

Legal Briefing Note – Ogale & Bille Communities v. Shell plc

1. The Ogale and Bille communities in the Niger Delta (estimated combined population of 50,000) have been fighting for justice against the British oil and gas giant, Shell plc, for over seven years (see timeline below). They seek simply to ensure that the oil pollution which has devastated their communities is cleaned up to international standards (which Shell concedes they are legally obliged to do) and that compensation is provided for their loss of livelihoods and the destruction of their way of life, given that these rural communities' ability to farm and fish has been largely destroyed.
2. On 12 February 2021, the UK Supreme Court unanimously ruled that there was a “good arguable case” that Shell plc, the UK parent company, was legally responsible for the pollution caused by its Nigerian subsidiary and that the case would proceed in the English courts. The judgment represented a watershed moment in the fight for corporate accountability. The Supreme Court has now confirmed in both *Okpabi v Shell* and its earlier 2019 decision in *Lungowe v Vedanta* (environmental pollution from a Zambian copper mine) that parent companies of multinational companies in the UK can be held legally responsible for harms committed by their foreign subsidiaries, and the scope of that potential liability is much wider than previously understood.
3. Parallel litigation in the Netherlands brought by Friends of the Earth on behalf of four separate Nigerian communities was fought by Shell for 13 years. The cases culminated in the groundbreaking [decision](#) of the Dutch Court of Appeal in 2021 which found Shell liable for the pollution of two Nigerian communities. This paved the way to a [€15 million settlement](#) in December 2022 and an agreement to install a leak detection system. In addition, Leigh Day previously represented the Bodo Community in the Niger Delta, which in 2015 resulted in compensation for loss of livelihoods of £55 million and the largest worldwide clean-up of oil-impacted mangroves in history.
4. By contrast, Shell has shown no interest in providing remedy to the Ogale and Bille communities at a time when they are making unprecedented global profits (\$30 billion in 2022 so far). The case is now proceeding to trial to determine whether Shell's parent company in London, as well as its Nigerian subsidiary, are legally responsible for the harm caused to the communities in Nigeria.
5. Since the Supreme Court ruling in 2021, the legal team for the communities has been preparing for trial in the High Court in London which is expected to take place in 2024. Shell have now served their legal Defence, in which they argue that they have no legal responsibility

whatsoever for any of the pollution, despite the fact that the communities continue to live with chronic levels of oil pollution caused by Shell's operations.

6. The implications of these legal arguments are highly significant at a time when Shell have announced that they plan to leave the Niger Delta and sell their onshore oilfields and assets. If Shell's legal arguments prevail, they would have no legal obligation to provide any remedy to multiple Nigerian communities polluted as a result of their poor operating practices. The "Just Transition" for Shell would not seem to include clean up and remedy for communities impacted over many years by their operations.
7. In addition, on 27 January 2023 the Ogale claimants filed their group register at court which, for the first time, confirmed the total number of claimants from these two communities bringing a case against Shell as **13,652 individuals**. These individual claims provide more detail as to the nature of the claims they are bringing and the harm they have suffered and continue to suffer, as a result of the devastation to their environment and way of life.
8. Now the group register has been filed at court, the next stage in the case is for a case management hearing to be set in Spring 2023, ahead of the full trial which is likely to take place the following year.
9. The Claimants are clear that these claims represent the only viable avenue for residents of Ogale and Bille to hold Shell to account for the devastating damage to their environments and lives. Access to any sort of timely legal remedy through the Nigerian courts is practically impossible for impoverished communities, hence the need to bring the case in the UK against Shell's parent company, Shell plc.
10. These legal claims form part of a wider movement to ensure that multinational corporations are held to account according to the minimum standards by which they would operate in the Global North. This is particularly true of companies like Shell who are seeking to "exit" countries such as Nigeria, from which they have derived vast profits over many decades but are leaving behind an environmental disaster for which they appear to claim they are under no obligation to address or remedy. At a time when the world is focused on "just transition" from fossil fuels, and the burden of climate change is falling disproportionately on developing countries, such an approach must be exposed.

The Claimants' Legal Case

11. The Claimants of each community (Ogale and Bille) are bringing separate claims (known as the 'Ogale Individual Claims' and the 'Bille Individual Claims' respectively) that seek compensation for individual loss of livelihoods sustained due to the ongoing pollution, corruption of clean water sources, and devastating impacts to public health. In the Bille case, 2,335 individuals have brought a claim for loss of livelihoods and compensation. In the Ogale case, 11,317 individuals and 17 institutions (including churches and schools) have brought a claim for loss of livelihoods and compensation.
12. In addition, both communities are pursuing representative actions against Shell, to secure the **clean-up and remediation** of Ogale and Bille (the 'Ogale Community Claim' and the 'Bille Community Claim'). Compensation for damage to communally owned property is also sought under these community claims. This remedy would benefit all inhabitants living with the chronic pollution, even where they have not sustained individual losses. A similar claim for clean-up was brought in the Bodo case (as detailed below), which has resulted in the largest and most effective clean-up operation of a Niger Delta community that Shell Nigeria has ever undertaken.
13. All four cases have been joined and are being case managed together, though there are some differences between the Bille and Ogale claims.¹
14. The Claimants have brought claims against both Shell plc, the UK parent company, and the Shell Petroleum Development Company of Nigeria (SPDC). The claims state that Shell plc and/or SPDC were aware of systemic oil spills from their pipelines occurring for many years but failed to take adequate steps to prevent these oil spills from occurring or to clean them up when they did.
15. The legal **claims against Shell plc** are based on the tort of negligence and the principle of parent company liability, as well as the Nigerian Constitution and the African Charter. The Claimants argue that Shell plc owes a duty of care to both communities because of the degree of involvement it had in SPDC's operations. The Supreme Court has found that "there is a good arguable case" that Shell plc is legally responsible for pollution caused by its Nigerian subsidiary.

¹The official case names and numbers are as follows:

(1) ALAME AND OTHERS Claimants: HT-2015-000430 "Bille Individuals";

(2) CHIEF IBITAMINO D MINAPAKAMA AND OTHERS Claimants: HT-2017-000022 "Bille Community";

(3) OKPABI AND OTHERS Claimants: HT-2015-000241 "Ogale Community"; and

(4) EJIRE AWALA AND OTHERS Claimants: HT-2016-000147 "Ogale Individuals".

In all claims, the Defendants are (1) Royal Dutch Shell (RDS) (2) The Shell Petroleum Development Company of Nigeria Ltd (SPDC).

16. The **claims against SPDC** are based primarily on causes of action under the Nigerian statutory law, specifically the Oil Pipelines Act 1990, which governs rules on compensation for those who have suffered from oil pollution caused by oil production companies, as well as the Nigerian constitution and the African Charter.

Shell's Defence – can Shell cut and run?

17. Shell denies any legal responsibility for any of the pollution in both the Ogale and Bille communities. By contrast to Shell's stance in the Bodo Case (see below), their response to the Ogale/Bille cases has been to litigate every point available to them to order to avoid or delay accountability. For five years, Shell argued that there was no arguable case that the UK parent company could be held legally responsible for the harms caused by its Nigerian subsidiary and that the case should be brought in the Nigerian courts. That argument was ultimately unanimously rejected by the UK Supreme Court in 2021. Following the Supreme Court's judgment, Shell then decided to abandon the remainder of their objections to the case proceeding in the UK jurisdiction.

18. Shell has now filed a legal Defence in which they argue that they have no legal liability for any of the pollution, although there is no doubt that the communities remain devastated by years of systemic oil spills. If successful, these legal arguments will have far reaching consequences.

19. As mentioned above, [Shell announced in 2021](#) that they plan to leave the Niger Delta and sell their onshore oilfields and assets after 80 years of highly profitable operations. However, it is not clear how (or indeed whether) Shell plan to address the widespread and systemic pollution to Nigerian communities caused by their operations over many years. The legal Defence filed by Shell in *Okpabi v Shell* provides important information as to their broader intentions.

20. The Defences, which are publicly available, make numerous arguments, but four points stand out:

- i) **Clean up.** While Shell accepts that it is legally obliged to clean up any oil which spills from its pipelines and infrastructure (irrespective of the cause of spill), it denies that the community has the legal standing to enforce clean up. Instead, Shell claims that only the Nigerian regulatory authorities have the legal authority to force them to clean up. However, the Nigerian regulators are chronically under-resourced and are unable to hold oil majors to account. The implication of this entirely novel legal argument is that Shell can chronically pollute a community's land and the community is powerless to

enforce clean up. Instead, they must rely on a regulator who is unable or unwilling to hold Shell to account.

- ii) **Limitation.** Shell contends that a legal claim must be brought within five years of any specific spill, even if there has been no clean up and the spills continue to impact community lands and waterways and to leach out into the ecosystem, with potentially toxic impact on the community residents. The implication is that Shell has no legal liability for a large number of uncleaned oil spill sites in the Niger Delta, and impacted communities who have been unable to enforce their legal rights within a five-year limitation period are left without legal remedy.
- iii) **Third party bunkering.** Shell argues that they cannot be held liable for any oil spills caused by third parties or 'bunkering' (a widespread problem in the Niger Delta), regardless of their own inaction or negligence. On Shell's case, they can be aware of the foreseeable risk of bunkering of a specific pipeline, but they are under no obligation to take any steps whatsoever to protect their infrastructure and the community from that foreseeable risk.
- iv) **Parent company liability.** Shell continues to argue, despite the findings of the Supreme Court in *Okpabi v. Shell*, that on the evidence, Shell plc cannot be liable for any pollution arising from SPDC's operations.

21. The implications of these legal arguments are that oil impacted communities in Nigeria will be:

- i) unable to force Shell to clean up their environment; and
- ii) unable to claim compensation for loss of livelihoods, unless they are able to prove the damage was caused by operational failure within five years of the date of issuing the claim.

22. For Nigerian communities living with legacy pollution, that would essentially deprive them of any legal remedy against oil companies.

23. In short, it appears that Shell is seeking to divest from the Niger Delta free of any legal obligation to address the environmental devastation caused by oil spills from its infrastructure over many decades. The legal issues in this case, therefore, will have consequences generally for whether oil majors should address the widespread pollution caused by their operations in the Niger Delta. In turn, this raises profound questions about the responsibility of fossil fuel companies for legacy and ongoing environmental pollution as they transition to clean energy.

Environmental damage caused by oil companies in the Niger Delta

24. Shell have been active in Nigeria for 86 years, and its Nigerian operations continue to account for a significant portion of the company's overall profits. To date, in the first 3 quarters of 2022, Shell made unprecedented [global profits of \\$30.5bn](#) (£24.6bn). These vast profits are being made whilst Shell continues to refuse to provide remedy to the world's poorest, whose communities have been devastated by their Nigerian operations. The cost of the first five years of clean-up of the entire Ogoniland area in the Niger Delta is [estimated by the United Nations at \\$1 billion](#). That represents a mere 3% of Shell's profits in 2022.
25. The environmental destruction caused to the Niger Delta by oil and gas majors is hard to overemphasize. Experts estimate that the inhabitants of the Niger Delta have experienced oil spills on a par with the 1989 Exxon Valdez disaster in Alaska every year for the past 50 years, a yearly average of about 240,000 barrels.² According to Amnesty International, who cite Shell's own reports, the company has also [spilt over 17.5 million barrels of oil](#) in the Niger Delta, devastating the health, livelihoods, way of life and wellbeing of the local communities.
26. These statistics mask a human tragedy on an extraordinary scale. The pollution is ingested by local communities and seriously impacts human health and mortality rates. [A recent study](#) by the University of St Gallen in Switzerland found that infants in the Niger Delta are twice as likely to die in their first month of life if their mothers live near an oil spill. That amounts to a scandalous [11,000 premature deaths](#) per year in the Niger Delta.
27. The situation is particularly dire in Ogoniland, from where Ken Saro-Wiwa led his fight against Shell in the early-1990s. In 2011, the United Nations Environment Programme's (UNEP) [Environmental Assessment of Ogoniland](#) reported, after a three year detailed study, how the Ogoni people were exposed to severe oil contamination on a daily basis, impacting their water sources, air quality, and farmland.
28. Public health was found to be significantly at risk. At the time the UNEP report was published, signs were erected around the impacted communities which made it clear that the drinking water was unfit for human consumption and vast areas of land and waterways were unsafe. [UNEP recommended](#) that urgent steps should be taken to ensure "*the largest terrestrial clean-up operation in history*" and found that there was "*an immediate danger to public health*". Shockingly, 12 years on, the communities remain polluted, no clean-up has occurred and their residents are still drinking from poisoned wells. The signs which once warned people of the dangers from chronic pollution are now rusty and barely visible.
29. Hundreds of polluted communities which host the infrastructure of oil majors have been left polluted, uncleaned and uncompensated for decades. Given the hopeless prospect of

² Petroleum, Pollution and Poverty in the Niger Delta, Amnesty International [2009] p. 16

accessing justice for these abuses in Nigeria, these communities are increasingly seeking redress in the Global North against the parent companies who reap rich profits from their Nigerian oil operations.

The Impacted Communities

The Ogale Community

30. The Ogale community is a rural community of about 40,000 people situated in Ogoniland in the Niger Delta. The people of Ogale have traditionally been either crop farmers or fishermen who rely on Ogale's tributaries and waterways as fishing areas.
31. Shell has a long legacy of oil pollution in Ogale. There have been repeated oil spillages from the Ogale pipelines and infrastructure since at least 1989. Shell's own records show that there have been an average of over two oil spills every year, including 55 spills in the community since September 2011. Shell's pipelines and other infrastructure in Ogale (which run through the middle of residential areas) are several decades old and in a poor state of repair, making the area vulnerable to oil spills which have caused, and continue to cause, long-term contamination of the land, swamps, groundwater and waterways in the community.
32. The Ogale Stream, which is the community's main source of water for agriculture, drinking, and fishing, has been severely polluted by oil contamination. This has killed fish and contaminated the community's drinking water. The oil pollution has also ruined the community's farmland.
33. The 2011 UNEP report included extensive testing of the Ogale Community's land and water supply. UNEP's testing of Ogale reported serious contamination of agricultural land and waterways in the community as well as its groundwater, exposing Ogale's inhabitants to serious health risks. Oil contamination of the groundwater in Ogale was found to be 1,000 times higher than levels permitted under Nigerian law and water in the community was found to be unfit for human consumption. The position since 2011 has only been compounded by multiple further oil spills that have occurred on Shell's watch.
34. Community members now report that as a result of hundreds of Shell oil spills, the water coming from their wells and boreholes is severely contaminated by oil and cannot be used for drinking, cooking, bathing or washing. For two years, Shell paid for clean water to be transported to the

community, and then a local government water project brought piped water to communal water points. However, for 5 years the piped water system has not functioned and so 11 years after the publication of the UNEP report, residents are still not being provided with clean drinking water. Much of the water coming from the borehole taps or wells in Ogale has a strong stench of hydrocarbons and is visibly discoloured or covered in an oil sheen. This includes water from the borehole taps in schools, hospitals, maternity clinics and inside residents' houses. Thousands of Ogale residents are forced to pay for safe water, and those who cannot afford to have no choice but to use and drink contaminated water.

35. Additionally, community members report that the oil contamination has impacted on their farming productivity, and fishing has all but ended in the community.

The Bille Community

36. Bille is located between the New Calabar and Sombbrero Rivers in Rivers State, Nigeria. It is a small riverine fishing community consisting of around 45 islands which is populated by nearly 13,000 residents. It is comprised of a number of island towns and fishing settlements that are surrounded entirely by water.
37. Residents of Bille have traditionally relied on fishing to sustain their way of life. However, following the devastation caused by the spills emanating from Shell's pipelines and infrastructure, their livelihood has been destroyed.
38. Between 2011 and 2013, oil spills from Shell's apparatus caused massive contamination of the rivers around the community. Many residents in Bille live close to the waterside and are subjected to the stench of oil when in their homes. The effects are particularly pronounced when the tide rises, bringing oily water right up to people's houses, which causes damage to their properties and possessions.
39. It is alleged that significant swathes of mangrove forest have been damaged by oil spilled from the Bille pipelines and infrastructure. The pollution has contaminated the community's drinking water and has killed most of the fish and shellfish in the rivers, leaving Bille's fishing population without a source of food or income. This has caused a fundamental shift in the way of life of the Bille community; a people who were previously heavily reliant on fishing as an intrinsic part of life are no longer able to live off the Bille creek. Many have been left without any independent

source of income, and now rely on handouts from family or friends, whilst others have had to relocate due to the devastating change in their circumstances.

The Bodo Community v Shell

40. Shell's response to the Ogale and Bille Communities contrasts strongly with their response to a previous case brought by Leigh Day on behalf of the Bodo Community. The case concerned a claim for loss of livelihoods on behalf of 15,000 fishermen and farmers from the Bodo community whose way of life had been devastated by two large operational spills in 2008. In that case Shell admitted liability at an early stage, and in 2015 agreed to compensate the community £55 million for loss of livelihoods.

41. In addition, Shell is conducting the largest clean up in history of oil impacted mangroves and are replanting two million mangrove seedlings. This clean-up operation is unprecedented and a potential model for oil spill clean-up in Nigeria. It demonstrates that when Shell is faced with the prospect of international litigation, it can invest the time and money necessary to conduct an effective clean-up in Nigeria with the assistance of leading international experts.

Timeline of the Ogale and Bille Litigation

- **2011:** United Nations Environment Programme ('**UNEP**') publishes its environmental assessment of Ogoniland [report](#), which explains the scale of the devastation caused by Shell and other oil majors, and states that the clean-up process would take up to 30 years if started immediately. The report stated that the "chronic oil pollution" in Ogoniland threatened public health and warranted "emergency action".
- **2015:** The Ogale Community Claim is issued in June 2015. The Bille Individual Claims follow in December 2015.
- **2016:** In June 2016, the initial Ogale Individual Claims are issued.
- **2017:** In January 2017, the Bille Community Claim is issued.
- **On 26 January 2016,** the High Court holds that although it has jurisdiction to try the claims against Shell plc, the claims do not have a real prospect of success. Consequently, orders are made setting aside service of the claim forms on SPDC and striking out the appellants' statements of case insofar as they relate to RDS.
- **2018:** The Court of Appeal dismisses the appellants' appeal.
- **2021:** On 12 February 2021, the UK Supreme Court unanimously rules that the Court of Appeal materially erred in law, and that there is a real issue to be tried. Consequently, Shell consents to the jurisdiction of the English courts, and the claims proceed to trial.
- **2022:** Pleadings are served in April 2022. In May, a second CMC takes place, to confirm, amongst other things, the details required for the Claimants' Schedules of Information (which will contain details of the individual circumstance of each Claimant). In June, Leigh Day initiates a field operation in the Niger Delta to take instructions from the Bille Individual claimants, and to complete the sign-up of the Ogale Individual clients.
- **2023:** By spring, all the group Registers (listing exactly which individuals will be part of the claims and the basis for their claims) and Schedules of Information will be served on Shell. A third CMC will follow.
- **2024:** It is anticipated that a trial will take place in 2024.

Leigh Day is a leading claimant-focused human rights, environment and personal injury firm based in London, and its International Department has for decades pursued cutting-edge corporate accountability cases, such as this one. Please direct media enquiries to pressoffice@leighday.co.uk. A media package of stills and videos is available upon request.