



The Social and Economic Rights Action Center, et al. v. Nigeria

Comm. No. 155/96 (2001).

Country: Nigeria

Region: Africa

Year: 2001

Court: African Commission on Human and Peoples' Rights African Commission on Human and Peoples' Rights

Health Topics: Chronic and noncommunicable diseases, Diet and nutrition, Environmental health, Infectious diseases, Violence, Water, sanitation and hygiene

Human Rights: Freedom from discrimination, Right to a clean environment, Right to food, Right to health, Right to housing, Right to life, Right to property

Facts

The applicant alleged that the military government of Nigeria (Government), in its efforts to produce oil through the State-owned Nigerian National Petroleum Company (NNPC), contaminated the environment of the Ogoni People and led to environmental degradation and health problems among that community. More specifically, the applicant claimed that the NNPC, acting within a consortium with Shell Petroleum Development Corporation (SPDC), disposed toxic wastes into the environment and local waterways of the Ogoni People. They also claimed that the consortium did not ensure adequate care of its facilities. Consequently, according to the applicant, numerous oil leaks occurred, which contaminated the surrounding water, soil and air. The applicants further claimed that the contamination caused skin infections, gastrointestinal and respiratory illnesses, increased risks of cancer, as well as caused neurological and reproductive problems among the Ogoni People. The applicant also alleged that the Government neglected to require standard industry safety measures of the oil companies and did not require oil companies to consult with local communities before commencing operations. Moreover, the applicant charged that the Government had made Nigerian security forces available to the oil companies, which utilized the forces to attack, burn and destroy Ogoni villages and food supplies under the pretext of suppressing an anti-government movement.

The applicant alleged that such acts constituted violations of the rights to health and to a clean environment under Articles 16 and 24, respectively, of the African Charter on Human and Peoples' Rights, as well as Articles 2 (freedom from discrimination), 4 (right to life), 14 (right to adequate housing), 18(1) (right to family) and 21 (right to freely dispose of their wealth and natural resources) of the Charter.

Decision and Reasoning

The Commission found that Nigeria violated Article 16 (right to health) and Article 24 (right to a clean environment) of the Charter. The Commission recognized the link between a clean and safe environment and the quality of life and safety of the individual. Moreover, the Commission underscored that the right to health and the right to a clean environment requires that states take the necessary measures to protect the environment and the health of people. Specifically, the state bears the responsibility of monitoring and protecting "threatened" environments from industrial development and notifying the affected communities from hazardous materials and activities, as well as providing them an opportunity to participate in development decision-making. Nigeria failed to undertake any of these measures.

The Commission also found that Nigeria violated Article 21 (right to freely dispose of their wealth and natural resources), as well as states' international obligations to protect their people from harmful acts. The Commission observed that Nigeria, rather than protect the Ogoni people from private actors, "facilitated the destruction of the Ogoniland."

The Commission concluded that Nigeria had "massively and systematically" violated Article 14 (right to adequate housing) in relation to Articles 16 (right to health) and 18(1) (right to family). The Commission noted that even though the African Charter does not contain a right to housing, it is derived by a combination of the right to health, the right to property, and the right to family. The Commission explained that the destruction of

one's home "adversely" affects property, health, and family life.

The Commission also found that Nigeria had violated the right to food and the rights from which it implicitly derives under the Charter--namely Articles 4 (the right to life), Article 16 (the right to health) and Article 22 (the right to economic, social and cultural development). The Commission underscored that the right to food is "inseparably linked" to human dignity and is "therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation." In failing to prevent private actors from contaminating and destroying food sources for the Ogoni, Nigeria violated the right to food.

The Commission also concluded that Nigeria had violated Article 4 (right to life) through the government's and private actors' "wide spread terrorisations and killings," as well as the pollution and degradation of the environment "to a level humanly unacceptable has made it living in the Ogoni land a nightmare." The Commission recognized that these actions severely affected the lives of the Ogoni.

The Commission also found Nigeria in violation of Articles 2 (freedom from discrimination).

Decision Excerpts

"44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights--both civil and political rights and social and economic--generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and in no way should it imply the priority accorded to them. Each layer of obligation is equally relevant to the rights in question."

"45. At a primary level, the obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio economic rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs."

"46. At a secondary level, the State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This is very much intertwined with the tertiary obligation of the State to promote the enjoyment of all human rights. The State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures."

"47. The last layer of obligation requires the State to fulfil the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights. This is also very much intertwined with the duty to promote mentioned in the preceding paragraph. It could consist in the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security)."

"48. Thus States are generally burdened with the above set of duties when they commit themselves under human rights instruments. Emphasising the all embracing nature of their obligations, the International Covenant on Economic, Social, and Cultural Rights, for instance, under Article 2(1), stipulates exemplarily that States "undertake to take steps" by all appropriate means, including particularly the adoption of legislative measures. Depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. But sometimes, the need to meaningfully enjoy some of the rights demands a concerted action from the State in terms of more than one of the said duties."

"51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health."

"52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual."

â€œ57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties (See Union des Jeunes Avocats /Chad). This duty calls for positive action on part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case *Velásquez Rodríguez v. Honduras*. In this landmark judgment, the Inter-American Court of Human Rights held that when a State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens. Similarly, this obligation of the State is further emphasised in the practice of the European Court of Human Rights, in *X and Y v. Netherlands*[12]. In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.â€•

â€œ60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian Government has apparently violated.â€•

â€œ63. [...] Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths. Evictions break up families and increase existing levels of homelessness. â€•

"65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves."

â€œ67. [â€¦] Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear blessing or not), the most fundamental of all human rights, the right to life has been violated. The Security forces were given the green light to decisively deal with the Ogonis, which was illustrated by the wide spread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made it living in the Ogoni land a nightmare. The survival of the Ogonis depended on their land and farms that were destroyed by the direct involvement of the Government. These and similar brutalities not only persecuted individuals in Ogoniland but also the whole of the Ogoni Community as a whole. They affected the life of the Ogoni Society as a whole. The Commission conducted a mission to Nigeria from the 7th to 14th March 1997 and witnessed first hand the deplorable situation in Ogoni land including the environmental degradation.â€•

â€œ68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of

the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter.â€•

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