CORE and ICJ welcome landmark UK Supreme Court decision - Nigerian claimants can pursue environmental devastation allegations against Shell in UK courts

Today (12 February 2021), the International Commission of Jurists (ICJ) and The Corporate Responsibility (CORE) Coalition UK welcome the judgment of the UK Supreme Court in the case Okpabi et al. v Royal Dutch Shell plc et al as a major step forward for those seeking access to justice for corporate abuses in the Niger Delta and around the world.

The Supreme Court judgment allows the case to proceed in the UK courts, reversing earlier decisions by the Court of Appeal and the High Court, and reaffirming the precedent established in its own previous decision in Lungowe et al v Vedanta Resources plc (2019).

Mark Dearn, Director of CORE, said:

“This landmark ruling is a vital step towards justice for some 50,000 claimants from the Ogale and Bille communities. It sends a clear message to multinational corporations like Shell - you have a duty of care and you will be held to account for human rights abuses and environmental damage caused by subsidiaries you control.

“Shell brazenly claimed in court that the oil spills were due to ‘uniquely Nigerian problems’. But the unique problem long faced by communities in this region is Shell’s impunity, as it has repeatedly tried to dodge accountability for its catastrophic destruction of the environment and people’s livelihoods.”

“It’s now crucial that governments step up to the plate to create new corporate accountability laws so that businesses know exactly what is expected of them.”

Carlos Lopez, Senior Legal Advisor at the ICJ, said:

“The emphasis of the Supreme Court on the relevance of evidence from internal company documents is of utmost importance for the proper assessment of whether the parent company intervened, advised or controlled the relevant activities of its subsidiary, including notably human rights abuses and environmental destruction.

“This should have an impact on future similar proceedings before courts in the UK and elsewhere.”

In Vedanta, the Court affirmed that a parent company that sufficiently intervenes, controls or advises the relevant operations of its subsidiary may bear liability for the breach of its duty of care towards the people affected by those operations.
Okpabi and other nearly 50,000 claimants in total sued Royal Dutch Shell (RDS -the UK based parent company) and its Nigerian subsidiary Shell Petroleum Development Corporation (SPDC) for their alleged involvement in the leakage of oil pipelines which destroyed their farming land, wiped out fish stocks and poisoned drinking water in the Niger Delta, Nigeria.

In 2018 the Court of Appeal dismissed the claimants’ case, but the claimants appealed to the Supreme Court. The ICJ and the CORE Coalition intervened before the Supreme Court.

The Supreme Court has allowed the claim to proceed, focusing on whether the claim had a real prospect of success and the high relevance of the internal company documents for a proper assessment.

ENDS

Notes to Editors:

- This case was first launched in 2015 in the UK High Court. For a timeline of the case’s passage through the UK court system, see here.
- The ICJ and CORE Coalition submitted a legal brief to the Supreme Court setting out the applicability of comparative law and standards regarding companies’ responsibilities in relation to human rights and environmental protection. These standards showed that Royal Dutch Shell PLC (Shell) could have duty of care in relation to the communities affected by its Nigerian subsidiary’s activities.
- In 2018 the Court of Appeal dismissed the claimants’ case, ruling that Shell did not exercise sufficient control over its subsidiary SPDC for Shell possibly to hold a duty of care towards those affected by the oil spills.
- The Supreme Court judgment reverses that judgment, cautioning against dismissing such claims in “mini-trials” without proper access to all relevant facts and evidence that are in great part in the power of the company. The judgment clarifies the evidential threshold needed for the courts to hear such cases in the UK: “The resolution of the jurisdictional challenge depended upon whether the appellants’ claim satisfied the summary judgment test of real prospect of success.” (para 127 ref. Vedanta at para 45.)
- In another section the Court also corrected the Court of Appeal’s view that the promulgation by a parent company of group wide policies or standards can never in itself give rise to a duty of care, saying: “that is inconsistent with Vedanta. Group guidelines … may be shown to contain systemic errors which, when implemented as of course by a particular subsidiary, then cause harm to third parties.” (para 143.)
- In Lungowe v Vedanta Resources plc, which CORE and the ICJ similarly filed a joint intervention, the Supreme Court ruled that a duty of care was owed by the UK parent company, Vedanta. A settlement was subsequently reached. As the Supreme Court notes, this ruling was, “very relevant to both the procedural and the substantive issues raised on this [Okpabi v Shell] appeal.”