

**CORPORATE ACCOUNTABILITY UNMASKED: LEGAL PERSPECTIVES ON
THE Ogoniland v ROYAL DUTCH SHELL**

By Jariatou Baldeh

LLM Human Rights Final Thesis
SUPERVISOR: Professor Karin Lukas
Central European University Private University
Quellenstrasse 51-55, 1100 Vienna
Austria

TABLE OF CONTENTS

Abstract	iii
Acknowledgment	iv
Introduction.....	1
CHAPTER ONE	5
1.1 Methodology	5
1.2 Frameworks.....	5
Corporate Accountability for Stakeholders.	6
Environmental justice	8
Human Rights	10
CHAPTER TWO	12
2.1 The Ogonis.....	12
2.2 Rooted in the Land, Flowing with the River.....	13
2.3 Shell in Ogoniland: A Complicated Relationship.....	14
2.4 Shell: “Persona Non Grata” in Ogoniland	15
2.5 Persisting Peril: thirty-one years later.....	17
CHAPTER THREE	21
3.1 Crossing the Line: When Rights Hit Rock Bottom	21
3.2 Regulatory Responses to the Plight of the Ogonis by the Federal Government.....	26
3.3 Responsible Business Practice under the UNGPs	31
CHAPTER FOUR.....	36

4.1 Holding the Parent Company Accountable: Nigerian Farmers and Friends of the Earth (Milieudefensie) vs. Shell	36
4.2 Remedies for the Afflicted Persons	39
4.3 Victory at Last for the Victims, or a Symbolic Gesture?.....	43
4.4 What's next for the Ogonis?	47
Conclusion/ recommendations.....	49
Bibliography	51

ABSTRACT

The Ogoni people (Ogonis) are an ethnic group in Nigeria - West Africa, primarily residing in the Niger Delta region, specifically in Ogoniland, which is located in the southern part of the country. The Ogonis, primarily farmers, and fishermen, have faced severe environmental degradation and human rights abuses due to decades of oil extraction activities on their land by corporate activities particularly the operation of Royal Dutch Shell. Despite Shell's suspension of operations in Ogoniland in 1993, the community still suffers from untreated oil spills, health impacts, and scarcity of resources, highlighting the enduring consequences of corporate harm. This thesis evaluates the adequacy of compensation provided in the 2021 judgment by the Court of Appeal of The Hague and identifies gaps in the existing literature. Through a socio-legal approach, this research aims to uncover the multifaceted impacts of the Ogoni oil case. The primary research questions address the environmental and human rights violations caused by Shell's operations, examining the immediate impacts of it on the environment and local communities. Additionally, the study explores the legal and regulatory responses to the case, assessing their effectiveness in holding corporations accountable. Despite the passage of time, genuine solutions remain elusive, highlighting the need for deeper understanding and meaningful action. The study concludes that restoration stands as the optimal form of remedy for this case, given its capacity to address the root cause of the prevailing situation. Through rigorous analysis of the case, the research aims to inform policy decisions, empower affected communities, and promote sustainable practices prioritizing human and environmental well-being.

Keywords: corporate harm, Ogoni v Shell, aftermath, human rights, environmental degradation, indigenous rights, corporate accountability, compensation, sustainable business practices.

ACKNOWLEDGMENT

I would like to express my deepest gratitude to Allah swt for providing me with the strength, wisdom, and perseverance to complete this thesis.

To my family (JMJ), I owe a debt of gratitude for their unwavering support, encouragement, and love. Your patience and understanding have been invaluable to me, and I could not have achieved this milestone without your continuous belief in my abilities.

I would also like to extend my heartfelt thanks to my supervisor, Professor Karin Lukas. Your expert guidance, insightful feedback, and constant support have been instrumental in shaping this work. I am profoundly grateful for your mentorship.

To all those who have contributed to this journey, your support and encouragement have been truly appreciated. Thank you.

This thesis is dedicated to the memory of my late Father Alh. Lamin Baldeh, who always supported his family and aspired for us to achieve the highest academic excellence, despite never having the chance to receive formal education. This accomplishment is a testament to his dreams and sacrifices.

INTRODUCTION

*The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. There is no single silver bullet solution to the institutional misalignments in the business and human rights domain. Instead, all social actors - States, businesses, and civil society - must learn to do many things differently. But those things must cohere and become cumulative, which makes it critically important to get the foundation right.*¹ John G. Ruggie

In the modern discourse on global development, the intricate relationship between multinational corporations and the communities in which they operate has become a subject of significant concern,² particularly in regions abundant in natural resources but lacking effective governance structures, the phenomenon commonly referred to as the “resource curse” or “paradox of plenty” has illuminated the detrimental effects of corporate activities on local populations and the environment.³ The Ogonis are an ethnic group located in the Niger Delta Region of Nigeria, West Africa. They are primarily found in River State, specifically in Ogoniland with a population of approximately 500,000 people at the time Shell started operations there.⁴ Traditionally, the Ogonis are farmers and fishermen and depend largely on the land and river for their survival and livelihood.⁵ Royal Dutch Shell began operating in

¹ John G. Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' Report of the Special Representative of the Secretary General on Business and Human Rights, UN Doc. A/HRC/8/5 (7 Apr. 2008) <<https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>> accessed 28 May 2024.

² Lisa Calvano, 'Multinational Corporations and Local Communities: A Critical Analysis of Conflict' (2008) 82 Journal of Business Ethics 793. <https://doi.org/10.1007/s10551-007-9593-z> accessed January 15 2024

³ Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997)

⁴ A. Olu Oyinlade and Jeffery M. Vincent, 'The Ogoni of Nigeria' (2002) <<https://digitalcommons.unl.edu/anthropologyfacpub/113/>>. accessed 20 January 2024

⁵ United Nations Environment Programme, 'About Ogoniland' (UNEP - UN Environment Programme, 21 September 2017) <<http://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/about-ogoniland>> accessed 27 January 2024.

Nigeria in 1937 under the name Shell-D'Arcy as a result of a joint venture agreement between the D'Arcy Exploration Company and the British colonial Administration.⁶ This joint venture later led to the establishment of Shell Petroleum Development of Nigeria Limited, which made the initial oil discovery in Oloibiri which is the present day of Bayelsa State in 1956.⁷ This marked the beginning of the Nigerian oil industry and set the stage for subsequent explorations and production activities by various international oil companies in the country. Since the discovery of this oil, the region has been plighted with serious environmental degradation resulting from over 100 oil wells in the area.⁸ The Ogonis protested against Shell's operations and demanded compensation and environmental remediation. This led to the uprising of the Ogonis in 1990, when writer and activist Ken Saro-Wiwa, appalled by the situation of the Ogoni, started the Movement for the Survival of the Ogoni People (MOSOP).⁹ The MOSOP demanded compensation for environmental damage, a fair share of oil profits, and greater autonomy over their resources. The Ogonis protested peacefully, however, the Nigerian government, influenced by the oil industry, responded with repression.¹⁰ Ultimately, Shell was forced to suspend its operations in Ogoniland in 1993 due to widespread protests and international pressure.¹¹ Unfortunately, this did not prevent the tragic execution of Ken Saro-Wiwa and eight other activists in 1995 by the Nigerian government. By the time Saro-Wiwa

⁶ Terisa E Turner, 'Review of Where Vultures Feast: Shelly, Human Rights, and Oil' (2005) 38 The International Journal of African Historical Studies 371, 49–50.

⁷ Justice for Bayelsa, 'Setting the Scene' (Oil in Nigeria and Bayelsa State) <<https://report.bayelsacommission.org/chapters/setting-the-scene-oil-in-nigeria-and-bayelsa-state>> accessed 27 January 2024.

⁸ Global Nonviolent Action Database, 'Ogoni People Struggle with Shell Oil, Nigeria' (1990-1995) <<https://nvdatabase.swarthmore.edu/content/ogoni-people-struggle-shell-oil-nigeria-1990-1995>> accessed 18 January 2024.

⁹ Code Rood 'The Story of the Ogoni' (*CODE ROOD*, 10 November 2020) <<https://code-rood.org/en/2020/11/10/the-story-of-the-ogoni/>> accessed 20 January 2024.

¹⁰ Social and Economic Rights Action Centre (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (2001) AHRLR 60.

¹¹ Amnesty International: 'A Criminal Enterprise? Shell's involvement in human rights violations in Nigeria in the 1990s.Pdf' <<https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4473932017ENGLISH.pdf>> accessed 25 January 2024.

was executed, the Nigerian military and Mobile Police force had killed 2,000 Ogonis¹². The community people were tortured, raped, their houses destroyed, families were separated,¹³ and they were forced by the Nigerian government through the military, to be silent and comply with the operations that were happening at the time.¹⁴

This year (2024) marks 31 years since Shell's operation ceased in Ogoniland, yet both the community and environment are still affected, and the situation does not seem to change anytime soon.¹⁵ Several cases were brought against Shell and the Nigerian government but they haven't yielded much towards the effective remedy that the community desired.

This thesis will address the following questions: What are the impacts of environmental destruction caused by Royal Dutch Shell in the Ogoni-Delta Region of Nigeria? How did the Ogoni oil case occur, and what were its immediate impacts on the environment and local communities? Which human rights were violated? What were the legal and regulatory responses to the case, and how effective were they in holding corporations accountable? What are the implications of the recent judgment by the Court of Appeal of The Hague for the people of Ogoniland? Is this Judgment a victory or a symbolic gesture for the affected communities?

This thesis aims to provide an analysis of the recent judgment in the Ogoni case and its implications for the people of Ogoni Land, with a particular focus on the concept of corporate accountability. By examining the human rights perspective inherent in corporate activities, the study seeks to contribute to a deeper understanding of the implications of environmental

¹² Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (First Harvard University Press paperback edition, Harvard University Press 2013) bk 124.

¹³ Amnesty International, 'Was Shell Complicit in Murder?' (2017) <<https://www.amnesty.org/en/latest/news/2017/11/was-shell-complicit-in-murder/>> accessed 30 January 2024.

¹⁴ Amnesty International 'Nigeria: Shell Complicit in the Arbitrary Executions of Ogoni Nine as Writ Served in Dutch Court' (*Amnesty International*, 29 June 2017) <<https://www.amnesty.org/en/latest/press-release/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>> accessed 20 January 2024.

¹⁵ Fegalo Nsuke 'The Allegory Of The Cave Should Not Play Out In The Ogoni Struggle' (Sahara 2024) <<https://saharareporters.com/2024/01/28/allegory-cave-should-not-play-out-ogoni-struggle-fegalo-nsuke>> accessed 26 March 2024.

destruction on affected communities and the environment. The scope of the research is limited to the operations of Shell in Ogoniland, and how the environmental degradation as a result of their operation has impacted the human rights and socio-economic life of the Ogonis.

The theoretical framework employed in this research is; corporate accountability which examines multinational corporations' responsibility for social and environmental impacts.¹⁶

Environmental justice:- underscores the inequitable distribution of environmental harms,¹⁷ and the human rights principles guide the analysis of violations, including Indigenous rights. These concepts collectively inform a holistic understanding of the case, guiding strategies for justice and accountability.

¹⁶ Staff Writer, 'A Brief History of Corporate Social Responsibility (CSR)' (24 October 2023) <<https://www.thomasnet.com/insights/history-of-corporate-social-responsibility/>> accessed 26 March 2024.

¹⁷ Renee Skelton, 'The Environmental Justice Movement' (22 August 2023) <<https://www.nrdc.org/stories/environmental-justice-movement>> accessed 20 March 2024.

CHAPTER ONE

1.1 Methodology

The methodological starting point is taken from legal scholarship on the relationship between the contexts of corporate operations, environmental justice, and human rights. The thesis relied on primary and secondary data sources, it made use of desk-based research, as well as empirical qualitative research by conducting interviews. The interviews were conducted through semi-structured questionnaires via zoom. Chapters one and two are based on desk research, and the remaining chapters three and four are based on both interview analysis and scholarly works review.

1.2 Frameworks

Corporate accountability, human rights, and environmental justice emerged as interconnected concepts that shape the ethical conduct of businesses and their impacts on society and the environment.¹⁸ One of the reasons for this is that usually, corporate operations occur within ecosystems shared by diverse communities, including local populations, wildlife, and natural habitats.¹⁹ The relevance of business and human rights has surged as awareness of the negative impacts of corporate activities on people and the environment grows.²⁰ This has led to a growing demand for businesses to be held accountable for their actions and to respect human rights in their operation, both within their countries of incorporation and in third countries.²¹

¹⁸ David Monsma, 'Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility' (2006) 33 Ecology Law Quarterly 443.

¹⁹ Ike Okonta and Orono Douglas, *Where Vultures Feast: Shell, Human Rights, and Oil* (1edn, Verso 2003) P 63

²⁰ Olivier DE Schutter, 'Towards a New Treaty on Business and Human Rights' (2016) 1 Business and Human Rights Journal 41.

²¹ Steven R Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 The Yale Law Journal 443.

Corporate accountability is central to this thesis as it forms the foundation for understanding the role of corporations in society and the implications of their actions.

Corporate Accountability for Stakeholders.

Stephen Tully in his book *International Corporate Legal Responsibility*, identified two concepts of corporate accountability; internal and external accountability. Internal accountability focuses on ensuring that corporate agents, such as directors, are answerable to internal stakeholders like shareholders, maintaining transparency and responsibility within the corporation. External accountability on the other hand, which this thesis is concerned with, broadens this scope to include a wider array of external stakeholders, such as communities, regulators, and NGOs.²² It is therefore imperative for corporations to know that they account not just for shareholders, but also for a wider range, including stakeholders, and this should be based on a legal obligation. This action should not be voluntary, as it requires going beyond that and establishing mechanisms that provide adequate legal and financial incentives for compliance and to empower stakeholders.²³ This is a relatively new concept and is based on the development of new aspects of international law, which requires fundamental changes in the companies' legal frameworks. This may include giving new social and environmental responsibilities to the executives and providing additional legal rights for victims to seek remedy when they are affected by the adverse operations of these businesses.²⁴

The initial thought about corporate activities is that the corporation's role is only to maximize profit to shareholders, and it is not concerned with other responsibilities, or accountably beyond this role. A well-known author associated with this view is Milton Friedman. In his book

²² Stephen Tully, *International Corporate Legal Responsibility* (Wolters Kluwer Law & Business 1st edn, 2012) 27

²³ Felix Dodds and Toby Middleton (eds), *Earth Summit 2002: A New Deal* (Rev ed, Earthscan 2001).

²⁴ Oscar Omar Salazar-Duran, 'A Human Rights Approach to Corporate Accountability and Environmental Litigation' 43. (2021)

Capitalism and Freedom (1962), which was based on a series of lectures he gave in 1956, he said: "...there is only one social responsibility of the business, that is to use its resources and engage in activities designed to increase its profits so long it stays within the rules of the game, which is to say, engages in open and free competition, without the deception of fraud".²⁵ Friedman's objective was to ensure that corporate social responsibility did not hinder the efficiency of a free-market economy, particularly in the American context.²⁶ He believed that businesses should primarily focus on profit maximization, arguing that this approach ultimately benefits society through economic growth and efficiency. Recent concerns, such as human rights, environmental sustainability, and global development, are more extensive and interconnected than in the past. These issues reveal that Friedman's focus on profit maximization as the primary corporate responsibility is insufficient in today's context. Modern corporations must consider a broader range of stakeholders, including local communities, environmental groups, and international bodies, to address these global challenges effectively.²⁷ Stakeholders in this sense include all the people who impact and are impacted by corporate activities that is the communities and the environment. Therefore, his conception is fundamentally flawed because corporate business activities need to be accounted for their wrongs.

In 1953, economist Howard Bowen introduced the concept of "Corporate Social Responsibility" in his influential book, "Social Responsibilities of the Businessman."²⁸ He stressed that corporate accountability encompasses more than just financial success, emphasizing the importance of social responsibility, sustainable practices, and effective governance. It emphasizes that corporations have obligations not only to shareholders but also

²⁵ Milton Friedman, *Capitalism and Freedom* (University of Chicago Press 2nd edn, 2002)p 133

²⁶ Adefolake O. Adeyeye, *Corporate Social Responsibility of Multinational Corporations in Developing Countries* (Cambridge University Press, 2012)P9

²⁷ *ibid*

²⁸ Howard R. Bowen, *Social Responsibilities of Businessman* (University of Iowa Press 1953) p 52

to employees, local communities, and the environment.²⁹ A range of authors hold the conviction that corporate responsibility goes beyond just the making of profit. John Kenneth Galbraith, an economist highlighted the importance of corporations being accountable for their actions and decisions. His work emphasizes the need for businesses to consider their societal impacts beyond financial success.³⁰ Archie B. Carroll,³¹ known for his CSR pyramid model identified four responsibilities for businesses: “economic, legal, ethical, and philanthropic,” stressing the importance of organizations fulfilling these responsibilities to society. The above statement connotes and includes, ensuring fair compensation for natural resources extracted, complying with environmental regulations, upholding ethical standards in their operations, and contributing to the well-being of the local communities.³² Research indicates a rise in corporate misconduct cases, highlighting the prevalence of unethical practices among companies. Despite this increase, many human rights violations committed by corporations go unpunished.³³ Amidst the rising cases of misconduct, there is a pressing need for stronger regulatory frameworks and enforcement mechanisms to ensure accountability and justice for the human rights violations perpetrated by corporations because doubt exists about whether businessmen are becoming more aware of their significant societal obligations.³⁴

Environmental justice

The environment is a common resource essential for our survival, encompassing clean water, a stable atmosphere, and diverse biodiversity crucial for both health and societal welfare. Some

²⁹ Writer (n 16).

³⁰ John Kenneth Galbraith, ‘Economics as a System of Belief’ (1970) 60 *The American Economic Review* 469.

³¹ Archie B. Carroll, *Corporate Social Responsibility, Evolution of a Definitional Construct* (Business and Society 1999), pp 268-269

³² Archie B Carroll, ‘Carroll’s Pyramid of CSR: Taking Another Look’ (2016) 1 *International Journal of Corporate Social Responsibility* 3.

³³ Karin Lukas and others, *Corporate Accountability: The Role and Impact of Non-Judicial Grievance Mechanisms* (Edward Elgar Publishing 2016).

³⁴ Howard (n 28).

corporations exploit and harm the environment, leading to public health risks and community degradation, without bearing the appropriate costs.³⁵ Economists term this phenomenon as “externalizing cost” whereby the burden of environmental degradation often falls on society rather than the responsible companies.³⁶ corporations hold substantial influence, which grants them considerable power. With this power comes the responsibility to protect the environment, ensuring sustainable practices that minimize ecological harm.³⁷

Dinah Shelton equates environmental justice to “Aesop’s elephant, where in the fable of Aesop, several blind men who touch an elephant describe it in different ways depending on where they touch.”³⁸ That being said, there is no agreed definition of what environmental justice is, however, Robert Bullard defined environmental justice as the principle that “all people and communities are entitled to equal protection of environmental and public health laws and regulations.”³⁹ Therefore, the concept of environmental justice is based on the principle that everyone, irrespective of race, ethnicity, or socioeconomic status, deserves to live in a clean and healthy environment.⁴⁰ This includes access to clean air, water, and land, as well as protection from environmental hazards and pollution⁴¹ Regularly, extractive/ polluting industries cause uneven environmental effects on isolated or vulnerable communities.⁴²

³⁵ Benjamin Maiangwa and Daniel E Agbibo, ‘Oil Multinational Corporations, Environmental Irresponsibility and Turbulent Peace in the Niger Delta’ (2013) 48 *Africa Spectrum* 71.

³⁶ Samudu Atapattu and Andrea Schapper, *Human Rights and the Environment* (Routledge, 2019)

³⁷ McCune Law Group ‘Holding Corporations Responsible For Environmental Damages’ (3 November 2023) <<https://mccunewright.com/blog/2023/11/holding-corporations-responsible-for-environmental-damages/>> accessed 11 April 2024.

³⁸ Dinah Shelton, ‘Describing the Elephant: International Justice and Environmental Law’ in Jonas Ebbesson and Phoebe Okowa (eds), *Environmental Law and Justice in Context* (Cambridge University Press 2009) <<https://www.cambridge.org/core/books/environmental-law-and-justice-in-context/describing-the-elephant-international-justice-and-environmental-law/201CCBAF9D20EA4A53F3650B32A44804>> accessed 30 March 2024.

³⁹ Robert D Bullard ‘Dumping in Dixie: Race, Class, and Environmental Quality’(1990) <<http://www.ciesin.org/docs/010-278/010-278chpt2.html>> accessed 30 March 2024.

⁴⁰ Kerri Woods, ‘What Does the Language of Human Rights Bring to Campaigns for Environmental Justice?’ [2006] *Environmental Politics* <<https://www.tandfonline.com/doi/full/10.1080/09644010600785192>> accessed 11 April 2024.

⁴¹ *ibid.*

⁴² David Monsma, ‘Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility’ (2006) 33 *Ecology Law Quarterly* 443.

Human Rights

The premise of human rights is based on the dignity of the human person and the rights that are recognized accrue to them by being born human.⁴³ Therefore, “Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status”. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.⁴⁴ Human rights law protects individuals from abuse by state actors and ensures that states take measures to prevent human rights violations by non-state actors.⁴⁵ It has long been recognized that businesses and transnational corporations have contributed to or been complicit in the violation of human rights in various ways.⁴⁶ Developing nations often face challenges in regulating foreign corporations involved in extracting minerals, oil, or other natural resources, leading to harm to local communities and the environment.⁴⁷ Corporations possess the capacity to influence human rights through both internal and external channels. Internally, their policies, practices, and treatment of employees directly shape the human rights landscape within the company. Externally, their actions, such as environmental practices, can impact the human rights of individuals and communities beyond their immediate workforce.⁴⁸ Corporations frequently engage in a wide range of external human rights violations, spanning from encroachments on the right to health and access to clean water through activities like land grabbing and pollution,

⁴³ United Nations Universal Declaration of Human Rights.(1948)

⁴⁴ United Nations, ‘Peace,dignity and equality on a healthy planet’ (*United Nations*) <<https://www.un.org/en/global-issues/human-rights>> accessed 30 March 2024.

⁴⁵ Dinah L Shelton and Donald K Anton, ‘Environmental Protection and Human Rights’.(2011) DOI: <https://doi.org/10.1017/CBO9780511974571>

⁴⁶ Denis G Arnold, ‘Transnational Corporations and the Duty to Respect Basic Human Rights’ (2010) 20 *Business Ethics Quarterly* 371.

⁴⁷ Terry Lynn Karl (n 3).

⁴⁸ Nadia Bernaz, *Business and Human Rights: History, Law and Policy-Bridging the accountability gap* (Routledge 1st edn, 2017) P1

to infringements on the right to be free from inhuman or degrading treatment.⁴⁹ Also, forced assimilation or cultural erasure occurs when Indigenous communities are displaced to make way for industrial projects, like mining, depriving them of their autonomy and heritage. These violations highlight the disregard for indigenous rights and the devastating impact of industrial development on traditional ways of life.⁵⁰ Although human rights impact assessments are increasingly researched, and conducted,⁵¹ it shows that human rights protection requires “more than just ticking the boxes.”⁵²

While the primary responsibility for promoting and protecting human rights lies with the state, weak government, poor regulation, lax enforcement, corruption, or simply a too-close relationship between business and government underlies the problem. Classic examples are Shell’s impact on the environment, natural resources, health, and living standards of the Ogoni people in Nigeria.⁵³ To conclude on this point, the intersection of corporate activities with human rights and environmental justice brings attention to the complex relationship between corporate practices and societal well-being. Corporations engaged in resource extraction might infringe upon human rights either inadvertently or deliberately through environmental pollution or by causing harm to nearby communities.⁵⁴

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ United Nations Environment Programme, ‘Environmental Assessment of Ogoniland’ (*UNEP* -17 January 2011) <<http://www.unep.org/resources/report/environmental-assessment-ogoniland>> accessed 30 March 2024.

⁵² Nadia Bernaz (n 48) P2

⁵³ Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (‘SERAC v. Nigeria – the Ogoniland Case’), AfCHPR, Communication 155/96 (2002), at paras. 52–53.

⁵⁴ Olga Martin-Ortega and others, ‘Towards a Business, Human Rights and the Environment Framework’ (2022) 14 Sustainability 6596.P1

CHAPTER TWO

2.1 The Ogonis

The Ogonis are indigenous people in Niger Delta, Rivers State in Nigeria. Ogoniland has a population of close to 832,000 (according to the 2006 National Census), and covers a landmass of about 1,000 square km.⁵⁵ Divided into six clans Ken-Khana, Baabe, Bori, Tai, Gokhana, and Eleme respectively which are presided over by a paramount ruler of the area.⁵⁶ For administrative purposes, the area is further divided into four local government areas: Tai, Khana, Eleme, and Gokana.⁵⁷ The Niger Delta, recognized as one of Africa's most significant wetlands and marine ecosystems, holds the distinction of being the largest wetland on the continent.⁵⁸ When petroleum exploration activities commenced in the region in 1958, an estimated 900 million barrels with an estimated value of \$30 billion were extracted in the area.⁵⁹ However, there is nothing to show for it in the Ogoni community.⁶⁰ The Ogonis relied on farming and fishing for their livelihood upon settling in the region.⁶¹ Their community enjoyed self-sufficiency and didn't need external aid for sustenance.⁶² But the glory days of Ogoniland are a thing of the past, all thanks to the impacts of oil extraction activities in the community.

⁵⁵ United Nations Environment Programme, 'About Ogoniland' (UNEP -21 September 2017) <<http://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/about-ogoniland>> accessed 18 April 2024.

⁵⁶ United Nations Environment Programme (n 51) .

⁵⁷ Nwamaka A Okeke-Ogbuafor, Tim S Gray and Selina M Stead, 'Reconciling Traditional Indigenous Governance with Contemporary Approaches to Decision Making in Ogoni Communities in Rivers State, Nigeria' (2016) 9 Journal of Sustainable Development 55.

⁵⁸ Saheed Matemilola, Oludare Hakeem Adedeji and Evidence Chinedu Enoguanbhor, 'Chapter 17 - Land Use/Land Cover Change in Petroleum-Producing Regions of Nigeria' in Prince E Ndimele (ed), *The Political Ecology of Oil and Gas Activities in the Nigerian Aquatic Ecosystem* (Academic Press 2018) <<https://www.sciencedirect.com/science/article/pii/B9780128093993000173>> accessed 15 April 2024.

⁵⁹ Nairametrics 'History of Oil and Gas in Nigeria(2013)' <<https://nairametrics.com/wp-content/uploads/2013/01/History-of-Oil-and-Gas-in-Nigeria.pdf>> accessed 29 April 2024.

⁶⁰ Unrepresented Nations and People Organization ' Ogoni: Poverty-Struck in a Land of Riches' (Mshale, 2011) <<https://unpo.org/article/12769>> accessed 17 April 2024.

⁶¹ The Ecumenical Council for Corporate Responsibility, ' Report: Shell in the Niger Delta' <https://justmoney.org.uk/wp-content/uploads/2019/12/ECCR_report_Shell_in_the_Niger_Delta_2010_1__1.pdf> accessed 22 April 2024.

⁶² Oyinlade and Jeffery Vincent, 'The Ogoni of Nigeria' (n 4)

2.2 Rooted in the Land, Flowing with the River.

The Ogonis were a largely agricultural and fishing society.⁶³ The annals of Ogoni history, the deltaic plateau within Rivers State stands as a testament to the fertility and agricultural prowess that once characterized this region before the onset of oil exploration in the late 1950s⁶⁴ Revered as the “bread basket”⁶⁵ of the surrounding area, Ogoniland boasted a fertile terrain, sustaining a thriving populace primarily engaged in subsistence agriculture. The Ogonis, adept custodians of their land, leveraged cooperative frameworks to maximize agricultural yields and fishing endeavors. Through communal efforts, fishermen operated in small groups, employing traditional methods to augment their catches and secure a competitive foothold in regional markets.⁶⁶ It was through the collective enterprise of these endeavors that the economic backbone of Ogoni households was formed. For Ogoni communities, the land on which they lived and the water in which they fished were very important, not only for the sustenance they provided but also for ancestral inheritances.⁶⁷ They feel a strong bond to their land, ancestors, and sacred sites, which shapes their feeling of home within their homesteads and communities.⁶⁸ There was, therefore, minimal deforestation or contamination of the rivers in the period before the discovery of oil. According to Okonta and Douglas, “The land was considered sacred and to commit acts that polluted or desecrated it was viewed as an abomination and promptly visited with appropriate sanctions.”⁶⁹

⁶³ Richard Boele, Heike Fabig and David Wheeler, ‘Shell, Nigeria and the Ogoni. A Study in Unsustainable Development: I. The Story of Shell, Nigeria and the Ogoni People – Environment, Economy, Relationships: Conflict and Prospects for Resolution I’ (2001) 9 Sustainable Development 74. DOI: : 10.1002/sd.161

⁶⁴ Oyinlade and Vincent, ‘The Ogoni of Nigeria’ (n 4).

⁶⁵ Ike Okonta and Oronto Douglas, *Where Vultures Feast* (n 19)

⁶⁶ Oyinlade and Vincent, ‘The Ogoni of Nigeria’ (n 4).

⁶⁷ *Genocide in Nigeria: The Ogoni Tragedy* (Saros International Publishers 1992).

⁶⁸ Lee Cuba and David M Hummon, ‘A Place to Call Home: Identification with Dwelling, Community, and Region’ (1993) 34 The Sociological Quarterly 111.

⁶⁹ Ike Okonta and Oronto Douglas, *Where Vultures Feast* (n 19)

Between 1976 and 1991, Nigeria experienced over 2,976 individual oil spills, collectively resulting in the pollution of Ogoniland with over two million barrels of oil.⁷⁰ This environmental devastation occurred during Nigeria's ascent to become one of the leading oil-producing nations globally. The data from Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) for 2020 and 2021 reveals a troubling pattern of 822 recorded oil spills, collectively amounting to 28,003 barrels of oil released into the environment.⁷¹ Much of the land has been stained black, destroying the once-fertile soil and continually limiting agricultural productivity.

2.3 Shell in Ogoniland: A Complicated Relationship

The history of oil exploration and production in Ogoniland is a long and complex one that to date has become seemingly intractable in terms of its resolution and future direction.⁷² The stakeholders who have received the most negative impact from the discovery of oil in Nigeria are the Ogonis.⁷³ In 1969, with the enactment of the Petroleum Law, which allowed states to nationalize all oil resources in Nigeria, the government acquired lands in Ogoniland.⁷⁴ Consequently, the government started leasing and granting licenses to oil companies for the exploration of these lands, aiming to boost crude oil production.⁷⁵ In all of these happenings and activities, the Ogonis have not benefited from the oil revenue generated in Ogoniland.⁷⁶ In

⁷⁰ United Nations Environment Programme, 'Ogoniland's Oil History' (n 55).

⁷¹ Ekpali Saint, 'Timeline: Half a Century of Oil Spills in Nigeria's Ogoniland' (*Al Jazeera*) <<https://www.aljazeera.com/features/2022/12/21/timeline-oil-spills-in-nigerias-ogoniland>> accessed 13 April 2024.

⁷² United Nations Environment, 'Environmental Assessment of Ogoniland Report' (n 51).

⁷³ Dr Sarah D Stanwick, 'Shell and Nigeria: Dancing with the Devil?' (2013) 2. *American International Journal of Social Science* https://www.aijssnet.com/journals/Vol_2_No_7_October_2013/8.pdf accessed 16 April 2024.

⁷⁴ Kaniye SA Ebeku, 'Oil and the Niger Delta People: The Injustice of the Land Use Act' (2002) 35 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 201.

⁷⁵ Michael Watt 'Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria' <<https://www.tandfonline.com/doi/epdf/10.1080/14650040412331307832?needAccess=true>> accessed 15 April 2024.

⁷⁶ Unrepresented Nations and People Organizations: Ogoni: Poverty-Struck in a Land of Riches' (n 60).

1990, the distribution of oil revenue was heavily skewed: “55% went to the Federal government of Nigeria, 32.5% to the state government, 10% to local government, with only 1% allocated for addressing environmental issues and 1.5% earmarked for the Oil and Mineral Commission.”⁷⁷ The Ogonis felt that they were just the goose that laid the golden egg for the government, and Shell, and nothing to benefit from.⁷⁸

The operations of these oil companies most notably Shell led to a disconnection between the communities and their natural surroundings, exacerbating environmental concerns and impacting the local ecosystem.⁷⁹ As oil production in the region escalated, the exploration activities conducted by oil companies resulted in numerous environmental issues. These included gas flaring, oil spills, soil erosion, loss of biodiversity, coastal erosion, water contamination, noise pollution, diminished soil fertility, deforestation, and overall land degradation.⁸⁰

2.4 Shell: “Persona Non Grata” in Ogoniland

This song from the Ogoniland, written in 1970, encapsulates their collective experiences with Shell in the Nigeria Delta:

*“The flames of Shell are flames of hell. We bask below their light. Nought for us serve the light of cursed neglect and cursed Shell.”*⁸¹

The removal of Shell from Ogoniland stands as a landmark event in the struggle for environmental justice and human rights in Nigeria. The journey toward Shell's expulsion from

⁷⁷ Boele, Fabig and Wheeler (n 63).

⁷⁸ Eghosa E Osaghae, ‘The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State’ (1995) 94 African Affairs 325. Stable URL: <https://www.jstor.org/stable/723402>

⁷⁹ Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria’ (n 75).

⁸⁰ Adati Ayuba Kadafa, ‘Oil Exploration and Spillage in the Niger Delta of Nigeria’ (2012) 2 Civil and Environmental Research. 38

⁸¹ Ike Okonta and Oronto Douglas, *Where Vultures Feast* (n 19)

the community was marked by a series of interconnected events that underscored the company's role in perpetuating environmental degradation, human rights abuses, and social unrest.

In 1990, Ken Saro-Wiwa and other Ogoni leaders established the Movement for the Survival of the Ogoni People (MOSOP), to resist the environmental degradation and various forms of discrimination of social, political, and economic nature caused by the activities of oil companies and the Nigerian government.⁸² MOSOP's tireless campaigns and activism brought widespread attention to the environmental damage caused by Shell's oil extraction activities and the company's complicity in human rights violations.⁸³ Led by Ken Saro-Wiwa and the MOSOP, the Ogonis organized and demanded recognition of their rights, including control over their land and resources, a fair share of oil revenues, and environmental remediation.⁸⁴ The Ogoni Bill of Rights (OBR) was drafted in 1990 and presented to the Nigerian government as a formal document outlining the aspirations and grievances of the Ogoni people.⁸⁵ The OBR emerged as a response to years of neglect, exploitation, and environmental degradation suffered by the Ogoni people.⁸⁶ In this regard, the Ogoni communities organized protests, boycotts, and other forms of resistance to challenge Shell's presence and demanded justice for the socio-economic marginalization they endured. Internationally, Ken Saro-Wiwa's advocacy efforts garnered significant support and condemnation of Shell's operations from human rights organizations, environmental groups, and foreign governments.⁸⁷ Shell had stopped oil production activities in Ogoniland during the trial of Ken Saro-Wiwa and eight others. The suspension of oil production during the trial and execution period was primarily due to

⁸² Steven Cayford, 'The Ogoni Uprising: Oil, Human Rights, and a Democratic Alternative in Nigeria' (1996) 43 *Africa Today* 183.

⁸³ Amnesty International, 'Nigeria: Shell Complicit in the Arbitrary Executions of Ogoni Nine as Writ Served in Dutch Court' (*Amnesty International*, 29 June 2017) <<https://www.amnesty.org/en/latest/press-release/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>> accessed 12 April 2024.

⁸⁴ United Nations Environment Programme 'Environmental Assessment of Ogoniland' (n 51).

⁸⁵ Leesi Ebenezer Mitee, 'Ogoni Bill of Rights'. <https://bebor.org/wp-content/uploads/2012/09/Ogoni-Bill-of-Rights.pdf> accessed 19 April 2024

⁸⁶ *ibid.*

⁸⁷ Amnesty International: A Criminal Enterprise? (n11)

concerns among Shell personnel regarding potential attacks or other serious security risks.⁸⁸ However, the execution of Ken Saro-Wiwa and eight other Ogoni activists by the Nigerian military regime in 1995, after a controversial trial, sparked global outrage and intensified scrutiny of Shell's activities in Nigeria.⁸⁹ Concurrently, international pressure, including boycotts and divestment campaigns targeting Shell, further eroded the company's reputation and influence.⁹⁰ In response to mounting pressure and escalating tensions, the Nigerian government, under President Olusegun Obasanjo, suspended Shell's operations in Ogoniland in 1993 and officially revoked the company's operating license in 1995.⁹¹

Following Shell's removal, efforts were made by Shell to address the grievances of the Ogonis and promote reconciliation in the region. This included the initiation of environmental cleanup projects.⁹² This has, however, faltered, plagued by bureaucratic hurdles and inadequate funding. Despite promises, progress remains slow, leaving communities grappling with ongoing environmental degradation.⁹³ This failure highlights broader issues of corporate accountability and environmental injustice thirty-one years later, the situation is the same.

2.5 Persisting Peril: thirty-one years later.

Three decades after oil drilling stopped in Ogoniland, the area still shows signs of environmental damage and social unrest caused by years of exploitation and neglect.⁹⁴ The

⁸⁸ Cayford (n 82).

⁸⁹ Editorial- 'The Executioner Awaits Nigerian Rights Hero' (*SFGATE*, 2 November 1995) <<https://www.sfgate.com/opinion/article/editorial-the-executioner-awaits-nigerian-3020305.php>> accessed 22 April 2024.

⁹⁰ Jennifer Hattam, 'Boycott Shell Now' (*Mother Jones* 1997) <<https://www.motherjones.com/politics/1997/05/boycott-shell-now/>> accessed 22 April 2024.

⁹¹ Boele, Fabig and Wheeler (n 63).

⁹² Amnesty International 'No Progress: An evaluation of the implementation of UNEP's environmental assessment of Ogoniland, three years on Pdf' <<https://www.amnesty.org/en/wp-content/uploads/2021/06/afr440132014en.pdf>> accessed 23 April 2024.

⁹³ *ibid.*

⁹⁴ Environment, 'Environmental Assessment of Ogoniland' (n 51).

oilfields and installations have since largely remained dormant. When Shell left Ogoniland, many of its facilities were not properly decommissioned and made safe.⁹⁵ Decommissioning is the standard practice, and it typically occurs when oil wells or facilities reach the end of their operational lifespan or are no longer economically viable.⁹⁶ In the case of Ogoniland, this was not done. Oil spills persist in communities as major pipelines traverse the region, exacerbated by insufficient maintenance and frequent acts of vandalism targeting oil infrastructure.⁹⁷ Oil spills still occur because the longevity of Shell's pipelines and installations, dating back to the 1960s, contributes to their vulnerability to corrosion, leaks, and other forms of degradation over time. As a result, the lack of replacement and modernization of these aging structures increases the risk of oil spills.⁹⁸

The once-thriving mangrove forests in Ogoniland now stand as reminders of the environmental destruction caused by oil pollution. Lakes and waterways contaminated with oil remain a health hazard for local communities who depend on these resources for their survival.⁹⁹ Despite widespread acknowledgment of the critical situation in Ogoniland, progress towards cleaning up and restoring the area has been slow and insufficient,¹⁰⁰ leaving the Ogonis to suffer the consequences of oil extraction. Years of neglect and lack of consequences have eroded trust in both corporate and government bodies, leading to frustration and anger among local communities who continue to endure the effects of past injustices. Despite facing challenges, the Ogoni community persists in sharing their experiences and pursuing justice internationally. They have traveled extensively to seek justice from Shell, participating in legal proceedings in

⁹⁵ 'No Progress: An evaluation of the implementation of UNEP's environmental assessment of Ogoniland, three years on Pdf' (n 92).

⁹⁶ *ibid.*

⁹⁷ United Nations Environment Programme (n 55).

⁹⁸ Ike Okonta and Oronto Douglas, *Where Vultures Feast* (n 19) P66

⁹⁹ Ebeku (n 74).

¹⁰⁰ Tony Ita Etim 'Ogoni Clean Up Too Slow, Stakeholders Say' (2020)<<https://thesouthernexaminer.com/ogoni-clean-up-too-slow,-stakeholders-say-p647-184.htm>> accessed 29 April 2024.

the United Kingdom,¹⁰¹ the Netherlands,¹⁰² in the United States,¹⁰³ as well as presenting their case before the African Commission for Human and Peoples' Rights¹⁰⁴. Even though the oil industry is no longer active in Ogoniland, oil spills continue to occur with alarming regularity. According to the UNEP report 2011, it said that “ the Ogonis have been living with chronic pollution all their lives.”¹⁰⁵

Providing compensation, while sometimes essential, does not effectively tackle the underlying problems within corporations.¹⁰⁶ Simply offering financial reparation does not get to the root of the issue and does not prevent similar issues from happening again. Without accountability, there is a continuous loop of misconduct and compensation, with no resolution in sight. Some members of the Ogoni communities are still waiting for their compensation for the wrongs that they suffered as a result of Shell's operations but to no avail to date.¹⁰⁷ While some, after losing their entire livelihood in one of the many oil Spills in 2008,¹⁰⁸ Shell's first compensation proposal to the 69,000 inhabitants of the community included meager provisions such as 50 bags each of rice, beans, along other basic food items.¹⁰⁹ Dividing such a paltry offering among tens of thousands of affected individuals demonstrates a profound lack of understanding of the gravity of the situation. Therefore, it is crucial to establish clear corporate accountability.

¹⁰¹ Al Jazeera, 'UK Court Rules in Favour of Shell in Nigerian Oil Spill Case' (*Al Jazeera*) <<https://www.aljazeera.com/news/2023/5/10/uk-court-rules-in-favour-of-shell-in-nigerian-oil-spill-case>> accessed 19 April 2024.

¹⁰² Friends of the Earth International, 'Victory in Shell Oil Spill Case, after 13 Long Years' (5 February 2021) <<https://www.foei.org/justice-at-last-dutch-court-orders-shell-to-compensate-nigerian-farmers-for-oil-spill-harm/>> accessed 19 April 2024.

¹⁰³ *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013)' (*Justia Law*) <<https://supreme.justia.com/cases/federal/us/569/108/>> accessed 19 April 2024.

¹⁰⁴ 'Achpr30_155_96_eng.Pdf' <https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf> accessed 19 April 2024.

¹⁰⁵ Environment, 'Environmental Assessment of Ogoniland Report' (n 51).

¹⁰⁶ Hana Vizcarra, 'Deepwater Horizon Ten Years Later: Reviewing Agency and Regulatory Reforms - Harvard Law School' (5 May 2020) <<https://eelp.law.harvard.edu/2020/05/deepwater-horizon-ten-years-later-reviewing-agency-and-regulatory-reforms/>> accessed 29 April 2024.

¹⁰⁷ Friends of the Earth International, 'A Journey through the Oil Spills of Ogoniland' (17 May 2019) <<https://www.foei.org/a-journey-through-the-oil-spills-of-ogoniland/>> accessed 11 April 2024.

¹⁰⁸ Leighday 'International Case Study - Shell (2024)' <<https://www.leighday.co.uk/news/cases-and-testimonials/cases/shell-bodo/>> accessed 25 April 2024.

¹⁰⁹ Scott Pegg and Nenibarini Zabbey, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) 48 *Community Development Journal* 391.

Holding corporations accountable for their actions will act as a deterrent and promote a culture of ethical business conduct, leading to sustained trust and integrity in the business world. That being said, we will briefly look at the human rights that are affected in this case.

CHAPTER THREE

3.1 Crossing the Line: When Rights Hit Rock Bottom

*“Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposure to toxic chemicals, hazardous wastes, and contaminated drinking water....”*¹¹⁰

Human rights are universal legal guarantees that protect individuals, groups, and people against actions and omissions that interfere with their fundamental freedoms and entitlements. Human rights are universal and are based on the inherent dignity and equal worth of all human beings. They are equal, indivisible, interrelated, and interdependent, and cannot be waived or taken away.¹¹¹ Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria outlines key fundamental rights for citizens. These include the right to life, ensuring protection against arbitrary killing; the right to dignity of the human person, prohibiting torture and degrading treatment; the right to personal liberty, protecting individuals from unjust arrest and detention; the right to a fair hearing, guaranteeing due process in legal proceedings; and the right to private and family life, safeguarding the privacy of individuals and their homes.¹¹² These rights form the foundation of human rights protection in Nigeria. Fundamental to the enjoyment of all the above-stated rights is the right to a clean environment, this is because *“environmental conditions help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but*

¹¹⁰ Klaus Toepfer, Executive Director of the United Nations Environment Programme at the 57th Session of the Comm’n on Human Rights, Geneva, (2001). UN News’ (27 April 2001) <<https://news.un.org/en/story/2001/04/2712>> accessed 30 April 2024.

¹¹¹ Office of the High Commissioner for Human Rights ‘Understanding Human Rights and Climate Change’ <<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>> accessed 6 May 2024.

¹¹² Constitution of the Federal Republic of Nigeria, 1999.

are violating human rights as well.”¹¹³ Connecting this to the situation during Shell’s operation in Ogoniland, and their departure, one can see that the right to a healthy environment which is guaranteed in the African Charter on Human and Peoples’ Rights (ACHPR) is flouted, and this right has constantly been violated. Article 24 (ACHPR) recognizes that... “*All peoples shall have the right to a generally satisfactory environment favorable to their development*”.¹¹⁴ The Delta’s polluted waters, emissions from flares, and mismanagement of hazardous waste have endangered the health of those relying on it for daily needs. Ogoniland residents suffer from numerous health problems linked to oil production, including respiratory issues, asthma, cancer, and infections affecting the skin, throat, and lungs. Women also experience headaches and a higher incidence of miscarriages etc.¹¹⁵

The 2011 United Nations Environmental Programme report found that community members in Nisisioken Ogale were drinking well water contaminated with benzene, a substance known to cause cancer, and the contamination levels were more than 900 times higher than the safety guidelines set by the World Health Organization (WHO).¹¹⁶ “We are not sure about where to drink from, because it keeps spreading from one community to another, and since the earth is all interconnected, which water is safe to drink doesn’t exist”.¹¹⁷ A study in the United States discovered that exposure to benzene by mothers can lead to low birth weight in infants, indicating potential health issues and developmental challenges.¹¹⁸ This highlights the widespread impacts of oil contamination, affecting not only individuals but also future

¹¹³United Nations News, ‘Living in a Pollution-Free World Is a Basic Human Right’(27 April 2001). <https://news.un.org/en/story/2001/04/2712> accessed 1 May 2024

¹¹⁴ African Charter on Human and Peoples’ Rights (Banjul Charter) adopted June 27, 1981.

¹¹⁵ Okhumode H Yakubu, ‘Addressing Environmental Health Problems in Ogoniland through Implementation of United Nations Environment Program Recommendations: Environmental Management Strategies’ (2017) 4 Environments 28. <https://doi.org/10.3390/environments4020028> accessed 24 April 2024

¹¹⁶ United Nations Environment Programme, ‘Environmental Assessment of Ogoniland Report’ (n 51).

¹¹⁷ Interview with a victim (interviewee 1) in Ogoniland. (via Zoom, May 2nd 2024)

¹¹⁸ United States Department of Health and Human Toxicological Profile for Total Petroleum Hydrocarbon (TPH) 1999 Services. *ATSDR’s Toxicological Profiles: Web Version* (CRC Press 2002) <<https://www.atsdr.cdc.gov/toxprofiles/tp123.pd>> accessed 29 April 2024..

generations.¹¹⁹ The continuous exposure has led to severe health consequences for the people living in oil-producing areas. Shockingly, life expectancy in the Niger Delta region is mere 41 years,¹²⁰ the lowest in Nigeria, compared to the national average of 54 years as of 2024.¹²¹ The stark 13-year gap in life expectancy underscores the urgent need to address health disparities and human rights violations caused by oil extraction activities in the area. UNEP concluded that the environmental restoration of Ogoniland was possible but could take 25 to 30 years.¹²²

Article 22 (1) (ACHPR) “*All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. Art. 22(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*”¹²³ This is a right that is guaranteed under the ACHPR. Additionally, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) explicitly safeguards the right to work and the right to an adequate standard of living, including the right to food, water, and health.¹²⁴ Article 12 recognizes the right to health, encompassing access to healthcare services, environmental hygiene, and industrial safety. It stresses the importance of clean surroundings and safe workplaces to prevent disease and protect workers’ health. The Committee on Economic, Social, and Cultural Rights (CESCR) stresses the state’s responsibility to regulate private businesses and civil society to ensure their activities do not infringe on the right to food. This entails implementing and enforcing laws and policies that prevent businesses and organizations from actions that would deprive individuals of access to adequate food. Failure by states to effectively regulate these entities and prevent such

¹¹⁹ Ibid

¹²⁰ Guardian Nigeria, ‘Environmental Laments Decline of Life Expectancy in N’Delta to 41 Years’ (*The Guardian Nigeria News - Nigeria and World News*, 9 March 2022) <<https://guardian.ng/news/environmentalist-laments-decline-of-life-expectancy-in-ndelta-to-41-years/>> accessed 29 April 2024.

¹²¹ Database.Earth ‘Life Expectancy in Nigeria 1950-2024 & Future Projections’ (*database.earth*) <<https://database.earth/population/Nigeria-growth-rate>> accessed 29 April 2024.

¹²² United Nations Environment Programme, ‘Environmental Assessment of Ogoniland Report’ (n 51).

¹²³ African Charter on Human and Peoples’ Rights (Banjul Charter) adopted June 27, 1981.

¹²⁴ International Covenant on Economic Social and Cultural Rights (1966) <<https://www.ohchr.org/sites/default/files/cescr.pdf>> accessed 18 April 2024.

violations constitutes a breach of their obligation to protect the right to food.¹²⁵ The Ogoni community now struggles with poverty as they rely on external sources for sustenance.¹²⁶ The depletion of fish stocks and the contamination of waterways have rendered traditional occupations unviable, leading to widespread unemployment and economic hardship.¹²⁷ The loss of livelihood among the Ogoni people, stemming from the environmental degradation caused by oil extraction activities, constitutes a violation of their fundamental human rights as recognized by international law.¹²⁸ Oil bunkering by the youth of Ogoniland also contributes to environmental degradation through oil spills, contaminating land, water, and air, and causing harm to ecosystems and public health. “You are pushing people into hunger and serious poverty, they cannot farm anymore, therefore, they result to oil bunkering”¹²⁹ therefore, there is also a need for the community to be educated about oil bunkering and the associated environmental hazards that it comes with, which leads to the scarcity of food and other related harm.

Rights under the International Covenant on Civil and Political Rights (ICCPR)¹³⁰ that are affected are i.e. the right to self-determination (Article 1) was compromised, as the Ogoni people were denied control over their natural resources and their land was exploited without their consent. The right to life (Article 6) was threatened due to the environmental degradation and pollution caused by oil extraction, which led to health hazards and fatalities. In 2011, the Council of Ogoni Traditional Rulers expressed concern over the federal government’s neglect,

¹²⁵ Covenant on Economic Social and Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12: The Right to Adequate Food, UN ESCOR, 20th sess, Agenda Item 7, [27], UN Doc E/C.12/1999/5 (1999) <https://documents.un.org/doc/undoc/gen/g99/420/12/pdf/g9942012.pdf?token=lbCOZuv71yz4GATdVT&fe=true> accessed 20 May 2024

¹²⁶ Unrepresented Nations and People Organization: Ogoni: Poverty-Struck in a Land of Riches’ (n 60).

¹²⁷ Eze Simpson Osuagwu and Eseoghene Olaifa, ‘Effects of Oil Spills on Fish Production in the Niger Delta’ (2018) 13 PLOS ONE e0205114. <https://mpira.ub.uni-muenchen.de/112933/> accessed 18 April 2024

¹²⁸ Fons Coomans, ‘The Ogoni Case before the African Commission on Human and Peoples’ Rights’ (2003) 52 The International and Comparative Law Quarterly 749. JSTOR, <http://www.jstor.org/stable/3663335>. Accessed 18 April 2024.

¹²⁹ Interview with a victim (interviewee 2) in Ogoniland. (via Zoom, May 2nd 2024)

¹³⁰ International Covenant on Civil and Political Rights 1976. <<https://www.ohchr.org/sites/default/files/ccpr.pdf>> accessed 20 May 2024.

highlighting that many children in their community were suffering from cancer and other serious diseases due to exposure to polluted air, water, and food.¹³¹ There are several instances where killings of protesters were reported. For instance, protesters were killed in Iko village in 1987. Shell invited policemen to disperse a local protest against environmental destruction caused by their activities¹³². Police transported by Shell's boats allegedly killed eight protesters at the Utapete flow station, injured many others, and committed multiple rapes.¹³³ This incident highlights severe human rights abuses linked to Shell's operations in Ogoniland.

The freedom from torture or cruel, inhuman, or degrading treatment (Article 7) was violated through violent crackdowns and human rights abuses by security forces. Among these atrocities, some individuals were subjected to torture so extreme that it resulted in the amputation of their limbs.¹³⁴ It is well known in international human rights law that freedom from torture is a cornerstone of a just society. Torture is an absolute right to which no exception is made.¹³⁵ Regardless of this existing absolute right, acts of torture were often carried out by security forces or personnel associated with the oil companies operating in the region, including Shell, as part of its efforts to suppress dissent and resistance to their activities.¹³⁶ Furthermore, beyond physical torture and violence, there were additional human rights violations of a similar nature documented. These violations included arbitrary arrests and detentions, forced displacement of communities, intimidation, and harassment of activists and community leaders

¹³¹ Oscarline Onwuemenyi, 'Oil Spill: Cancer Is Ravaging Our Land – Ogoni Council of Rulers' (*SweetCrudeReports*, 25 August 2011) <<https://sweetcrudereports.com/oil-spill-cancer-is-ravaging-our-land-ogoni-council-of-rulers/>> accessed 21 May 2024.

¹³² Amnesty International 'Amnesty Accuses Shell Of Complicity In Killings, Torture In Nigeria In The 1990s | HuffPost Latest News' <https://www.huffpost.com/entry/amnesty-shell-nigeria_n_5a1db128e4b06a14100a940a> accessed 12 April 2024.

¹³³ Ike Okonta and Oronto Douglas, *Where Vultures Feast* (19)

¹³⁴ Ratical 'Factsheet on the Ogoni Struggle' <<https://www.ratical.org/corporations/OgoniFactS.html>> accessed 16 April 2024.

¹³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

¹³⁶ Factsheet on the Ogoni Struggle (n 134).

who spoke out against the environmental degradation and social injustices caused by oil extraction activities.¹³⁷

The right to privacy (Article 17) was affected as homes and personal spaces were invaded during military operations. The rights of minorities (Article 27) were disregarded, as the Ogoni people's cultural and social rights were trampled upon, and their pleas for justice and environmental remediation were ignored.

It will be interesting to know how the government of Nigeria responded to all these happenings. The next sub-chapter highlights this aspect.

3.2 Regulatory Responses to the Plight of the Ogonis by the Federal Government

There were gaps and remaining gaps in the legal framework that allowed oil companies to operate without stringent environmental impact assessment and human rights considerations. The Federal government of Nigeria has not established effective regulations to prevent environmental harm by oil production. The state often relies on inaccurate self-reporting from companies, leading to minimal government oversight. The government is hesitant to regulate oil companies due to their reliance on oil revenue.¹³⁸ It derives 47%¹³⁹ of revenue from oil companies, so it may seem financially advantageous for the government to prioritize the welfare of these oil companies and their shareholders over that of its citizens. However, the government should know that it has the primary duty to protect its people and those within its territory. That is a state duty, which means that the state must implement measures to prevent

¹³⁷ Human Rights Watch, 'The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria (1 July 1995)' <<https://www.refworld.org/reference/countryrep/hrw/1995/en/21522>> accessed 16 April 2024.

¹³⁸ D O'Rourke and S Connolly, 'Just Oil? :The Distribution of Environmental and Social Impacts of Oil Production and Consumption' (2003) 28 Annual Review of Environment and Resources 587.

¹³⁹ Sarah Burns and Olly Owen, 'Nigeria: No Longer an Oil State'. https://www.oxfordmartin.ox.ac.uk/downloads/academic/Nigeria_Oil_WP_final_130819.pdf accessed 30 April 2024

and address violations committed by private individuals or groups, as well as other states. This protective role involves creating and enforcing laws, providing security, and ensuring justice to prevent harm and uphold rights. Article 2 of the ICCPR mandates that States Parties must respect and ensure the rights outlined in the Covenant for all individuals within their territory and jurisdiction.¹⁴⁰ This duty to “ensure” implies that states must take proactive steps to guarantee the enjoyment of these human rights. The ICCPR outlines this duty in two main aspects i.e. Preventive Measures:- states must implement actions and policies to prevent human rights violations by private actors, and Remedial Measures:- article 3, States are also required to take steps to address and remedy any violations that occur, ensuring justice and reparation for victims.¹⁴¹ There is a law against gas flaring in Nigeria, but it continues to be widely breached.¹⁴² The federal government seems to lack the motivation to oversee the oil industry, which heavily funds their administration. They seldom address oil spills or hold oil companies accountable. As a result, the environmental burdens fall on Nigerians in oil-producing areas. Moreover, conflicting policies and overlapping jurisdictions between the Federal Environmental Agency (FEPA) and the Department of Petroleum Resources (DPR), render environmental regulations ineffective.¹⁴³

The regulatory laws in existence at the time Shell was operating in Ogoniland are; the Petroleum Act 1969:- This act regulated the exploration and production of petroleum in Nigeria. It granted the government authority over all petroleum resources and required oil companies to obtain licenses and leases for their operations.¹⁴⁴ Associated Gas Re-Injection

¹⁴⁰ International Covenant on Civil and Political Rights (n 130).

¹⁴¹ *ibid*

¹⁴² Anene Ejikeme, ‘Opinion | The Oil Spills We Don’t Hear About’ *The New York Times* (4 June 2010) <<https://www.nytimes.com/2010/06/05/opinion/05iht-edejikeme.html>> accessed 25 April 2024.

¹⁴³ Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities* (1999) <<https://www.refworld.org/reference/countryrep/hrw/1999/en/97545>> accessed 15 April 2024.

¹⁴⁴ Petroleum Act of the Federal Republic of Nigeria 1969 <https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Petroleum%20Act.pdf> accessed 21 May 2024.

Act 1979:- This act aimed to reduce gas flaring by mandating that oil companies submit plans for gas utilization and reinjection. It also set deadlines for the cessation of gas flaring, although these were frequently extended.¹⁴⁵ Oil Pipelines Act 1956:- This legislation regulated the construction, operation, and maintenance of oil pipelines. It required oil companies to take measures to prevent environmental damage and provide compensation to affected landowners.¹⁴⁶ Mineral Oils (Safety) Regulations 1963:- These regulations set safety standards for oil exploration and production activities to protect workers and the environment.¹⁴⁷ Federal Environmental Protection Agency (FEPA) Act 1988:- Tasked with overseeing environmental protection and enforcing regulations to prevent pollution, including that caused by oil operation¹⁴⁸

In reality, despite the legal safeguards established by the federal government and international treaties to uphold citizens' rights, these protections are often flouted, especially evident in the oil-producing communities of the Niger Delta region. This persistent violation of legal frameworks perpetuates systemic injustices and undermines the well-being and autonomy of the affected populations.¹⁴⁹

Nigeria, as a signatory to major international human rights instruments,¹⁵⁰ is obligated to uphold and implement the rights specified in these agreements for all individuals and groups

¹⁴⁵ Associated Gas Re-Injection Act of the Federal Republic of Nigeria 1979

<https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Associated%20Gas%20Re-injection%20Act.pdf> accessed 22 May 2024.

¹⁴⁶ Oil Pipelines Act of the Federal Republic of Nigeria 1956 <[https://www.chr.up.a of the Federal Republic of Nigeria](https://www.chr.up.a%20of%20the%20Federal%20Republic%20of%20Nigeria%20c.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Oil%20Pipelines%20Act.pdf)

c.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Oil%20Pipelines%20Act.pdf> accessed 22 May 2024.

¹⁴⁷ Mineral Oils (Safety) Regulations of the Federal Republic of Nigeria 1963

<<https://faolex.fao.org/docs/pdf/nig92408.pdf>> accessed 22 May 2024.

¹⁴⁸ 'Federal Environmental Protection Agency (FEPA) Act 1988'

<<https://www.placng.org/lawsofnigeria/laws/F10.pdf>> accessed 22 May 2024.

¹⁴⁹ FO Ayodele-akaakar, 'Appraising The Oil & Gas Laws: A Search For Enduring Legislation For The Niger Delta Region' <<https://jsd-africa.com/Jsda/Fallwinter2001/articlespdf/ARC%20-%20APPRAISING%20THE%20OIL%20and%20Gas.pdf>> accessed 21 May 2024.

¹⁵⁰ United Nations Human Rights Instruments , 'Lists Depicting Nigeria's Sstatus of Ratification of U.N.' <<https://www.ohchr.org/sites/default/files/lib->

within its jurisdiction. Section 19 of the Nigerian Constitution 1999 outlines the nation's foreign policy objectives, which include, respecting international laws and treaties, fostering global peace, and maintaining an independent stance in international relations.¹⁵¹ Shell's continuous breaches of Nigerian environmental laws and international standards are partly due to the government's lenient penalties. To fulfill its obligations under international law, the Nigerian government must impose stringent punishments for environmental violations. Without meaningful consequences, multinational corporations lack the incentive to respect the local environment, leading to persistent ecological damage and neglect of community welfare.¹⁵²

Following the Ogoniland case, several laws and regulations have been either introduced or reinforced in Nigeria to address environmental and social issues related to oil pollution and to enhance regulatory oversight. The following laws are a part of the government's effort to manage the situation at hand; The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006:-This act established NOSDRA, an agency responsible for coordinating and implementing the national oil spill contingency plan. The agency has the authority to manage oil spill responses and enforce regulations to prevent and control oil pollution.¹⁵³

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN):- These guidelines, developed by the Department of Petroleum Resources (DPR), set out the environmental standards and procedures for petroleum operations, including oil spill prevention, response, and remediation.¹⁵⁴

docs/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf accessed 21 May 2024

¹⁵¹ Constitution of the Federal Republic of Nigeria 1999.

¹⁵² Barisere Rachel Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' (2014) 47 Cornell Int'l LJ 181

¹⁵³ National Oil Spill Detection and Response Agency (Establishment) Act, 2006 as Ammended' <<https://faolex.fao.org/docs/pdf/nig124170A.pdf>> accessed 22 May 2024.

¹⁵⁴ Damilola Olawuyi and Tubodenyefa Zibima, *Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (2019).

The Petroleum Industry Act 2021 (PIA): This comprehensive legislation was passed to overhaul the oil and gas sector in Nigeria. It aims to improve transparency, attract investment, and ensure better environmental management. The PIA also mandates that oil companies contribute to a host community development trust fund to support local communities impacted by their operations.¹⁵⁵

Following the severe environmental damage and persistent protests by the Ogonis, this forced the Nigerian government to invite UNEP for an independent assessment in 2006. UNEP conducted a comprehensive assessment of the situation in Ogoniland.¹⁵⁶ This assessment was followed by a landmark report in 2011. The report provided a roadmap for the cleanup and restoration of Ogoniland and recommended initial funding of 1 billion dollars for the first five years of the Ogoniland cleanup to address the severe environmental damage in the region.¹⁵⁷

Following the UNEP report, there was the establishment of the Hydrocarbon Pollution Remediation Project (HYPREP). However, there has been a significant delay in the work of HYPREP in Ogoniland. Despite UNEP's urgent recommendations for immediate action, progress has been slow, with crucial environmental restoration and clean water provision efforts lagging. To date, the communities of Ogoniland continue to consume water contaminated with benzene, with little or no food to put on their tables.¹⁵⁸ “We do not have enough to eat, some of our girls have ventured into prostitution, as a means to have something for their survival”.¹⁵⁹ The delay in the HYPREP cleanup of Ogoniland is caused by several factors, including bureaucratic inefficiencies, logistical challenges, and insufficient community

¹⁵⁵ Petroleum Industry Act of the Federal Republic of Nigeria 2021

<<https://pwc-nigeria.typepad.com/files/petroleum-industry-act-2021.pdf>> accessed 22 May 2024.

¹⁵⁶ United Nations Environment Programme ‘Environmental Assessment of Ogoniland 2011’ (n51)

¹⁵⁷ *ibid.*

¹⁵⁸ Dr Porbari Monbari Badom, Bariceba Gbogbara ‘Environmental Conflict and United Nations Environment Programme (UNEP) Report: An Appraisal of the Clean-Up in Ogoni (2022) DOI: 10.47119/IJRP100941220222849

¹⁵⁹ Interview with a victim (interviewee 3) in Ogoniland. (via Zoom, May 3rd 2024)

involvement.¹⁶⁰ Additionally, issues such as corruption and lack of politics have further impeded progress.¹⁶¹ “With this slow pace, it will take forever to complete the cleanup, there will be no Ogoniland in the next 30 years”.¹⁶² If the 1 billion dollars allocated for the Ogoniland cleanup is applied as intended, it will mark a crucial and constructive advance in tackling the region’s environmental issues because it is a good start, and a good step in the right direction but until that is done, the plight of the Ogonis continues.

This underscores the imperative of conducting business responsibly, as adherence to this principle could have significantly altered the situation in Ogoniland.

3.3 Responsible Business Practice under the UNGPs

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provides a framework for businesses to prevent, address, and remedy human rights abuses linked to their operations, products, or services.¹⁶³ Developed by the UN Human Rights Council in 2011, the UNGPs consist of three pillars: The State Duty to Protect:- which means that states are responsible for protecting human rights within their territories and must ensure that businesses operating within their jurisdiction respect human rights. The Corporate Responsibility to Respect Human Rights:- businesses have a responsibility to respect human rights, meaning they should avoid infringing on the rights of individuals and address any negative impacts they may cause. Access to Remedy:- this means that victims of human rights abuses should have

¹⁶⁰ Amnesty International 'No Clean-Up, No Justice' : An Evaluation of the Implementation of UNEP's Environmental Assessment of Ogoniland, Nine Years on (2020)' <https://www.foeeurope.org/sites/default/files/extractive_industries/2020/no_clean-up_no_justice_final.pdf> accessed 22 May 2024.

¹⁶¹ Guardian Nigeria, 'How Bureaucratic Hurdles Hinder Ogoni Clean Up Project' (*The Guardian Nigeria News - Nigeria and World News*, 12 September 2020) <<https://guardian.ng/news/how-bureaucratic-hurdles-hinder-ogoni-clean-up-project/>> accessed 22 May 2024.

¹⁶² Interview with a victim (interviewee 2) in Ogoniland. (via Zoom, May 2nd 2024)

¹⁶³ United Nations Human Rights Council (UNHCR), 'Guiding Principles on Business and Human Rights (2011)' <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf> accessed 21 May 2024.

access to effective remedies, both judicial and non-judicial if they are harmed by business activities.¹⁶⁴

Williams and Conley emphasize that “we expect companies to create wealth while respecting the environment and exercising responsibility towards the society and the local communities in which they operate . . .”¹⁶⁵ This means that companies should strive to generate economic value while also being mindful of their environmental impact and fulfilling their responsibilities to society and local communities. Gone are the days when the only objective of business was to make a profit as opposed to Milton Friedman’s belief.¹⁶⁶ Therefore, to attain this, it will involve sustainable practices, ethical behavior, and contributing positively to the social and economic well-being of the areas in which they operate. Shell’s frequent oil spills demonstrate a disregard for its responsibility towards the environment and society. These spills not only harm ecosystems but also pose serious health risks to nearby communities, leading to chronic diseases and other health issues.¹⁶⁷ In failing to prevent these spills and adequately address their consequences, Shell violates the principles outlined in the UNGPs. “Shell never left Ogoniland, if they had left, why haven’t the pipelines dried up? , this is a misconception, go to Ogoniland and ask the community, they know that Shell never left, as they are pumping fuel through those pipelines and causing harm to all of us”.¹⁶⁸ “Shell is still indirectly operating in Ogoniland they still have their properties there, they still have their warehouse”.¹⁶⁹ Therefore

¹⁶⁴ *ibid.*

¹⁶⁵ Cynthia A Williams and John M Conley, ‘An Emerging Third Way?: The Erosion of the Anglo-American Shareholder Value Construct’ [2004] SSRN Electronic Journal <<http://www.ssrn.com/abstract=632347>> accessed 21 May 2024.

¹⁶⁶ ‘Milton Friedman “The Social Responsibility of Business Is to Increase Its Profits”’ <<https://static1.squarespace.com/static/56b7a300356fb06478dcea5a/t/5fb99036957a3511df281e4a/1605996599044/A+Friedman+doctrine%E2%80%90+The+Social+Responsibility+Of+Business+Is+to+Increase+Its+Profits+-+The+New+York+Times.pdf>> accessed 12 April 2024.

¹⁶⁷ United Nations Environment Programme ‘Ogoniland Assessment Back in Spotlight’ (*UNEP*, 7 August 2017) <<http://www.unep.org/news-and-stories/story/un-environments-ogoniland-assessment-back-spotlight>> accessed 12 April 2024.

¹⁶⁸ Interview with a victim (interviewee 2) in Ogoniland. (via Zoom, May 2nd 2024)

¹⁶⁹ Interview with a victim (interviewee 1) in Ogoniland. (via Zoom, May 2nd 2024)

to fulfill the responsibility of the UNGPs, companies should undertake measures to proactively prevent, detect, mitigate, and transparently report on their impacts on human rights. This entails addressing any damage they have directly or indirectly inflicted or played a role in causing. Principle 13 of the UNGPs crystallizes the dual responsibility of businesses in the human rights domain: direct accountability and proactive stewardship. The principle not only mandates that enterprises refrain from infringing on human rights but also imposes a duty to address any harm they may cause. Furthermore, it extends the responsibility to include indirect impacts arising from their business relationships, underscoring a holistic approach to human rights due diligence. This includes relationships with suppliers, contractors, subcontractors, franchisees, joint venture partners, and any other entities directly linked to the company's operations, products, or services. The obligation to uphold human rights is not an optional commitment or a form of corporate charity.¹⁷⁰

As stated by a Dutch Judge, *“the responsibility of business enterprises to respect human rights, as formulated in the UNGP, is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Therefore, it is not enough for companies to monitor developments and follow the measures states take; they have an individual responsibility”*¹⁷¹ Thus, Shell operating in a country like Nigeria where the government may lack the capacity or willingness to enforce laws

¹⁷⁰ John Gerard Ruggie and John F Sherman, ‘The Concept of “Due Diligence” in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale’ (2017) 28 European Journal of International Law 921.

¹⁷¹ Milieudefensie v Royal Dutch Shell, District Court of the Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5339, *Rechtbank Den Haag, C/09/571932 / HA ZA 19-379 (engelse versie)* [2021] Rb Den Haag ECLI:NL:RBDHA:2021:5339. Para 4.4.11 <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2021:5339>

safeguarding human rights, Shell remains responsible for taking action to ensure that human rights are respected within its operations.¹⁷²

When it comes to human rights due diligence, under the UNGPs, businesses must go beyond merely stating their commitment to human rights; they need to take concrete actions to uphold this pledge which includes assessing impacts, taking appropriate actions, monitoring progress, and transparently communicating efforts.¹⁷³ “ It is a normal scenario now and then to see a faulty pipeline being maintained only when it has caused harm and spill benzene, and other chemicals into the rivers, then Shell will come and maintain only that portion of the pipe, and then go back and wait for another spill to occur before they come back. From the 1960s to date, they have not changed their pipelines.”¹⁷⁴ This illustrates a failure to conduct thorough human rights due diligence as mandated by Principle 17 of the UNGPs, exemplifying a stark misalignment with this article.

One would argue that they are not legally binding, yes the UNGPs aren't legally binding and don't carry the force of law. However, they have been widely adopted globally and are considered the leading authoritative framework on business and human rights.¹⁷⁵ Tom Donaldson, using social contract theory, argues that because corporations are granted the privilege to operate by communities, they in turn have reciprocal obligations to those communities.¹⁷⁶ This means that just as individuals consent to form a society and abide by its rules, corporations must also fulfill their responsibilities toward societal well-being in

¹⁷² Amnesty International, On Trial: Shell in Nigeria (2020) <<https://www.amnesty.de/sites/default/files/2020-02/Amnesty-Bericht-Nigeria-Shell-on-trial-Februar-2020-ENG.pdf>> accessed 29 April 2024.

¹⁷³ International Bar Association, 'IBA Practical Guide on Business and Human Rights for Business Lawyers, 2016' <<https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4>> accessed 27 May 2024.

¹⁷⁴ Interview with a victim (interviewee 1) in Ogoniland. (via Zoom, May 2nd 2024)

¹⁷⁵ International Bar Association, IBA Practical Guide on Business and Human Rights for Business Lawyers, 2016' (n 173).

¹⁷⁶ Thomas Donaldson, '*Corporations and Morality* (Englewood Cliffs NJ: Prentice- Hall, 1982).' <<https://faculty.wharton.upenn.edu/wp-content/uploads/2012/04/Corporations-and-Morality.pdf>> accessed 27 May 2024

exchange for the benefits and legitimacy they receive from the community. Society has not only recognized businesses as economic entities but has also set the basic rules and guidelines for their operations and functioning.¹⁷⁷ These ground rules include laws and regulations and, in effect, reflect society's view of "codified ethics" in that they articulate fundamental notions of fair business practices as established by lawmakers at federal, state, and local levels.¹⁷⁸ Shell's website prominently displays its commitment to the UNGPs and other ethical standards in its operations.¹⁷⁹ However, in the case of Ogoniland, Shell has been criticized for not adhering to these principles, particularly concerning environmental degradation and its impact on local communities. This discrepancy highlights a significant gap between Shell's stated ethical commitments and their actual practices on the ground in Ogoniland.

In summary, the Ogoni farmers, having endured sufficient hardships, decided to pursue legal redress by bringing their case to court. The following chapter will examine the progression and outcomes of the 2021 judgment.

¹⁷⁷ Carroll (n 32).

¹⁷⁸ *ibid.*

¹⁷⁹ Shell Global, 'Human Rights' (2024) <<https://www.shell.com/sustainability/people/human-rights.html>> accessed 1 June 2024.

CHAPTER FOUR

4.1 Holding the Parent Company Accountable: Nigerian Farmers and Friends of the Earth (Milieudefensie) vs. Shell

From 2004 to 2007, a series of oil spills occurred in the Ogoniland communities due to alleged failures in security measures and defective equipment installed by Shell Petroleum Development Company (SPDC). In October 2004, over 23,000 liters of oil spilled into the environment, causing a fire that destroyed nearly 40 acres of mangrove forest. Less than a year later, in June 2005, a leak from Shell's pipeline near Oruma in the Niger Delta led to a 12-day environmental contamination before it was contained. Another major incident occurred in August 2007 in Ikot Ada Udo, where approximately 100,000 liters of oil leaked from a Shell wellhead.¹⁸⁰ These spills caused significant environmental damage, affecting the soil and water in the villages of Oruma, Goi, and Ikot Ada Udo. This had devastating impacts on the local environment and the livelihoods of the communities in these villages. As a response to the damage caused by the oil spills, four local farmers from the affected communities decided to take legal action against SPDC. These farmers acted as representatives for their communities to seek justice and compensation for the harm caused. The farmers involved in the case were: Barizza Manson Tete Dooh, Fidelis Ayoro Oguru, Alali Efanga, and Friday Alfred Akpan. These farmers alongside Milieudefensie brought a case against SPDC and Shell to the Netherlands, where SPDC's parent company is headquartered, seeking accountability and redress for the environmental degradation and the consequent impact on their communities' health and economic well-being.¹⁸¹ This is a landmark case because it is the first time a Dutch

¹⁸⁰ Ekpali Saint, 'Niger-Delta Residents Win Case against Oil Giant Shell' (*FairPlanet*) <<https://www.fairplanet.org/story/historic-victory-for-niger-delta-oil-spill-victims/>> accessed 12 April 2024.

¹⁸¹ Business and Human Rights Resource Center, 'Four Nigerian Farmers Take Oil Giant Shell to Court' (*Business & Human Rights Resource Centre*) <<https://www.business-humanrights.org/en/latest-news/four-nigerian-farmers-take-oil-giant-shell-to-court/>> accessed 23 May 2024.

company is being taken to court in the Netherlands to answer for harm or damages it has caused in another country.¹⁸² This unprecedented legal action highlights the accountability of companies for their actions internationally, even when those actions take place outside their home country.¹⁸³ One of the primary legal hurdles in this case was establishing the jurisdiction of Dutch courts over a case involving actions that took place in Nigeria by a Nigerian subsidiary of a Dutch company. The complexity of international jurisdiction, especially in environmental cases, was a central issue from the outset.¹⁸⁴ Shell argued that the Dutch court lacked jurisdiction over the case, contending that the proper jurisdiction should be in Nigeria, where the alleged harm occurred. The jurisdictional issue remained contentious and was appealed by Shell. In 2015, the Court of Appeal in The Hague ruled definitively on the matter, establishing that Dutch courts did indeed have jurisdiction over the case due to the company's headquarters being situated in the Netherlands.¹⁸⁵ This central administrative presence was deemed to establish a substantial connection with Dutch jurisdiction. Additionally, the plaintiffs contended that Shell plc, as the parent company, held a duty of care towards its subsidiaries, including the SPDC in Nigeria. As a result, they argued that legal action against the parent company could be pursued in the jurisdiction where it is headquartered.¹⁸⁶ Ultimately, the issue of jurisdiction was settled, and the case was heard in the District Court of The Hague. In court, Shell repeatedly claimed that it was not responsible for the actions of its Nigerian subsidiary,

¹⁸² Raymond Ridderhof, 'Shell and Ogoni People : (S)Oil Pollution in the Niger Delta | Peace Palace Library' <<https://peacepalacelibrary.nl/blog/2013/shell-and-ogoni-people-soil-pollution-niger-delta>> accessed 10 June 2024.

¹⁸³ Business and Human Rights Resource Center (n 181).

¹⁸⁴ Tim Edwards, 'The Long, Dark Shadow of Bhopal: Still Waiting for Justice, Four Decades On' *The Guardian* (14 June 2023) <<https://www.theguardian.com/global-development/2023/jun/14/bhopal-toxic-gas-leak-chemical-environmental-disaster-waiting-for-justice-union-carbide-dow>> accessed 23 May 2024.

¹⁸⁵ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2000 (OJ L).

¹⁸⁶ De Rechtspraak 'Shell Nigeria liable for oil spills in Nigeria' <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/Shell-Nigeria-liable-for-oil-spills-in-Nigeria.aspx>> accessed 12 April 2024.

SPDC. However, the Court disagreed, ruling that the parent company can be held liable for the actions of its subsidiary.¹⁸⁷

On January 29, 2021, the court ruled that Shell's Nigerian subsidiary must take responsibility for the damage caused by oil pipeline leaks in the Niger Delta. The Court ordered SPDC to compensate the affected farmers and implement preventive measures, including the installation of a leak detection system on the Oruma pipeline.¹⁸⁸ This ruling is significant because, unlike previous decisions that primarily focused on compensation, it mandates proactive steps to prevent future pollution. This marks a notable shift in legal accountability, emphasizing not just reparations but also the prevention of recurring environmental damage. Moreover, the fact that jurisdiction was established by the courts opened the door for greater scrutiny of multinational corporations' operations and their impact on local communities and environments in developing countries.

In as much as there was a judgment in favor of the plaintiffs, the litigation lasted over thirteen years, and by the time judgments were delivered in January 2021, two of the four original farmer plaintiffs had died, with their heirs continuing with the case.

The protracted duration of the case was due to a combination of jurisdictional challenges, extensive legal procedures, the collection and examination of complex evidence, and multiple rounds of appeals.¹⁸⁹ Each of these factors contributed to the overall length of the legal battle, which ultimately culminated in a landmark ruling. While the ruling is a positive outcome and offers hope for other victims seeking justice, the protracted duration underscores the adage "justice delayed is justice denied." Timely delivery of justice remains a significant challenge,

¹⁸⁷ *ECLI:NL:GHDHA:2021:132, Gerechtshof Den Haag, 200126804 en 200126834* [2021] Hof Den Haag ECLI:NL:GHDHA:2021:132.

¹⁸⁸ Friends of the Earth Netherlands (Milieudefensie, 'Our Lawsuit against Shell in Nigeria' (*Milieudefensie*) <<https://en.milieudefensie.nl/shell-in-nigeria>> accessed 23 May 2024.

¹⁸⁹ Amnesty International (n 172).

particularly in complex environmental disputes.¹⁹⁰ Following the court's verdict, Milieudefensie and Shell entered into negotiations to determine the amount of compensation to be paid by Shell, and they finally settled for 15 million euros.¹⁹¹ Shell had a condition attached to the settlement, i.e. "the settlement is on a no admission of liability basis, and settles all claims and ends all pending litigation related to the spills."¹⁹² Therefore, the question is what does this judgment and compensation mean for the claimants and the people of Ogoniland? The next sub-chapter will look at the specific remedies, focusing on the compensation process, and the broader impact of the judgment on Ogoniland, particularly in terms of environmental restoration, economic recovery, and social justice.

4.2 Remedies for the Afflicted Persons

Legal remedies are the mechanisms through which courts uphold rights and address wrongs.¹⁹³ These remedies include damages, which compensate for losses (either through compensatory or restitutionary measures); injunctive relief, which mandates or prohibits specific actions (either temporarily or permanently); and specific performance, which requires the fulfillment of contractual obligations when monetary compensation is insufficient.¹⁹⁴ Each of these remedies ensures that justice is served by addressing the unique circumstances of each case.

*"for rights to have meaning, effective remedies must be available to redress violations."*¹⁹⁵

¹⁹⁰ Edwards (n 184).

¹⁹¹ Friends of the Earth Netherlands (Milieudefensie), 'Shell Pays 15 Million Euros Compensation for Oil Spills in Nigeria' (*Milieudefensie*) <<https://en.milieudefensie.nl/news/shell-pays-15-million-euros-compensation-for-oil-spills-in-nigeria>> accessed 24 May 2024.

¹⁹² Abimbola Essien-Nelson 'Shell and Milieudefensie Settle Long-Running Case over Oil Spills in Nigeria' <<https://www.shell.com.ng/media/2022-media-releases/shell-and-milieudefensie-settle-long-running-case-over-oil-spills-in-nigeria.html>> accessed 24 May 2024.

¹⁹³ Lexis Nexis, 'Remedy Definition | Legal Glossary | LexisNexis' <<https://www.lexisnexis.co.uk/legal/glossary/remedy>> accessed 7 June 2024.

¹⁹⁴ *ibid.*

¹⁹⁵ United Nations Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N. Doc. CRC/GC/2003/5 (2003).

This assertion underscores the essential nature of remedies in the enforcement of rights, positing that without mechanisms for redress, rights are merely theoretical constructs with no practical impact. This emphasizes that the existence of rights alone is insufficient; their meaningfulness is contingent upon the ability of individuals to seek and obtain justice when those rights are breached, thereby reinforcing the legitimacy and efficacy of the legal and human rights framework.¹⁹⁶

Under international human rights law, people whose rights are violated have a right to an effective remedy.¹⁹⁷ Those who commit human rights violations are held accountable and, victims receive proper remedies to ensure justice and prevent future abuses. It has now been established that corporations can be subject to international law.¹⁹⁸ Both the UNGPs and the Draft Binding Treaty on Business and Human Rights (BTBHR) affirm this.¹⁹⁹ The ongoing negotiation of the BTBHR signifies a move towards recognizing and codifying corporate obligations and liabilities under international law, making corporations subject to international legal norms.²⁰⁰

That being said, regardless of the laws in place for victims to get a remedy to their grievances, victims often struggle to get justice due to political resistance, complex legal procedures, and

¹⁹⁶ United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (*OHCHR*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>> accessed 28 May 2024.

¹⁹⁷ *ibid.*

¹⁹⁸ Michael J Kelly and Luis Moreno-Ocampo, 'The Corporation as a Subject of International Law' in Michael J Kelly and Luis Moreno-Ocampo (eds), *Prosecuting Corporations for Genocide* (Oxford University Press 2016) <<https://doi.org/10.1093/acprof:oso/9780190238896.003.0003>> accessed 1 June 2024.

¹⁹⁹ United Nations Human Rights Council (UNHCR), 'Guiding Principles on Business and Human Rights (2011)' (n 163).

²⁰⁰ United Nations Human Rights Council, 'Tenth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (*OHCHR*) <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session10>> accessed 10 June 2024.

lack of resources or knowledge. These barriers can prevent victims from obtaining the redress they need, undermining the protection of human rights for everyone.²⁰¹

*“Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.”*²⁰²

The UNGPs do not create legally enforceable obligations for businesses. However, this does not mean businesses operate without any legal constraints.²⁰³ The UNGPs recognize that governments have to protect human rights, which includes enacting national laws that hold businesses accountable for human rights violations. Additionally, the access to remedy pillar of the UNGPs requires that there are binding judicial remedies available for victims of corporate human rights abuses. Thus, while the UNGPs themselves are not legally binding but instead must be seen as soft-law guidelines, they operate within a framework where national laws and legal remedies are essential for their implementation. Principle 26 of the UNGPs places a clear onus on states to ensure their judicial systems are capable of effectively addressing and remedying business-related human rights abuses. This underscores the state’s duty to protect human rights, as outlined in the first pillar of the UNGPs. States must evaluate and reform their judicial mechanisms to ensure they are accessible, impartial, and capable of delivering justice.²⁰⁴ This includes reducing barriers such as high litigation costs, lack of legal representation, and complex legal procedures. This means that the law should not only exist in theory but, must also function properly in practice.²⁰⁵ Courts and other judicial bodies should

²⁰¹ Amnesty International ‘Justice Incorporated’: Corporate Abuses and the Human Right to Remedy (2014) <https://www.amnesty.org/en/documents/pol30/001/2014/en/> accessed 28 May 2024

²⁰² United Nations Human Rights Council (UNHCR), ‘Guiding Principles on Business and Human Rights (2011)’ (n 163).

²⁰³ Peter Muchlinski, ‘The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights’ (2021) 6 Business and Human Rights Journal 212. <https://doi.org/10.1017/bhj.2021.14>

²⁰⁴ United Nations Human Rights Council (UNHCR), ‘Guiding Principles on Business and Human Rights (2011)’ (n 163).

²⁰⁵ *ibid.*

be adequately resourced, competent, and free from corruption. An effective judicial system is one where victims can seek and obtain appropriate remedies, including restitution, compensation, and rehabilitation. By fulfilling these duties, states uphold their obligation to protect human rights and ensure that victims can seek and obtain redress for harm caused by corporate activities. The Ogonis harbor a lack of confidence in the Nigerian judicial system, consequently, they have been seeking redress in other jurisdictions.²⁰⁶

The 2021 judgment, while significant for the reasons mentioned in the case analysis section, raises critical questions about the sufficiency and efficacy of the compensation, especially considering the 13-year waiting period for judgment to be reached. Following the judgment, Shell and Milieudefensie entered negotiations regarding the amount of compensation to be paid. Shell proposed certain conditions as mentioned above in the case analysis sub-chapter for their payment of the agreed compensation.²⁰⁷ Therefore to measure the sufficiency and efficacy, it is pertinent to look at the following:

According to Principle 20 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation, compensation should be proportionate to the gravity of the violation and the harm suffered.²⁰⁸ This includes the right to reparation, which in turn encompasses these measures:- restoring the victim to their original situation (before the violation occurred, compensating people for economically assessable damage in rehabilitation, and satisfaction:- which should include effective measures aimed at verifying the facts, and full and public disclosure of the truth as well as judicial and administrative sanctions against those liable for the violations, and a guarantee that the violation will not be repeated.²⁰⁹ With the

²⁰⁶ Deutsche Welle ‘Nigerian Farmers Can Sue Shell — UK Court – DW – 02/12/2021’ (*dw.com*) <<https://www.dw.com/en/uk-court-nigerian-farmers-can-sue-shell-over-pollution/a-56551330>> accessed 1 June 2024.

²⁰⁷ Friends of the Earth Netherlands (Milieudefensie) (n 191).

²⁰⁸ United Nations General Assembly (n 196).

²⁰⁹ United Nations Office of the High Commissioner for Human Rights, ‘Reparations’ (*OHCHR*) <<https://www.ohchr.org/en/transitional-justice/reparations>> accessed 3 June 2024.

compensation amount for the Ogoni farmers now agreed upon, several critical considerations remain. It is essential to address when the compensation will be disbursed to the victims, the methods of distribution, and the significance of this compensation to the affected individuals. These aspects are often overlooked yet are vital for ensuring the compensation fulfills its intended purpose.

4.3 Victory at Last for the Victims, or a Symbolic Gesture?

Securing compensation is merely the first step; the real challenge lies in the effective implementation and enforcement of the compensation package. Lessons from past environmental disasters, such as the Bhopal gas tragedy just to give example, demonstrate that victims often face significant hurdles in receiving the full benefits of awarded damages.²¹⁰ The case of Ogoni is no different, as numerous examples exist in this regard. I will briefly highlight two of the many that exist.²¹¹ In 2005, the Federal High Court of Nigeria, ruled in favor of the Ogoni people, ordering Shell to pay 1.5 billion dollars in damages for environmental pollution. However, Shell contested the judgment, and the compensation has not been fully paid to date.²¹² In the Bodo City case of 2015, Shell agreed to a 55 million pound settlement for two oil spills that devastated the Bodo community. Despite the settlement, many residents reported that the compensation did not adequately cover the extensive environmental damage and loss of livelihoods caused by the spills.²¹³ I believe that the adequacy of compensation awarded to the Ogoni farmers must be measured against the extensive environmental and economic

²¹⁰ Dinesh C Sharma, 'Bhopal: 20 Years On' (2005) 365 *The Lancet* 111.

²¹¹ Amnesty International, 'On Trial: Shell in Nigeria – Legal Actions Against the Oil Multinational' Amnesty International <<https://www.amnesty.ch/de/themen/wirtschaft-und-menschenrechte/fallbeispiele/nigeria/dok/2020/shell-muss-endlich-verantwortung-tragen/report-on-trial-shell-in-nigeria-legal-actions-against-the-oil-multinational.pdf>>. accessed 4 June 2024

²¹² Kevin John Heller, 'Nigerian Court Orders Shell to Pay \$1.5 Billion' (*Opinio Juris*, 28 February 2006) <<https://opiniojuris.org/2006/02/28/nigerian-court-orders-shell-to-pay-15-billion/>> accessed 3 June 2024.

²¹³ Amnesty International (n 201). accessed 3 June 2024

damages caused by oil spills in Ogoniland. Following the case's compensation ruling, divergent perspectives have emerged regarding its implications for the Ogoni community. Few believe that financial redress presents an opportunity for the affected individuals to rebuild their lives. They maintain that this monetary support can serve as a foundation for economic recovery and personal development. One of the plaintiffs Mr. Eric Dooh said *"Thanks to this compensation we can build up our community once again. We can start to re-invest in our living environment. It is a great relief to all of us that after years of legal battle with Shell, we will soon be recipients of this money as compensation for all we have lost.."*²¹⁴ While Mr. Dooh feels a sense of relief and optimism, believing that the compensation will enable the rebuilding and reinvestment in their community, conversely, many believe that the compensation, while beneficial, falls short of addressing the profound and systemic issues faced by the Ogoni community. They argue that this financial assistance is merely a superficial remedy that fails to deliver meaningful and sustainable change, thus perpetuating the long-standing challenges within the community.²¹⁵

According to Milieudefensie, "This case addressed only three of the many thousands of oil spills in Nigeria, and regrettably, it does not bring change to the numerous other spills."²¹⁶ The issue in Ogoniland continues to persist, with recent incidents showing that more needs to be done to prevent thus future occurrences. In January 2021, just a few days before this judgment was passed, another oil spill occurred.²¹⁷ Currently, the communities of Ogale and Bille are

²¹⁴ Friends of the Earth Netherlands (Milieudefensie) (n 191).

²¹⁵ Interview with victims (interviewee 1,2,3) in Ogoniland. (via Zoom, May 2nd, 3rd 2024)

²¹⁶ Friends of the Earth Netherlands (Milieudefensie) (n 188).

²¹⁷ Reuters, 'Nigeria's Oil Spills Agency Investigates Shell Pipeline Leak Report' (*Voice of America*, 20 January 2024) <<https://www.voanews.com/a/nigeria-s-oil-spills-agency-investigates-shell-pipeline-leak-report/7448380.html>> accessed 4 June 2024.

suing Shell, seeking compensation for severe environmental damage caused by oil spills that have contaminated water sources and harmed local communities.²¹⁸

Another thing is the issue of timely remedy, which is crucial in ensuring the effectiveness of redress for human rights violations. The Committee (CESCR) in its General Comment No. 9 (E/C.12/1998/24), highlighted the importance of providing effective and prompt remedies for violations of economic, social, and cultural rights. It stressed that remedies must not only be accessible but also timely to ensure the protection and realization of these rights.²¹⁹ In 2018, one of the plaintiffs, Mr. Oguru age 80 began experiencing eye issues and by 2020, he had gone blind.²²⁰ His age and declining health will probably hinder him from utilizing the compensation to rehabilitate his land. For him, the compensation will likely arrive too late because the oil spill has already destroyed his land and livelihood, and his health has significantly deteriorated, leaving him unable to use the funds to restore his land. Besides, the psychological impact of waiting for thirteen years for judgment to be reached cannot be overstated. Prolonged legal battles can lead to mental distress, loss of community trust, and social disintegration. Compensation, therefore, should also account for the intangible but real cost of psychological trauma and social disruption. As noted by Ruggie, effective remedy mechanisms must encompass both material and moral damages to be truly just.²²¹

Compensation should extend beyond the market value of lost resources, addressing livelihood needs and maintaining essential community connections. Additionally, it should cover non-

²¹⁸ Sam Meredith, 'More than 13,000 Nigerian Residents Take Shell to Court over Oil Spills' (*CNBC*, 2 February 2023) <<https://www.cnbcm.com/2023/02/02/over-13000-nigerians-take-shell-to-court-over-devastating-oil-spills.html>> accessed 5 June 2024.

²¹⁹ United Nations Economic and Social Council: Committee on Economic Social and Cultural Rights, 'General Comment No. 9: The Domestic Application of the Covenant' (*Refworld*) <<https://www.refworld.org/legal/general/cescr/1998/en/53238>> accessed 28 May 2024.

²²⁰ Linus Unah, 'Nigerian Farmers Hail Shell Ruling, but Future Remains Uncertain' (*Al Jazeera*) <<https://www.aljazeera.com/news/2021/1/31/nigerian-farmers-hail-shell-ruling-but-future-remains-uncertain>> accessed 24 May 2024.

²²¹ John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (Norton Global Ethics Series) (W W Norton & Company 2013).

material damages, including physical, mental, and cultural harm, as well as expenses for legal, medical, and psychological support.²²²

While the 15 million euros compensation to Nigerian farmers marks a significant victory in holding multinational corporations accountable, its sufficiency remains ostensible given the economic, environmental, and psychological toll of the 13-year wait, the award, though substantial, will not fully cover the extensive damages suffered. Therefore, the best remedy for the Ogonis is restitution. This is because it can address historical injustices in Ogoniland by acknowledging the exploitation and environmental degradation inflicted upon the community by past activities, and to prevent future occurrences. By starting the process of restitution for these damages, it acknowledges the harm done and begins the process of healing and reconciliation. These measures not only address immediate needs but also contribute to rebuilding trust between the Ogonis and external entities. Additionally, restitution can promote sustainable development by allocating resources towards environmental remediation efforts, infrastructure improvements, and economic empowerment programs within Ogoniland. UNEP report of 2011 proposed a multi-year remediation program to restore the environmental integrity of Ogoniland, estimating that the cleanup process could span over several decades (30 years) due to the scale and complexity of the contamination.²²³ But for a start, there should be an allocation of 1 billion dollars to start the first phase of the restoration process, which is stipulated to last for the first five years of the proposed duration. This duration underscores the long-term commitment required to fully restore the region and highlights the magnitude of the environmental challenges faced by Ogoni communities. This further shows why restitution is the best form of remedy for the situation of Ogoniland.

²²² Surya Deva and David Bilchitz *'Building a Treaty on Business and Human Right's: Context and Contours'* (Cambridge University Press 2017) P417

²²³ Environment, 'Environmental Assessment of Ogoniland Report' (n 51).

4.4 What's next for the Ogonis?

“We have not obtained justice either for the environment or livelihood that we've lost”.²²⁴ It might sound a bit exaggerated, but the situation in Ogoniland mirrors Thomas Hobbes' concept of the “state of nature,”²²⁵ characterized by a lack of effective governance and perpetual conflict. In the absence of adequate protection from powerful external forces, particularly multinational oil corporations, the local population faces environmental degradation, human rights abuses, and insecurity. Similar to Hobbes' description of life in the state of nature as “solitary, poor, nasty, brutish, and short.” The Ogonis have endure health problems, displacement, and violence stemming from oil extraction activities and collusion between government forces and corporate interests. Despite the presence of traditional social structures and community solidarity, the need for governance, accountability, and respect for human rights is urgent to address systemic injustices and restore security and dignity to the people of Ogoniland. “The people are just suffering, there are no good roads, no hospital, no schools, just nothing.”²²⁶ The government fails to provide protection, prioritizing its interests and those of multinational corporations over the people's well-being.²²⁷ Meanwhile, communities face systemic injustices and neglect, left to fend for themselves amidst environmental devastation and human rights abuses. This embodies Hobbes' depiction of individuals driven by self-preservation, leading to perpetual conflict and insecurity characteristic of the state of nature.

In the quest for both sustainable practices and justice, the active inclusion of stakeholders stands as imperative. The Ogonis must be central to remediation and development initiatives in Ogoniland, given their invaluable firsthand experiences and deep understanding of the land's

²²⁴ Interview with a victim (interviewee 3) in Ogoniland. (via Zoom, May 3rd 2024)

²²⁵ ‘Thomas Hobbes. Leviathan..Pdf’

<<https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/748/leviathan.pdf>> accessed 17 April 2024.

²²⁶ Interview with a victim (interviewee 2) in Ogoniland. (via Zoom, May 2nd 2024)

²²⁷ Melik Özden, *Transnational Corporations and Human Rights: What Is at Stake in the United Nations Debate over the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (Europe - Third World Centre ed, s.n 2005).

challenges. Inclusive decision-making processes are essential to prioritize their needs and rights, resulting in solutions that directly benefit those most affected. The 2011 UNEP report underscores the importance of active stakeholder inclusion, recommending extensive community engagement and transparent processes for effective cleanup and restoration.²²⁸

²²⁸ Environment, 'Environmental Assessment of Ogoniland' (n 51).

CONCLUSION/ RECOMMENDATIONS

This thesis concludes that compensation alone is insufficient, and is not the appropriate solution to address the Ogoniland case. Instead, the most suitable approach would be to have restoration. This is because it is imperative to tackle the root causes of the issues, necessitating a comprehensive approach to the situation. Although regulatory laws are in place in Nigeria, they are defective and have failed to ensure adequate protection and remediation. The Nigerian government should implement stringent regulations with robust enforcement mechanisms and impose substantial financial penalties for non-compliance. Additionally, ensures transparency by mandating public disclosure of corporate practices and decisions. This goes to show that the Nigerian government has thus failed in its primary responsibility to protect its citizens, underscoring the urgent need for systemic changes to effectively remediate the environmental and social impacts in Ogoniland. The faith in the clean-up exercise recommended by UNEP is not promising at all at this stage. Some Ogonis think that it is a very slow process, and that “it will take 100 years to clean up Ogoniland”,²²⁹ instead of the 30 years stated by UNEP. Therefore, there is a necessity for restructuring the current system arising from the imperative to ensure that funds are allocated appropriately to their designated purposes. This restructuring is indispensable for enhancing efficiency, transparency, and accountability within the system.

In the interim, the installation of spill detectors stands as a critical measure to promptly identify and address oil spills resulting from leaks of rusty pipelines, and oil bunkering activities in the community. Simultaneously, civil education programs should be implemented to inform communities about the inherent dangers associated with oil bunkering and the enduring impacts of environmental degradation. By engaging stakeholders in collaborative decision-making processes, a broad spectrum of perspectives can inform interim solutions, fostering a sense of

²²⁹ Interview with a victim (interviewee 2) in Ogoniland. (via Zoom, May 2nd 2024)

shared ownership and credibility within the community. These proactive measures can pave the way for immediate actions to mitigate risks and promote awareness while long-term strategies are developed. The time to act is now, as it is essential to restore Ogoniland because delaying remediation efforts will worsen existing problems, prolonging suffering and environmental degradation. Restitution is possible, it may take time, but it is still achievable.

BIBLIOGRAPHY

Adeyeye A.O , Corporate Social Responsibility of Multinational Corporations in Developing Countries (Cambridge University Press 2012)

Amnesty International “A Criminal Enterprise?” Shell’s Involvement in Human Rights

Violations in Nigeria in the 1990s’ <<https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4473932017ENGLISH.pdf>> accessed 16 April 2024

_____ ‘Amnesty Accuses Shell Of Complicity In Killings, Torture In Nigeria In The 1990s [HuffPost Latest News]’ <https://www.huffpost.com/entry/amnesty-shell-nigeria_n_5a1db128e4b06a14100a940a> accessed 12 April 2024

_____ ‘Nigeria: Shell Complicit in the Arbitrary Executions of Ogoni Nine as Writ Served in Dutch Court’ (*Amnesty International*, 29 June 2017) <<https://www.amnesty.org/en/latest/press-release/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>> accessed 20 January 2024

_____ ‘On Trial: Shell in Nigeria – Legal Actions Against the Oil Multinational’ Amnesty International <<https://www.amnesty.ch/de/themen/wirtschaft-und-menschenrechte/fallbeispiele/nigeria/dok/2020/shell-muss-endlich-verantwortung-tragen/report-on-trial-shell-in-nigeria-legal-actions-against-the-oil-multinational.pdf>>

_____ ‘No Clean-Up, No Justice’ : An Evaluation of the Implementation of UNEP’s Environmental Assessment of Ogoniland, Nine Years on (2020)’ <https://www.foeeurope.org/sites/default/files/extractive_industries/2020/no_clean-up_no_justice_final.pdf> accessed 22 May 2024

_____ -Nigeria Shell on Trial (2020) <<https://www.amnesty.de/sites/default/files/2020-02/Amnesty-Bericht-Nigeria-Shell-on-trial-Februar-2020-ENG.pdf>> accessed 29 April 2024 ‘_____’ <<https://www.amnesty.de/sites/default/files/2020-02/Amnesty-Bericht-Nigeria-Shell-on-trial-Februar-2020-ENG.pdf>> accessed 24 May 2024

_____ ‘No Progress: An Evaluation of the implementation of UNEP’s Environmental Assessment of Ogoniland, three years on’ <<https://www.amnesty.org/en/wp-content/uploads/2021/06/afr440132014en.pdf>> accessed 23 April 2024

Arnold DG, ‘Transnational Corporations and the Duty to Respect Basic Human Rights’ (2010) 20 *Business Ethics Quarterly* 371

Ayodele-akaakar FO, ‘Appraising The Oil & Gas Laws: A Search For Enduring Legislation For The Niger Delta Region*’ <<https://jsd-africa.com/Jsda/Fallwinter2001/articlespdf/ARC%20-%20APPRAISING%20THE%20OIL%20and%20Gas.pdf>> accessed 21 May 2024

Bernaz N, *Business and Human Rights: History, Law and Policy- Bridging the accountability gap* (Routledge 2017)

Boele R, Fabig H and Wheeler D, 'Shell, Nigeria and the Ogoni. A Study in Unsustainable Development: I. The Story of Shell, Nigeria and the Ogoni People – Environment, Economy, Relationships: Conflict and Prospects for Resolution1' (2001) 9 Sustainable Development 74

Bowen HR, *Social Responsibilities of the Businessman* (University of Iowa Press 2013)

Bullard RD 'Dumping in Dixie: Race, Class, and Environmental Quality' <<http://www.ciesin.org/docs/010-278/010-278chpt2.html>> accessed 30 March 2024

Burns S and Owen O, 'Nigeria: No Longer an Oil State'

Business and Human Rights Resource Center, 'Four Nigerian Farmers Take Oil Giant Shell to Court' (*Business & Human Rights Resource Centre*) <<https://www.business-humanrights.org/en/latest-news/four-nigerian-farmers-take-oil-giant-shell-to-court/>> accessed 23 May 2024

Calvano L, 'Multinational Corporations and Local Communities: A Critical Analysis of Conflict' (2008) 82 Journal of Business Ethics 793

Carroll AB, 'Carroll's Pyramid of CSR: Taking Another Look' (2016) 1 International Journal of Corporate Social Responsibility 3

Cayford S, 'The Ogoni Uprising: Oil, Human Rights, and a Democratic Alternative in Nigeria' (1996) 43 Africa Today 183

Clapham A, *Human Rights Obligations for Non-States Actors* (Oxford University Press 2006)

Coomans F, 'The Ogoni Case before the African Commission on Human and Peoples' Rights' (2003) 52 The International and Comparative Law Quarterly 749

Constitution of the Federal Republic of Nigeria 1999'

Convention on the Right of the Child 1989

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

Cuba L and Hummon DM, 'A Place to Call Home: Identification with Dwelling, Community, and Region' (1993) 34 The Sociological Quarterly 111

Database Earth 'Life Expectancy in Nigeria 1950-2024 & Future Projections' (*database.earth*) <<https://database.earth/population/Nigeria-growth-rate>> accessed 29 April 2024

Day L 'International Case Study - Shell | Leigh Day' <<https://www.leighday.co.uk/news/cases-and-testimonials/cases/shell-bodo/>> accessed 25 April 2024

Deva S and Blitchitz D, *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017)

Deutsch welle 'Nigerian Farmers Can Sue Shell — UK Court – DW – 02/12/2021' (*dw.com*) <<https://www.dw.com/en/uk-court-nigerian-farmers-can-sue-shell-over-pollution/a-56551330>> accessed 1 June 2024

De Rechtspraak, 'Shell Nigeria liable for oil spills in Nigeria' <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/Shell-Nigeria-liable-for-oil-spills-in-Nigeria.aspx>> accessed 12 April 2024

Dodds F and Middleton T (eds), *Earth Summit 2002: A New Deal* (Rev ed, Earthscan 2001)

Donaldson T, 'Corporations and Morality' (Englewood Cliffs NJ: Prentice-Hall, 1982).

'Ebeku KSA, 'Oil and the Niger Delta People: The Injustice of the Land Use Act' (2002) 35

Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 201

'Ecumenical Council for Corporate Responsibility,' Report Shell in the Niger_Delta 2010 <https://justmoney.org.uk/wp-content/uploads/2019/12/ECCR_report_Shell_in_the_Niger_Delta_2010_1__1.pdf> accessed 22 April 2024

ECLI:NL:GHDHA:2021:132, Gerechtshof Den Haag, 200126804 en 200126834 [2021] Hof Den Haag ECLI:NL:GHDHA:2021:132

ECLI:NL:RBDHA:2021:5339, Rechtbank Den Haag, C/09/571932 / HA ZA 19-379 (engelse versie) [2021] Rb Den Haag ECLI:NL:RBDHA:2021:5339

Edwards T, 'The Long, Dark Shadow of Bhopal: Still Waiting for Justice, Four Decades On' *The Guardian* (14 June 2023) <<https://www.theguardian.com/global-development/2023/jun/14/bhopal-toxic-gas-leak-chemical-environmental-disaster-waiting-for-justice-union-carbide-dow>> accessed 23 May 2024

Ejikeme A, 'Opinion | The Oil Spills We Don't Hear About' *The New York Times* (4 June 2010) <<https://www.nytimes.com/2010/06/05/opinion/05iht-edejikeme.html>> accessed 25 April 2024

Etim T I 'Ogoni Clean Up Too Slow, Stakeholders Say' <<https://thesouthernexaminer.com/ogoni-clean-up-too-slow,-stakeholders-say-p647-184.htm>> accessed 29 April 2024

EUR-Lex, 'Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2000 (OJ L)

Friedman M "The Social Responsibility of Business Is to Increase Its Profits" <<https://static1.squarespace.com/static/56b7a300356fb06478dcea5a/t/5fb99036957a3511df281e4a/1605996599044/A+Friedman+doctrine%E2%80%90+The+Social+Responsibility+Of+Business+Is+to+Increase+Its+Profits+-+The+New+York+Times.pdf>> accessed 12 April 2024

Friends of the Earth International, 'A Journey through the Oil Spills of Ogoniland' (17 May 2019) <<https://www.foei.org/a-journey-through-the-oil-spills-of-ogoniland/>> accessed 11 June 2024

_____ 'Our Lawsuit against Shell in Nigeria' (*Milieudefensie*) <<https://en.milieudefensie.nl/shell-in-nigeria>> accessed 23 May 2024

_____ 'Victory in Shell Oil Spill Case, after 13 Long Years' (5 February 2021) <<https://www.foei.org/justice-at-last-dutch-court-orders-shell-to-compensate-nigerian-farmers-for-oil-spill-harm/>> accessed 19 April 2024

_____ 'Shell and Milieudefensie Settle Long-Running Case over Oil Spills in Nigeria' <<https://www.shell.com.ng/media/2022-media-releases/shell-and-milieudefensie-settle-long-running-case-over-oil-spills-in-nigeria.html>> accessed 24 May 2024

_____ 'Shell Pays 15 Million Euros Compensation for Oil Spills in Nigeria' (*Milieudefensie*) <<https://en.milieudefensie.nl/news/shell-pays-15-million-euros-compensation-for-oil-spills-in-nigeria>> accessed 24 May 2024

Gate SF 'The Executioner Awaits Nigerian Rights Hero' (*SFGATE*, 2 November 1995) <<https://www.sfgate.com/opinion/article/editorial-the-executioner-awaits-nigerian-3020305.php>> accessed 22 April 2024

Galbraith JK, 'Economics as a System of Belief' (1970) 60 *The American Economic Review* 469

Global Non-Violence Database 'Ogoni People Struggle with Shell Oil, Nigeria, 1990-1995 | Global Nonviolent Action Database' <<https://nvdatabase.swarthmore.edu/content/ogoni-people-struggle-shell-oil-nigeria-1990-1995?ssp=1&setlang=de-AT&safesearch=moderate>> accessed 18 January 2024

Hattam J, 'Boycott Shell Now' (*Mother Jones*)
<<https://www.motherjones.com/politics/1997/05/boycott-shell-now/>> accessed 22 April 2024

Human Rights Watch 'The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria' (*Refworld*)
<<https://www.refworld.org/reference/countryrep/hrw/1995/en/21522>> accessed 16 April 2024

_____ 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities' (*Refworld*)
<<https://www.refworld.org/reference/countryrep/hrw/1999/en/97545>> accessed 15 April 2024

Heller KJ 'Nigerian Court Orders Shell to Pay \$1.5 Billion' (*Opinio Juris*, 28 February 2006)
<<https://opiniojuris.org/2006/02/28/nigerian-court-orders-shell-to-pay-15-billion/>> accessed 3 June 2024

Hobbes T. Leviathan..Pdf'
<<https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/748/leviathan.pdf>> accessed 17 April 2024

'International Bar Association, IBA Practical Guide on Business and Human Rights for Business Lawyers, 2016' <<https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4>> accessed 27 May 2024

'International Covenant on Civil and Political Rights 1966

'International Covenant on Economic Social and Cultural Rights 1976.

Jazeera A 'UK Court Rules in Favour of Shell in Nigerian Oil Spill Case' (*Al Jazeera*)
<<https://www.aljazeera.com/news/2023/5/10/uk-court-rules-in-favour-of-shell-in-nigerian-oil-spill-case>> accessed 19 April 2024

Kadafa AA, 'Oil Exploration and Spillage in the Niger Delta of Nigeria' (2012) 2 Civil and Environmental Research

Karl TL, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997)

Kelly MJ and Moreno-Ocampo L, 'The Corporation as a Subject of International Law' in Michael J Kelly and Luis Moreno-Ocampo (eds), *Prosecuting Corporations for Genocide*

<<https://doi.org/10.1093/acprof:oso/9780190238896.003.0003>> accessed 1 June 2024

‘Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013)’ (*Justia Law*)
<<https://supreme.justia.com/cases/federal/us/569/108/>> accessed 19 April 2024

Lexis Nexis, ‘Remedy Definition | Legal Glossary | LexisNexis’
<<https://www.lexisnexis.co.uk/legal/glossary/remedy>> accessed 7 June 2024

Lukas K and others, *Corporate Accountability: The Role and Impact of Non-Judicial Grievance Mechanisms* (Edward Elgar Publishing 2016)

NairaMetrics ‘History-of-Oil-and-Gas-in-Nigeria.Pdf’ <<https://nairametrics.com/wp-content/uploads/2013/01/History-of-Oil-and-Gas-in-Nigeria.pdf>> accessed 29 April 2024

Maiangwa B and Agbiboa DE, ‘Oil Multinational Corporations, Environmental Irresponsibility and Turbulent Peace in the Niger Delta’ (2013) 48 *Africa Spectrum* 71

Martin-Ortega O and others, ‘Towards a Business, Human Rights and the Environment Framework’ (2022) 14 *Sustainability* 6596

Matemilola S, Adedeji OH and Enoguanbhor EC, ‘Chapter 17 - Land Use/Land Cover Change in Petroleum-Producing Regions of Nigeria’ in Prince E Ndimele (ed), *The Political Ecology of Oil and Gas Activities in the Nigerian Aquatic Ecosystem* (Academic Press 2018)
<<https://www.sciencedirect.com/science/article/pii/B9780128093993000173>> accessed 15 April 2024

McCune, ‘Holding Corporations Responsible For Environmental Damages’ (3 November 2023) <<https://mccunewright.com/blog/2023/11/holding-corporations-responsible-for-environmental-damages/>> accessed 11 April 2024

Meredith S, ‘More than 13,000 Nigerian Residents Take Shell to Court over Oil Spills’ (*CNBC*, 2 February 2023) <<https://www.cnbc.com/2023/02/02/over-13000-nigerians-take-shell-to-court-over-devastating-oil-spills.html>> accessed 5 June 2024

Mitee LE, ‘OGONI BILL OF RIGHTS’

Monsma D, ‘Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility’ (2006) 33 *Ecology Law Quarterly* 443

Muchlinski P, ‘The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights’ (2021) 6 *Business and Human Rights Journal* 212

Nations U, ‘Human Rights’ (*United Nations*) <<https://www.un.org/en/global-issues/human-rights>> accessed 30 March 2024

_____, ‘Universal Declaration of Human Rights’ (*United Nations*)
<<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 9 April 2024

Nigeria G, 'How Bureaucratic Hurdles Hinder Ogoni Clean Up Project' (*The Guardian Nigeria News - Nigeria and World News*, 12 September 2020)
<<https://guardian.ng/news/how-bureaucratic-hurdles-hinder-ogoni-clean-up-project/>>
accessed 22 May 2024

_____'Environmentalists Lament Decline of Life Expectancy in N'Delta to 41 Years' (*The Guardian Nigeria News - Nigeria and World News*, 9 March 2022)
<<https://guardian.ng/news/environmentalist-laments-decline-of-life-expectancy-in-ndelta-to-41-years/>> accessed 29 April 2024

Nigeria 'Associated Gas Re-Injection Act 1979'
<https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Associated%20Gas%20Re-injection%20Act.pdf> accessed 22 May 2024

Nigeria Mineral Oils (Safety) Regulations 1963'
<<https://faolex.fao.org/docs/pdf/nig92408.pdf>> accessed 22 May 2024

Nigeria 'National Oil Spill Detection and Response Agency (Establishment) Act, 2006 as Amended' <<https://faolex.fao.org/docs/pdf/nig124170A.pdf>> accessed 22 May 2024

Nigeria 'Federal Environmental Protection Agency (FEPA) Act 1988'
<<https://www.placng.org/lawsofnigeria/laws/F10.pdf>> accessed 22 May 2024

Nigeria 'Oil Pipelines Act 1956'
<https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Oil%20Pipelines%20Act.pdf> accessed 22 May 2024

Nigeria 'Petroleum Act 1969'
<https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Petroleum%20Act.pdf> accessed 21 May 2024

Nigeria 'Petroleum Industry Act, 2021' <<https://pwc-nigeria.typepad.com/files/petroleum-industry-act-2021.pdf>> accessed 22 May 2024

Nixon R, *Slow Violence and the Environmentalism of the Poor* (First Harvard University Press paperback edition, Harvard University Press 2013)

Nsuke F 'The Allegory Of The Cave Should Not Play Out In The Ogoni Struggle, | Sahara Reporters' <<https://saharareporters.com/2024/01/28/allegory-cave-should-not-play-out-ogoni-struggle-fegalo-nsuke>> accessed 26 March 2024

Ramcharan BG, *Africa and the Universality of Human Rights* (Brill | Nijhoff 2022)
<<https://brill.com/view/title/63121>> accessed 30 April 2024

Ratical, 'Factsheet on the Ogoni Struggle'
<<https://www.ratical.org/corporations/OgoniFactS.html>> accessed 16 April 2024

Ratner SR, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 *The Yale Law Journal* 443

Raymond Ridderhof, 'Shell and Ogoni People : (S)Oil Pollution in the Niger Delta | Peace Palace Library' <<https://peacepalacelibrary.nl/blog/2013/shell-and-ogoni-people-soil-pollution-niger-delta>> accessed 10 June 2024

Reuters, 'Nigeria's Oil Spills Agency Investigates Shell Pipeline Leak Report' (*Voice of America*, 20 January 2024) <<https://www.voanews.com/a/nigeria-s-oil-spills-agency-investigates-shell-pipeline-leak-report/7448380.html>> accessed 4 June 2024

Rood C 'The Story of the Ogoni' (10 November 2020) <<https://code-rood.org/en/2020/11/10/the-story-of-the-ogoni/>> accessed 20 January 2024

Ruggie JG, Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on Business and Human Rights, UN Doc. A/HRC/8/5 (7 Apr. 2008), <<https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>> accessed 28 May 2024

Ruggie JG, *Just Business: Multinational Corporations and Human Rights (Norton Global Ethics Series)* (W W Norton & Company 2013)

Ruggie JG and Sherman JF, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale' (2017) 28 *European Journal of International Law* 921

OHCHR 'Understanding Human Rights and Climate Change' <<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>> accessed 6 May 2024

Okeke-Ogbuafor NA, Gray TS and Stead SM, 'Reconciling Traditional Indigenous Governance with Contemporary Approaches to Decision Making in Ogoni Communities in Rivers State, Nigeria' (2016) 9 *Journal of Sustainable Development* 55

Okonta I and Douglas O, *Where Vultures Feast: Shell, Human Rights and Oil* (Verso 2001)

Olawuyi D and Zibima T, *Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (2019)

O'Rourke D and Connolly S, 'Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption' (2003) 28 *Annual Review of Environment and Resources* 587

Osaghae EE, 'The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State' (1995) 94 *African Affairs* 325

Onwuemenyi O 'Oil Spill: Cancer Is Ravaging Our Land – Ogoni Council of Rulers' (*SweetCrudeReports*, 25 August 2011) <<https://sweetcrudereports.com/oil-spill-cancer-is-ravaging-our-land-ogoni-council-of-rulers/>> accessed 21 May 2024

Osuagwu ES and Olaifa E, 'Effects of Oil Spills on Fish Production in the Niger Delta' (2018) 13 *PLOS ONE* e0205114

Oyinlade A and Vincent J, 'The Ogoni of Nigeria' [2002] Department of Anthropology: Faculty Publications <<https://digitalcommons.unl.edu/anthropologyfacpub/113>>

Özden M, *Transnational Corporations and Human Rights: What Is at Stake in the United Nations Debate over the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (Europe - Third World Centre ed, s.n 2005)

Pegg S and Zabbey N, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) 48 *Community Development Journal* 391

Saint E, 'Niger-Delta Residents Win Case against Oil Giant Shell' (*FairPlanet*) <<https://www.fairplanet.org/story/historic-victory-for-niger-delta-oil-spill-victims/>> accessed 12 April 2024

_____ 'Timeline: Half a Century of Oil Spills in Nigeria's Ogoniland' (*Al Jazeera*) <<https://www.aljazeera.com/features/2022/12/21/timeline-oil-spills-in-nigerias-ogoniland>> accessed 13 April 2024

Salazar-Duran OO, 'A Human Rights Approach to Corporate Accountability and Environmental Litigation' 43

Saro-Wiwa K *Genocide in Nigeria: The Ogoni Tragedy* (Saros International Publishers 1992)

Schutter OD, 'Towards a New Treaty on Business and Human Rights' (2016) 1 *Business and Human Rights Journal* 41

Sharma DC, 'Bhopal: 20 Years On' (2005) 365 *The Lancet* 111

Shelton D, 'Describing the Elephant: International Justice and Environmental Law' in Jonas Ebbesson and Phoebe Okowa (eds), *Environmental Law and Justice in Context* (Cambridge University Press 2009) <<https://www.cambridge.org/core/books/environmental-law-and-justice-in-context/describing-the-elephant-international-justice-and-environmental-law/201CCBAF9D20EA4A53F3650B32A44804>> accessed 30 March 2024

Shelton DL and Anton DK, 'Environmental Protection and Human Rights'

Shell Global 'Human Rights | Shell Global' <<https://www.shell.com/sustainability/people/human-rights.html>> accessed 1 June 2024

Skelton R, 'The Environmental Justice Movement' (22 August 2023) <<https://www.nrdc.org/stories/environmental-justice-movement>> accessed 20 March 2024

Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) (155/ 96)/ (Nigeria<https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf> accessed 19 April 2024

Stanwick DSD, 'Shell and Nigeria: Dancing with the Devil?' (2013) 2

The Economist 'The Paradox of Plenty' <<https://www.economist.com/special-report/2005/12/20/the-paradox-of-plenty>> accessed 27 January 2024

Turner TE, 'Review of Where Vultures Feast: Shelly, Human Rights, and Oil' (2005) 38 The International Journal of African Historical Studies 371

Tully S, International Corporate LEGAL Responsibility (Wolters Kluwer 2012)

Unah L, 'Nigerian Farmers Hail Shell Ruling, but Future Remains Uncertain' (*Al Jazeera*) <<https://www.aljazeera.com/news/2021/1/31/nigerian-farmers-hail-shell-ruling-but-future-remains-uncertain>> accessed 24 May 2024

United Nations Economic and Social Council: Committee on Economic Social and Cultural Rights, 'General Comment No. 9: The Domestic Application of the Covenant' (*Refworld*) <<https://www.refworld.org/legal/general/cescr/1998/en/53238>> accessed 28 May 2024

United Nations Environment Programme, 'Environmental Assessment of Ogoniland' (17 January 2011) <<http://www.unep.org/resources/report/environmental-assessment-ogoniland>> accessed 30 March 2024

_____, 'Ogoniland Assessment Back in Spotlight' (*UNEP*, 7 August 2017) <<http://www.unep.org/news-and-stories/story/un-environments-ogoniland-assessment-back-spotlight>> accessed 12 April 2024

_____, 'About Ogoniland' (*UNEP - UN Environment Programme*, 21 September 2017) <<http://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/about-ogoniland>> accessed 27 January 2024

United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (*OHCHR*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>> accessed 28 May 2024

United Nations Human Rights Council, 'Tenth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (*OHCHR*) <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session10>> accessed 10 June 2024

'United Nations Human Rights Council (UNHCR), 'Guiding Principles on Business and Human Rights (2011)' <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusiness_hr_en.pdf> accessed 21 May 2024

United Nations Office of the High Commissioner for Human Rights, 'Reparations' (*OHCHR*) <<https://www.ohchr.org/en/transitional-justice/reparations>> accessed 3 June 2024

United Nations, 'Living in a Pollution-Free World Is a Basic Human Right, Says Top UN Rights Body | UN News' (27 April 2001) <<https://news.un.org/en/story/2001/04/2712>> accessed 30 April 2024

United States Department of Health- *ATSDR's Toxicological Profiles: Web Version* (CRC Press 2002) <<http://www.crcnetbase.com/doi/book/10.1201/9781420061888>> accessed 29 April 2024

‘Unrepresented Nations and People Organization: Ogoni: Poverty-Struck in a Land of Riches’ <<https://unpo.org/article/12769>> accessed 17 April 2024

Vizcarra H, ‘Deepwater Horizon Ten Years Later: Reviewing Agency and Regulatory Reforms - Harvard Law School’ (5 May 2020) <<https://eelp.law.harvard.edu/2020/05/deepwater-horizon-ten-years-later-reviewing-agency-and-regulatory-reforms/>> accessed 29 April 2024

Watts M ‘Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria’ <<https://www.tandfonline.com/doi/epdf/10.1080/14650040412331307832?needAccess=true>> accessed 15 April 2024

Williams CA and Conley JM, ‘An Emerging Third Way?: The Erosion of the Anglo-American Shareholder Value Construct’ [2004] SSRN Electronic Journal <<http://www.ssrn.com/abstract=632347>> accessed 21 May 2024

Woods K, ‘What Does the Language of Human Rights Bring to Campaigns for Environmental Justice?’ [2006] Environmental Politics <<https://www.tandfonline.com/doi/full/10.1080/09644010600785192>> accessed 11 April 2024

Writer S, ‘A Brief History of Corporate Social Responsibility (CSR)’ (24 October 2023) <<https://www.thomasnet.com/insights/history-of-corporate-social-responsibility/>> accessed 26 March 2024

Yakubu OH, ‘Addressing Environmental Health Problems in Ogoniland through Implementation of United Nations Environment Program Recommendations: Environmental Management Strategies’ (2017) 4 Environments 28