



ON TRIAL: SHELL IN NIGERIA

LEGAL ACTIONS AGAINST THE OIL MULTINATIONAL

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First published in 2020 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: AFR 44/1698/2020

Original language: English

amnesty.org



Cover photo: A Dutch court hears the first arguments in an historic case against Shell, in which the oil giant stands accused of instigating a raft of horrifying human rights violations committed by the Nigerian government against the Ogoni people in the 1990s, on February 12, 2019 in The Hague, Netherlands. © Pierre Crom/Getty Images

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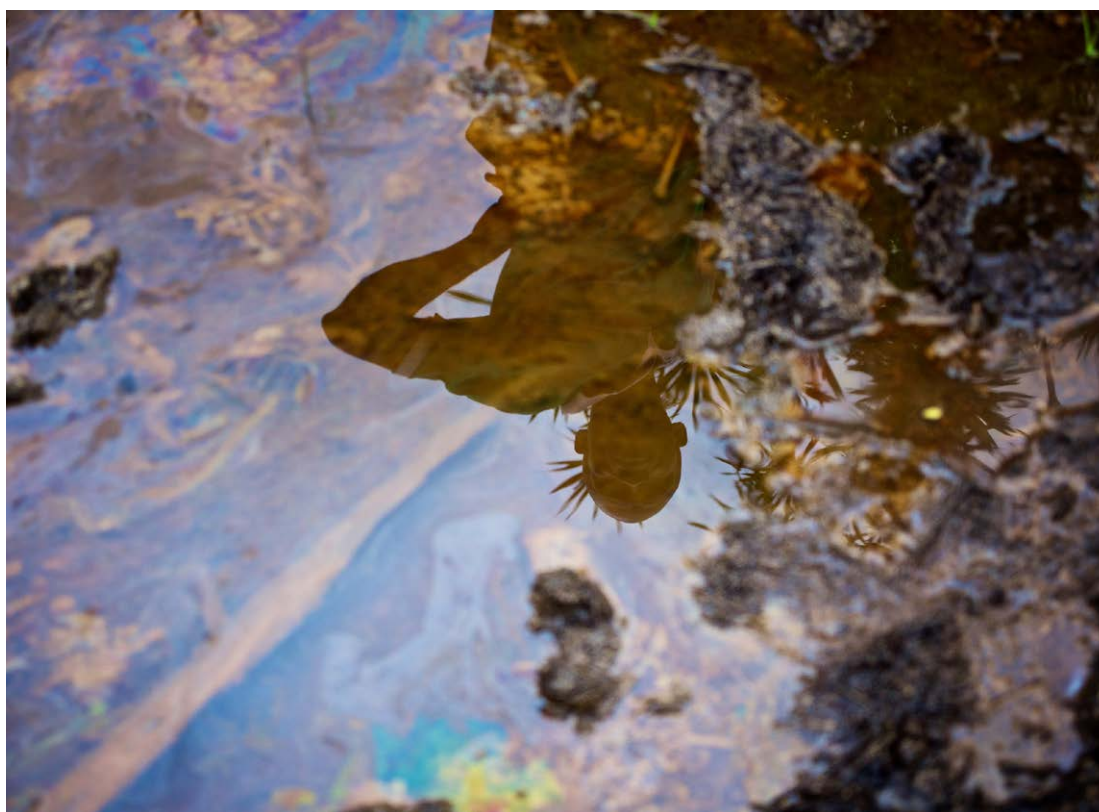
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1. EXECUTIVE SUMMARY



Every year there are hundreds of spills from Shell's pipelines and wells in the Niger Delta. Land and waterways that people rely on for farming and fishing is contaminated. Kegbara Dere, Ogoniland, September 2015. © Michael Uwemedimo/cmapping.net

Since Shell first discovered oil near the village of Oloibiri in 1956, the Niger Delta has become Africa's most valuable oil-producing region and the Anglo-Dutch giant has earned billions of dollars.

But Amnesty International's research over many years has demonstrated that Shell's Nigeria operations have come at the cost of the human rights of people living there.

Hundreds of oil spills a year from poorly-maintained pipelines and wells, along with inadequate clean-up practices, have damaged the health and livelihoods of the Niger Delta's many inhabitants, who largely remain stuck in poverty. Starting in the 1990s there have been waves of community protests, but the Nigerian government has brutally repressed them, sometimes with the support of the oil company.

Now, Shell's Nigeria operations are facing scrutiny like never before, with an unprecedented set of legal cases against the oil company in courts in Europe. Each is expected to reach a conclusion, or other important milestone, in 2020.

This report draws on Amnesty International's research on the Niger Delta, which dates back more than twenty years. Researchers also spoke to lawyers and human rights and environmental organizations involved in each of the cases. They reviewed court documents, attended hearings in the Okpabi and Kiobel cases, and interviewed the claimants.

Researchers also visited the Niger Delta in August 2019, where they met human rights defenders, environmentalists and representatives of the Ogale and Bodo communities.



In Port Harcourt, Nigeria, activists, partner organizations and Amnesty International called on Shell to own up, pay up and clean up the Niger Delta, as part of a week of action in April 2012. © Amnesty International

THE CASES

In the Netherlands, **four Nigerian women are taking Shell to court** over what they say was the **company's complicity in the unlawful arrest, detention and execution of their husbands in 1995**. This came as the **Nigerian military sought to suppress community protests against the oil industry**. The men were jailed and then hanged following a blatantly unfair trial, alongside the writer and protest leader **Ken Saro-Wiwa**. In October 2019, the court heard evidence that **Shell paid bribes to individuals in exchange for them falsely testifying against the men**. The four widows are claiming **compensation** and a **public apology** from Shell. The next, and **possibly final, witness hearing is due to take place in The Hague in March 2020**.

In May 2020, a final hearing is also expected in the first cases brought against Shell in a European court over its environmental record in Nigeria. In 2008, four Nigerian farmers and Friends of the Earth filed three separate claims in the Netherlands against its parent company, Royal Dutch Shell (RDS), and its Nigeria-based subsidiary, Shell Petroleum Development Company (SPDC) over damage caused by oil spills. These cases also marked the first time that a Dutch multinational had been sued in a Dutch court over the operations of its overseas subsidiaries.

In June 2020, the UK's Supreme Court will hear an appeal brought by two communities, Ogale and Bille, in another pollution-related case. The court will decide whether it can proceed on the critical issue of whether RDS is liable for the actions of SPDC. Shell claims that RDS is not responsible for the actions of its subsidiary even though it owns 100 percent of SPDC and receives the profits that it makes.

Finally, another community, Bodo, is also involving the UK courts in its battle to get Shell to clean up pollution from oil spills. This community first sued Shell in London in 2012. Three years later, under a court-approved settlement, Shell made an unprecedented payment to Bodo of 70 million US dollars (55 million pounds) for losses caused by two massive spills. At the same time, Shell undertook to clean up Bodo's waterways, which had been devastated by the giant spills. Due to a lack of progress in this effort, and the ongoing harm suffered by the community, it is threatening to refer the issue back to the High Court in London if the pollution is not cleaned up by mid-2020.

These are civil cases, in which Nigerian individuals or communities are seeking redress from Shell, for the impact that pollution has had, and continues to have, on their human rights. At stake in each of these are potentially tens of millions of dollars in damages, clean-up of oil pollution and legal costs.

A different sort of legal proceeding is also taking place. It is a criminal case, brought by prosecutors in Italy, over the alleged involvement of Shell, and the Italian oil multinational Eni, in a 1.3 billion US dollar bribery scheme connected to the transfer of a Nigerian oil licence. The case is also being investigated by law enforcement agencies in the UK, the Netherlands and Nigeria. If found guilty, some former members of Shell staff face jail and the company faces financial penalties.

In this and the other cases, Shell denies the claims.

SHELL'S BUSINESS MODEL ON TRIAL

These cases are not only important for the individuals and communities involved. They could set important precedents on the responsibility of companies for their overseas operations, which would open the way for further litigation not only against Shell but other multinational corporations as well.

They are also placing a much-needed spotlight on Shell's business model in Nigeria. It is not a coincidence that these cases are all focussing on the same country.

Nigeria's regulation of the oil industry is undoubtedly weak and lacks independence. Government agencies responsible for industry regulation and enforcement are under-resourced, ineffective and in some cases compromised by conflicts of interest. Its own courts have failed to offer the victims of human rights abuses a meaningful avenue for seeking justice. Shell has benefitted enormously from extracting oil in such a context where there is little or no government oversight and no effective safeguards.

Shell does not publish a breakdown of its earnings by country, but the profit that flows from Nigeria to its parent company in the Netherlands and the UK is certainly significant. Reuters estimated that it had earned 4 billion US dollars from oil and gas production in Nigeria in 2017, which was around 7 percent of its total global output.

These cases, as well as Amnesty's research into Shell's operations over many years, show that while generating these profits, it has operated in a way that has harmed communities and has not effectively remediated the harm it has caused.

Shell has a responsibility to respect the human rights of people in the Niger Delta, including by taking all reasonable steps to prevent spills and then remediate contaminated land and water. Shell should not have to wait for legal action before taking such actions, nor should affected communities have to resort to legal action in order to obtain a remedy.



Pastor Christian Kpandei showing the damage done to his fish farm in Bodo, Nigeria, May 2011. The farm flourished before a massive spill from a Shell pipeline in August 2008, but the pollution destroyed his fish farm, leaving him and his workers without a regular income.
© Amnesty International

KEY RECOMMENDATIONS

The Government of Nigeria must significantly strengthen its regulation of the oil industry and guarantee that its regulatory bodies have the necessary enforcement powers, expertise and resources to ensure that companies take all reasonable steps to prevent spills and clean up those that do occur, as required by Nigerian law.

The UK and the Netherlands need to introduce legal reforms to ensure accountability and redress for human rights abuse in the context of the overseas operations of their multinationals.

Shell must improve its operational practices in the Niger Delta, to take all reasonable measures to prevent spills, and then effectively clean up and remediate all spills from its pipelines and wells in line with Nigerian law and international standards. Shell must ensure that all communities affected by failed or delayed clean-up of oil spills receive adequate compensation for their losses.

Map of the Niger Delta region



1. METHODOLOGY

Amnesty International has been conducting research on human rights abuses linked to the oil industry in the Niger Delta since the mid-1990s.¹ Working jointly with the **Port Harcourt-based Centre for the Environment, Human Rights and Development (CEHRD)**, this has included investigations into the cause and impact of pollution in Ogoni and Bodo, which are two of the communities that have brought cases against Shell.² Amnesty International has also investigated **Shell's role in the military crackdown of the 1990s**, reviewing thousands of pages of court depositions and internal company documents.³

For this report, researchers spoke to lawyers and human rights and environmental organizations involved in each of the cases. They reviewed court documents, attended hearings in the Okpabi and Kiobel cases, and interviewed the claimants.

Researchers also visited the Niger Delta in August 2019, where they met human rights defenders, environmentalists and representatives of the Ogoni and Bodo communities.



On 28 August 2008 a fault in the Trans-Niger pipeline resulted in a massive 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 their livelihood. © CEHRD

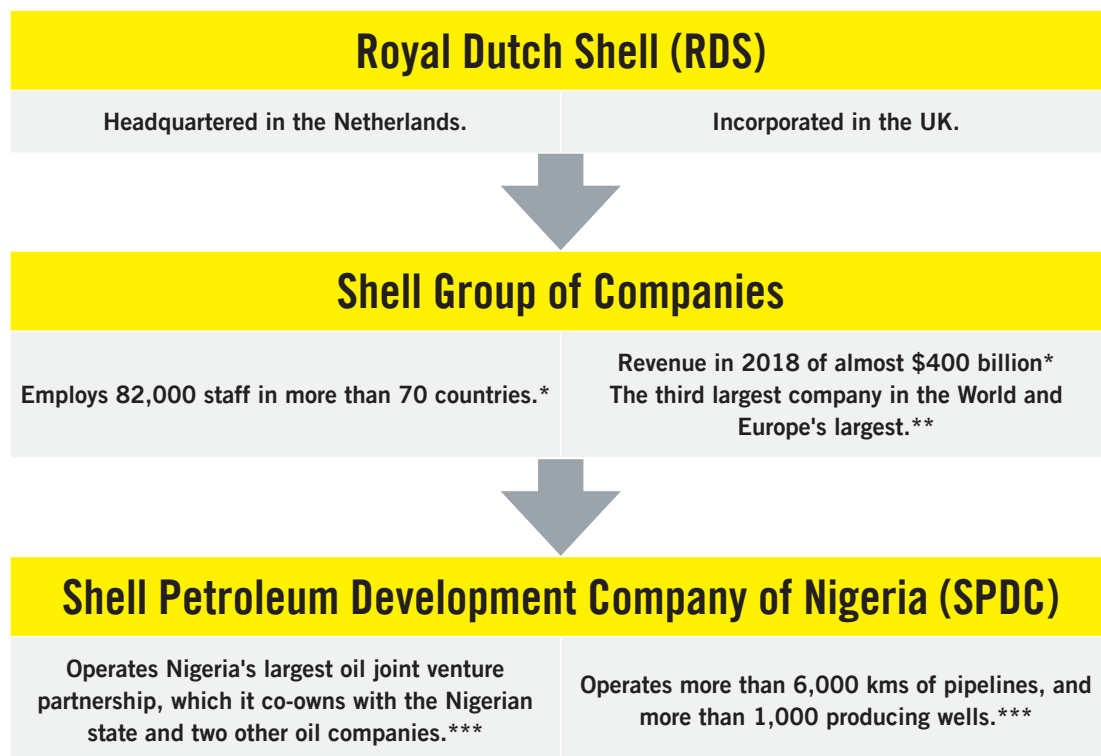
1. Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 1995 (Index: AFR 44/020/1995), *Claiming Rights and Resources. Injustice, Oil and Violence In Nigeria*, 2005 (Index: AFR 44/020/2005), *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, 2009 (Index: AFR 44/017/2009), <https://www.amnesty.org/en/documents/AFR44/017/2009/en/> (hereinafter, Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*); Amnesty International and the Centre for the Environment, Human Rights and Development (CEHRD), *Bad Information: Oil Spill Investigations in the Niger Delta*, 2013 (Index: AFR 44/028/2013), www.amnesty.org/en/documents/AFR44/028/2013/en/ (hereinafter, Amnesty International and CEHRD, *Bad Information*); *Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills*, 2018 (Index: AFR 44/7970/2018), <https://www.amnesty.org/en/documents/afr44/7970/2018/en/> (hereinafter, Amnesty International, *Negligence in the Niger Delta*).

2. Amnesty International, *The True Tragedy: Delays and Failures in Tackling the Oil Spills in the Niger Delta*, 2011 (Index: AFR 44/018/2011), <https://www.amnesty.org/download/Documents/24000/afr440182011en.pdf> (hereinafter, Amnesty International, *The True Tragedy*); Amnesty International and CEHRD, *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta*, 2015 (Index: AFR 44/2746/2015), <https://www.amnesty.org/en/documents/afr44/2746/2015/en/> (hereinafter, Amnesty International and CEHRD, *Clean it up*).

3. Amnesty International, *A Criminal Enterprise?*, 2017, p20, (Index: AFR 44/7393/2017) <https://www.amnesty.org/en/documents/AFR44/7393/2017/en/> (hereinafter, Amnesty International, *A Criminal Enterprise?*).

2. KEY FACTS ABOUT SHELL IN NIGERIA

SHELL CORPORATE STRUCTURE



*Shell Global, *Who We Are*, <https://www.shell.com/about-us/who-we-are.html>

** Fortune, *Global 500*, 2019, <https://fortune.com/global500/2019/>

*** SPDC, *About Us*, <https://www.shell.com.ng/about-us/what-we-do/spdc.html>

Nigeria is Africa's largest oil producer.⁴ Its industry is based in the Niger Delta, in the south of the country, where **Shell first found oil** in commercially viable quantities near the village of Oloibori **in 1956, when Nigeria was still a British colony.**⁵ **The Niger Delta has since become Africa's most valuable oil-producing region.**

4. Organization of the Petroleum Exporting Countries, *Table 3.5: World crude oil production by country*, <https://asb.opec.org/index.php/data-download>

5. Shell Nigeria, *Shell in Nigeria Portfolio*, <http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/portfolio.html>

The industry is run by joint ventures between the Nigerian government and multinational companies. Shell has always been the most important of these. Shell runs its oil operations in Nigeria through its subsidiary, Shell Petroleum Development Company (SPDC). It is a major shareholder and the operator of the country's largest joint venture, which produces almost 40 percent of Nigeria's oil.⁶

In his memoirs, Shell's former chief economist and prominent British politician Sir Vince Cable laid out the historic importance of Shell's Nigeria operations:

"The upstream business in Nigeria was the jewel in the crown of the exploration and production division, the company's elite corps. Many managing directors, past and present had served time in the Niger Delta; Nigeria accounted for one of Shell's largest sources of equity oil (oil owned by the company rather than managed on Shell's behalf), and a steady if unspectacular profit."⁷

Shell does not publish a breakdown of its earnings by country, but this profit is certainly significant. Reuters estimated that Shell had earned 4 billion US dollars from oil and gas production in Nigeria in 2017, which was around 7 percent of its total global output.⁸

A vast network of pipes connecting numerous oil and gas fields now cross the Delta. Many run close to people's homes, next to farmland and through swamps and waterways where people fish. Shell operates more than 1,000 oil and gas wells and manages a network of approximately 6,000 km of pipelines, spread over 30,000 square kilometres.⁹

6. Witness Statement of Osagie Okunbor in Okpabi v Shell, Managing Director of SPDC, 26 June 2016, p5, on file with Amnesty International.

7. Vince Cable, *Free Radical: A Memoir*, Atlantic Books, 2009, p195.

8. Ron Bousso, *In Nigeria, Shell's onshore roots still run deep*, Reuters, 23 September 2018, <https://www.reuters.com/article/us-nigeria-shell-insight/in-nigeria-shells-onshore-roots-still-run-deep-idUSKCN1M3069>.

9. Witness Statement of Osagie Okunbor in Okpabi v Shell, Managing Director of SPDC, 26 June 2016, p4, on file with Amnesty International.

3. THE CASES



A peaceful protest movement against Shell was launched in the early 1990s by the activist and author Ken Saro-Wiwa in his home region, Ogoniland. Shell was later forced to pull out of the area, prompting a crackdown on protestors by the Nigerian military. Ken Saro-Wiwa was executed, along with eight other men, in 1995, after a blatantly unfair trial. January 1993. © Tim Lambon / Greenpeace

3.1 KIOBEL AND OTHERS V SHELL

Shell's operations in the Niger Delta were first, and most effectively, put under the spotlight in the 1990s by **Ken Saro-Wiwa**, an acclaimed Nigerian writer. Saro-Wiwa led a community organisation in his home area, **Ogoniland**, called the **Movement for the Survival of the Ogoni People (MOSOP)**. MOSOP said that while outsiders had grown rich on the oil that was pumped from under their soil, pollution from oil spills and gas flaring had, "led to the **complete degradation of the Ogoni environment, turning our homeland into an ecological disaster.**"¹⁰

10. MOSOP, *The Ogoni Bill of Rights*, article 16, 1990.

In January 1993, MOSOP declared that Shell was no longer welcome to operate in Ogoniland.¹¹ Shell accused Ken Saro-Wiwa of exaggerating the scale of the pollution. It encouraged and solicited the intervention of the Nigerian military, who at the time ruled the country, to deal with the protestors, despite the likelihood that this would result in serious human rights abuses.¹² In 1995, following a blatantly unfair trial in Port Harcourt, Ken Saro-Wiwa and eight other men (commonly known as the “Ogoni Nine”) were hanged, accused of involvement in murder.¹³

One of the men hanged alongside Ken Saro-Wiwa was Dr Barinem Kiobel, a government official from Ogoniland. He was not a member of MOSOP but personal correspondence seen by Amnesty International shows that he had courageously tried to use his influence to prevent human rights abuses being committed, even after he was jailed.¹⁴

In 2017, Dr. Kiobel's widow Esther brought a claim against Shell in the Netherlands along with three other widows of the “Ogoni Nine”: Victoria Bera, Blessing Eawo and Charity Levula.¹⁵ This case is currently in front of the Dutch courts. The women are claiming damages for harm caused by Shell's actions, and a public apology.

“I need the truth to be heard. I will continue fighting even if it takes my last breath - to see my husband exonerated for a crime he did not commit,” Esther Kiobel explained.¹⁶

She accuses Shell of colluding with the Nigerian military authorities in human rights abuses during the government's campaign to silence the protest movement, including the unlawful arrest, detention and execution of her husband, Dr Kiobel. She first initiated proceedings against Shell in the USA, where she was granted asylum, in 2002. Shell challenged the case on jurisdictional grounds. The US Supreme Court eventually ruled in Shell's favour in 2013, holding that the US courts were not the appropriate forum to hear a case involving foreign parties in events that took place overseas. This followed a 1996 civil case against Shell by relatives of Ken Saro-Wiwa and others, which Shell settled out of court in 2009 for 15.5 million US dollars without an admission of liability.¹⁷ The US courts never examined the question of what Shell's role in human rights violations was. The Nigerian courts have also never examined this.

This issue is now before the Dutch courts. At the case's first hearing in February 2019, Esther Kiobel and Victoria Bera gave moving testimonies regarding their late husbands and subsequent struggles for justice. It was the first time either had an opportunity to speak in court.¹⁸

The women largely base their case on a mass of internal documents that Shell was required to release during the US proceedings. These documents included details of Shell's close relationship with the Nigerian authorities in the 1990s, as well as examples of company managers calling for the security

11. Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 119

12. Amnesty International, *A Criminal Enterprise?* p46 and Conclusion.

13. Amnesty International, *In The Dock*, 2017 (Index: AFR 44/6604/2017), <https://www.amnesty.org/en/documents/afr44/6604/2017/en/> (hereinafter Amnesty International, *In The Dock*).

14. Kiobel's private correspondence show that in the months prior to his arrest, he had helped communicate concerns about the human rights situation in Ogoniland to Lieutenant-Colonel Komo, the military administrator of Rivers State. Even after his arrest, Kiobel campaigned to improve conditions in his home area, writing to Komo to appeal for a military withdrawal from Gokana (in Ogoniland) because of “indiscriminate shootings, killing of innocent persons.” (Letter from Kiobel to Komo, 3 June 1994).

15. Amnesty International, *In The Dock*.

16. Amnesty International, *I will fight to my last breath” - Esther Kiobel on her 22-year battle to get Shell in court*, 29 June 2018, <https://www.amnesty.org/en/latest/news/2018/06/i-will-fight-to-my-last-breath-esther-kiobel-on-her-22year-battle-to-get-shell-in-court/>

17. For details of both cases see the website of the Center for Constitutional Rights, <https://ccrjustice.org/home/what-we-do/our-cases/kiobel-v-royal-dutch-petroleum-co-amicus>

18. Mark Dummett, *Ruling due in Esther Kiobel's epic legal battle against Shell*, Amnesty Global Insights, 24 April 2019, <https://medium.com/amnesty-insights/ruling-due-in-esther-kiobels-epic-legal-battle-against-shell-cb76bba37e6d>.

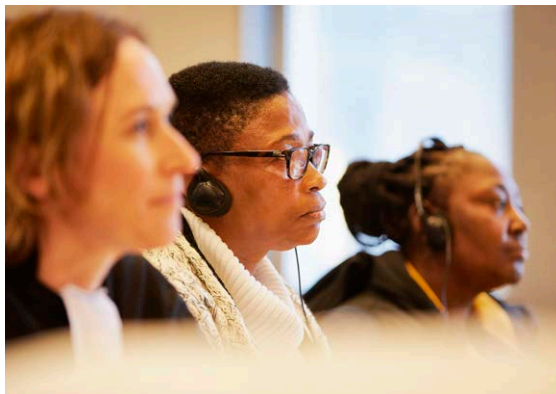
forces to intervene to protect pipelines and oil fields, even though they knew that such interventions were likely to end in bloodshed.¹⁹ The claimants also allege that Shell offered jobs and money to several witnesses to induce them to provide false testimony incriminating the Ogoni Nine.²⁰

Shell rejected all allegations. It also argued that the court should dismiss the claim on jurisdictional grounds and because the events took place so long ago.²¹

In May 2019, the court issued an interim ruling, stating that the case was not time-barred and that the court did have jurisdiction. The court ordered that the claimants' lawyers call witnesses and provide further evidence as to whether Shell bribed individuals to testify against the Ogoni Nine, and whether these testimonies contributed to human rights violations against the claimants or their husbands. The court also ruled that Shell hand over some further internal documents concerning communication within Shell about the trial of the Ogoni Nine.²²

The court, however, did not order Shell to release other confidential internal documents, which were requested by Esther Kiobel's legal team in the case.²³ It also dismissed some important allegations made by the claimants, relating to Shell's close ties with the Nigerian government and the extent to which the company supported the crackdown.

In October 2019, the first witness hearing took place. Three men told the court that Shell and the Nigerian government had given them money and offered them other bribes in order to incriminate the Ogoni Nine.²⁴ A second, and possibly final, witness hearing is expected in March 2020. The date of the ruling is not yet known.



Esther Kiobel and Victoria Bera sit with their lawyer as a Dutch court hears the first arguments in an historic case against Shell, in which the oil giant stands accused of instigating a raft of horrifying human rights violations committed by the Nigerian government against the Ogoni people in the 1990s, on February 12, 2019 in The Hague, Netherlands.
© Pierre Crom/Getty Images

19. Amnesty International researchers reviewed thousands of pages of internal Shell documents and court depositions released as part of subsequent US litigation. These provide evidence that Shell repeatedly encouraged the Nigerian military and police to take action to deal with community protests when the company knew this put lives at risk. On several occasions Shell provided logistical assistance to military or police personnel, including transport. Without transporting the military or police to areas where community protests were occurring, it is likely that the subsequent violence would not have happened. Finally, Shell's relationship with the Nigerian authorities at the time gives rise to questions about its complicity or involvement in the violations and crimes. The company had significant access to senior figures and was at times in daily contact with parts of the security forces. None of the hundreds of internal documents analysed reflect any attempt by Shell to express concern about the violence in Ogoniland. As a result, Amnesty International considers that Shell and specific executives should face investigation, with a view to prosecution, over their involvement in the crimes committed by the Nigerian military in Ogoniland in the 1990s. See Amnesty International, *A Criminal Enterprise*.

20. Prakken d'Oliveira, *Shell summoned to court for involvement in unlawful executions in Nigeria*, 29 June 2017, <https://www.prakkendoliveira.nl/en/news/2017/shell-summoned-to-court-for-involvement-in-unlawful-executions-in-nigeria>

21. Shell, *Statement of Defence, SPDC et al V Kiobel and Others*, 11 April 2019, on file with Amnesty International.

22. Prakken d'Oliveira, *Interlocutory verdict in Kiobel and others vs Shell*, 2 May 2019, <https://www.prakkendoliveira.nl/en/news/2019/interlocutory-verdict-in-the-kiobel-case>

23. Prakken d'Oliveira, *Interlocutory verdict in Kiobel and others vs Shell*, 2 May 2019, <https://www.prakkendoliveira.nl/en/news/2019/interlocutory-verdict-in-the-kiobel-case> (accessed 22 August 2019).

24. Amnesty International observation of the hearing.

3.2 ENVIRONMENTAL CASES

There are **three separate legal proceedings** taking place against Shell in **Dutch and British courts** relating to oil pollution. This has devastated the Niger Delta.

Data from Shell's own spill incident reports reveal that from **2011-18** the company reported a **huge number of spills - 1,010** along the network of pipelines and wells that it operates.²⁵ Spills have a variety of causes – from third-party tampering, to operational faults and corrosion of aged facilities. Shell blames most spills on theft and pipeline sabotage, and are not due to its own negligence.²⁶

Research by Amnesty and CEHRD however show **that the company's facts and figures emerge from a flawed process for identifying the volume, cause and impact of oil spills.**²⁷ The research also shows that this **process often lacks both independence and oversight,** partly because the government regulators are so weak. As a result, **Shell's findings cannot be trusted.**

For example, the company's report for a spill in the Bodo area of Ogoniland in 2008 claimed that only 1,640 barrels of oil were spilled. However, based on an independent assessment published by US firm Accufacts Inc., Amnesty International calculated that the total actually exceeded 100,000 barrels.²⁸ For years, Shell defended its far lower figure. But in November 2014 during a court case in the UK, Shell was finally forced to admit that the amount was indeed larger than it had previously stated.²⁹



Oil pollution in Kegbara-Dere (K-Dere) community in Ogoniland, Rivers State, Niger Delta, Nigeria. This community has experienced multiple oil spills since Shell started operations there in the 1960s. September 2015. © Michael Uwemedimo/cmapping.net

25. Shell Nigeria, *Oil Spill Data*, <https://www.shell.com.ng/sustainability/environment/oil-spills.html>.

26. Shell Nigeria, *Oil Spill Data*, <https://www.shell.com.ng/sustainability/environment/oil-spills.html>.

27. Amnesty International and CEHRD, *Bad Information*, p15-44; Amnesty International, *Negligence in the Niger Delta*, p15.

28. Amnesty International and CEHRD, *Bad Information*, pp49-53.

29. Amnesty International, “*Court documents expose Shell's false claims on Nigeria oil spills*”, 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills/

Similarly, Amnesty International research and data analysis has undermined Shell's claims regarding the cause of oil spills.³⁰ In many cases, we found that **the company's claims that spills were caused by theft or sabotage are based on inconsistent or incomplete evidence**, and that the spills **might instead have been caused by operational faults**. Following an analysis of thousands of pages of oil spill reports and photographs, Amnesty International requested in 2018 that the Nigerian government oil spill regulator **re-open investigations into almost 50 spills because evidence undermined Shell's claims about their likely cause**.³¹ The regulator has **so far refused to do so**.

Even in cases of spills caused by theft or sabotage, Shell still has responsibility. **Nigerian law requires all pipeline operators to employ the best available technology and practice standards**. These include **measures to protect against spills resulting from third party interference**, such as by strengthening or burying pipelines and surveillance.³² Nigerian law also requires oil companies to clean up spills from their infrastructure, regardless of the cause.³³



Shell's pipelines in Ogoniland are old and poorly maintained. There have been several spills and in 2009 there was a huge fire, at the Bomu Manifold, at K. Dere, Rivers state. September 2015. © Michael Uwemedimo/cmapping.net

30. Amnesty International and CEHRD, *Bad Information*, p19-27, and Amnesty International, *Negligence in the Niger Delta*, p29-32.

31. Amnesty International, *Negligence in the Niger Delta*, p29.

32. For example, Nigerian law requires oil companies to ensure "good oil field practice" and to comply with internationally recognized standards, including those established by the American Petroleum Institute. Mineral Oils (Safety) Regulations 1962, Regulation 7.

33. Department of Petroleum Resources, *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (EGASPIN), revised edition 2002, p148, para.2.6.3.

THE SHELL FILES

Internal company documents and other sources collated by Amnesty International show that Shell staff have known for years that underinvestment and poor maintenance or equipment failure have been a major cause of the spills.

- In 1994, the head of environmental studies for Shell Nigeria, Bopp Van Dessel, resigned, complaining that he felt unable to defend the company's environmental record, "without losing his personal integrity."³⁴
- The same year an internal paper revealed that Shell had not properly funded its pipelines and other infrastructure in Nigeria: "One measure of this deterioration is the frequency and severity of oil pollution incidents caused by corrosion and other integrity failures in the production system."³⁵
- In 1996, a Shell Nigeria "Country Business Plan" identified that its "infrastructure (was) poorly designed and maintained."³⁶
- In 2002, an internal Shell presentation stated: "the remaining life of most of the [Shell] Oil Trunklines is more or less non-existent or short, while some sections contain major risk and hazard."³⁷
- In 2008, a US diplomatic cable stated that a contractor with many years' experience of laying pipelines in the Niger Delta reported that, "73 per cent of all pipelines there are more than a decade overdue for replacement. In many cases, pipelines with a technical life of 15 years are still in use thirty years after installation."³⁸
- In 2009, a Shell employee warned in an email that: "[the company] is corporately exposed as the pipelines in Ogoniland [in the Niger Delta] have not been maintained properly or integrity assessed for over 15 years."³⁹



Dead periwinkles covered in oily mud from Bodo creek, Nigeria, May 2011. There were two massive spills in August 2009 from a poorly maintained Shell pipeline.
© Amnesty International

34. Shell, *Exit Interview with JP Van Dessel*, 28 November 1994, on file with Amnesty International.

35. Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, on file with Amnesty International.

36. *The Shell Companies in Nigeria, Country Business Plan*, 1996, on file with Amnesty International.

37. Amnesty International, *Court documents expose Shell's false claims on Nigeria oil spills*, 13 November 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

38. Wikileaks, *Nigeria: Pipeline Expert Says 73 Percent Of Niger Delta Pipelines Need Replacement, Cause Spills*, Consulate Lagos (Nigeria), 17 December 2008.

39. Amnesty International, *Court documents expose Shell's false claims on Nigeria oil spills*, 13 November 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

THE HUMAN RIGHTS IMPACT OF OIL POLLUTION IN THE NIGER DELTA

The livelihoods, health and access to food and clean water of communities across the Niger Delta are closely linked to the land and environmental quality, and hence are vulnerable to oil contamination. This was documented by the United Nations Environment Programme (UNEP) in 2011. UNEP exposed an appalling level of pollution in the Ogoniland region caused by oil spills that Shell had not adequately cleaned up. This included the contamination of agricultural land and fisheries, the poisoning of drinking water, and the exposure of hundreds of thousands of people to serious health risks.⁴⁰

The main human rights impacts documented by Amnesty International and CEHRD include the following violations and abuses:⁴¹

- the right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agriculture and fisheries.
- the right to water – which occur when oil spills pollute water used for drinking and other domestic purposes.
- the right to health – which arise from the failure to secure the underlying determinants of health, including a healthy environment, and the failure to enforce laws to protect the environment and prevent pollution.
- the right to ensure access to effective remedy for people whose human rights have been violated.
- the right to information of affected communities relating to oil spills and clean-up, and the impact that these have.

The violations are the result of the operations of the oil companies, including Shell, and the almost complete failure of the Nigerian government to regulate the oil industry and protect the rights of the people of the Niger Delta.

Shell has publicly said that, since 2011, it has addressed pollution at contaminated sites, as documented by UNEP.⁴² However, research by Amnesty International and CEHRD contradicts Shell's claims.⁴³



Signboard warning people not to enter stream that has been contaminated by oil spills, Ogale, Rivers State, Nigeria. Every year there are hundreds of spills in the Niger Delta, and clean-up is often slow and ineffective.
© Amnesty International

40. United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, https://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf (hereafter, UNEP, *Environmental Assessment*).

41. For a full discussion on the human rights impact of oil pollution in the Niger Delta, see Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*.

42. Shell Nigeria, The UNEP Environmental Assessment of Ogoniland, <https://www.shell.com.ng/sustainability/environment/unep-environmental-assessment-of-ogoniland.html>.

43. Amnesty International and CEHRD, *Clean it up*.

3.2.1 FOUR FARMERS' CASES

The first of the pollution-related cases marked the first time that any Dutch company had been sued in the Dutch court for the operations of its subsidiaries overseas.

In 2008, four Nigerian farmers (Eric Barizaa Dooh, Fidelis Ayoro Oguru, Alali Efanga and Friday Alfred Akpan), along with Milieudefensie, the Dutch section of Friends of the Earth, filed claims against RDS and SPDC.⁴⁴ They are seeking to obtain compensation for alleged damage to fish ponds and land caused by oil spills from two underground pipelines and an oil well operated by Shell in the villages of Goi, Ikot Ada Udo and Oruma between 2004 and 2007.⁴⁵

The farmers and Milieudefensie have also requested that Shell take steps to fully clean up the affected areas and to prevent further spills in the future. Shell denied liability, arguing that it had done nothing wrong, and that the Dutch courts had no competence to make findings regarding SPDC, as this was a separate legal entity registered in Nigeria.⁴⁶

The case has been through numerous hearings and appeals.⁴⁷ Most significantly, in December 2015, the Court of Appeal in The Hague recognised the jurisdiction of the Dutch courts in the case. It also ordered Shell to disclose internal documents to provide clarity on the company's involvement in the spills.⁴⁸ This ruling meant that the court could finally examine the merits of the claim.

A final court hearing is expected by May 2020. Milieudefensie argues that if the court rules that Shell is indeed liable for the oil spills and resulting damage, it could set a precedent and possibly open the door to future lawsuits against Shell or other multinationals in the Dutch courts.⁴⁹

3.2.2 OKPABI AND OTHERS

In 2015, the Ogale and Bille communities in the Niger Delta started legal actions in the UK also against both RDS and SPDC, alleging serious environmental damage stemming from oil pollution.⁵⁰ The communities claim that over several years they have suffered systematic and ongoing oil pollution because of Shell's operations, and demand RDS compensate their inhabitants and clean up the damage, on the basis that RDS controlled and directed the operations of SPDC.

Shell has contested these claims and, to date, has successfully argued that the case should be dismissed on jurisdictional grounds.⁵¹

44. Dooh and Milieudefensie v Royal Dutch Shell and SPDC; Dooh and Milieudefensie v Shell Petroleum N.V. and the 'Shell' Transport and Trading Company Ltd; Oguru, Efanga and Milieudefensie v Royal Dutch Shell and SPDC; Oguru, Efanga and Milieudefensie v Shell Petroleum N.V. and the 'Shell' Transport and Trading Company Ltd; Akpan and Milieudefensie v Royal Dutch Shell and SPDC; Akpan and Milieudefensie v Shell Petroleum N.V. and the 'Shell' Transport and Trading Company Ltd.

45. Milieudefensie, *Timeline*, <https://en.milieudefensie.nl/shell-in-nigeria/timeline-the-course-of-the-lawsuit>

46. Dutch Court of Appeal, *Dutch Courts have jurisdiction in case against Shell Nigeria oil spills*, 18 December 2018, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/Dutch-Courts-have-jurisdiction-in-case-against-Shell-Nigeria-oil-spills.aspx>.

47. Milieudefensie, *Timeline*, <https://en.milieudefensie.nl/shell-in-nigeria/timeline-the-course-of-the-lawsuit>

48. Court of Appeal of The Hague (*Dooh and Milieudefensie v Royal Dutch Shell and SPDC*; and *Dooh and Milieudefensie v Shell Petroleum N.V. and the 'Shell' Transport and Trading Company Ltd*), ECLI:NL:GHDHA:2015:3586, 18 December 2015, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2015:3586> (includes English translation)

49. Milieudefensie, *Milieudefensie's lawsuit against Shell in Nigeria*, <https://en.milieudefensie.nl/shell-in-nigeria/milieudefensie-lawsuit-against-shell-nigeria>.

50. *Okpabi and others v Royal Dutch Shell Plc and another*. Leigh Day, *Two new legal actions launched against Shell over Nigerian oil pollution*, March 2016, <https://www.leighday.co.uk/News/News-2016/March-2016/Two-new-international-legal-actions-launched-again>.

51. *High Court Judgement, Okpabi and others v Royal Dutch Shell Plc and another*, 26 January 2017.



Oil stains the land at Okuluebu, Ogale, Rivers State, Nigeria, years after spills occurred, August 2015. © Amnesty International

Shell claimed that its Netherlands and UK-based parent company, RDS, is a separate legal entity from its subsidiary in Nigeria, SPDC.⁵² Contrary to what the claimants argued, Shell stated that, while RDS owns 100 percent of SPDC and receives profits earned by SPDC, it has no responsibility for SPDC's actions, and does not intervene in operational matters concerning its subsidiary.⁵³ For these reasons, Shell argued that RDS did not have a duty of care for the people affected by the operations of its Nigerian subsidiary.

The High Court in London agreed, holding that that RDS is merely a holding company which does not exercise any control over the operations of its Nigerian subsidiary and has, therefore, no duty of care towards the communities affected by those operations.⁵⁴ In February 2018, the Court of Appeal found that the English courts do not have jurisdiction over the claims due to a lack of evidence demonstrating sufficient direction and control of the UK and Netherlands-based parent company over its Nigerian subsidiary SPDC.⁵⁵

52. Witness Statement of Osagie Okunbor, managing Director of SPDC, Okpabi and others v. Royal Dutch Shell Plc and another, 26 June 2016. On file with Amnesty International.

53. Witness Statement of Osagie Okunbor, managing Director of SPDC, Okpabi and others v. Royal Dutch Shell Plc and another, 26 June 2016. On file with Amnesty International.

54. *Okpabi and others v Royal Dutch Shell Plc and another* [2017] EWHC 89 (TCC) (26 January 2017), <http://www.bailii.org/ew/cases/EWHC/TCC/2017/89.html>. See also Amnesty International, *UK: Shell ruling gives green light for corporations to profit from abuses overseas*, 26 January 2017, <https://www.amnesty.org/en/latest/news/2017/01/uk-shell-ruling-gives-green-light-for-corporations-to-profit-from-abuses-overseas/>

55. *Okpabi and others v Royal Dutch Shell Plc and another* [2018] EWCA Civ 191 (14 February 2018), <http://www.bailii.org/ew/cases/EWCA/Civ/2018/191.html>.

A key issue in the case (and these kinds of cases in general) is that **the most likely source of evidence demonstrating the degree to which one company entity relates to another, is the company itself.**

Therefore, in this instance, such **internal information can only come from within Shell itself.** It is not something that members of rural Nigerian communities, like Bille and Ogale, are likely to have access to. Yet the **Court of Appeal made its ruling and struck out the case without the benefit of disclosure of critical information on the actual structure of Shell and the role its headquarters play in decision making.**

But the case is far from over. In **July 2019**, following an application by the Nigerian claimants, the **UK's Supreme Court announced it would review this decision** and is expected to do so in June 2020.⁵⁶ This comes soon after the **Supreme Court heard an appeal in another high-profile human rights case** involving a British-domiciled multinational and its overseas operations. Its findings are potentially highly relevant to the Shell case.

This was a case brought by almost **2,000 Zambian villagers against Konkola Copper Mines** and its **parent company Vedanta Resources Plc**, alleging that their land and water had been damaged by toxic waste from the mine.⁵⁷ As with the Okpabi case, the **key preliminary issue was in relation to whether the English courts had jurisdiction to hear the case.**⁵⁸

In **April 2019**, the Supreme Court found that **the Zambian villagers had an arguable case against both parent company and subsidiary.** Unlike the Okpabi/Shell case, the court did not consider that the claimants needed to establish that the parent company had operational day-to-day control over its subsidiary. Instead, the Supreme Court focused on the public commitments that the parent company made regarding their subsidiaries and the communities in which they operate. Notably, it ruled that a company might “*incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so.*” In such circumstances, the judges found that it could be the very fact of failing to live up to the public commitment that may present the breach of duty.⁵⁹

The ruling in the **Vedanta case** could be very relevant to Shell and other multinational corporations, which **deny that their headquarters control subsidiaries.** Like Vedanta, Shell makes **public statements to its shareholders about how its subsidiaries must operate, and issues policies and standards with which its subsidiaries must comply.**⁶⁰

If the claims are successful in the Supreme Court, **RDS could be potentially liable for the oil-related pollution generated by its Nigerian subsidiary** and this may **result in many more cases** being brought by Nigerian communities in the UK.

56. UK Supreme Court Order, 2 September 2019. Leigh Day, *Supreme Court grants permission to appeal to Nigerian Communities in their fight against Shell*, 24 July 2019, <https://www.leighday.co.uk/News/2019/July-2019/Supreme-Court-grants-permission-to-appeal-to-Niger>. Amnesty International made a submission in this case saying there are strong reasons for the Supreme Court to accept the application for permission to appeal. Amnesty International, *Rule 15 submission*, 26 April 2018, <https://www.amnesty.org/download/Documents/AFR4483212018ENGLISH.PDF>.

57. *Lugowe and others v Vedanta Resources PLC*.

58. Leigh Day, *Zambia – Vedanta – Konkola Copper Mines*, <https://www.leighday.co.uk/International/Corporate-accountability/Environmental-damage/Zambia>

59. *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)*, [2019] UKSC 20, <https://www.supremecourt.uk/cases/docs/uksc-2017-0185-judgment.pdf>.

60. Shell, *Business Integrity*, <https://www.shell.com/sustainability/our-approach/commitments-policies-and-standards/business-integrity.html>

OGALE'S POISONED WATER

Ogale – one of the two communities represented in the Okpabi case – is home to around 40,000 people, many of whom rely on farming and fishing. Community members report that oil contamination has impacted on their farming productivity, ending all fishing activities and curtailing their access to clean drinking water.⁶¹

A study on oil pollution by the UN Environment Programme in 2011 found that residents of Ogale were drinking water from wells contaminated with hydrocarbons. UNEP recorded spills in the area from pipelines operated by Shell as well as the Nigerian state oil company.⁶²

UNEP recommended that the Nigerian government take immediate action.⁶³ Following this, the local government and Shell did begin delivering water by truck to Ogale and then constructed a pipeline in 2013 which brought water to the community. Nevertheless, research by Amnesty International in 2018 found that the water was only supplied sporadically and in inadequate amounts.⁶⁴ Amnesty found that the residents' right to water has been violated as they were forced to drink polluted water, or buy water at unaffordable prices, and called on the government and Shell to address this urgently, as well as to ensure a regular supply of safe water to other communities with contaminated wells elsewhere in the Niger Delta region.⁶⁵

Amnesty also called on Shell to fully clean-up its spills in Ogale. The company claimed to have done so.⁶⁶ However, a 2015 report by Amnesty International and CEHRD exposed its failure to do so.⁶⁷

In August 2019, Amnesty International researchers returned to Nigeria to check what steps the government and Shell had taken. The customary ruler of Ogale, King Okpabi expressed his frustration that Shell was still refusing to tackle the pollution:

“Shell spoiled our water and destroyed our livelihoods. It is now spending millions to protect itself and tell the world that it has no responsibilities towards the people of Ogale, rather than addressing the wrong it did to us. Shell, why cannot you repair the mess you have created? Why are you denying our rights?”⁶⁸

61. Leigh Day, *Supreme Court grants permission to appeal to Nigerian Communities in their fight against Shell*, <https://www.leighday.co.uk/News/2019/July-2019/Supreme-Court-grants-permission-to-appeal-to-Niger>

62. United Nations Environment Programme, *Factsheets, Nsisioken- Agbi (001-005), Ebubu/Ejama/Agbeta (001-004), Ogale (004-004), Okuluebu- Ogale (005-002), Okuluebu- Ogale (005-001)*, 2011, <https://www.unenvironment.org/resources/assessment/environmental-assessment-ogoniland-site-factsheets-executive-summary-and-full>

63. UNEP, *Environmental Assessment*, p 215.

64. Amnesty International, *Nigeria: community in Nigeria drinking polluted water*, 27 September 2018, <https://www.amnesty.org/en/documents/afr44/9172/2018/en/>

65. Amnesty International interviewed 47 residents of Ogale on 1 September 2018.

66. Shell Nigeria, *The UNEP Environmental Assessment of Ogoniland*, <https://www.shell.com.ng/sustainability/environment/unep-environmental-assessment-of-ogoniland.html>.

67. Amnesty International and CEHRD, *Clean it up*.

68. Amnesty International interview with King Okpabi, Port Harcourt, 12 August 2019.

3.2.3 THE BODO COMMUNITY

In 2008, there were two massive oil spills along one of Shell's most important pipelines, caused by corrosion, in a creek close to the Bodo community. Crude oil continuously leaked into the water for five weeks on each occasion, killing fish and causing major damage to mangrove swamps where the fish bred. People lost their incomes and livelihoods and were exposed to serious health risks.⁶⁹

Shell accepted liability for the spills in 2011 but continued to dispute the extent of the damage caused and initially offered only about £4,000 of compensation to the community.⁷⁰ The community decided to bring a claim against SPDC in London, which they did in 2012, requesting both compensation and clean-up.⁷¹

In an interim ruling in June 2014, the High Court ruled that Shell could be liable to pay compensation for spills resulting from illegal tampering with its pipelines, if it failed to take reasonable steps to protect, maintain or repair its infrastructure.⁷²



Before and after the Bodo spills. The left image was taken on 4 December 2006. The right image was taken on 26 January 2009, after the oils spills of 2008. In this false-colour image, healthy vegetation appears bright red, but large swaths of vegetation near the riverbanks have turned from red to black, consistent with plant death. Supervised multi-spectral classification of the image indicated that approximately three square kilometres of vegetation was affected. © 2011 GeoEye, Inc.

69. Amnesty International, *The True Tragedy*.

70. Leigh Day, *Shell agrees £55m compensation deal for Niger Delta community*, <https://www.leighday.co.uk/News/2015/January-2015/Shell-agrees-55m-compensation-deal-for-Nigeria-Del>. See also *The Bodo Community and others v The Shell Development Company of Nigeria* [2014] EWHC 1973 (TCC), <https://www.bailii.org/ew/cases/EWHC/TCC/2014/1973.html>.

71. *The Bodo Community and others v The Shell Petroleum Development Company of Nigeria Ltd, Particulars of Claim*, 23 March 2012. See also, Leigh Day, *Bodo Community v Shell Claim*, <https://www.leighday.co.uk/International/Further-insights/Detailed-case-studies/The-Bodo-community-shell-claim>.

72. *The Bodo Community and others v The Shell Development Company of Nigeria* [2014] EWHC 1973 (TCC) (20 June 2014), <http://www.bailii.org/ew/cases/EWHC/TCC/2014/1973.html>.

Internal company documents subsequently lodged with the court then showed that Shell had known for years that its pipelines in the Niger Delta were old, poorly maintained and “not fit for purpose.”⁷³

Shell subsequently decided to settle with the Bodo community and, in January 2015, paid the community 70 million US dollars (£55 million pounds) compensation which was distributed directly to 15,000 families.⁷⁴ This was an unprecedented amount for any Nigerian community.

Separately, Shell agreed to clean up and remediate Bodo’s heavily contaminated waterways under a mediation initiative sponsored by the Dutch government.⁷⁵ However according to the community, there has been very little progress and contractors were only appointed in July 2019.⁷⁶ Bodo has accordingly decided to allow one more year for Shell to clean up. If they fail to do so, Bodo will return to the High Court in mid-2020 to enforce their ongoing claim against Shell.



Thousands of barrels of oil spouted out of the broken pipeline at Bodo for 10 weeks before Shell finally clamped it on 7 November 2008.
© CEHRD

73. Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

74. Joe Westby, *The Nigerian Community that took on Shell and won*, Amnesty International <https://www.amnesty.org/en/latest/campaigns/2015/04/nigeria-shell-oil-compensation/>

75. Government of the Netherlands, *Dutch mediation in Niger Delta proves successful*, 2 May 2015, <https://www.government.nl/latest/news/2015/05/02/dutch-mediation-in-niger-delta-proves-successful>.

76. Email to Amnesty International from Leigh Day, the law firm representing Bodo, 25 September 2019.

NO CLEAN UP AFTER 11 YEARS

The Bodo community is a settlement in the Ogoniland region of Rivers state, close to Port Harcourt, Nigeria's oil capital. Bodo has a population of approximately 50,000 people across 35 villages, who have traditionally made their living from farming and fishing.

While Nigeria's oil deposits have generated billions of dollars in revenues for the country, the majority of people in the Niger Delta are still living in poverty. This poverty has been exacerbated by long-term oil pollution from spills like the ones in Bodo.

Grace Loabel is a 42-year-old mother of three children, and a periwinkle picker (an edible sea snail). In August 2019, she told Amnesty International how the spills continue to affect her family livelihood. Since 2008, Grace is no longer able to harvest periwinkles in the Bodo Creek, whose waters are covered in oil. She said she is now forced to embark on a longer and more expensive journey to other creeks to make ends meet.⁷⁷

She explained how her husband's business also changed because of the spills: "My husband used to be a fisherman but stopped because the water is too contaminated. Now he earns a living by giving lifts to people with his motorcycle. When the motorcycle breaks he cannot work. In addition, he needs to pay to get it repaired."

Grace says that her husband used to earn about five US dollars a day as a fisherman, but now often takes home less than two. The loss of income, Grace explained, had a ripple effect on her entire family, including her children's education: "Often I do not have money to pay for their school fees and buy their books. For this reason, they do not attend school regularly."

Beatrice Vimong is a 56-year-old mother of four. She also explained that ever since the two 2008 oil spills, her entire family life has changed: "We were happy, we had food, fish and enough money to solve our little problems. I used to grow cassava, okra, melons, and corn. We used to have very good harvests, eat some of these foods and sell the rest but since the spill whatever we planted would not grow."⁷⁸

Pastor Christian Kpandei, a 58-year-old father of four, is one of the community's most vocal activists. He says he lost everything when the oil spills killed the fish in his ponds. He said the compensation money from Shell helped improve local education and health services, and provide better drinking water, but has not fixed all of Bodo's problems: "The lack of clean-up has deeply affected us. The soil, the water and the air are all still contaminated."⁷⁹



Pastor Christian Kpandei contemplates the damage done to his fish farm in Bodo, Nigeria, May 2011. The farm flourished before the August 2008 oil spill, but the pollution destroyed his fish farm, leaving him and his workers without a regular income.
© Amnesty International

77. Amnesty International interview with Grace Loabel, Port Harcourt, 10 August 2019.

78. Amnesty International interview with Beatrice Vimong, Port Harcourt, 10 August 2019.

79. Amnesty International interview with Pastor Christian Kpandei, Port Harcourt, 10 August 2019.

3.3 THE “OPL 245” BRIBERY CASE

In 2018, Italian prosecutors brought a criminal case over the alleged involvement of Shell, and the Italian oil multinational Eni, in a 1.3 billion US dollar bribery scheme linked to the license of OPL 245. This is the name of one of Nigeria’s most valuable offshore oil blocks.

Thirteen individuals, including some current and former senior managers of Shell and the Italian oil company Eni, are currently on trial in Italy relating to how the two companies acquired the block in 2011.⁸⁰ The defendants include both companies, a former Royal Dutch Shell Executive Board Member and two former MI6 agents who worked for Shell.⁸¹

In February 2016, Shell’s headquarters in The Hague were raided by 50 police in a joint Dutch–Italian investigation into the deal. According to the Milan prosecutors, and based on previous investigations by Global Witness, the two oil companies paid 1.3 billion US dollars for OPL 245.⁸² The prosecutors allege that, instead of going to the Nigerian Government to benefit the Nigerian people, 1.1 billion US dollars of the payment went to a former oil minister and convicted money launderer, Dan Etete.⁸³ Hundreds of thousands of dollars were then allegedly used for payment of the former Nigerian president Johnathan Goodluck and other Nigerian government and public officials. The prosecutors also allege that some of the money was returned to Shell and Eni managers.

If found guilty, the individual defendants could go to jail. The companies also face financial penalties. Hearings are ongoing in Italy and a verdict could come in early 2020.

The Nigerian state has also made corruption allegations as part of a civil case in London in early 2019, alleging that managers of Shell and Eni were implicated in the ‘bribery scheme’.⁸⁴ Related criminal proceedings against the Nigerian subsidiaries of Shell and Eni, company managers and public officials for conspiracy to commit corruption are under way in Nigeria.⁸⁵ Dutch public prosecutors are also in the process of pressing criminal charges over the same deal.⁸⁶

Shell, Eni, and the individuals who have been charged, all reject the allegations.⁸⁷

80. *Milan Public Prosecutor V Scaroni, Descalzi, Casula, Armanina, Pagano, Falcioni, Bisignani, Di Nardo, Obi, Agaev, Etete, Eni and Royal Dutch Shell*. See Ben Chapman, *Shell and Eni face one of the biggest corruption cases in corporate history over \$1.3bn Nigerian oil field*, The Independent, 16 September 2018, <https://www.independent.co.uk/news/business/analysis-and-features/shell-and-eni-face-one-of-the-biggest-corruption-cases-in-corporate-history-over-13bn-nigerian-oil-a8537506.html>. See also: Global Witness, *Shell and Eni on Trial*, <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-eni-trial/> (hereafter Global Witness, *Shell Knew*).

81. The Magistrate for the Preliminary Investigation, *Decision to open trial*, 20 December 2017, https://shellandenitrial.org/wp-content/uploads/2018/06/decision-to-open-trial-20.12.2017_English.pdf

82. Public Prosecution Office, *Notification of completion of preliminary investigations*, 22 December 2016, https://shellandenitrial.org/wp-content/uploads/2018/08/Milan-prosecutors-notice-of-closure-of-OPL-245-investigation_legal-translation_English.pdf. See also: Global Witness, *Shell Knew*.

83. The Magistrate for the Preliminary Investigation, *Decision to open trial*, 20 December 2017, https://shellandenitrial.org/wp-content/uploads/2018/06/decision-to-open-trial-20.12.2017_English.pdf

84. Kelly Gilblom, Jonathan Browning, and Chiara Albanese, *Shell, Eni Officials Named in \$1 Billion Nigeria Lawsuit*, Bloomberg, 7 May 2019, <https://www.bloomberg.com/news/articles/2019-05-07/shell-eni-executives-named-in-1-billion-nigeria-bribery-suit>

85. Court documents are available on the Shell and Eni On Trial website, which is maintained by the anti-corruption organizations, Cornerhouse, Global Witness, Heda and Re:Common., <https://shellandenitrial.org/other-jurisdictions-documents/>

86. Reuters, *Dutch prosecutors say Shell Nigeria probe finds ‘prosecutable offences’*, 1 March 2019, <https://www.reuters.com/article/us-shell-nigeria-prosecutors/dutch-prosecutors-say-shell-nigeria-probe-finds-prosecutable-offences-idUSKCN1QI42Z>.

87. Eni, *NIGERIA – BLOCK OPL 245*, https://www.eni.com/en_IT/media/focus-on/our-position-on-nigeria.page ; Shell, *Shell comments on decision to indict the company over OPL 245 settlement*, 20 December 2017, www.shell.com/media/news-and-media-releases/2017/shell-comments-on-decision-to-indict-the-company-over-opl-245-settlement.html

5. CONCLUSION AND RECOMMENDATIONS

These cases are important for what they mean for the individuals and communities involved. They could also set important precedents on the responsibility of companies for their overseas operations, which would open the way for further litigation not only against Shell but other multinational corporations as well.

They are also placing a much-needed spotlight on Shell's business model in Nigeria.

Nigeria's regulation of the oil industry is undoubtedly weak and lacks independence. Government agencies responsible for industry regulation and enforcement are under-resourced, ineffective and in some cases compromised by conflicts of interest. Its own courts have failed to offer the victims of human rights abuses a meaningful avenue for seeking justice for the oil spills that have blighted the Niger Delta and the lives and livelihoods of its communities. Shell has thus avoided being held effectively to account in Nigeria.

It has benefitted enormously from extracting oil in a context where there is little or no government oversight and no effective safeguards.

Profits have flowed to its parent company in the Netherlands and the UK. The cases and Amnesty's research show that, while generating these profits, Shell has operated in a way that has harmed communities and has not effectively remediated the harm it has caused.

As elaborated in globally endorsed standards like the UN Guiding Principles on Business and Human Rights, companies have a responsibility to respect human rights wherever they operate in the world. To meet that responsibility, companies should take steps to prevent, identify, address and account for their human rights impacts. This includes remediating any harm they have caused or contributed to. The responsibility to respect human rights exists independently of a state's ability or willingness to fulfil its own human rights obligations. So, if a state where a company operates, such as Nigeria, is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights in their operations. Shell itself expressly says that it uses the UN Guiding Principles to inform its global approach to human rights. However the pollution in the Niger Delta has had a significant human rights impact. Shell has consistently failed to fulfil its responsibility to respect the human rights of communities there.



Esther Kiobel is one of the many residents or former residents of the Niger Delta to be taking Shell to court. While earning huge profits from its Nigeria operations, Shell has operated in a way that has harmed individuals and communities and has not effectively remediated the harm it has caused.
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RECOMMENDATIONS

The **Government of Nigeria** must significantly strengthen its regulation of the oil industry and guarantee that its regulatory bodies have the necessary enforcement powers, expertise and resources to ensure that companies take all reasonable steps to prevent spills and clean up those that do occur, as required by Nigerian law.⁸⁸

The **UK and the Netherlands** and the home states of other multinational corporations need to introduce legal reforms to ensure accountability and redress for human rights abuse in the context of the overseas operations of their multinationals.⁸⁹

They must require companies to undertake human rights due diligence measures in respect of their global operations and supply chains, with particular attention to high-risk areas such as the Niger Delta. This should involve the companies disclosing information about the potential human rights impacts of their plans and operations and specific detail as to how they have been addressed. They should make it mandatory for companies to disclose information in their possession to ensure the effective protection of human rights.


Shell must improve its operational practices in the Niger Delta, including to take all reasonable measures to prevent spills, and then effectively clean up and remediate all spills from its pipelines and wells in line with Nigerian law and international standards. Shell must ensure that all communities affected by failed or delayed clean-up of oil spills receive adequate compensation for their losses. Shell should disclose information relating to spills, the impact that these have on people's health and the environment, the state of its infrastructure and the measures it is taking to prevent and respond to oil spills and improve remediation. This should be done as a matter of urgency and in consultation with affected communities.⁹⁰

Shell should implement effectively human rights due diligence measures in respect of its global operations, including the Niger Delta. As part of this, Shell should disclose information about the potential human rights impacts of its plans and operations and specific detail as to how they have been addressed.

88. More detailed recommendations to the Government of Nigeria are in the Amnesty and CEHRD reports *Petroleum, Pollution and Poverty in the Niger Delta* and *Negligence in the Niger Delta, Bad Information, Clean it Up and Negligence in the Niger Delta*.

89. For a detailed discussion of these reforms, see Amnesty International and the Business and Human Rights Resource Centre, *Creating a paradigm shift: Legal solutions to improve access to remedy for corporate human rights abuse*, 2017 (Index: POL 30/7037/2017), <https://www.amnesty.org/en/documents/pol30/7037/2017/en/>.


90. More detailed recommendations for Shell are in the Amnesty International reports, *Petroleum, Pollution and Poverty in the Niger Delta*, *Clean it Up and Negligence in the Niger Delta*.



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ON TRIAL: SHELL IN NIGERIA

LEGAL ACTIONS AGAINST THE OIL MULTINATIONAL

Shell's operations in Nigeria are facing scrutiny like never before, with an unprecedented set of legal cases against the oil company in courts in Europe. Each is expected to reach a conclusion, or other important milestone, in 2020. This report provides essential information and analysis of each case and concludes that the Anglo-Dutch corporation has operated in a way that has harmed communities and has not effectively remediated the harm it has caused. The report draws on Amnesty International's research on the Niger Delta, which dates back more than twenty years.

Index: AFR 44/1698/2020

January 2020

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