

New York judge lets Talisman Energy Genocide Case Proceed Despite Warnings from Canada, U.S.

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NEW YORK, Aug 30 (AP) -- A judge on Tuesday allowed a church's lawsuit alleging that a Canadian energy company aided genocide in its pursuit of oil in Sudan to proceed despite efforts by the United States and Canada to have it dismissed.

In the lawsuit, Talisman Energy Inc. and the Sudanese government are accused of working on a plan for the security of oil fields as Talisman hired its own advisers to coordinate military strategy with the government. The oil giant is accused of participating in ethnic cleansing, confiscation of property, kidnapping and rape.

U.S. District Judge Denise Cote noted Tuesday in her ruling that documents from the U.S. and Canadian governments did not suggest that the civil case against Talisman and the Republic of the Sudan would hinder U.S. relations with Canada or the Sudan.

She ruled after reviewing a diplomatic letter from the Canadian Embassy calling the case an "infringement in the conduct of foreign relations by the government of Canada" that would have a "chilling effect" on Canadian firms in the Sudan.

The judge said Canada had indicated that once the Sudan peacefully resolved its internal disputes and Canadian trade support services resumed, Canadian companies would avoid joining Sudan's economic revitalization "out of fear of U.S. courts."

"Even giving substantial deference to the Canada letter, Talisman has not shown that dismissal of this action is appropriate," the judge wrote. "Finally, the United States and the international community retain a compelling interest in the application of the international law proscribing atrocities such as genocide and crimes against humanity."

The lawsuit, which seeks unspecified damages, was brought in 2001 by the Presbyterian Church of Sudan on behalf of current and former residents of southern Sudan against the Calgary-based oil company.

The lawsuit alleges that there were regular meetings involving Talisman, army intelligence and the Ministry of Energy and Mining in which Talisman mapped out areas intended for exploration and discussed how to dispose of civilians in those areas.

It says Talisman and the government of Sudan "willfully participated in a campaign of ethnic cleansing, including extrajudicial killing, war crimes, forcible displacement, military bombings and assaults on civilian targets, confiscation and destruction of property, kidnapping, rape and enslavement against the non-Muslim, African Sudanese population living in and near the oil concession areas."

Lawyers for the plaintiffs and for Talisman Energy, which stopped doing business in the Sudan more than two years ago, did not immediately return telephone messages seeking comment Tuesday.

The U.S. Department of State in a letter told the court it took no position on the lawsuit's merits but shared the Canadian government's concerns.

The judge said the Department of State said it might be proper to dismiss a case when another government protests that the U.S. proceeding interferes with its foreign policy in pursuit of goals that the United States shares.

The U.S. letter said the United States "has been working actively and directly with the government of Sudan and with the international community for several years to bring an end to the decades-old conflict in southern Sudan and to bring relief to the many thousands of victims of that conflict."

The letter also advised that the Alien Tort Claims Act, used as a basis for the lawsuit, should only apply to disputes affecting the rights of aliens within the United States for acts that take place in this country, the judge said.

The obscure 1789 law was originally enacted to prosecute pirates but has been used since 1980 by Holocaust survivors and relatives of people killed or tortured under despotic foreign regimes. More recently, it has been invoked against multinational corporations, including ChevronTexaco over alleged abuses in Nigeria and Exxon Mobil over alleged problems in Indonesia.

The judge acknowledged that the U.S. Supreme Court has said federal courts should give serious weight to the executive branch's view of a case's impact on foreign policy.

But she said that there were few cases similar to the Talisman case and that it differed from a case in which large corporations were accused of using cheap labor in South Africa to sell products including technology and oil. That case was tossed out.

In the Talisman case, she said, the plaintiffs allege that the company "knowingly assisted Sudan in perpetrating a campaign of genocide and crimes against humanity, not that Talisman merely transacted business in and with Sudan."

She said the South African Apartheid cases resulted from state executive policies encouraging investment whereas the Talisman claims "involve knowing assistance in the commission of grave human rights abuses, including jointly planning attacks on civilians and supporting and facilitating those attacks."

She said she ruled as she did despite Canada's claim that the lawsuit will interfere with its foreign policy and handicap its efforts to promote peace in the Sudan.

"The allegations in this lawsuit concern participation in genocide and crimes against humanity, not trading activity," she said.

She said the contents of Canada's letter suggest "a lack of understanding about the nature of the claims" in the lawsuit.