



Shell's impunity for destruction in the Niger Delta (Nigeria)

Sector: Oil

Issues: Environmental destruction, right to health

The companies: **Shell PLC** (Shell) is one of the world's largest oil and gas companies and Europe's largest public company.¹ It is both registered and, since January 2022, headquartered in London. Shell established a joint venture in Nigeria in 1936 along with the precursor company of BP PLC, with its first shipment of oil leaving Nigeria in 1958.² In 1973, the Nigerian Government joined this venture and over a period of years, increased its stake as BP exited. The **Shell Petroleum Development Company of Nigeria** (SPDC) was established in 1979, incorporating assets of the preceding consortium. Shell is now in the process of exiting Nigeria.³

Affected rights holders: The **Ogale** and **Bille** communities are fishing and farming communities in the Niger Delta. Over a number of decades, oil spills from Shell's operations led to devastating environmental impacts with disastrous consequences for the local residents. The spills contaminated the communities' land and waterways which they relied on for farming, drinking, and washing. They destroyed vast swathes of mangrove swamp and killed the fish of the waterways on which the communities relied as a source of food.⁴ Shell has maintained that it may only be responsible where spills are caused by operational failure of its pipelines and not in the case of spills caused by oil theft, also known as bunkering.⁵

Ogoni is a region in the Niger Delta and the name of the ethnic group that lives there.⁶ The case of the **Ogoni Nine** is one infamous example of Shell's legacy of environmental destruction and complicity in corruption and human rights abuses, involving the arbitrary execution of nine men by the Nigerian state in 1995. Following years of legal battles, the widows of the Ogoni Nine who took their case against the company in the Netherlands for complicity in the unlawful arrest, detention, and execution of their husbands withdrew legal proceedings.⁷

Nigeria's military led a brutal campaign to suppress the protests of the Movement for the Survival of the Ogoni People (MOSOP) confronting the Anglo-Dutch giant for its impact in the region. This campaign against the movement, led by author and activist, Ken Saro-Wiwa, culminated in his execution along with eight other men.⁸ The military's campaign led to widespread human rights abuses, including the unlawful killing of hundreds of Ogoni people, rape, torture, and the destruction of homes and livelihoods.⁹ A review of thousands of pages of documents including Shell's internal documents, government reports and witness statements revealed Shell's knowledge of and complicity in the grave human rights abuses committed by the Nigerian Government.¹⁰

Details:

In 2015, claims were filed by the Ogale and Bille communities in the Niger Delta against Shell in the English courts.¹¹ In 2017, the High Court held that Shell is merely a holding company which does not exercise control over the operations of SPDC and owes no duty of care towards communities affected by foreseeable harm caused by the operations of this subsidiary.¹² In 2018, the Court of Appeal upheld the decision of the High Court but allowed its appeal to the Supreme Court.¹³

It was for the Supreme Court to decide on the circumstances under which the UK-domiciled parent company may owe a common law duty of care to the affected communities that suffer serious harm as a result of failings of one of its overseas subsidiaries as part of a joint venture operation.¹⁴

The Corporate Justice Coalition (then CORE) and the International Commission of Jurists were given permission to intervene in the Supreme Court case as representatives of civil society and both urged the court to reconsider the judgment of the lower courts on a number of points.¹⁵ The submission included a request that the court resolve inconsistencies between the lower courts' ruling on Okpabi, and the recent *Vedanta* ruling.¹⁶ In *Vedanta* it was decided that the English courts should take jurisdiction over the claim because substantial justice was not obtainable for the claimants in Zambia.

The Supreme Court held that the judgment of the Court of Appeal had erred by conducting a "mini-trial" prior to disclosure without witness evidence being properly tested.¹⁷ It also held that the Court of Appeal had erred in its decision that a parent company's enactment of group-wide policies and guidelines could not lead to liability for the acts of a subsidiary. Citing *Vedanta*, the court reaffirmed that there were numerous ways by which a parent company could adopt responsibility for the impacts of a subsidiary including through management, issuing defective advice or policies, implementing group-wide policies, or exercising supervision or control over a subsidiary.

This decision opened up the route for the communities to proceed with their claims against both Shell and SPDC. However, Shell refused to disclose documents central to the case. Instead, the claimants were forced to rely on evidence disclosed by whistleblowers – including former Shell staff members – revealing it held centralised control, including "mandatory rules" that must be followed by its subsidiaries.¹⁸

In early 2023, an Ogale group claim register was filed at the High Court in London, confirming that 11,317 people and 17 institutions, including churches and schools, from Ogale are seeking compensation for loss of livelihoods and damage against Shell.¹⁹ This is in addition to the 2,335 individual claims which were issued at the High Court in 2015.

How could a UK Business, Human Rights and Environment Act have made a difference?

In our assessment, under a UK Business, Human Rights and Environment Act, the company may have carried out appropriate due diligence in the first place. Such due diligence should reasonably include a human rights and environmental impact assessment including consultation with the communities whose land they had planned to use.

If carried out, this consultation may have indicated that such work could not be carried out without infringing on the communities' rights. If potential impacts arose in an impact assessment, the provisions of such a law might compel Shell to put measures in place to mitigate and prevent any future impacts and show that it had acted on risks discovered.

Had the communities proceeded to file a claim, they would likely not have faced hurdles related to Shell's alleged lack of control over, and therefore of liability for, the harm caused by its subsidiary. This is because the UK law would make clear that a parent company has a duty to prevent harm resulting from operations of subsidiaries, and this would not have been subject to debate within the court proceedings.

Once the harm was established, the burden of proof would have fallen on Shell to prove that it had taken all reasonable steps to prevent the harm. This would significantly have alleviated the difficulty for the communities to access internal company documents to prove their claim, including the need to rely on whistleblowers for evidence.

If a UK court found that Shell had caused, contributed to, or failed to take all reasonable due diligence steps to prevent the oil spills, Shell would likely have been held liable and ordered to pay compensation to the Ogale and Bille claimants, as well as to comply with any ancillary orders deemed appropriate.

Endnotes

- 1 Forbes (12 May 2022), "[Forbes Global 2000: Shell Becomes Europe's Top Public Company As Oil Price Boom Drives Profits](#)".
- 2 Reuters (23 September 2018), "[Timeline: Shell's Operations in Nigeria](#)".
- 3 Reuters (14 March 2022), "[Shell stopped from selling Nigerian assets until \\$2bn appeal decided](#)".
- 4 Reuters (14 March 2022).
- 5 Amnesty International (2 March 2016), "[Shell's growing liabilities in the Niger Delta](#)".
- 6 Anti-Slavery International and European Coalition for Corporate Justice, "[What if? Case studies of human rights abuses and environmental harm linked to EU companies and how EU due diligence laws could help protect people and the planet](#)".
- 7 Al Jazeera (8 November 2022), "[Nigerian widows end case in the Netherlands against Shell](#)".
- 8 Amnesty International (28 November 2017), "[A Criminal Enterprise? Shell's Involvement in Human Rights Violations in Nigeria in the 1990s](#)", p. 5.
- 9 Amnesty International (28 November 2017).
- 10 Amnesty International UK (18 May 2020), "[Shell: A Criminal Enterprise?](#)".
- 11 Leigh Day, "[Shell – Ogale and Bille](#)." Accessed 22 November 2022.
- 12 Amnesty International UK (12 February 2021), "[UK: Landmark Supreme Court ruling forces Shell to address abuses in Nigeria](#)".
- 13 Amnesty International UK (12 February 2021).
- 14 UKSC [2021], "[Okpabi and others v Royal Dutch Shell Plc and another](#)".
- 15 CORE Coalition (29 May 2019), "[Rule 15 Submission: Okpabi v Shell](#)".
- 16 UKSC [2019], "[Vedanta Resources PLC and another v Lungowe and others](#)".
- 17 UKSC [2021].
- 18 CORE Coalition (29 May 2019).
- 19 Leigh Day (2 February 2023), "[Over 13,000 residents from the Ogale and Bille communities in Nigeria file claims against Shell for devastating oil spills](#)".