

Business and human rights – access to remedy

United Kingdom – Case study 2 2019

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1. Country where the incident took place	Nigeria
2. Country where the remedy was sought	UK
3. Type of remedy used (reasons why this remedy was used)	Out of Court settlement (£55 million)
4. Deciding body - (in original language /and in English)	N/A
5. Date (month/year) when the remedy was initiated Date, if available, of the (final) decision	<p>A claim against Shell was filed in March 2012 in the English High Court in London.</p> <p>In April-May 2014, a preliminary hearing took place. In June 2014, a judge considered that Shell could be held responsible for oil spills provided that there is evidence of a failure from Shell to take reasonable measures to prevent such spills, whether they result from malfunction or theft.</p> <p>In November 2014, evidence produced before the English High Court suggested that Shell was aware of a risk prior to the oil spills that affected the Bodo community.</p> <p>In January 2015, Shell accepted its responsibility for the oil spills and agreed to pay £55m to the Bodo Community following an out of court settlement. The settlement agreement was for all claims, save in respect of the claim for the company to clean up the oil pollution on the claimants' land and in the sea</p>
6. Reference details, (type and title of court/body; in original language and English [official translation, if available])	Claim: <i>Bodo Community v Shell Petroleum Development Company of Nigeria</i> , Case No HQ11X01280, English High Court of Justice, 23 rd March 2012
7. Web link to the decision/procedure (if available)	http://platformlondon.org/wp-content/uploads/2012/06/The-Bodo-Community-and-The-Shell-Petroleum-Development-Company-of-Nigeria-Ltd.pdf
8. Did the incident receive media attention? If so, please provide links	<p>UK, <i>Shell agrees \$84m deal over Niger Delta oil spill</i>, 7 Jan 2015, bbc.co.uk, available at: https://www.bbc.co.uk/news/world-30699787</p> <p>UK, <i>Shell announces £55m payout for Nigeria oil spills</i>, by John Vidal, 7 Jan 2015, theguardian.com available at: https://www.theguardian.com/environment/2015/jan/07/shell-announces-55m-payout-for-nigeria-oil-spills</p>
9. Legal basis in national/EU /international law of the rights under dispute	<p>Basis of Liability of the Defendant in Nigerian Law according to the claim:</p> <ol style="list-style-type: none"> 1) Oil Pipelines Act 1990, section 11-5)-c) 2) Petroleum Drilling and Production Regulations of 1969. Regulations 25 and 37

	<p>3) The Mineral Oils (Safety) Regulations 1962 - Regulation 7</p> <p>4) Environmental Guidelines and Standards for the Petroleum Industry (2002), Section VIII</p> <p>5) The rule in <i>Rylands v. Fletcher</i></p> <p>Basis of UK claim: EU Brussels 1 Regulation</p> <p>Negligence under UK tort law</p>
10. Parties	Bodo community v Shell Petroleum Development Company of Nigeria
11. Form of abuse/violation, and rights involved ¹	<p>Environmental damages in Bodo, Nigeria, following oil spills from a pipeline of the company Shell.</p> <p>Environmental rights – right to livelihood</p>
12. Type of business involved	<i>Shell Petroleum Development Company of Nigeria</i> is registered in Nigeria and is involved in oil exploration and production. It was the licensee for the oil pipeline license running through the Bodo creek.
<p>13. Profile of the victim(s) - individuals /population affected - can be broader than actual parties to the proceedings</p> <p><i>(e.g. country of origin, belonging to a particular minority – ex. ethnic, gender, age, occupation, social status, relations with the responsible company)</i></p>	Victims are members of the Bodo City community, which counts around 30.000 persons. They are Nigerian farmers and fishers living in 35 villages in Bodo. The Community is the legal owner of communal lands, creeks, rivers, mangroves and swamps in Bodo, Rivers State, Nigeria, and has capacity, as a matter of Nigerian law, to pursue claims for damage to its land.
14. Any legal or institutional factors in the Member State that facilitated the abuse of the (fundamental) rights in questions?	Very close relationship between Shell and the Nigerian government meant that there would be no likelihood of a fair hearing in Nigeria. This included a corrupt government, which relied on Shell for a substantial amount of their foreign exchange, and which would interfere in cases, such as by moving any judges who appeared to be indicating that they may rule in favour of the claimants. There was also an absence of the rule of law, with the courts not being trusted, taking a very long time to make decisions and being open to corruption. The victims would also feel unsafe in bringing a claim for fear of reprisals against them and their families if they did so.
15. Key facts of the case	<p>1. The claim originates from two oil spills that took place in Bodo in late 2008. These oil spills have devastated the sensitive environment of Bodo and left many members of the Bodo community unable to earn money by fishing and farming as they used to.</p> <p>2. In 2011, Leigh Day, a law firm acting for the claimants, liaised with Shell, and the parties reached an agreement whereby Shell formally agreed to accept</p>

¹ The rights affected may include the entire spectrum of internationally recognised fundamental rights – civil and political rights, as well as economic, social and cultural rights; for example: the right to non-discrimination, the right to private and family life, freedom of expression, the right to health, the right to protection of life and physical integrity, property rights, consumer rights or environmental rights.

	<p>liability for the oil spills and accepted the jurisdiction of the English courts. A lawsuit was filed in March 2012 in the English High Court against Shell. In April-May 2014, a preliminary hearing took place.</p> <p>In June 2014,² a judge considered, <i>inter alia</i>:</p> <ul style="list-style-type: none"> - that the Oil Pipelines Act 1956 (Nigeria) (OPA) superseded common law financial remedies; - that Shell could be held responsible for oil spills provided that there is evidence of a failure from Shell to take reasonable measures to prevent such spills, whether they result from malfunction or theft; - that compensation was not recoverable under the OPA by individual claimants on any sort of stand-alone basis for shock and fear; annoyance, inconvenience, discomfort and illness, distress and anxiety; - that ‘awards of just compensation under the OPA... should be valued primarily by reference to the value of land and/or the cost of living and/or incomes in Nigeria. Quantification is to be by way of English law procedures and approaches’.³ <p>In November 2014, evidence produced before the London High Court suggested that Shell was aware of a risk prior to the oil spills that affected the Bodo community.</p> <p>In January 2015, Shell agreed to pay £55m to the Bodo Community following an out of court settlement. The settlement agreement was outlined for all claims, save in respect of the clean-up claim.</p>
<p>16. With respect to the case described in this template - <u>what worked well</u> from the standpoint of the complainant/victim? What were the reasons for it?</p>	<p>The settlement offered to the victims both financial compensation and the guarantee to clean-up the area. Claimants have received the financial compensation. The clean-up operations were delayed and are still ongoing.</p> <p>Phase 1 was meant to be completed by July 2018 and, as of May 2018, Phase 2 had been defined and approved⁴. The clean-up claim was stayed before the tribunal and claimants can come back to UK Courts until 1 July 2019 to make sure that the clean-up operations have been carried out properly.</p>
<p>17. With respect to the case described in this template – what did <u>not</u> work well from the standpoint of the complainant/victim? What were the reasons for this?</p>	<p>The clean-up operations have been delayed for two main reasons:</p> <p>1) An incident took place in 2015 between members of the Bodo community and workers who were cleaning the area, which led to an interruption of cleaning-up operations. This is because members of the community believed that the process which led the contractor to be appointed to carry out the cleaning work was</p>

² UK, *Bodo Community v Shell Petroleum Development Co of Nigeria Ltd*, 20 June 2014, [2014] EWHC 1973 (TCC)

³ UK, *Bodo Community v Shell Petroleum Development Co of Nigeria Ltd*, 20 June 2014, [2014] EWHC 1973 (TCC), §160

⁴ UK, *King Felix Sunday Bebor Berebon & Others v The Shell Petroleum Development Company of Nigeria Limited*, Case No: HQ12X04933, 24 May 2018, [2018] EWHC 1377 (TCC)

	<p>suspicious. They complained that the contractor was not local and was guilty of ‘persistent poor contract performances’⁵.</p> <p>2) Between 2016 and 2017, six claims were brought by different members of the community before Nigerian courts to seek an injunction to prevent remediation works, which further delayed the cleaning process.</p>
<p>18. Main reasoning / argumentation (of the parties and the court: key issues /concepts clarified by the case)</p>	<p>The English Court held that Shell could be held responsible for oil spills provided that there is evidence of a failure from Shell to take reasonable measures to prevent such spills, whether they result from malfunction or theft.</p>
<p>19. What was the outcome?</p>	<p>The Bodo community received £55m from Shell by this settlement. According to Leigh Day, “this money has helped the residents of Bodo to diversify into other areas of work while they wait for the area to be cleaned up.”⁶</p> <p>The claimants appeared content with the settlement with the feeling that they had won and had a recognition of wrongdoing by the company, even without the company admitting (or being forced to admit by a court) that they had any liability.</p> <p>The Bodo Mediation Initiative, sponsored by the Dutch Government, was set up to supervise clean-up operations, which are still ongoing.</p>
<p>20. Did the case lead to legislative or policy developments?</p> <p>(including more general measures introduced to stop future incidents)</p>	<p>No but the case was cited, <i>inter alia</i>, in <i>His Royal Highness Okpabi v Royal Dutch Shell Plc</i> [2018] EWCA Civ 191; 14 February 2018 and <i>His Royal Highness Okpabi v Royal Dutch Shell Plc</i> [2017] EWHC 89 (TCC); 26 January 2017</p>
<p>21. In case the remedy sought was not of a judicial nature, was there eventually any follow up on the case in the court? Or followed by a different type of procedure?</p>	<p>Following the £55m settlement, the clean-up claim was stayed for two years and was to be struck out in October 2016. However, the claimants had liberty to apply to restore that claim before that date. They applied to restore the claim and lift the stay in October 2016, but the application was opposed by Shell and adjourned until May 2018.</p> <p>On 24 May 2018, the Court re-imposed an unconditional stay until 1 July 2019. This means that the Bodo community could come back to UK Court to make sure the clean-up takes place properly.⁷</p>

⁵ UK, *King Felix Sunday Bebor Berebon & Others v The Shell Petroleum Development Company of Nigeria Limited*, Case No: HQ12X04933, 24 May 2018, [2018] EWHC 1377 (TCC), §20

⁶ UK, *Nigeria - oil spills*, Leigh Day, available at: <https://www.leighday.co.uk/International/Corporate-accountability/Environmental-damage/Nigeria>

⁷ UK, *Shell fails in High Court bid to halt Nigerian Community’s legal fight over clean-up*, Leigh Day, 29 May 2018, available at: <https://www.leighday.co.uk/News/News-2018/May-2018/Shell-fails-in-High-Court-bid-to-halt-Nigerian-Com>

	Case reference: <i>King Felix Sunday Bebor Berebon & Others v The Shell Petroleum Development Company of Nigeria Limited</i> , Case No: HQ12X04933, [2018] EWHC 1377 (TCC), 2018 WL 02724300
22. Any other comments relevant to case?	This was an example where the commencement of a legal action in the UK led to the settlement for the claimants of a long-term human rights and environmental issue in another state.