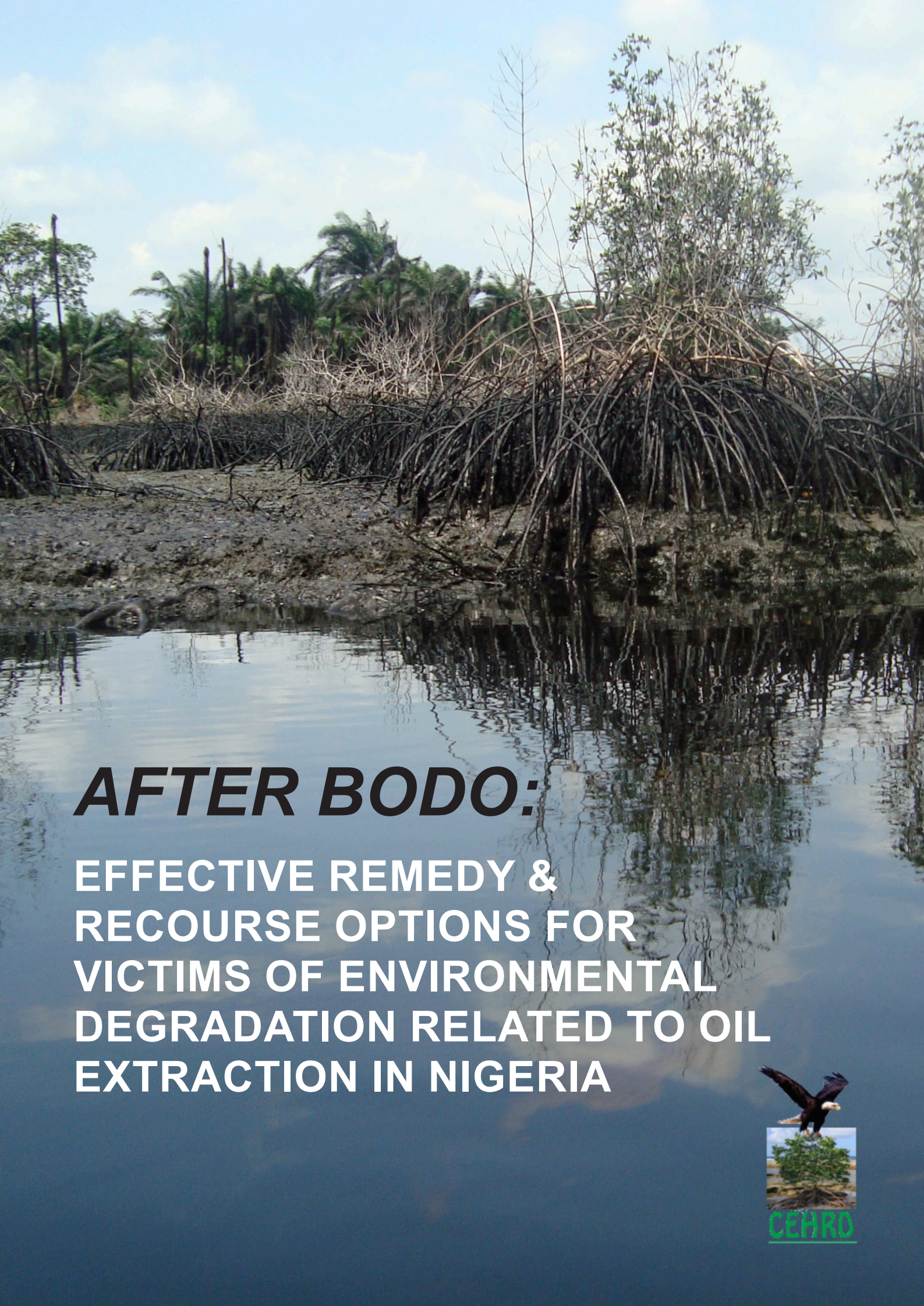

AFTER BODO:

EFFECTIVE REMEDY & RECOURSE OPTIONS FOR VICTIMS OF ENVIRONMENTAL DEGRADATION RELATED TO OIL EXTRACTION IN NIGERIA

CEHRD

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Kingdom of the Netherlands

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Few will dispute that environmental degradation is rampant throughout the oil-producing region of Nigeria.[1] Whether due to oil spills, gas flaring, dumping of waste associated with drilling, artisanal refining, or other related activities, the impacts on land, water, and vegetation – and consequently on human livelihoods and health – are widespread and severe[2]. There is little hope that such environmental degradation will lessen or cease unless there are serious and sustained multilateral efforts to curb pollution and remediate the environment.

Unfortunately, at present, the proper incentives are not in place for government and the oil industry — licensed and unlicensed/black market — to firmly tackle oil-related pollution as they would if they are truly committed to the wellbeing of citizens and the environment. Instead, an easy calculation reveals hefty profits on one side and rela-

[1] Nigeria has the second highest gas ‡aring rates in the world and accounts for 10% of total gas flared globally, according to the U.S. Energy Information Administration: http://www.eia.gov/countries/cab.cfm?fips=ni. A new website set up by the Nigerian Oil Spill Detection and Response Agency (NOSDRA) graphically shows the size/location of nearly 9,000 reported oil spills (an underestimate of those dated 1990-2014) across the Niger Delta, the vast majority of which have not been cleaned up: https://oilspillmonitor.ng.

[2] See, e.g. United Nations Environment Program (UNEP), Environmental Impact Assessment of Ogoniland (2011), which involved intensive field and laboratory work over two years and concluded, “oil contamination in Ogoniland is widespread and severely impacting many components of the environment.”

tively minor or avoidable penalties imposed for pollution or lack of cleanup. [3] Litigation risks are limited and spin machines manage to counter reputational risks.

We argue simply that this calculation must be made to change and a key part of changing this calculation is enabling persons or communities affected by oil-related environmental degradation to access real and sufflcient remedy. This means remedy that is actually equivalent to immediate, short-term, and long-term harms and losses they suffer and sufflciently certain that it gives responsible parties the incentive to act quickly and effectively to prevent, mitigate and remedy pollution.

Toward this end, this report looks at recent developments in litigation and other paths to remedy for victims of oil-related environmental degradation and surveys options available to those who are trying or will try to seek remedy. The report draws on semi-structured interviews with key informants, including persons directly affected by oil-related environmental degradation in Nigeria who have sought remedy through various channels, lawyers and activists involved in such efforts, and regulators in the sector. It is further informed by desk research, particularly a survey of relevant case law from Nigerian and other courts (details in **Annex A**).

This report takes as a starting point and central example the well-studied case of the 2008 Bodo spills (see **Box 1**). This example is set alongside a key comparative example of the Deepwater Horizon case (Part II), which illustrates how the various elements of effective remedy (Part I) can be achieved in an enabling environment. It then explores a broader context of litigation and settlement around oil spills in Nigeria (Part III) along with more recent trends in foreign or international forums (Part IV). Finally, we offer practical advice to victims and advocates who are seeking remedy for oil spills in Nigeria (Part V) and also frame practicable recommendations regarding how to strengthen other elements of effective remedy (Part VI).

[3] Oil theft has been estimated to skim off 10% of production, which reaps windfall proflts. The remainder of production is split via joint ventures with 60% going to the Nigerian National Petroleum Corporation (NNPC) and the remaining 40% split between According to a (outdated) 2003 Human Rights Watch report, ”Illegal oil bunkering is effectively Nigeria÷s most profltable private business… [with proflts around U.S.$2-3 million daily].‘ (750 million to a billion dollars annually), oil.‘

A public notice posted by HYPREP in Bodo Town (April 2014).
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Box 1. *Bodo v. Shell* case in the UK raises hopes for greater accountability

The well studied and highly publicized *Bodo v. Shell* case began with two large spills in August and December 2008 affecting thousands of flshermen and farmers in Bodo and neighboring communities. The oil company's response to the spills was slow and it, in fact, admitted liability. A unique set of circumstances meant that pre-spill water samples in the affected creek had been collected and have helped, alongside other documentation, to prove the extent of the spill and its impacts on the environment, livelihoods, health, etc.

Because of the scale, the admission of liability, and high-proflle advocacy from CEHRD and international human rights bodies such as Amnesty International, the case has been taken up by Leigh Day, a leading UK law flrm that specializes in large-scale environmental torts cases and other human rights cases that can be brought in the UK and where the "loser pays" rules guarantee full cost recovery should litigation be successful. This all means the case has beneflted from legal expertise and scientiflc evidence that are (at last) on par with what the corporate defendant puts up; the offers made to date in parallel settlement negotiations have evidenced higher levels of fear of both reputational and litigation risk. [4]

[4] For instance, the September 2013 offer rejected by the claimants was for U.S. $50 million, a number that only looks very low when divided amongst the approximately 30,000 individuals affected. Ultimately, in January 2015, the Claimants accepted an out-of-court settlement for $83.3 million.

Part I. Recourse & Access to Effective Remedy

The concepts of recourse and of effective remedy are essential to framing this discussion, even while the paper ultimately intends to elevate practice over theory.

Recourse means, broadly, the path(s) by which an aggrieved party can access remedy. For any grievance, there may be multiple paths to remedy. Recourse mechanisms (a.k.a. grievance redress mechanisms) can be judicial or non-judicial. They can be state-based (e.g. established by government) or non-state-based (e.g. put in place by a private body such as an industry association). Under the UN Guiding Principles on Business and Human Rights, three sets of actors – the state, businesses, and industry associations – share/have responsibilities for ensuring the availability of effective recourse/redress for grievances related to business activity.

Effective remedy means what is owed to anyone whose human rights are violated. Therefore, victims of oil-related environmental degradation may be entitled to effective remedy for violations of the right to life, right to livelihood, right to health, right to healthy environment, right to property, among others. Effective remedy is broader than just "compensation" or "damages" for harms suffered. It comprises various forms that may, together, provide effective remedy in any given case.

The different forms of remedy elaborated by the United Nations[5] could take concrete shape in a case of oil-related environmental degradation as follows:

- **Restitution** – e.g. restoration of a polluted environment (land, water, air, mangrove) and properties to their original states, insofar as possible;
- **Compensation**– e.g. monetary compensation for any economically assessable damage, harm, or loss, including lost value in property, lost income/employment, negative health consequences, etc.;
- **Rehabilitation** – e.g. medical treatment for health impacts of pollution;
- **Satisfaction**– e.g. penalties (criminal or regulatory sanctions) imposed on persons/entities responsible for environmental degradation; and
- **Guarantees of non-repetition**– e.g. legislative/regulatory/policy/institutional reforms to ensure that oil-related pollution does not continue to take place.

[5] See, e.g., UN 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, adopted by the UN General Assembly in 2005. Many of these concepts appear in other UN human rights instruments.

Ensuring and/or providing effective remedy – in whichever combination of forms – is primarily the responsibility of the state, though businesses also have responsibilities. Effective remedy does not just result from victims going to court for compensation; regulatory agencies must impose prescribed penalties, police and prosecutors must investigate and prosecute criminal activity that might be behind pollution, and environmental agencies must coordinate and ensure sufflcient remediation, even while responsible companies or other private parties may lead efforts in order to mitigate harms for which they would otherwise be liable.

Oil-skimming vessels at the site of the BP oil spill in the Gulf of Mexico (2010).
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Part II. Effective Remedy in Practice: Responses to Deepwater Horizon Spill

All this may sound “too good to be true” without a practical example that illustrates how different actors come together to ensure something like effective remedy: the very high-proflle 2010 BP Deepwater Horizon oil spill affecting the U.S. Gulf Coast. The underwater spill began with an explosion that claimed 11 lives and ‡owed for 87 days, becoming the largest marine oil spill in history at ~4.9 million barrels.

Following “prodding” remarks from the U.S. president and (correctly) anticipating a slew of litigation, bad press, and regulatory/enforcement action, BP acted quickly to stop, contain, and cleanup the spill. It also set up a privately administered mechanism to swiftly resolve claims, in line with the U.S. Oil Pollution Act, [6] put $20 billion into a trust fund, and committed to supplement if this proved insufflcient. [7]

Meanwhile, the U.S. Justice Department (the federal prosecutor) initiated investigations into possible charges against BP for criminal negligence, while the U.S. Environmental Protection Agency began regulatory enforcement actions. Victims — flshermen, hoteliers, and owners of properties along the Gulf Coast – began to make claims through BP’s Gulf Coast Claims Facility (GCCF) and many accessed “quick payouts” (interim/short-term compensation to offset immediate hardship) as well as full settlement of their claims through the GCCF.[8]

However, lack of transparency and consistency in the compensation awards offered to similarly situated persons raised suspicions, leading many victims to ultimately opt out of the GCCF in favor of litigation. Here, rules of judicial efflciency helped out, with hundreds of cases involving thousands of individual plaintiffs were consolidated into a single “multi-district litigation” case. While pretrial litigation was ongoing, plaintiffs’

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[6] 33 U.S.C. §§ 2712¹13 (2006). This Act facilitates compensation to victims of oil spill without undue delay by (1) making the primary responsible party, as designated by a government agency, strictly liable for all cleanup costs and resulting economic harms (this party can only later seek contributions from other responsible parties); (2) this responsible party must publicize a procedure for quickly settling claims; and (3) victims cannot go to court without flrst ”exhausting‘ this administrative claims procedure.

[7] This is considered remarkable because the Oil Pollution Act actually caps liability at $75 million, a flgure widely seen as being outdated; BP÷s choice to voluntarily waive this statutory limit seems to evidence the extent of its concerns for reputational and legal liabilities.

[8] According to an independent evaluation, the GCCF paid out $6.2 billion to 220,000 claimants in just 18 months of operation. See BDO Consulting, “Independent Evaluation of the Gulf Coast Claims Facility – Executive Summary 1” (April 19, 2012).

lawyers were organized into a Plaintiffs' Steering Committee to negotiate two class action settlement awards with BP. Ultimately, despite higher "transaction costs" of litigation, these class settlements resulted in more (or much more) favorable awards to virtually all classes of claimant.[9] In the case of fishermen, for instance, the total class settlement award was nearly five times the average total annual revenue for the Gulf Coast seafood industry in the three prior years![10]

BP's attitude both in setting up the GCCF, waiving statutory limits on liability, and ultimately agreeing to such class settlements likely reflects various realities — the strict liability imposed by statute (irrespective of possibility of other wrongdoers); the government's tough stance through regulatory and public enforcement action (throughout much of the settlement action with plaintiffs, BP was also engaged in settlement negotiations with the Department of Justice); a court system that would most certainly, under the circumstances, deliver judgment for the plaintiffs; and pressure from shareholders to settle in order to avoid unlimited future liabilities. On the flipside, by settling with certified classes of plaintiffs, BP achieved what its shareholders were looking for – the certainty of resolution of all future claims.

While some might argue this is excessively plaintiff-friendly, the reality is that this framework and these realities make incredible strong incentives for the most important public interests at stake: immediate and maximum efforts to stop the spill, contain the spill, cleanup the spill, and put in place all possible precautions to prevent such spills from happening again. While doing all this, BP has not gone out of business or had to divest from the United States.

Thus, alongside adequate compensation for past and future losses and potential harms (including medical checkups for exposure-related illnesses), here U.S. victims enjoy restitution, rehabilitation, satisfaction, and guarantees of non-repetition (which benefits the public as well). We argue that Nigeria victims deserve nothing less.

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[9] Examples of how the class settlement awards were more favorable include: (1) higher "risk multipliers" that multiply cost a base amount that accounts for past economic losses to account for possible future losses, e.g. long-term environmental impacts, etc.; (2) higher base amounts in many classes, particularly for fishermen/the seafood industry that was paralyzed by the spill; and (3) remedy for persons (e.g. cleanup workers) exposed to environmental hazards that could result in future health problems, including free medical screening for decades to detect and treat exposure-related illnesses and prescribed opening of health facilities in the Gulf Coast.

[10] Samuel Issacharoff & D. Theodore Rave, "The BP Oil Spill Settlement and the Paradox of Public Litigation,' Louisiana Law Review Vol. 74, No. 2, at p. 410-11.

Part III. 50 Years of Litigation and Settlement in Nigeria

It was not long after the beginnings of oil extraction in Nigeria in1956 that oil-related pollution began to occur. From as early as the 1960s oil pollution-related claims have made their way through Nigerian courts and, occasionally in more recent years, foreign or international venues. Just a small sampling of such cases appears in a chart in **Annex A** However, there is little doubt from anecdotal reports that the vast majority of such complaints/cases are resolved outside of the courts through some form of negotiated settlement. Such settlements are reportedly grossly inadequate, lack transparency or broad participation, and may thus beneflt just a few to the detriment of the majority.

Of the cases that have gone through Nigerian courts, it is clear that it is possible to get a favorable outcome. Indeed courts have awarded a wide variety of damages based on theories of liability based in statute (primarily the Oil Pipelines Act (OPA)) and common law theories of negligence, nuisance, and strict liability. Courts have even, on at least one occasion, issued mandatory injunction against future harms.

Oil drums near Nembe Waterside, Port Harcourt.
© Andrew Maki & Megan Chapman

However, it is equally clear that such cases are subject to long delays and that favorable outcomes at a lower court are likely to be appealed by the defendant right up to the Supreme Court, adding years if not decades to the delay. Unfortunately, the majority of cases reviewed in **Annex A** are those that have been appealed (since law reporters publish Court of Appeal or Supreme Court decisions). In only a few cases is information available about implementation or enforcement of the judgment, or other details about plaintiffs' experience. These few anecdotes tend to reveal a pattern of litigation tactics that tend to delay outcomes, including procedural challenges and frequent interlocutory appeals. Implementation of favorable flnal judgment may come too late or not at all. Most decisions tend to deal exclusively with monetary compensation and not with environmental cleanup/remediation or other forms of remedy.

Lastly, in almost all cases reviewed, the case is brought only against the oil company being held responsible. In most cases where such information was available, companies raise a defense of "malicious third party acts" or sabotage/bunkering, although this defense is not always accepted. There have been no known cases seeking to hold "malicious third parties" accountable for environmental impacts.

In terms of government/state accountability, a handful of cases have been brought against just NNPC. Further, since under Nigerian law all oil companies must form a joint venture with NNPC, other companies being held accountable will represent shared interests in line with the division of ownership between private companies and the state-owned company. However, it is not clear in practice what role NNPC plays in defending such cases. Only two cases before regional human rights bodies – not domestic courts – have really raised the issue of broader state accountability.[11]

[11] These cases are: (1) *SERAC v. Nigeria*, African Commission on Human and Peoples' Rights, Communication 155/96 (Decision at 30th Ordinary Session, 13-27 October 2001); and (2) *SERAP v. Federal Republic of Nigeria*, ECOWAS Community Court of Justice, JUDGMENT N° ECW/CCJ/JUD/18/12 (14 December 2014).

Part IV. Beyond Nigerian Courts: Recent Developments

Over the last two decades, a few test cases dealing with oil-related pollution have been taken outside Nigeria, to regional human rights bodies and foreign courts. The first human rights case dealt generally with oil-related environmental pollution (and other human rights violations) in Ogoniland and was filed with the African Commission on Human and Peoples' Rights in 1996 by the Social and Economic Rights Action Center (SERAC), a Nigerian NGO acting on a kind of public interest standing. The favorable decision and recommendations by the Commission, though widely celebrated for advancing regional jurisprudence on social and economic rights, has sadly not been met by serious efforts to implement and enforce.

The more recent human rights-based case was brought to the Community Court of Justice for the Economic Community of West African States (ECOWAS), again by a Nigerian NGO acting on a public interest-like standing – the *Social and Economic Rights Advocacy Project (SERAP) v. Nigeria*. This case also raised issues of rights violations relating to widespread environmental degradation by the oil industry and, particularly, the state's failure to prevent and remedy such degradation. The Court held it lacked jurisdiction over NNPC and all the oil companies originally named; but, in 2012, it issued three broad – and binding – orders against Nigeria:

1. Take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta;
2. Take all measures that are necessary to prevent the occurrence of damage to the environment; and
3. Take all measures to hold the perpetrators of the environmental damage accountable.

During this same period, a number of cases have begun to test out foreign courts that have jurisdictional rules broad enough to include environmental torts or related claims arising from events in Nigeria. Unfortunately, the U.S. jurisdictions – the venue of a

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[12] In these three cases, the damning factor was evidence presented by the company that the spills were due to pipeline sabotage; the court then went on to hold that the companies were not liable under applicable statutes or the common law torts of negligence for acts committed by third parties. Worse still, the plaintiffs were held jointly/severally liable for Shell's costs – no doubt a hefty burden. See, e.g. Oguru & Ors v. RDS & SPDC [C/09/330891] 30 January 2013 (Dutch District Court).

[13] Akpan and Vereniging Milieudefensie v. RDS and SPDC [C/09/337050] 30 January 2013 (Dutch District Court).

number of earlier cases (albeit not on environmental issues) against oil companies operating in Nigeria – were closed off by the backsliding U.S. Supreme Court decision in *Kiobel v. Shell*. However, both the Dutch and English courts have been willing to entertain cases involving environmental pollution attributable to oil companies whose parent companies have ties to the Netherlands or the UK.

Quite a bit of hope has been placed on these cases; many believe that, if they can provide more effective remedy to victims of serious oil-related environmental degradation, they can also help to change incentives for oil companies and other responsible parties. So far, unfortunately, results have been at-best mixed.

The Dutch court ruled against the plaintiffs in three of the four cases brought against Shell Petroleum Development Corporation (SPDC) and its parent company by Friends of the Earth, Netherlands.[12] In the fourth case,[13] however, the Dutch Court held that both SPDC and its Dutch parent company are liable for oil spill damage resulting from sabotage of a "Christmas tree" wellhead, albeit just to a single neighboring landowner in the Akwa Ibom community. Here, the negligence theory succeeded because the sabotage of the wellhead was "reasonably foreseeable" and no appropriate precautions taken. While all four cases are under appeal, this fourth decision goes farther than any Nigerian court has yet to go.

Another case that has raised hopes is the high profIle and large-scale Bodo case — the case whose potential precedent flrst inspired this paper and, thus, its name. See **Box 1** for background on the case and the reasons it has raised such high hopes.

Unfortunately, the promise of this case – as a new kind of deterrent or precedent that would recalculate risks and incentives for the oil industry around pollution in Nigeria – has been somewhat undercut by a judgment on preliminary issues given by the UK Court on 20 July 2014. This judgment responded to detailed submissions on questions of law that help to frame the litigation and predetermine, to some extent, the scope of what is achievable. The main holdings whittled the case down to some degree — flrst, as the case involved spills from oil pipelines, the court determined that the only theory of liability was statutory liability under the Oil Pipelines Act (despite the fact that Nigerian courts have for about 50 years given judgment based on common law tort theories

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[14] The court went through extensive reasoning around the meaning of "protect" in the OPA, concluding that it certainly does not entail "policing" or providing paramilitary protection against sabotage, but rather taking reasonable steps – e.g. reporting suspected sabotage to the police and facilitating police access to the site – or putting in place other safeguards in line with maintenance and repair responsibilities. The Court wrote, "It is concieveable... that neglect by licensee in the protection of the pipeline... which can be proved to be the enabling cause of preventable damage to the pipeline by people illegally engaged in bunkering which causes spillage could give rise to a liability; this may be difflcult to prove but there is that theoretical possibility .' (Bodo Community & Ors v. SPDC [214] EWHC 1973 (TCC), para. 93)

as well); second, it limited the type of damages available to just compensatory (e.g. not aggravated) damages and eliminated certain categories of harm (e.g. illness, distress); third, while leaving the door open to the (theoretical) possibility of pipeline operator liability for sabotage or bunkering, if the operator neglected to protect the pipeline, this opening seems narrow.[14]

Those legal issues aside, the Bodo case still seems poised for a precedent-setting victory, whether through court decision or settlement, and – along with the successful Dutch case – opens up new venues for serious and impactful litigation of strong cases challenging oil-related environmental degradation in Nigeria. However, it remains to be seen to what extent such a case helps provide and create the environment in which victims finally access full and effective remedy.

Evidence of oil in the creeks near Goi community in Ogoni (August 2011).
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Part V. Recommendations on How to Approach Available Recourse Options

So, in light of all the above, what should victims of oil-related environmental degradation – and their advocates – do and where/how should they seek recourse? How do they access (more) effective remedy?

This assessment starts from the basic assumption that victims of oil spill (or other hazards, e.g. ‡aring) are not responsible for or complicit in the acts leading up to environmental degradation. The “blame the victim” rhetoric spun from powerful corners in Nigeria tends to, conveniently, bundle together affected communities and oil thieves. Even if there are persons in such communities who engage in oil bunkering or related activities, their acts do not make an entire village complicit or responsible. The other convenient suggestion is that oil spills are deliberately caused in order to seek compensation from oil companies – a suggest that, as many communities are quick to point out, makes no rational sense since the likelihood of timely or adequate compensation is low as are other aspects of effective remedy.

From this premise, we lay out the following recommendations for victims and advocates who help to educate and assist them in seeking effective remedy:

- **Document** – Its important to collect pre-spill (baseline) data on the environment before a spillage. As soon as an oil spill or other hazard is detected, use whatever means possible to document the circumstances. Take photographs, video, and get as many credible eyewitnesses as possible on site. Contact NGOs or other specialists who can assist. For instance, CEHRD has been training oil-affected communities on basic photography and how to document oil spills, e.g. taking water samples, which can be important both before and after a spill. Other documentation, e.g. satellite image analysis, can come later – but certain on-the-ground steps must happen immediately/as soon as possible.

- **Report** – In the case of oil spill, reporting to the company that operates the pipeline or other oil installation, is essential because this will trigger its responsibility to take immediate steps to stop the continued spill. Reporting to the Nigerian Oil Spill Detection and Response Agency (NOSDRA) is also essential. Keep copies of dated correspondence of such reports. When reporting to both the company and NOSDRA (or other relevant government ministries), proactively include in correspondence a list of nominated/community-approved representatives to participate in the ensuing joint investigation visit (JIV).

Depending on the facts on ground, consider others to whom the spill should be reported. For instance, if the community suspects bunkering is the cause of the spill, reporting to police is essential because this will trigger the state's responsibility to investigate and hold responsible persons accountable. That said, because of powerful interests at stake in bunkering and possible complicity of police and military, these steps should be taken carefully. Consult with supporting NGOs or advocates about the best way to approach this, e.g. bypassing local police offices to go to area commands or higher levels or simultaneously involving other state institutions with relevant responsibility, e.g. the National Human Rights Commission or the Police Services Commission. Remember that under no circumstances is it the community's or an individual's job to stop unlawful activity, especially where there could be security risks involved. Document every report or effort made to engage different authorities.

- **Avoid over-simplification of responsibility** – If going to court is necessary, choose defendants carefully with an eye to the totality of circumstances. Make sure to assess the responsibilities of each and every party – the company/oil facility or pipeline operator, possible third parties who may be involved, different government agencies responsible for responding to environmental degradation or investigating/prosecuting unlawful activity. When going to court, construct the case carefully to apportion responsibilities where they are due. Although it may not be strategic to take up all these issues in one case or all through the medium of court action, still consider

Box 2. Summary of recommendations to victims and advocates seeking remedy for oil-related environmental degradation

- Document the case independently and immediately, making use of training and tools available through organizations such as CEHRD
- Report the case to NOSDRA and/or other relevant agencies, and the company – and include a list of community-nominated representatives for a JIV
- Avoid over-simplification of responsibility, remembering that liability can be apportioned between parties that are jointly responsible, while over-simplification may leave victims with nothing
- Choose forum carefully, keeping an eye on efficiency, nature of claims to be raised, etc.

how to approach all responsible parties.

- **Choose forum carefully**– The above sections outline a number of possible forums for litigation against one or more responsible party. Federal High Court has clear jurisdiction over all matters related to oil and also for most issues challenging action or inaction by federal agencies. It is perhaps the only venue in which different responsible parties can be brought in a single case. However, other issues may arise including delay, lack of openness to creative arguments against government agencies, or challenges with enforcement of decisions.

  When considering other venues, e.g. foreign courts, realistically evaluate the strength of the case against the company or parent company one hopes to hold accountable, remembering the issue of possibly being liable for litigation costs. In truth, with the emerging precedents discussed above, NGOs and law flrms capable of handling such cases may exercise caution and only be willing to take up the strongest cases involving very large-scale harms. Moreover, it may be that the Federal High Court is more willing to consider a variety of theories of liability and, thus, a broader range of harms suffered.

  Finally, if considering a human rights forum to deal with issues of state accountability, remember that the ECOWAS Community Court of Justice does not require "exhaustion of remedies" and will entertain a case even while parallel proceedings are ongoing in domestic courts, which makes it a good forum to raise issues of state accountability that are difflcult to bring into a domestic case. Orders given by the Court are binding. However, it is strongly urged that future cases to this Court deal with speciflc instances of violations (rather than broad/general patterns) in which concrete and easily enforceable remedies can be ordered and implemented.

Part VI. Recommendations to Ensure Other Elements of Effective Remedy

The previous section looks at recourse options from the perspective of victims and their advocates, making recommendations as to what they can do using existing mechanisms to seek effective remedy. As discussed in Part I above, however, effective remedy does not result from victim-initiated recourse alone. Ensuring effective remedy in a situation of oil-related environmental degradation further requires action by state agencies, as in the Deepwater Horizon case (Part II).[15]

In the Nigerian context, both legal and practical problems have constrained the rigorous state response that would be necessary to effective remedy in cases of oil-related environmental degradation. We do not fully explore these issues here, but rather provide a few illustrative examples to frame subsequent recommendations. On the legal side, a weak legislative framework limits the possibility of meaningful accountability for oil-related environmental degradation (see **Box 3**). On the practical side looms the issue of regulatory capture – regulatory agencies generally lack of structural or actual independence from the regulated sector (legal oil);[16] the law enforcement agencies (e.g. JTF) meant to tackle oil theft are seen as complicit.[17]

Box 3. Insufficient penalties for oil-related environmental torts available under Nigerian law

The following examples illustrate the weakness of the legislative framework for accountability on polluters in the oil and gas sector in Nigeria

- NOSDRA Act only contemplates two fines: (1) operator failure to report oil spill >> N500,000 ($3,125) per day; and (2) failure to clean up oil spill >> N1m ($6,300) (one-time)
- Oil and gas sector exempt from oversight by National Environmental Standards and Regulations Enforcement Agency (NESREA)
- Criteria for revocation of oil exploration or production licenses by Ministry of Petroleum does not contemplate environmental harm

[15] In the DeepWater Horizon case, various U.S. governmental agencies investigated the impacts of the spill and the U.S. Department of Justice (as public prosecutor) initiated criminal investigations against responsible corporations and individuals and initiated civil enforcement actions for fines stemming from violations of environmental and safety legislation.
[16] Amnesty International & CEHRD, "Bad Information" (Nov. 2013).
[17] Stakeholders Democracy Network, "Communities Not Criminals: Illegal Oil Refining in the Niger Delta," 2014.

The outcome is few flnes or civil penalties imposed by regulatory agencies; little meaningful law enforcement response aimed at actually tackling oil theft-related organized crime; and a climate in which court victories are rarely enforced. All this amounts to further limitations on the possibility of effective remedy for victims of oil-related environmental degradation. Thus, we offer other critical recommendations:

To the National Assembly

- Strengthen the legislative framework for imposing civil and criminal penalties on those responsible for oil-related environmental degradation

To the Federal Ministry of Justice

- Set up specialized team to prosecute and/or litigate cases of environmental degradation in the oil sector, circumventing apparent capture of oil-sector regulators and law enforcement operating in areas where oil theft is rampant

To DPR & NOSDRA

- Systematically investigate and impose available flnes and penalties on those responsible for oil-related pollution

To Ministry of Defense & Commanders of the Joint Task Force (JTF)

- Set up independent team to investigate alleged JTF complicity in oil theft and unlicensed reflning and, thus, related environmental impacts

Annex A. Survey of Cases Seeking Remedy for Environmental Degradation

Case/Community	Facts of the Spill/ Other Environmental Hazard	Resolution
Mon Igara v. Shell-BP PDC [1970]		1970: Company held liable
San Ikpede v. The Shell-BP PDC [1973] MWSJ 61 at p. 89	Crude oil and other chemicals escaped from Shell-BP pipeline	1973: Supreme Court held that transporting crude through swamps and forests by pipeline is an unnatural use of land; thus strict liability
Atubie v. Shell-BP PDC (UCH/48/73 – 12 Nov 1974	Spill of crude, gas and other chemicals polluted farmlands and fishponds	1974: Case failed for lack of evidence of negligence
Chinda v. Shell-BP PDC (1974)	Oil drilling involved gas flaring that damaged plaintiff's land, hoses and trees	1974: Case failed for lack of evidence of negligence
Umudje & Anor. V. SPDC [1975] 9-11 SC 155	Crude oil was collected and kept in a pit under the control of Shell escaped onto the adjoining land of plaintiff where it damaged his fishpond and lake.	___: Plaintiffs file suit seeking "fair and reasonable compensation" for blockage of waterways, oil spills ____: Trial court in favor of plaintiffs 1975: Supreme Court held that the defendant oil company was strictly liable
Nweke & Anor v. Nigerian Agip Oil [1976] 10 S.C. 101		
	Crude oil pollution occurred in Calabar River and spread into Port Harcourt River, damaging marine life and raffia palms	1989: Companies held liable
Nwadiaro v. SPDC [1990] 5 NWLR (Pt. 150) 322	Shell's operations blockaded lakes, creeks and ponds	___: Plaintiffs claimed in nuisance ___: High Court found for Plaintiffs ___: Court of Appeal upheld judgment
SPDC v. Otoko [1990] 6 NWLR 693.	Relates to spillage of crude oil in the Andoni River. [OTHER FACTS MISSING]	____: Plaintiffs in representative capacity claim compensation based on negligence, nuisance and seen mandatory injunction to restrain Shell from further unlawful acts. Shell raised a defense re: third party acts. ____: Lower court gave judgment for Plaintiffs. _____: Court of Appeal overturned because there were no factual findings on negligence.
SPDC v. Ambah [1991/9] 3 NWLR (Pt. 593) 1;	Shell dumped mud dredged from adjoining land that covered family's fishponds, fish lakes, fish channels and creeks at Asesaoba near Beniseide oil fields in 1976. Deprived family of livelihood.	1987: Lower court gave judgment for Plaintiffs including lost income from 1976 -1987 1991: Supreme Court held family only entitled to market value for property/land destroyed and overturned award of lost income

SPDC v. Enoch [1992] 8 NWLR 335.	[FACTS MISSING]	____: Plaintiffs came in representative capacity seeking damages for negligence for oil spill caused by a pipeline explosion. ____: Lower court "non-suited Plaintiffs ____: "Non-suit" ruling upheld on app eal.
ELF v. Opere Sillo [1994] 6 NWLR (Pt. 350) 258	Deals with dumping of silt and mud from oil operations that polluted land / water	Court awarded compensation for loss of fishing rights due to oil pollution
SPDC v. Farah [1995] 3 NWLR 148. (This casetook place before the 1999 Constitution placed full jurisdiction of these matters in the Federal High Court).	1970: Bomi Well blowout affects a widespread swath of farming and hunting land. Shell compensates for loss of crops and economic trees, but not the damage to land or other long-term effects based on promise to rehabilitate the land. The land is never rehabilitated.	1991: Community files suit with the Bori High Court in Rivers State and are awarded N4.6 Million (US$210,000) finding that victims of the spill should be compensated for loss of income for destroyed farmland, and for general damages of shock, fear, and "general inconvenience." Both parties have expert witnesses, and the court appoints two additional independent expert witnesses who issue areport supporting the testimony given by the plaintiff's expert witness. The court is highly critical of the defendant's use of an interested party (the expert had also be hired to do the cleanup) to testify on whether the land had been rehabilitated. 1994: Shell appeals. The lower Court's decision is upheld, finalizing the case after 24 years.
SPDC v. Tlebo [1996] 4 NWLR 657, [2005] 9 NWLR 439	Major oil spillage led to the pollution of the Plaintiff's farmlands, swamps, creeks, river, fish ponds, fishing nets, raffia palms and juju shrines	____: Plaintiffs sued for selves/in representative capacity under negligence and strict liability 1991: Rivers State High Court at Yenagoa (before jurisdiction vested fully in the federal high court) found for Pl aintiffs on both theories, awarded N5m in general damages plus additional awards for damage to raffia, loss of drinking water ____: Court of Appeal dismissed appeal ____: Supreme Court limited damage awards
Barry & 2 Ors. v. Obi A. Eric & 3 Ors. [1998] 8 NWLR (Pt. 562) 404 at 416	[FACTS MISSING]	1998: Court of Appeal held that issues relating to oil spill are subject to exclusive jurisdiction of Federal High Court

SERAC v. Nigeria, African Commission on Human and Peoples' Rights, Communication 155/96 (2001)	Case deals withpattern of abuses by Nigeriaand through NNPC and security forces, including widespread environmental pollution by oil industry and violence by security forces in Ogoniland	1996: Complainant initiates communication to Commission re: violations of Articles 2, 4, 14, 16, 18(1), 21, and 24 of the African Charter. 2001: Commission finds violation of all pled Articles of African Charter and appeals to Nigeria to ensure protection of environment, health and livelihood of the people of Ogoniland, by: 1.Stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory; 2. Conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations; 3. Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations; 4. Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and 5. Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.
SPDC v. Amaro [2001] 10 NWLR 248.	[FACTS MISSING]	___: Plaintiffs in representative capacity filed suit claiming damages under Petroleum Act, strict liability, negligence and nuisance
SPDC v. A Otelemaba Max & Ors. [2001] 9 NWLR (Pt. 719) 541.	[FACTS MISSING]	2001: Court of Appeal held that issues relating to oil spill are subject to exclusive jurisdiction of Federal High Court

SPDC v. Isaiah [2001] 6 NWLR 236 (CA); 11 NWLR 168 (SC)	A tree fell on a Shell pipeline and crude spilled during the subsequent repairs, polluting and damaging Plaintiffs' lands, swamps, and streams.	___: Plaintiff filed suit at ___ State High Court ___: State High Court awarded N22m damages under atheory of strict liability ___: Court of Appeal ___ ___: Supreme Court vacated the lower court's judgment, holding that issues relating to oil spillage are in exclusive jurisdiction of Federal High Court.
Mobil v. Monokpo [2003] NWLR 346	Oil spill from off-shore oil production platform on continental shelf affected numerous villages/communities	___: Two chiefs filed suit in representative capacity on behalf of numerous communiteis claiming N3.698bn and N938m in special damages, N302m and N61m in general damages ___: Lower court entered judgment in default because defendant failed to file defence 2002: Court of Appeal decision [2002] 3 NWLR 48 2003: Supreme Court allowed appeal finding that the procedure for setting damages through judgment in default was flawed
SPDC v. Edamkue [2003] 11 NWLR 533 (CA), [2009] 14 NWLR 1 (SC)	Explosion and oil spill (unclear if related to oil pipeline, at an oil well, or at a flow station); [OTHER FACTS MISSING]	___: Plaintiffs filed suit based on negligence and strict liability; defence based on third party. N30.576m was claimed for "general damages" for "inconveniences caused by heat radiation, noxious and toxic odour, general illness resulting from the contaminated water and foods, cost of evacuation of lives and property, burial expenses of the dead and alternative sources of sustenance" as well as other "special damages". ____: FHC ___ ____: Court of Appeal ____ ____: Supreme Court ____

SPDC v. Edamkue [2003] 11 NWLR 533 (CA), [2009] 14 NWLR 1 (SC) **SPDC v. Edamkue [2003] 11 NWLR 533 (CA), [2009] 14 NWLR 1 (SC)**	Explosion and oil spill (unclear if related to oil pipeline, at an oil well, or at a flow station); [OTHER FACTS MISSING]	___: Plaintiffs filed suit based on negligence and strict liability; defence based on third party. N30.576m was claimed for "general damages" for "inconveniences caused by heat radiation, noxious and toxic odour, general illness resulting from the contaminated water and foods, cost of evacuation of lives and property, burial expenses of the dead and alternative sources of sustenance" as well as other "special damages". ____: FHC ___ ____: Court of Appeal ____ ____: Supreme Court ____
NNPC v. Sele [2004] 5 NWLR 379.	Oil wells 2 and 4 in Abure location delivery line, belonging to NNPC, burst and resulting oil spillage caused pollution to land and water.	____: Plaintiffs for selves and in representative capacity sued NNPC based in negligence. ____: Lower court found for Plaintiffs (negligence) ____: Court of Appeal upheld judgment for Plaintiffs based on negligence: "…failure of the defendants to take reasonable steps to avoid bursting of their pipelines caused the spillage and the burden is on them to prove lack of negligence. The appellants cannot run away from the fact that initially they did nothing to clean up the spilled crude oil thereby allowing the spillage to persist and the effect of this dangerous thing to continue. The appellants failed to adduce evidence to show that they attempted to prevent the escape of same... Their negligence caused the burst delivery line/pipeline which I think is actionable…"
Gbemre v. SPDC (2005) AHRLR 151	Gas flaring in Delta state was having a particularly egregious effect on the Iwerekhan community, with particularly bad side effects on health.	____: Plaintiffs sought declaratory orders that gas flaring violates certain human/peoples' rights and a perpetual injunction against further flaring 2005: FHC gave sought for declaratory and injunctive reliefs, ordering Shell and NNPC to create a plan to stop gas flaring by 30 April 2007. 2007: Gbemre attends court with his representative to discover that no plan to stop the flaring had been submitted, the judge was transferred to another court, and the court file was unavailable. Shell obtains a court order further delaying compliance. Current: Ruling has not been enforced to date

Phyne v. SPDC (FHC/PH/376/97 - 2 August 2006	[FACTS MISSING]	1997: Plaintiffs sued seeking compensation for oil spill onto land, damage to fish pond/traps, trees 2006: FHC awarded N700,000 for damage to fish ponds and land – says burden of proof for plaintiff under OPA is less than for special damages
Firibeb v. SPDC (Suit No. FHC/PH/990/98 - 29 Sept. 2006)	Related to oil spillage near Zaakpon in Ogoniland; claim was for N31.835m in general damages for loss of cassava, vegetable crops, palms and timber and loss of fish harvest [OTHER FACTS MISSING]	1998: Plaintiff sued Shell for damage tor crops from oil pipelines; defence of 3rd party vandalisation 2006: FHC found Shell had not proved independent act of third party sabotage as cause (defence was that Shell had been chased out of Ogoniland and stopped operation; Plaintiffs argued that Shell is still "operating" so long as its equipments remain in Zaakpon area); because of community fault, could not find Shell negligent, but found the rule requires strict liability; awarded N1m ____: Court of Appeal dismissed appeal
Agadia & Uruesheyi v. SPDC [HC/B/CS/ 166/2000, 27 July 2006]	Damage to crops resulting from fire outbreak along Shell pipelines; Shell claimed leakage was due to explosion caused by third party	2000: Plaintiffs filed suit for damage to crops based on res ipsa loquitur / strict liability basis 2006: FHC dismissed claim based on finding that it was "neither practicable nor realistic" to expect Defendant to post security men along all laid/buried pipelines throughout the country.
Chief Omu & Ors v. SPDC (FHC - 21 Nov 2007	Oil spill damaged fishing equipment and fish farms in Ihuama Community; Shell paid out some compensation prior to suit beginning for water rights and pollution of shrine	____: Plaintiffs for selves and in representative capacity sued for N15m in damages 2007: FHC awards N600,00 as general damages
SPDC v. Ohaka [2008] 8 CLRN 94	[FACTS MISSING]	____: Plaintiff sued for pipeline oil spill damages basedon OPA, negligence/strict liability ____: FHC rejected sabotage defence and entered judgment for Plaintiffs despite no lower court finding on negligence ____: Court of Appeal rejected appeal re: sabotage and relied on OPA for strict liability
Agbara v. SPDC (Suit No. FHC/ ASB/CS/231/ 2001 - 2010)	Harms suffered included acid rain, pollution of underground water [OTHER FACTS MISSING]	2001: Plaintiffs (chiefs) in representative capacity sued for special damages and punitive damages 2010: Court awarded all damages claimed
SPDC v. John [2011] 2 NWLR 236	Relates to spillage from an oil well [OTHER FACTS MISSING]	____: Plaintiff sued for damages based in negligence and private nuisance ____: FHC ___ ____: Court of Appeal _____

John Holt Krebale & Ors v. SPDC (Suit No. FHC/ASB/ CS/41/09)	Oil spill resulting from explosives placed close to pipeline in Delta [??] on 5 January 2001 [??] [OTHER FACTS MISSING]	2009: Plaintiff sued for damage to farmland due to oil spill from pipeline; Shell raised defence that spill was due to explosives placed close to pipeline; Plaintiff argued that Shell had intelligence of possible attack earlier than incident but failed to act; Court rejected argument for negligence and accepted defence, dismissing the Plaintiff's suit
Barizaa M.T. Dooh v The Shell Petroleum Development Co. of Nig. Ltd, Suit No. FHC/PH/159/97 (struck out in 2012)	1994-96: Several oil spills from the K-Dere Manifold in Goi Community, Rivers State. 1996: Shell, through a representative, pays undisclosed amount of compensation to Chiefs of community. This compensation never reaches Mr. Barizaa M.T. Dooh. March 2012: After years of illness – believed to be caused by long-term exposure to the oil spills in Goi – Mr. Dooh dies.	27 Dec. 1996 & 12 Mar. 1997: Mr. Barizaa Dooh writes Shell protesting payment of compensation to the Chiefs, lack of compensation or remediation for damages to his property. March 1998: Mr. Barizaa Dooh files suit, seeking compensation for damage to farms, fishponds. 2011: In protesting an interlocutory appeal by the defendant in 2011, Plaintiff asserts that "[SPDC] has always exploited all available means and tactics to frustrate [the elderly Plaintiff] and ensure that he does not obtain judgment in the suit before the Federal High Court till he dies…." 27 May 2012: Court denies motion by Chief Eric Dooh, as the son and beneficiary of the decedent's lands, seeking to substitute himself as the Plaintiff. He is advised to look into re-filing the suit nearly 14 years after suit commenced.
Ogbodo, Rivers State	25 June 2001: Community notifies Shell the day after pipeline ruptures. Several days later Shell representative visits. Oil catches on fire, worsening pollution and destruction affecting 42 communities. The slow response breeds confusion, conflict and distrust. 2001-2003: Inter-communal conflict breaks out over compensation and contracts for oil-spill cleanup. Feb. 2002: Partial cleanup started of 2 zones. March – June 2005: Some more clean up conducted.	June/July 2011: Shell brings water and a team of health workers to address increasing spill-related problems. These remedies are reported as insufficient. People who can afford to leave the area. No evacuation or resettlement is done. February 2003: Shell representative from London visits and promises a post-impact assessment and full remediation. Neither done. To date: Some individuals and families receive amounts claimed to be less than market value, and Shell reports that an undisclosed compensation agreement has been reached with some communities - includes future development project. Waterways are still not rehabilitated.

Batan, Delta State	20 Oct. 2002: Spill reported from an underground pipe. 23 Oct. 2002: Shell reports sabotage to Delta State Governor before the JIV conducted. 25 Oct. 2002: JIV conducted, equipment failure found. Process filmed by community, but the Shell expert fails to take photos or document the spill sufficiently. 26 Oct. 2002: Shell rejects JIV as being coercive, and asserts sabotage. Community does not accept change.	To date: Community given a "development package worth approximately US$100,000." No individual payments made. Shell has not agreed that the spill was due to equipment failure.
Bodo Community v. SPDC (UK Technology & Construction Court, Case Nos. HT-13-295 and HT-13-339 to 350); Judgment on preliminary issues: [2014] EWHC 1973 (TCC)	28 Aug. 2008: Major oil spill into Bodo Creek, Ogoniland, killing fish and other wildlife, and damaging mangroves, as well as damaging farmland and drinking water. This affects many communities. Bodo community claims report of spill made to NOSDRA and Shell. At some point, the oil catches on fire, adding to air pollution and increasing level of damage. No immediate action taken. 5 Oct. 2008: Shell claims report of spill made on this date. 7 Dec. 2008: A larger spill occurs.	7 Nov. 2008: Leak stopped and JIV conducted by Shell, NOSDRA, community; no cleanup done. 19-21 February 2009: JIV conducted by Shell, NOSDRA and community. NOSDRA dependent on Shell for both JIV and post-impact assessment. 2 May 2009: Shell brings food to Bodo community - rejected as inadequate. 12 May & 9 June 2009: NOSDRA sends letters to Shell asking to "accelerate" plans to assess damage despite the fact that this task is within NOSDRA's mandate. September 2009: Center for Environment, Human Rights and Development commissions independent post-impact assessment of spill. 2009-2011: Community, directly and with support from NGOs, seeks remediation and remedy. April 2011: International law firm Leigh Day files suit on behalf of Bodo Community in UK Courts. Sept. 2011: NOSDRA reports that it is still waiting on Shell's damage assessment report. 20 June 2014: UK High Court issues ruling finding limited liability for oil companies in sabotage cases, and no aggravated, exemplary or punitive damages. The issue of damages scheduled for May 2015. Jan. 2015: The parties reached an out-of-court compensation settlement of 55 Million UK Pounds. However, the Bodo Creek is yet to be cleaned up. The Dutch Embassy in Abuja and NACGOND are facilitating talks for the clean up and remediation of the impacted creeks.

SERAP v. Federal Republic of Nigeria, ECOWAS Community Court of Justice, Judgment N° ECW/CCJ/ JUD/18/12	Case deals broadly with pattern of environmental degradation associated with the oil industry in the Niger Delta, both corporate responsibility and state failure to enforce its laws and regulation aimed at protecting the environment and preventing pollution; it mentioned only a few specific instances (Ogbodo spill of 2001 and Bodo oil spill of 2008) but only as examples	2009: SERAP commenced suit against FRN along with NNPC, SPDC, ELF, AGIP, Chevron, Total, and ExxonMobil alleging violation of rights to health, adequate standard of living and rights to economic and social development of the people of Niger Delta and the failure of the Defendants to enforce laws and regulations to protect the environment and prevent pollution 2010: Court ruled that it had no jurisdiction over claims against corporations (including NNPC) 2012: Court ordered FRN to (1) take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta; (2) take all measures that are necessary to prevent the occurrence of damage to the environment; and (3) take all measures to hold the perpetrators of the environmental damage accountable
Bonga Oil Field, Coast of the Niger Delta	2011: An estimated 40,000 barrels spilled during transfer of oil to a tanker off the coast of the Niger Delta. Shell asserts that spill stopped and cleaned before reaching shore. Governmental agency NIMASA accuses SPDC of frustrating attempts to assess oil spill, while NOSDRA asserts that the spill "posed a serious environmental threat to the offshore environment."	2013: Nigerian Maritime Administration and Safety Agency (NIMASA) estimates that communities affected by oil spill should be compensated N1.04 Trillion (US$6.5 Billion) and NOSDRA issues a fine of N800 Billion (US$5 Billion) on Shell for the oil spill.

Background Note

There is nowhere in the world where the environmental atrocities and human rights violations associated with the activities of the oil industry can be tolerated; yet they are routinely ignored in the Niger Delta region of Nigeria. The legacy of irresponsible corporate practices and bad government policy on extractive activities has impacted on the people and communities that inhabit the region for decades. An Environmental Assessment of Ogoniland (just a fraction of the Niger Delta) by the United Nations Environmental Programme (UNEP) concluded that cleaning up the Ogoni area of the Delta alone will take up to thirty years. How long will it then take to clean up the entire region?

Despite the injustice that the people of the Niger Delta have suffered from the extractive industry, neither the government nor the oil companies has paid adequate attention to the environmental impacts of their operations and the human rights abuses done to the people of the region. Even where they claim to have made efforts, it is not sufflcient to remedy the adverse impacts of their operations. Communities in the Delta through support from local and international civil society organisations have continued to demand for justice and accountability from the government and oil companies.

This research report draws inspiration from the courageous actions of the Bodo community against Shell Petroleum Development Company (SPDC) through a class action suit in a London Court in the United Kingdom. Through support from Centre for Environment, Human Rights and Development (CEHRD) and other international partners, the people of Bodo have been able to drag Shell to account for the massive oil spills that ravaged the community between August and December 2008 from its Trans-Niger Pipeline.

The people of Bodo certainly deserved justice for this massive damage, and with the out of court settlement by SPDC, it is now clear that the company has flnally acknowledged its responsibility for the damage its operations has done to the community. The lessons drawn this settlement is that impunity can linger on for a while, but it can certainly not last forever. We also are sure that other communities will be inspired to seek recourse options to demand corporate accountability and social justice for the damages done to their environment and the violation of their fundamental human rights.

The paper is in line with the United Nations Guiding Principles on Business and Human Rights' view that the Nigerian Government has a duty to protect, respect and remedy the rights of its citizens. It also calls on Shell and other oil companies to account for and remedy the consequences of their actions in Ogoniland and other parts of the Delta; and it encourages citizens to take proactive steps to ensure the protection of their environmental rights, and to seek remedy where violations occur.

The report is part of a larger Human Rights and Environmental Justice project of CEHRD supported by the Dutch Embassy in Nigeria to provide capacity building to oil impacted communities, conduct evidence based research and carry out institutional advocacy and engagements with regulatory agencies and oil companies to demand accountability and social justice for communities whose lives, environment and livelihoods have been adversely affected by crude oil extraction for over half a century.

Oil in the creekbeds at Gbea Jetty, Bodo Creek, Ogoni (August 2011).