violation by the Federal Republic of Nigeria of its international obligations under Articles 1 and 24 of the African Charter on Human and Peoples' Rights.
112. Consequently, the Court concludes and adjudges that the Federal Republic of Nigeria, by comporting itself in the way it is doing, in respect of the continuous and unceasing damage caused to the environment in the Region of Niger Delta, has defaulted in its duties in terms of vigilance and diligence as party to the African Charter on Human and Peoples' Rights, and has violated Articles 1 and 24 of the said instrument.

REPARATIONS

113. In the statement of claims the Plaintiff asks for an order of the Court directing the Defendants to pay adequate monetary compensation of 1 Billion Dollars (USD) (\$ 1,000,000,000) to the victims of human rights violations in the Niger Delta, and other forms of reparation the Court may deem fit to grant.
114. The Court acknowledges that the continuous environmental degradation in the Niger Delta Region produced devastating impact on the livelihood of the population; it may have forced some people to leave their area of residence in search for better living conditions and may even have caused health problems

to many. But in its application and through the whole proceedings, the Plaintiff failed to identify a single victim to whom the requested pecuniary compensation could be awarded.

115. In any case, if the pecuniary compensation was to be granted to individual victims, a serious problem could arise in terms of justice, morality and equity: within a very large population, what would be the criteria to identify the victims that deserve compensation? Why compensate someone and not compensate his neighbour? Based on which criteria should be determined the amount each victim would receive? Who would manage that one Billion Dollars?
116. The meaning of this set of questions is to leave clear the impracticability of that solution. In case of human rights violations that affect indetermined number of victims or a very large population, as in the instant case, the compensation shall come not as an individual pecuniary advantage, but as a collective benefit adequate to repair, as completely as possible, the collective harm that a violation of a collective right causes.
117. Based on the above reasons, the prayer for monetary compensation of one Billion US Dollars to the victims is dismissed.
118. The Court is, however, mindful that its function in terms of protection does not stop at taking note of human rights violation. If it were to end in merely taking note of human rights violations, the exercise of such a function would be of no practical interest for the victims, who, in the final analysis, are to be protected and provided with relief. Now, the obligation of granting relief for the violation of human rights is a universally accepted principle. The Court acts indeed within the limits of its prerogatives when it indicates for every case brought before it, the reparation it deems appropriate.
119. In the instant case, in making orders for reparation, the Court is ensuring that measures are indicated to guide the Federal Republic of Nigeria to achieve the objectives sought by Article 24 of the Charter, namely to maintain a general satisfactory environment favourable to development.

DECISION

For these reasons, and without the need to to adjudicate on the other alleged violations and requests,

120. THE COURT,

Adjudicating in a public session, after hearing both parties, and after deliberating:

- Adjudges that it has jurisdiction to adjudicate on the alleged violations of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
- Adjudges that SERAP has locus standi in the instant case;
- Adjudges that the report by Amnesty International is admissible;
- Adjudges that the Federal Republic of Nigeria has violated Articles 1 and 24 of the African Charter on Human and Peoples’ Rights;

CONSEQUENTLY,

121. Orders the Federal Republic of Nigeria to:

- i. Take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta;
- ii. Take all measures that are necessary to prevent the occurrence of damage to the environment;
- iii. Take all measures to hold the perpetrators of the environmental damage accountable;

Since other requests asking for declarations and orders from the Court as to rights of the Plaintiff and measures to be taken by the Defendant, and listed in the subparagraphs of paragraph 19, have already been considered albeit implicitly, by this decision, the Court does not have to address them specifically.

COSTS

122. The Federal Republic of Nigeria shall bear the costs.

123. The Federal Republic of Nigeria shall fully comply with and enforce this Decision of the Community Court of Justice, ECOWAS, in accordance with Article 15 of the Revised Treaty and Article 24 of the 2005 Supplementary Protocol on the Court.

Thus made, declared and pronounced in English, the language of procedure, in a public session at Ibadan, by the Court of Justice of the Economic Community of West African States, on the day and month above.

124. AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES :

- | | |
|--|-----------|
| – Hon. Justice Benfeito Mosso Ramos | Presiding |
| – Hon. Justice Hansine Donli | Member |
| – Hon. Justice Anthony Alfred Benin | Member |
| – Hon. Justice Clotilde Médégan Nougbodé | Member |
| – Hon. Justice Eliam Potey | Member |

125. **ASSISTED BY** Tony Anene-Maidoh Chief Registrar