HOW MANY WRONGS DOES IT TAKE TO MAKE A HUMAN RIGHT?

Its not the leaking roof
Nor the singing mosquitoes
In the damp, wretched cell
Its not the clank of the key
As the warder locks you in
Its not the measly rations
Unfit for man or beast
Nor the emptiness of day
Dipping into the blankness of night
It is not
It is not
It is not.
It is the lies that have been drummed
Into your ears for one generation
It is the security agent running amok
Executing callous calamitous orders
in exchange for a wretched meal a day
The magistrate writing into her book
Punishment she knows is undeserved
The moral decreptitude
Mental ineptitude
The meat of dictators
Cowardice masking as obedience
Lurking in our denigrated souls
It is fear damping trousers
We dare not wash of our urine
It is this
It is this
It is this
Dear friend, turns our free world
Into a dreary prison.

The True Prison
Ken Saro-Wiwa

INTRODUCTION

In order to perceive a legal wrong, a court must entertain both an accuser and an accused. The parties of a dispute must present their respective versions of an incident or an accident to a judge or a jury who will, if the issue is justiciable, determine a legal solution. In the process, each party produces

facts and evidence that will support its own position and undermine the opponent's argument. The process becomes more complex as more parties enter the dispute. More fingers point; more versions of the story manifest themselves. Theoretically, this fecundity should produce a more complete picture—a more honest accounting of the wrong, a more accurate appraisal of the situation, and a more enlightened deliberation of the legal solution. This appears to be the goal, as well as the foundation of the legal process. Presumably, each party stands and speaks for itself, and the side with the more persuasive argument ultimately wins. Reality, however, often contravenes theory.

To enter the legal arena, the individual, in theory, needs merely to have a legally cognizable conflict, an opponent, and an appropriate legal forum. The aggrieved party complains to an impartial court, the opponent responds, and the show begins. This admittedly simplistic formula presumes that the parties can articulate their stories, that the dispute can be resolved, and that a competent court can enforce an adequate solution. These presumptions challenge the accuser to define the problem accurately, choose the forum precisely, and persuade the court adequately. These presumptions also encourage the opponent to undermine the accuser at each and every opportunity in order to avoid liability or responsibility. This defines the nature of the adversarial legal model.

This model works particularly well when the adversaries command relatively equal respect between each other, and from the court. The system does not work well, however, if one party has no voice or lacks adequate access to an impartial tribunal. Neither does it work if one party has too much access to a tribunal, or if a tribunal is predisposed to one party and hostile to the other. Under these circumstances, the purpose of the adjudication—to fairly resolve the conflict—becomes lost.

Today, many indigenous groups still experience the latter scenario when they attempt to assert their legal rights domestically and internationally. The legal rights in question range from the basic civil and human rights necessary for their legitimate existence, to communal property rights, and environmental justice. Often, the assertion of basic rights by indigenous groups forces them to confront opponents who either control the legal process entirely, or have far greater access to the legal arena.[1] Contrary to common sense and common

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1. *See generally* GRAND COUNCIL OF THE CREE, SOVEREIGN INJUSTICE (1995); W. Michael Reisman, *Protecting Indigenous Rights in International Adjudication*, 89 AM. J. INT'L. L. 350 (1995); Andrea Carmen, *Letter: Indigenous Peoples*, Z MAGAZINE, Sept. 1997, at 2; Charles J. Hanley, *Lure of the Modern World May Sap Life of Forest People*, CHI. TRIB., June 7, 1996, at 8; Eyal Press, *Jim Bobs Indonesian Misadventure: A U.S. Mining Company Clashes with Indigenous Peoples*, THE PROGRESSIVE, June 1996, at 32; Aaron Sachs, *Upholding Human Rights and Environmental Justice*, THE HUMANIST, March 1996, at 5.

notions of fairness, the more fundamental the right in question, the more unlevel the playing field.[2]

One particularly lopsided dispute, the conflict between the Ogoni people of Nigeria (Ogoni), the Royal Dutch/Shell Company (Shell), and the Nigerian government, illustrates the David and Goliath potential of these conflicts. To the casual observer, this dispute appears as a domestic environmental claim by the Ogoni people against the multinational oil conglomerate, Shell. However, the Ogoni claim challenges the very notion of the rule of law in Nigeria itself.[3] This dispute exemplifies the basic underlying question contained within many indigenous rights claims: How universal is the rule of law?

The Ogoni are a minority within an ethnic minority.[4] Shell is one of the world's largest oil companies[5] and Nigeria is the sixth largest oil producing state in the Organization of Petroleum Exporting Countries (OPEC).[6] In Part I, this Note will explore the factual antecedents of the Ogoni dispute with both Shell and the Nigerian Government. Part II summarizes the issues that characterize this dispute as a legal dispute,[7] and attempts to define the legal conflict and locate a potential forum.[8] Part III explores the viability of the various forums with respect to potential claims. Finally, this Note will examine the notion of corporate social responsibility as an alternative to legal solutions.

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2. For the purposes of our discussion the fundamental rights are the right to self-determination, land or territorial sovereignty, and the right to a liveable environment.

3. *See infra* notes 93-96 and accompanying text.

4. *See generally* WALDEN COUNTRY REPORTS, NIGERIA (1995). Since Nigeria's independence in 1960, Nigerians have, at least technically, ruled the country. *See id.* In this sense, Nigeria can claim indigenous rule. Three major ethnic groups—the Hausa Fulani of the north, the Yoruba of the west, and the Ibo of the east— have each vied for the right to rule Nigeria. *See id.* The Hausa Fulani comprise the largest group, claiming 50% of Nigeria's population. *See id.* The Yoruba claim 25% percent and the Ibo claim roughly 15%. *See id.* Nigeria has approximately another 250 minority tribes. *See id.*

5. *See generally Royal Dutch/Shell Group*, Hoover's Company Profile Database - World Companies, Sept. 1, 1996, *available in* LEXIS, Hoover's Company Profile Database, World Companies. "As an oil refiner and seller, Royal Dutch/Shell edged ahead of Exxon in 1993 and outsells #3 Mobil by almost 2 to 1." *Id.* Shell's sales in 1994 were $118 billion and its net income was $4 billion. *See id.*

6. *See* FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, NIGERIA: A COUNTRY STUDY 186 (Helen Chapin Metz, ed., 1991); WALDEN COUNTRY REPORTS, *supra* note 4.

7. The purpose of this Part is to illustrate the complexity and the seriousness of the Ogoni-Shell-Nigerian dispute rather than to lay out a particular cause of action in a specific forum. This fact pattern illustrates both the need for a competent and responsible forum, and the difficulty, if not the impossibility, of locating such a forum.

8. The examination of the various forums and applicable laws in this part is cursory, at best. However, without exploring the particularized bodies of substantive law, the message in this part is that the logical forums in this case, and in many other indigenous rights cases, fails to be adequate. Whether Nigeria has sufficient environmental or human rights law written into its legal code means little if its government consistently ignores, undermines, or supersedes the rule of law. *See infra* Part III, discussing the lack of adequate forums for the Ogoni claims.

I. HISTORY AND BACKGROUND OF THE DISPUTE BETWEEN THE OGONI PEOPLE, SHELL OIL COMPANY, AND THE NIGERIAN GOVERNMENT.

The dispute between the Ogoni people and Shell began long before the Nigerian General Sani Abacha regime[9] hanged playwright/environmentalist Ken Saro-Wiwa and eight other Ogoni activists.[10] Those executions, however, travel to the very heart of the dispute.

Shell exported its first oil from Nigeria in 1958.[11] Currently, it controls roughly half of Nigeria's estimated two million barrels per day (bpd) of oil production.[12] This production level makes Nigeria OPEC's sixth largest oil exporting country.[13] Oil, which comprises over ninety percent of Nigeria's export revenues, provides the Nigerian government with ten billion dollars per year.[14]

Between 1958 and 1993, Shell extracted approximately thirty billion dollars worth, or six hundred million barrels, of crude oil from the Ogoni oil fields in the Niger River delta.[15] Until 1993, Shell's operations in Ogoniland yielded about 28,000 barrels per day, or 2.8% of Shell's total Nigerian output.[16] Shell's operations in Ogoniland include four oil fields, ninety-six oil wells, and two refineries.[17] The Movement for the Survival of the Ogoni People (MOSOP), led by Ken Saro-Wiwa, mounted a persistent campaign protesting Shell's disastrous environmental and economic policies in Ogoniland.[18] The MOSOP campaign culminated in a 300,000 person rally on

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9. For a discussion of the political climate in Nigeria, see CLAUDE E. WELCH, JR., PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NON-GOVERNMENTAL ORGANIZATIONS 55, 111-17 (1995). *See also Nigeria: New Reports on Ogoni Crisis*, AFRICA NEWS SERVICE, July 1995. For a discussion of lawyers, human rights, and Nigeria's military regimes, see Okechukwu Oko, *Lawyers in Chains: Restrictions on Human Rights Advocacy Under Nigeria's Military Regimes*, 10 HARV. HUM. RTS. J. 257 (1997).

10. On November 10, 1995, the regime of General Sani Abacha hanged nine Ogoni activists for allegedly inciting a riot that caused the deaths of four Ogoni leaders. *See* EVELYN A. ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 118 (1996). The names of the nine are Ken Saro-Wiwa, Barinem Kiobel, John Kpuinen, Baribor Bera, Saturday Dobee, Felix Nuate, Nordu Eawo, Paul Levura, and Daniel Gbokoo. *See id.*

11. *See* FEDERAL RESEARCH DIVISION, *supra* note 6, at 46. Shell's first commercial discovery occurred at Olobiri in the Niger Delta. *See id.*

12. *See* WALDEN COUNTRY REPORTS, *supra* note 4. *See also* sources cited *infra* note 14.

13. WALDEN COUNTRY REPORTS, *supra* note 4.

14. *See Status of Africa's Environment: Hearings Before the Subcomm. on Africa of the House Comm. on International Relations*, 104th Cong. 17 (1996) (statement of Steven Mills, Campaign Director, Sierra Club) [hereinafter *Status of Africa's Environment*].

15. *See id. See also* WELCH, *supra* note 9, at 114.

16. *See* Dulue Mbachu, *Nigeria-Economy: Not Yet Healing Time in Ogoniland*, INTER PRESS SERVICE, May 28, 1996.

17. *See Status of Africa's Environment*, *supra* note 14.

18. *See* Andy Rowell, *Shell Shocked*, VILLAGE VOICE, Nov. 21, 1995, at 21. The Ogoni created MOSOP as a reaction to a massacre in the Ogoni community of Umuechem in 1990. The massacre occurred after Shell management called on the Nigerian police to "quell" a protest by the Umuechem

January 3, 1993—the largest ever against the oil industry.[19]

While Shell divided the profits from the thirty billion dollars worth of Ogoniland oil with the Nigerian National Petroleum Corporation (NNPC), little, if any, of the government's oil revenues trickled down to the Ogoni themselves.[20] Many Ogoni households still lack electricity, running water, adequate schools, or health care.[21] Unfortunately, the Ogoni do not lack leaking crude oil.

"From 1982 to 1992, 1.6 million gallons of oil were spilled from Shell's Nigerian fields in twenty-seven separate incidents."[22] Although Nigeria accounts for only thirteen percent of Shell's total oil production, forty percent of the company's oil spills have occurred there.[23] Initially, Shell denied any responsibility for the spills in Ogoniland.[24] Shell maintained that it followed the same standards in Nigeria as it did in the United States and Great Britain.[25] However, the Sierra Club's Steve Mills testified before the House Committee on Africa that Nigeria has "few or no requirements to conduct environmental impact studies, recycle oil waste or lay subterranean oil pipes instead of cheaper above ground pipes."[26] Instead, Shell pointed the finger at MOSOP, claiming that the Ogoni themselves have sabotaged the oil pipelines.[27] Dr. Owens Wiwa, brother of Ken Saro-Wiwa, questioned the Shell logic on this point:

> The Ogoni people would be the last people on earth to go near the Shell installations because they know that if anything goes wrong on the pipelines or on the installations it is their land which they hold precious that will be spoiled—that will be devastated it is their streams from which they fish and drink water that will be polluted because there is no piped water in Ogoniland it's only the

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residents. *See id. See also infra* notes 57-63 and accompanying text.

19. *See* Rowell, *supra* note 18, at 22.

20. *See Status of Africa's Environment*, *supra* note 14. Additionally, through corruption and mismanagement of the NNPC, countrywide gasoline and petroleum product shortages plague this oil rich country. *See* WALDEN COUNTRY REPORTS, *supra* note 4.

21. *See Status of Africa's Environment*, *supra* note 14.

22. Rowell, *supra* note 18, at 21. Another commentator, however, provides a drastically higher number of oil spills in Nigeria for the period between 1971-1980. *See* Pita Ogaba Agbese, *Nigeria's Environment: Crises, Consequences, and Responses*, *in* ENVIRONMENTAL POLICIES IN THE THIRD WORLD: A COMPARATIVE ANALYSIS 130 (O. P. Dwivedi & Dhirendran K. Vajpeyi eds., 1995) Pita Agbese records 1,131 oil spills during the period between 1971-1980. Also, the Nigerian Environmental Society claims that 1.7 million barrels of crude oil were spilled between 1970-1983. *See id.*

23. *See* Rowell, *supra* note 18, at 21.

24. *See* Claude Ake, *Shelling Nigeria Ablaze*, TELL (Nigeria), *Jan. 29, 1996*, *reprinted in Nigerian Democratic Movement Information Release*, (visited Oct. 19, 1996) <http://www.cldc.howard.edu/~ndmorg/Information_Releases/ShellArms.html>.

25. *See* Vince Bielski, *Shell's Game*, SIERRA, March 1996, at 32-34. *See also infra* Part IIA.

26. *Status of Africa's Environment*, *supra* note 14.

27. *See* Ake, *supra* note 24.

> water from the streams so no Ogoni person will go near any Shell installation for sabotage because that would lead to spillage and we understand spillages and devastated land more than any people in the world.[28]

Primarily, the Ogoni live a subsistence lifestyle. Traditionally, they have fished the Niger River delta and farmed the fertile delta land.[29] Numbering 500,000, they comprise only a fraction of Nigeria's estimated population of 102 million.[30] In terms of land, the Ogoni live on four hundred square miles at the Niger River delta.[31] The whole of Nigeria covers 357,000 square miles in West Africa.[32]

Ogoniland is a densely populated, but agricultural region.[33] The land has value to the Ogoni beyond the possessory right.[34] MOSOP claims that Shell's business practices in the region have rendered the Ogoni soil unfarmable and the Ogoni water undrinkable; oil spills from antiquated equipment have polluted the water.[35] Shell's thirty-three years of twenty-four-hour-a-day gas flaring, which violated even Nigerian law, caused respiratory diseases, hearing loss, and airborne diseases among the Ogoni.[36] The Ogoni claim that these gas

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28. Greenpeace, *Nigeria Statement by Dr. Owens Wiwa*, AFRICA NEWS SERVICE, Feb. 1, 1996.

29. MARC S. MILLER ET AL., STATE OF THE PEOPLES: A GLOBAL HUMAN RIGHTS REPORT ON SOCIETIES IN DANGER 173 (Cultural Survival ed., 1993).

30. *See id.*; WALDEN COUNTRY REPORTS, *supra* note 4. Nigeria is Africa's most populous country, comprising one fifth of the continent's population. *See id.*

31. *See* Bielski, *supra* note 25, at 30.

32. *See* WALDEN COUNTRY REPORTS, *supra* note 4. Cameroon borders Nigeria's south and east, Niger borders its north, Benin borders its north and west, and the Gulf of Guinea (Atlantic Ocean) borders its south and west. *See id.*

33. *See* MILLER ET AL., *supra* note 29, at 173.

34. Value should not be limited to the monetary sense. A tree, for example, can have a greater value than its monetary assignment. A tree may physically provide shade, fire wood, or sustenance. It may also provide a spiritual point of reference for a people. For example, "[t]hroughout West Africa, from Senegal to the Niger, . . . the huge *Ceiba pentandra*, which we know as the silk cotton tree . . . is considered as the home of a deity. Such sacred groves are places of religious ceremony and worship, and are protected from cutting or other acts of destruction." NATHANIEL ALTMAN, SACRED TREES 62 (1994). "In southern Nigeria, there was once a sacred tree in the town of Uduku. Its name was Eyeyek and its indwelling spirit was believed to speak to worshipers through the priests of Idiong, a secret cult. It also acted as a guardian to those who took refuge in its shade." *Id.* at 63.

Likewise, the land itself may have a particular non-monetary value to a people. For example, the Lakota people of North America believe that:

> [b]eyond the obvious fact that land provides subsistence, it is the source of spiritual origins and sustaining myth, which in turn provide a landscape of cultural and emotional meaning. The land often determines the values of the human landscape . . . . The people needed the land and each other too much to permit wanton accumulation and ecological impairment to the living source of nourishment.

FRANK POMMERSHEIM, BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE 14 (1995).

35. *See* MILLER ET AL., *supra* note 29, at 173-74.

36. *See id. See also* videotape: Delta Force (Catma Films 1995); *Shell Moves to Cut Nigerian Gas*

fires also caused acid rain, which destroyed the land's fertility and productivity.[37]

Shell disregarded repeated warnings by its own head of environmental studies, Bopp Van Dessel, that Shell's production operations in Nigeria caused this widespread pollution.[38] Eventually, Van Dessel resigned from Shell in 1994, protesting Shell's recalcitrant attitude.[39] Van Dessel reported that Shell generally did not properly operate its facilities.[40] He thus vindicated MOSOP's four years of accusations and protests. From his insider's perspective, Van Dessel verified that in Nigeria, Shell did not meet its own company or international environmental standards.[41]

The environmental disruption in Ogoniland has spilled over onto the social fabric of the traditional Ogoni way of life. One source estimates that over twenty thousand Ogoni must now migrate to neighboring Gabon and Cameroon to find work.[42] This migration displaces families and destroys the traditional Ogoni culture.[43]

Despite the wealth beneath their land, the Ogoni appear to have no political or economic rights within the Rivers State—a state within Nigeria—let alone with the Nigerian government. In 1978, the military declared that all land in Nigeria belonged to the federal government.[44] When Shell acquired Ogoni farmland in the delta for oil exploration, Nigerian law enabled Shell to compensate the villagers for their annual crop rather than for the land itself.[45] Since three quarters of the Ogoni can neither read nor write, many Ogoni could not understand the compensation forms that Shell required them to sign.[46] Some Ogoni claim that Shell forced them to accept money as compensation, but they never actually received the monies promised to them.[47]

Shell, however, maintained publicly that it has provided "large sums of money to Ogoni community projects."[48] Privately, Shell has conceded that the "donations" never reach their intended destinations.[49] Nor has Shell's

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Flaring, REUTER EUROPEAN BUSINESS REPORT, Oct. 21, 1996.

37. *See* MILLER ET AL., *supra* note 29, at 174.

38. *See Sierra Club—Shell/Nigeria Documentary, Shell Ignored Nigeria Pollution, ex-manager says*, REUTERS NEWS REPORT (London), May 12, 1996 (visited Oct. 19, 1996) <http://www.sierraclub.org/saro-wiwa/documentary1.html>.

39. *See id.*

40. *See id.*

41. *See id.*

42. *See* MILLER ET AL., *supra* note 29, at 174. It seems quite ironic that in Nigeria's most oil rich region—the Delta/Rivers States—Nigerians must leave Nigeria to find work.

43. *See id.*

44. *See Status of Africa's Environment*, *supra* note 14.

45. *See* Rowell, *supra* note 18, at 21.

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.*

presence brought jobs to the Ogoni, as only eighty-eight of Shell's five thousand Nigerian employees were Ogoni.[50]

In 1990, the five Ogoni kingdoms sent a signed draft bill of rights to the Nigerian federal government.[51] The Ogoni demanded "political autonomy, political representation at the federal level, local control of development resources, and religious and cultural rights."[52] When the federal government did not act, MOSOP issued an ultimatum to the area's three major companies—Shell, Chevron and NNPC[53]—demanding six billion dollars in oil royalties.[54] The oil companies did not send six billion dollars to the Ogoni. However, the Nigerian military government did send armed forces into Ogoniland.[55]

MOSOP and others have charged Shell and the Nigerian regime with collusion.[56] In October 1990, members of the Umuechem community occupied a portion of a Shell facility demanding compensation for their farmland taken over by Shell.[57] Despite a peaceful protest by the Umuechem, Shell sent an urgent message to the Nigerian police requesting Mobil Police Force (MPF) protection.[58] The MPF responded with a "scorched earth" assault that killed eighty people and left 495 homes either totally destroyed or badly damaged.[59] A judicial inquiry later lambasted the MPF for its vicious actions against the peaceful protesters.[60] Shell eventually issued a statement of regret for the Umuechem tragedy, but it defended its actions saying, "The request for police assistance was in strict accordance with legal requirements when an interruption to oil production may be caused."[61]

Rather than stop the protests, the actions by the MPF and Shell fed the fires of Ogoni opposition and resolve. Out of the ashes of the Umuechem

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50. *See id.*

51. *See* MILLER ET AL., *supra* note 29, at 174.

52. *Id.*

53. *See* FEDERAL RESEARCH DIVISION, *supra* note 6, at 186. While the Shell presence in Nigeria may currently be the most notorious, other oil companies including Chevron and Texaco have also done business in Nigeria without clean hands. *See* James Kolawole Egunjobi, *Nigeria, in* INTERNATIONAL HANDBOOK OF POLLUTION CONTROL 289 (Edward J. Kormondy ed., 1989). In January 1980, an oil well jointly owned by the NNPC, Chevron, and Texaco, blew up spilling over 146,000 barrels of crude oil into the Bight of Benin. *See id.* Commentator Paul Nwabuikwu has stated that "Nigerian communities in Rivers, Cross River and Imo States (the main areas of oil exploration) fight a daily battle with oil spillage which destroys their rivers and farms." Agbese, *supra* note 22, at 130.

54. *See* MILLER ET AL., *supra* note 29, at 174.

55. *See id.*

56. *See* Bielski, *supra*, note 25, at 35.

57. *See id.*

58. *See id.*

59. *Id.* at 30.

60. *See* Rowell, *supra*, note 18, at 21.

61. *Id.*

massacre rose MOSOP.[62] By 1993, MOSOP organized nearly three hundred thousand people in Ogoniland under the banner of environmental justice.[63] As a result, Shell suspended oil extraction from Ogoniland in 1993.[64]

As Shell retreated, the Nigerian military advanced into the delta.[65] Publicly, Shell denied any connection with the Nigerian military.[66] As one spokesperson for Shell in New York insisted, "Business shouldn't be in the business of being political."[67] Various memos and actions by the MPF and Shell, however, have revealed otherwise.[68]

On January 29, 1996, the *Dow Jones* reported that Shell admitted to importing weapons into Nigeria to help arm the police.[69] Shell acknowledged buying handguns for the ill-equipped police force which guards Shell's facilities.[70] The same report also quoted Nigeria's former Chief of Defense Staff, Lieutenant-General Alani Akinrinade, as saying that the police were "well armed and do not need anyone to import arms for them."[71]

In a Nigerian newspaper, *Tell*, Professor Claude Ake called for an official inquiry into the matter.[72] Professor Ake resigned as head of Shell's Niger Delta Environmental Survey (NDES) advisory committee after the regime hanged the nine Ogoni activists.[73] Professor Ake stated he began to doubt both Shell's sincerity to make amends for past environmental devastation and the impartiality of the NDES.[74] Professor Ake reported that in a case before a Lagos High Court, an arms dealer, Humanitex Nigeria Limited, sued Shell Nigeria for a breach of a 1993 contract.[75] An official involved in the dispute signed an affidavit attesting to the fact that "Shell was making the purchase to update the firearms of its own security forces across the country."[76]

In 1995, Human Rights Watch/Africa produced a report implicating the Nigerian military, in this case the Rivers State Internal Security (RSIS) Task Force, in a series of punitive raids against the Ogoni.[77] An internal government memo, acquired by MOSOP from the Chairman of RSIS, Major

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62. *See* Bielski, *supra* note 25, at 30. *See also supra* notes 18-19 and accompanying text.
63. *See* Bielski, *supra* note 25, at 30.
64. *See id.* at 32.
65. *See id.*
66. *See id.* at 34-35.
67. *Id.* at 34.
68. *See generally Nigerian Democratic Movement Information Release, Jan. 29, 1996* (visited Oct. 19, 1996) <http://www.cldc. howard.edu/~ndmorg/Information_Releases/ShellArms.html>.
69. *See id.*
70. *See id.*
71. *Id.*
72. *See* Ake, *supra* note 24, at 34.
73. *See Status of Africa's Environment*, *supra* note 14.
74. *See* Ake, *supra* note 24, at 34.
75. *See id.*
76. *Id.*
77. *See Nigeria: New Reports on Ogoni Crisis*, *supra* note 9.

Paul Okuntimo, outlines the RSIS strategy to deal with the Ogoni situation.[78] In the memo, Okuntimo states that "Shell operations [are] still impossible unless ruthless military operations are undertaken for smooth economic activities to commence."[79] He also cryptically suggests that the oil companies have a monetary investment in the RSIS operation, reporting "pressure on oil companies for prompt regular imputs as discussed."[80]

II. POTENTIAL LEGAL ISSUES

The Ogoni people may have multiple claims against both Shell and the Nigerian government.[81] These claims would primarily fall into two categories—environmental and human rights. The environmental claims arise from Shell's drilling activities on the Ogoni's land from 1958 to 1993.[82] The Ogoni charge that Shell contaminated Ogoni soil, water, and air during those years, while it took away thousands of barrels of premium crude oil and earned billions of dollars for itself.[83]

The Ogoni assert that Shell's environmental degradation also violated the Ogoni's human rights.[84] The Ogoni could no longer survive as individuals, as a people, or as a distinct ethnic minority.[85] Since they could no longer farm their land, fish or drink from their streams, or breathe the air, they claim that Shell threatened the Ogoni's very existence.[86] Although Shell extracted oil from Ogoniland, it hired few Ogoni and paid little for the use of that land.[87] When the Ogoni confronted Shell directly in 1990, Shell responded by calling out the Nigerian Mobil Police, who killed and wounded numerous Ogoni protesters.[88]

The Ogoni also have potential claims against the Nigerian Government. The Ogoni, along with the other minority groups, complain that the military

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78. *See Secret Nigerian Government Memo* (visited Oct. 19, 1996) <http://www.sierraclub.org/saro-wiwa/secretmemo.html>.

79. *Id.*

80. *Id.* Major Okuntimo has made no secret of his aggressive approach to resolving the Ogoni conflict. *See* Delta Force Video, *supra* note 36. He has been recorded on video tape explaining the finer points of his strategy. *See id.*

81. The intent of this Part is simply to frame the Ogoni-Shell-Nigeria dispute in a more or less legal context. It is beyond the scope of this Note to exhaustively explore all the possible legal claims, or even the best claims, that the Ogoni could have against Shell or the Nigerian government. The purpose of this Part is to illuminate the breadth of legal claims arising out of this particular dispute.

82. For a discussion on the history and background of the Ogoni/Shell dispute, *see supra* Part I.

83. *See Nigeria: New Reports on Ogoni Crisis*, *supra* note 9; Michael Smith et al., *The Human Cost has Been Too High, Says 'Horrified' Shell*, THE DAILY TELEGRAPH, Nov. 11, 1995, at 2.

84. *See* Smith, *supra* note 83, at 2.

85. *See id.*

86. *See id.*

87. *See supra* text accompanying notes 45-50.

88. *See supra* text accompanying notes 51-60.

regime has denied them a voice in Nigeria's decision making process, compensation for valuable land lost due to oil exploration and pollution, and a fair share of the revenues from that oil.[89]

The Ogoni further claim that both Shell and the Nigerian government have conspired to harass, maim, and kill them because the Ogoni stand in the way of large oil profits.[90] In short, the Ogoni claim that the Nigerian Government works for Shell.

A. Environmental Dispute

If one looks at the Ogoni-Shell-Nigeria dispute from an environmental perspective, the question becomes: What level of environmental degradation by industry must a community be expected to endure? This issue encompasses both site specific tort litigation and the most broad-reaching concepts of economic development.[91] Industrial pollution can degrade both the domestic and the transnational environment.[92]

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89. *See* MILLER ET AL., *supra* note 29, at 173-74.

90. *See Nigeria: New Reports on Ogoni Crisis*, *supra* note 9. *See also* WOLE SOYINKA, THE OPEN SORE OF A CONTINENT 3-6, 151 (1996).

91. In practice, the balancing of the environment versus economic development seems to vary greatly. The pattern tends to provide more industry deference for developing third world countries and less deference in wealthy first world neighborhoods. This is the realm of environmental justice. Coincidentally, developing third world countries tend to have lower (or non-existent) domestic environmental standards than developed countries. *See, e.g.*, Andrew Hurrell, *Brazil and the International Politics of Amazonian Deforestation*, *in* THE INTERNATIONAL POLITICS OF THE ENVIRONMENT: ACTORS, INTERESTS, AND INSTITUTIONS 398, 422 (Andrew Hurrell & Benedict Kingsbury, eds., 1992); Martin Khor Kok Peng, *Reforming North Economy, South Development and World Economic Order*, *in* GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER 163-5 (Jeremy Brecher et al., eds., 1993); CAROLINE LEQUESNE, REFORMING WORLD TRADE: THE SOCIAL AND ENVIRONMENTAL PRIORITIES 2-3, 67-77 (1996); LAWRENCE E. SUSKIND, ENVIRONMENTAL DIPLOMACY: NEGOTIATING MORE EFFECTIVE GLOBAL AGREEMENTS 19-21 (1994); Tom Wathen, *A Guide to Trade and the Environment*, *in* TRADE AND THE ENVIRONMENT: LAW, ECONOMICS AND POLICY 3, 10-11 (Durwood Zaelke et al., eds., 1993); Konrad von Moltke, *Environmental Protection and Its Effects on Competitiveness*, *in* DIFFICULT LIASON: TRADE AND THE ENVIRONMENT IN THE AMERICAS, 5, 8-9 (Heraldo Munoz & Robin Rosenberg, eds., 1993).

92. *See* Egunjobi, *supra* note 53, at 291. Perhaps the most notorious examples are the industrial disasters such as the Chernobyl nuclear disaster in the Ukraine during the Soviet era, the Union Carbide gas explosion in Bhopal, India, and the Exxon-Valdez oil tanker spill off the coast of Alaska. Other examples may be more insidious such as acid rain or the greenhouse effect. *See id.*

1. Nigeria's Political Climate

In 1993, the military leader of Nigeria, General Ibrahim Babangida, annulled the Nigerian presidential elections.[93] With this annulment, Nigeria took yet another step away from its professed goal—democracy and the rule of law.[94] In his treatise on African human rights, Claude E. Welch, Jr. described the contemporary political situation in Nigeria:

> Political decay continued unabated. Nigerians by this time were thoroughly disheartened by the obstacles to democratization. Their country's economy, despite its petro-dollars, was in shambles. Major cities were torn by strikes and demonstrations. Violence flared in rural areas, particularly over land claims by competing groups and religious squabbles. Corruption within the police and among other underpaid government employees continued the parasitic nature of the ruling cliques and their followers.[95]

This political climate has not been conducive to basic civil and human rights, much less environmental rights.[96]

Although Nigeria has a constitution, various military leaders have all but extinguished it through a series of military decrees.[97] A 1995 United States Department of State dispatch has responded that:

> Pending a new constitution, some provisions of the 1979 Constitution were observed, although the decree suspending it was not repealed. The regime failed to clarify, however, which aspects of the Constitution remained in effect. Although the regime occasionally made reference to rights or guarantees outlined in the Constitution to suit a particular purpose, it just as often reminded the public of the continued suspension of constitutional rights.[98]

Under these political circumstances, Nigerian law, such as the one that

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93. *See* WELCH *supra* note 9, at 24. On August 27, 1993, after he annulled the election and set up an "interim" civilian government, Major General Ibrahim Babangida stepped down from power. *See id.* At 25. However, by November 17, 1993, General Sani Abacha, another military officer, took over the presidency. *See id.* at 26.

94. *See id.* at 24-26.

95. *Id.* at 26.

96. As a practical matter, the annulment of the 1993 election eclipsed any list of Nigerian laws, environmental or otherwise, since the annulment suspended Nigeria's rule of law. However, it should be noted here that the Ogoni's problem did not begin at the annulment. *See supra* text accompanying note 59. Rather, this event has made obvious what many Nigerians have known for awhile: Nigeria's leadership rules by decree and force (and perhaps whim).

97. *See* WELCH, supra note 9, at 249-50.

98. U.S. DEP'T. OF STATE, NIGERIA HUMAN RIGHTS PRACTICES, 1994 (1995).

forbade twenty-four hour a day gas flares, remained unheeded and ineffective.[99]

2. The State of Nigeria's Environmental Laws

Nigeria enacted its first national policy to protect its environment in 1988, even though extensive environmental problems had existed for a long time.[100] One commentator argues that although Nigeria's environmental problems began during the period of colonial rule (pre-1960), it was the industrialization strategy of the 1970s that caused the current environmental degradation.[101] In the 1980s, a series of environmental disasters forced the Ibrahim Babangida government to implement, albeit ex post facto, a set of national environmental standards.[102] At this point, the government established

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99. *See* MILLER ET AL., *supra* note 29, at 174.

100. Three documents embody the Nigerian environmental policy: The National Policy on the Environment; The Federal Environmental Protection Agency Decree (1988); and the Harmful Waste (Special Criminal Provisions) Decree of 1988. *See* Agbese, *supra* note 22, at 125.

Professor Agbese produces a laundry list of Nigeria's environmental problems that have led to the above policies. It includes "industrial pollution, uncontrolled discharge of industrial wastes, deforestation, oil spillage, soil erosion, desertification, and the dumping of toxic wastes." *Id.*

101. *See id.* at 127. During the 1960s, Nigeria maintained a primarily agricultural economy. Seventy percent of the population engaged in producing crops such as cocoa, cotton, peanuts, and palm oil. *See id.* However:

> [t]he increasing reliance on crude oil production significantly changed the environmental picture in Nigeria. Oil exploration, production, and refining caused serious ecological damage. In addition, the huge foreign exchange that began to accrue after the quadrupling of oil prices in the 1970's financed the import-substitution industrialization strategy adopted by the federal government. Many of the industries attracted in the 1970's are heavy environmental polluters. Oil revenues also financed gigantic agricultural development projects that have produced ecological nightmares.

Id. at 128.

102. *See id.* at 131, 136. The series of disasters included the dumping of 4,000 tons of international hazardous wastes at the Nigerian port of Koko by Italian businessman Gianfrance Raffaelli. *See id.* at 131. Additionally, a number of protests by various communities against oil companies occurred in 1982 for nonpayment of oil spill compensation: Mkpanak community against Mobil Oil in 1980; people of Iko against Shell Oil in 1987; and people of Egbema against the Nigerian Agip Oil Company (NAOC) in 1982. *See id.* at 136. These incidents, along with the emergence of Nigerian environmentalist groups, caused the Babangida government to rethink its attitude toward the Nigerian environment. *See id.*

With respect to petroleum pollution in particular, Nigeria had acceded to a number of international laws. *See* Egungobi, *supra* note 53, at 291.

Nigeria also had a few domestic laws on the books:

> 1. The Petroleum Act of 1969, Section 8 (iii), intended the "formation of regulations to prevent the pollution of watercourses and the atmosphere during petroleum operations." *Id.*
>
> 2. The Petroleum Drilling and Production Regulation, 1969 (Regulation 25), required that "license or Lessee shall adopt all practicable precautions . . . to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the hogh seas by oil, mud or other fluids or substances which might contaminate

the Federal Environmental Protection Agency (FEPA).[103]

The Babangida regime instituted this agency to resolve a multitude of past environmental sins. Essentially, FEPA had the responsibility to research, develop, prescribe, supervise, enforce, and establish a national environmental policy.[104] It also had the duties of advising the federal government on environmental policy and priority issues; preparing environmental master plans and advising the government on the financial requirements for such plans; promoting international cooperation and coordination on environmental issues; and coordinating federal, state, and local government on environmental protection policy.[105] FEPA membership consisted of a chairman, director, and four scientists appointed by the president of Nigeria and one representative from each of the federal ministries.[106]

Notwithstanding this noble endeavor in 1988, Nigeria's new environmental plan had a number of shortcomings from its inception. According to Professor Agbese, the plan employed "essentially ad hoc crisis-management techniques," rather than "a comprehensive, systematic, and long-term approach to ecological problems."[107] The Nigerian government allocated little money to FEPA.[108] A Nigerian structural adjustment program has lessened the role of state regulation in the economy.[109] In other words, Nigeria has been more interested in attracting and maintaining foreign investors than in protecting its environment.[110]

Another fundamental flaw, according to Agbese, is that the policy did nothing to assign responsibility for past environmental transgressions, "even though the culprits are well known."[111] He called the policy "excessively forward looking rather than attempting to rectify the serious ecological

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the water banks or shoreline or which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred shall take prompt steps to control and if possible end it." *Id.* (citation omitted).

3. The Petroleum Refining Regulations, required that "unprogrammed spillage of crude oil, products or chemicals inside a refinery must be notified immediately to the Petroleum Inspectorate to be followed within seven days by a written report." *Id.* (citation omitted).

During the 1980s, Nigeria relied primarily on the oil industry's sense of corporate responsibility to clean up any of its oil spills. *See id.* at 293. Nigerian law provided only for guidelines, record keeping and certification of clean up chemicals. *See id.* The inspectorate division of the NNPC had "no authority to penalize defaulters." *See id. See also infra* Part IV discussing social responsibility and an alternative perspective.

103. *See* Agbese, *supra* note 22, at 137.
104. *See id.*
105. *See id.*
106. *See id.*
107. *Id.* at 141.
108. *See id.*
109. *See id.*
110. *See id.*
111. *Id.* at 142.

problems created by thousands of industries in Nigeria."[112] Agbese argues that the lack of public participation in the creation of Babangida's environmental policy caused the omission of any remedial aspects.[113] However, he also argues that Babangida's 1988 response to the environmental crisis has raised environmental degradation to a national concern and has ironically legitimized environmental organizations.[114]

Finally, Agbese argues that FEPA may be prone to the same corruption and bribery that other Nigerian public institutions experience, thus obviating any serious regulatory role that it could potentially play.[115] Perhaps optimistically, however, he has proposed some solutions to Nigeria's environmental problems:

> The responsibility for safeguarding Nigeria's environment should not lie with the government. Accordingly, to make environmental regulations more effective, the public must be intensely involved in making and implementing environmental policies. While this may have to wait until the full democratization of the political process takes place, a temporary solution is to *give communities as collectives* the power to sue companies and individuals for ecological degradation. FEPA does not have the resources or the personnel to sufficiently monitor the Nigerian environment by itself. . . . [I]t is imperative that *the actual victims of ecological destruction be given the right to monitor their own environment* and to have the power to sue violators for huge compensation.[116]

Agbese's proposals essentially close the circle for Nigeria's environmental laws because his solutions to the ineffectiveness of the laws is to get rid of them. Professor Agbese's argument demonstrates that Nigeria's environmental policy is at best a paper lion—even under its creator, General Babangida. Babangida's successor, General Sani Abacha, has since retired both Babangida and Nigeria's rule of law.[117] While the Ogoni claim goes to the raison d'etre of Nigeria's environmental policy, the Abacha regime has responded to it with "ethnic cleansing" Nigerian style.[118]

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112. *Id.*

113. *See id.*

114. *See id.* MOSOP is, among other things, an environmental justice organization. *Id.*

115. *See id.* at 143.

116. *Id.* at 142-43 (emphasis added).

117. *See* U.S. DEP'T. OF STATE, *supra* note 98.

118. *See* SOYINKA, *supra* note 90, at 6, 150-51. This digression into Nigeria's environmental policy does, however, reinforce one crucial point: civilized jurisprudence can no longer separate environmental rights from human rights, particularly with respect to the indigenous community. The Ogoni, like many indigenous peoples, have been forced to choose between death by starvation and disease (because of

B. Minority Ethnic Group Rights

One cannot easily classify or limit the Ogoni dispute with Shell and the Nigerian government. While numerous oil spills and continuous gas flaring demand corrective measures in themselves, they represent—for the Ogoni people—merely the surface of a much more deeply rooted problem. One commentator, Claude Welch, Jr., describes this problem as one of a minority ethnic group's right of empowerment.[119] As of 1995, one hundred million people from more than two hundred ethnic groups live in Nigeria.[120] Post-colonial Nigeria consists of thirty states with six hundred local governments.[121] Ethnicity determines who rules and who profits from ruling.[122]

The Ogoni, who are a small minority group in the Rivers State and happen to live atop large quantities of oil, want to have a piece of the pie.[123] Welch argues that minority ethnic populations throughout Nigeria, Africa, and the world have rights to community, religion, and language.[124] Two documents, the United Nations International Covenants and the African Charter on Human and Peoples' Rights, guarantee a people's right to self-determination within a framework of equal protection under law.[125] The reality, however, for countries such as Nigeria with deep-rooted ethnic divisions, falls quite short of that ideal.[126] Tyranny of the majority, rather than respect for minorities, is the rule.[127] Under these circumstances, Welch believes that legal recognition of community identity is an essential prerequisite for the resolution of Nigeria's current problems.[128]

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massive environmental degradation in their communities) or, if they protest the degradation, death by execution or murder (at the hands of the national government that has been charged with the group's survival and protection). *See generally* Bielski, *supra* note 25.

119. *See* WELCH, *supra* note 9, at 107-18.

120. *See* MILLER ET AL., *supra* note 29 and accompanying text; WALDEN COUNTRY REPORTS, *supra* note 4.

121. *See* WELCH, *supra* note 9, at 111.

122. *See id.* at 110-13.

123. *See id.* at 111.

124. *See id.* at 109. Theses rights "exist" on paper, anyway.

125. *See id.* at 107-18 (summarizing the United Nations International Covenants and the African Charter on Human and Peoples' Rights).

126. *See id.* at 110.

127. *See id.*

128. *See id.* The central issue that should permeate this discussion, implicitly if not explicitly, is sovereignty. This is the fundamental issue in the Ogoni crisis. But one needs to ask the question: "Whose sovereignty?" How one answers that question naturally determines where one lies on the issue. Three sovereign entities are vying for the right to rule in Nigeria.

Proforma, the Nigerian government appears to hold the traditional legal claim of right. Nigeria became an independent nation-state in 1960. *See* FEDERAL RESEARCH DIVISION, *supra* note 6, at 47. Since then, its neighbors and the world body of governments have recognized it as a sovereign governmental entity. *See id.* Nigeria has entered into treaties and agreements with various other sovereign nation-states

However, Welch concedes that recognition of these group rights may create problems rather than resolve them.[129] Ethnic group empowerment clashes directly with centralized governmental control.[130] The state perceives the minority group empowerment as a threat to power, not as an "essential building-block."[131]

In other words, if the Nigerian government perceives the Ogoni as a threat, they are not very likely to listen to, much less support, the Ogoni protests against Shell. In fact, if the Ogoni were to succeed in their demands, the Nigerian government would, in all likelihood, lose money by that success. Any recognition of the legitimacy of the Ogoni claims threatens the flow of potential oil revenues from Ogoniland, through Shell, to the current regime.[132] Already, Shell's 1993 suspension of operations in Ogoniland has interrupted that flow, albeit temporarily.[133]

C. Individual Human Rights

The traditional human rights perspective, in this case, contains many of the analytical attributes of the previous two perspectives: environmental degradation and minority ethnic group rights. The main difference, however, is that the human rights perspective relates to the legal and civil rights of individuals rather than to those of communities.[134] Amnesty International has

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and it is a member of the United Nations. *See id.* Theoretically, the Nigerian laws and forum should predominate in the resolution of the Ogoni crisis. However, Nigeria does not operate under the rule of law at this time. *See* WELCH, *supra* note 9, at 27. The absence of the rule of law renders moot any debate concerning what specific laws in Nigeria have been broken.

The sovereignty of the Ogoni people presents another issue. The Ogoni are one of the many distinct indigenous groups within Nigeria. *See supra* note 4 and accompanying text. They comprise only a fraction of Nigeria's population. *See supra* note 4 and accompanying text. Like many other indigenous peoples, their existence as a people is tied to the particular land on which they live. Their cultural survival depends upon their sovereignty. If they lose their land, they lose their identity as a people and, ultimately, their existence as a people. *See* WELCH, *supra* note 9, at 54.

129. *See* WELCH, *supra* note 9, at 110.

130. *See id.*

131. *Id.*

132. In some respects, the Ogoni's situation resembles the tribal recognition claims of North American Indians such as the Abenaki who live in the northeastern part of the United States. No one doubts that the Abenaki live and thrive in the region. However, the State of Vermont and the United States government do not presently recognize the Abenaki as an official "tribe." *See generally* State of Vermont v. Elliot, 159 Vt. 102, 616 A.2d 210 (1992) (rejecting the aboriginal rights of the Abenaki). Thus, the Abenaki have no recognized claim to aboriginal title to their traditional homeland, or to the Indian benefits accorded to recognized tribes. *See id.* Therefore, the United States government has no obligation to them or to the land which the Abenaki occupy. *See id.*

133. *See* Rowell, *supra* note 18, at 22. Shortly after the Abacha regime's execution of the nine Ogoni activists, Shell reportedly signed a natural gas contract with the Nigerian government agreeing to extract natural gas from Ogoniland. *See Contract Signed for Controversial Nigeria Gas Plant*, REUTERS BUSINESS REPORT, Dec. 15, 1995.

134. The detention, trial, and execution of the nine Ogoni activists on November 10, 1995 is

called the unfair trial and executions of the nine Ogoni activists "a manifestation of more widespread and systematic violations of human rights in Nigeria."[135] They point out that the Nigerian government has arrested and detained without charges various members of the Ogoni ethnic group for their environmental protests in the Rivers State, and for unlawful assembly in connection with a rally to mark Ogoni Day.[136]

Amnesty International also reported that the Special Tribunals,[137] which have already convicted and executed the nine Ogoni activists, have been convened to try nineteen other Ogoni for the same crime.[138] They report widespread torture and beatings of detained Ogoni leaders, as well as boys and youths.[139] In May and June of 1994, at least fifty Ogoni may have been killed and many others wounded when the military attacked towns and villages in Ogoniland.[140]

Each of these government perpetrated human rights violations arguably has its roots in the Ogoni-Shell conflict. The Ogoni appear to face less than a Hobson's choice. They could choose to accept their fate to be cursed with oil rich land and environmental degradation, thus insuring more disease, poverty, and perhaps the eventual cession of their homeland to the Nigerian government and the oil companies, or they could speak out against what they feel is a wrong against them and suffer the human rights consequences.

III. THE LACK OF ADEQUATE FORUMS FOR THE OGONI CLAIMS

Establishing a grievance, which theoretically should be sufficient to initiate proceedings for legal redress, does not necessarily work for indigenous or minority groups. These groups have an additional burden of finding a forum that will accept their claim. This search is somewhat different than the traditional notion of forum shopping[141] because the groups must find a forum

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perhaps the most strident example of this, but it is far from an isolated event. *See* ANKUMAH, *supra* note 10, at 118.

135. AMNESTY INTERNATIONAL, NIGERIA: A SUMMARY OF HUMAN RIGHTS CONCERNS 1 (1996).

136. *See id.* at 2.

137. *See id.* at 4. The Civil Disturbances Decree No. 2 of 1987 established the Special Tribunals. *See id.* This decree gives the Head of State extrajudicial power to create a special court consisting of a judge and "must include a serving armed forces officer." *Id.* The military government confirms or disallows the convictions and sentences, and the defendant has "no right of judicial appeal to a higher or independent jurisdiction." *Id.*

138. *See id.* at 4. Amnesty International notes that "[t]he federal High Court ruled in December 1995 that their trial should be suspended until it had ruled as to the constitutionality of the special tribunal. As of 1 March the federal High Court has not yet ruled on the matter." *Id.* This question of constitutionality is interesting considering that the Nigerian government has, over the years, repeatedly suspended important parts of Nigeria's Constitution. *See* U.S. DEP'T. OF STATE, *supra* note 98.

139. *See* AMNESTY INTERNATIONAL, *supra* note 135, at 5.

140. *See id.* at 6.

141. *SEE* BLACK'S LAW DICTIONARY 655 (6th ed. 1990).

that will perform three functions: (1) recognize them as a legal entity; (2) provide a fair hearing of the grievance; and, (3) provide an adequate enforceable remedy should the group prevail. The obvious legal fora available to the Ogoni each lack at least one of these crucial elements. Therefore, they ultimately deny the Ogoni an opportunity for a satisfactory resolution of their conflict.

The first element, recognition as a legal entity, concerns the issue of standing within the court's jurisdiction. Recognition of standing means more than recognizing the Ogoni people as Ogoni. It means that a court recognizes the group as a legally cognizable entity over which the court has the authority to preside.[142] The Ogoni are not a recognized legal entity and, therefore, the International Court of Justice (World Court), which would be a logical forum for a case of this political magnitude, offers little hope of a resolution for the Ogoni dispute.

A. The World Court and the United Nations

The World Court hears trans-boundary disputes between its member states:

> [T]he International Court of Justice allows access only to its members, and only States are eligible for membership, and only then, generally, if specific consent to such a judicial submission has been given by the defendant government. As a result, indigenous peoples cannot under any likely set of circumstances have their claims of abuse resolved under international law as assessed by the International Court, or even by some special tribunal with any authority to assess claims put forward on behalf of indigenous peoples.[143]

This severely limits the authority that the World Court can exert with respect to the human rights claims of the Ogoni.

Despite the fact that Nigeria has signed on to various human rights declarations,[144] the World Court cannot act unless another signatory makes a complaint against Nigeria on behalf of the Ogoni.[145] This event is both

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142. *See, e.g.*, Vermont v. Elliot, 159 Vt. 102, 616 A.2d 210 (1992). Despite the Abenaki people's continuous existence in the Northeast, they do not have official status as a tribe. *See id. See also* JOSEPH BRUCHAC, THE WIND EAGLE AND OTHER ABENAKI STORIES i-iii (1985). While the Abenaki are recognized as individuals, they are not recognized as the Abenaki people. As a result, neither the United States nor the State of Vermont have current treaty obligations with the Abenaki.

143. Richard Falk, *The Rights of Peoples (In Particular Indigenous Peoples), in* THE RIGHTS OF PEOPLES 17, 19-20 (James Crawford ed., 1992).

144. *See* AMNESTY INTERNATIONAL, *supra* note 135, at 11.

145. *See* Falk, *supra* note 143, at 19-20.

unlikely and unwise from the statist point of view because any state that does so, in the absence of absolutely clean hands, asks for the "favor" returned in kind. The Ogoni dispute is arguably a domestic dispute. Any state that interferes within Nigeria's borders, and succeeds before the World Court, potentially opens up the largest human rights can of worms imaginable.[146]

The concepts of international law conflict with the principals of state sovereignty. For example, should the United States Constitution govern United States policy towards the Lakota in the aftermath of the battle at Wounded Knee, or should the United Nations Charter govern?[147] Naturally, the United States Government would claim that the United States Constitution governs even though the Lakota may want otherwise. Similarly, Nigeria would claim that Nigerian law governs regardless of what rules the Ogoni prefer.

Another problem with using the United Nations as a forum is that the World Court may not be competent to address the specific claims of the Ogoni.[148] Even if an individual Ogoni could have his or her individual human rights claims addressed, the World Court still might not address the Ogoni people's claims regarding self-determination and the environment.[149] In the case of the former, the term "self-determination" may not apply to the Ogoni "internal" context.[150]

In the case of the latter, the Ogoni may not receive much support for their international environmental claims because, beyond the scope of specific, signed environmental agreements between governments, the United Nations has not offered much hope for redress.[151] Developing nations have been

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146. That is not to say that governments do not meddle inside other state's borders unofficially. What prevents the official interference most likely revolves around an "if you don't dig in my back yard, I won't dig in yours" approach to international legal policy-making and diplomacy. Unofficially, for example, the United States Central Intelligence Agency (CIA) influenced both Iranian and Guatemalan politics in the 1950s. *See* RHODRI JEFFREYS-JONES, THE CIA AND AMERICAN DEMOCRACY 88-91 (1989); HARRY ROSITZKE, THE CIA'S SECRET OPERATIONS: ESPIONAGE COUNTERESPIONAGE, AND COVERT ACTION 174-77, 180-81 (1988); GREGORY F. TREVERTON, COVERT ACTION: THE LIMITS OF INTERVENTION IN THE POSTWAR WORLD 20-25, 44-45 (1987).

147. *See* THOMAS BIOLSI, ORGANIZING THE LAKOTA: THE POLITICAL ECONOMY OF THE NEW DEAL ON THE PINE RIDGE AND ROSEBUD RESERVATIONS 23 (1992).

148. *See* James Crawford, *The Rights of Peoples: 'Peoples' or 'Governments'?*, *in* THE RIGHTS OF PEOPLES 55-56 (James Crawford ed., 1992) (comparing and contrasting interpretations of the term "self-determination").

149. *Id.*

150. *Id.* at 58-59. The Ogoni-Nigeria dispute is an internal or domestic dispute, not an international one. *See id. See also* Hurst Hannum, *The Limits of Sovereignty and Majority Rule: Minorities, Indigenous Peoples, and the Right to Autonomy*, *in* NEW DIRECTIONS IN HUMAN RIGHTS 7-9 (Ellen L. Lutz et al. eds., 1989); UNITED STATES RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS 72-83 (Hurst Hannum & Dana D. Fischer eds., 1993); WELCH, *supra* note 9, at 109.

151. *See* Crawford, *supra* note 148, at 18-21; EDITORS OF THE HARVARD LAW REVIEW, AMERICAN BAR ASS'N., TRENDS IN INTERNATIONAL ENVIRONMENTAL LAW 79-82 (1992) [hereinafter TRENDS IN ITERNATIONAL ENVIRONMENTAL LAW].

reluctant to assent to international environmental treaties because, in addition to the perceived threat to political sovereignty,[152] the treaties may also threaten the developing country's perceived ability to advance economically.[153] This has led to various adaptive approaches to treaty agreements. Since most developing countries with environmental problems are also debtor countries, some commentators have proposed different incentive mechanisms.[154]

However, alternatives such as debt-for-nature swaps and funding environmentally sound development still do not resolve the problem of enforcement. Countries may not have the funding or the personnel to enforce their domestic environmental commitments.[155] Nor would they necessarily have the will.[156] Such alternatives also create the potential danger of holding the environment hostage. Unscrupulous regimes could hold a "gun to the head" of protected and valuable environmental areas with an eye toward increased levels of compensation or future exploitation.[157]

B. The African Regional Charter

By 1992, twenty-seven African countries had ratified the African Charter on Human and Peoples' Rights.[158] The African Charter is a regional human rights instrument designed to establish a pan-African standard of human and peoples' rights, and to establish an African Commission to promote and ensure those rights.[159] Responses to the African Charter have been mixed.[160]

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152. TRENDS IN INTERNATIONAL ENVIRONMENTAL LAW, *supra* note 151, at 79, 96.

153. *See id.* Too much regulation may drive the polluting industries elsewhere.

154. *See id.* at 100-04 (urging debt-for-nature swaps and the tying of World Bank development funds to "eco-development").

155. *See id.* at 101.

156. For example, before the discovery of gold, the Black Hills were easier to reserve for the Lakota Sioux. *See generally*, United States v. Sioux Nation of Indians, 448 U.S. 371, 376-84 (1980); Ward Churchill, *The Earth is Our Mother*, *in* THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE 139, 162-69 (1992); EDWARD LAZARUS, BLACK HILLS WHITE JUSTICE: THE SIOUX NATION VERSUS THE UNITED STATES 1775 TO THE PRESENT (1991). Likewise, the Amazon rain forest was easier to reserve for the indigenous population before grazing land became an issue. *See* Sachs, *supra* note 1.

157. *See* Sachs, *supra* note 1.

158. *See* WELCH, *supra* note 9, at 166. Nigeria signed the 1981 Charter in 1983 and ratified it in 1986. *See* AMNESTY INTERNATIONAL, NIGERIA: A SUMMARY OF HUMAN RIGHTS CONCERNS 11 (March 1996). However, it then nullified Article I of the Charter which states: "The member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them." Ankumah, *supra* note 10, at 172 (quoting the African Charter). *See also Selected Treaties, Resolutions, and other Documents on the Rights of Peoples*, *in* THE RIGHTS OF PEOPLES 193-202 [hereinafter *Selected Treaties*] (citing text of the African Charter).

159. *See Selected Treaties*, *supra* note 158, at 193-202.

160. One commentator argues that the African Charter holds promise since it mentions certain rights, such as the right to development and the right to a healthy environment. *See id.* at 65-66. Other human rights documents do not even mention them. *See* Crawford, *supra* note 148, at 65-66. *See also* ANKUMAH, *supra* note 10, at 11 (stating "in spite of the shortcomings of the Charter and the ineffectiveness

The African Charter, despite its innovative approach and future potential, does have practical shortcomings: reports by the Commission are not public;[161] the Commission, much like the United Nations, interacts only with signatory states;[162] and some question the political independence of the Commission.[163]

The African Charter also contains a feature called the "clawback clause."[164] Essentially, the clawback clause qualifies or conditions a particular right enumerated in the Charter.[165] While the existence of clawback clauses do not per se render the particular rights meaningless, some commentators have criticized the Charter as "tak[ing] away with the left hand that which it has given with the right hand."[166] These critics fear that these clawback clauses provide African regimes an excellent opportunity to undermine the very rights that the Charter claims to protect.[167] Conceivably, regimes could pass laws that would severely restrict or burden the party wishing to exercise the protected right.[168]

By taking a wait and see approach in her study of the African Commission and the African Charter, Evelyn Ankumah has reserved judgment on the African Commission.[169] She points out that the Commission's early pronouncements appear to favor human rights over governmental decrees.[170]

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of certain aspects of the work of the Commission, even in its present form, the African Charter if used creatively can go a long way in protecting human rights.").

Another commentator, Claude Welch, states that the African Commission is a:

> small, weak institution whose mandate and support are limited. [It] draws its duties from a toothless Charter; it suffers from serious staff and resource deficiencies; it cannot yet count on lengthy, positive experience with reports to strengthen the process itself; communications to the Commission have rarely been used to protect the rights of specific individuals. All these points are true. Nonetheless, the ACHPR is starting to make a serious contribution to protecting as well as to promoting human rights in Africa.

WELCH, *supra* note 9, at 162.

161. *See* ANKUMAH, *supra* note 10, at 194.

162. *See id.* at 172-73, 194, 196.

163. *See id.* at 197.

164. *See id.* at 176.

165. *See id.*

> For example, Article 6 of the Charter guarantees the right to liberty subject to "reasons and conditions previously laid down by law." Article 8 guarantees the freedom of conscience and religion "subject to law and order." Article 9 guarantees the freedom of expression so long as it is done "within the law." Article 10 guarantees the freedom of association so long as the person exercising the right "abides by the law."

Id. Finally, "Article 14 guarantees the right to property, however with an extra provision that property may be encroached upon 'in accordance with the provisions of appropriate law.'" *Id.*

166. *Id.*

167. *See id.*

168. *See id.*

169. *See id.* at 179-98.

170. *See id.* at 182.

However, one must remember that the African Commission offers only advisory opinions, and it has no enforcement capacity.[171] Therefore, the Nigerian government is both the conduit and the impediment to any resolution of the current Ogoni crisis.[172]

C. Nigeria and the Home Field Advantage

The Ogoni crisis involves more than just a few oil spills in the jungle. This unresolved crisis strains both the concept of the rule of law and the concepts of international human rights and environmental cooperation. These concepts provide a basis for the modern notion of the nation-state, i.e., the notion of nations within the worldwide community of nations, and subject to the law of nations. Institutions such as the United Nations, NATO, and the African Commission have demonstrated the tendency of nations toward cooperation and interconnectedness. Under these agreements, otherwise sovereign nations have agreed to relinquish a part of their independence in order to integrate themselves with the larger body of nations.[173]

The Ogoni crisis, however, exposes how tenuous those agreements can be. The polluted air, water, and soil in Ogoniland, and the violation of minority or individual human rights demonstrate that governments, even in the face of signed agreements (constitutions included), ultimately hold the trump card. State sovereign power may be difficult, if not impossible, for indigenous groups to surmount.

Sovereignty is a double edged sword. Even belligerent governments recognize that international agreements depend on each nation's assent to the particular law in question.[174] If the country chooses to resist its responsibilities under an international agreement, the international community can only persuade, cajole, or coerce it into accepting its sovereign responsibilities. However, if the regime in Nigeria cannot be persuaded or coerced into carrying out its sovereign responsibilities to its own citizens, then who will—Shell?

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171. *See id.* at 193-98.

172. The African Commission found that the Nigerian government committed numerous rights violations against Ken Saro-Wiwa. *Id.* at 117-18. The Commission requested that the Nigerian government refrain from conduct that might cause "irreparable prejudice to Mr. Saro-Wiwa." *Id.* at 117. Despite various efforts and reports by the African Commission, General Abacha executed the Ogoni nine on November 10, 1995. *See id.*

173. *See, e.g.*, Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

174. *See* Falk, *supra* note 143, at 27.

IV. AN ALTERNATIVE PERSPECTIVE

Rather than focus on a perceived legal wrong committed against an individual or group by a corporation, one could also consider what the corporation views as its legal responsibility. The effect of this shift in perspective can illuminate why the Ogoni-Shell type of dispute arises in the first place.

A. The Business of Business is Business

Corporations, and Shell Oil is no exception to this, are bound by their duties to their articles corporate charters. According to the American Law Institute's (ALI) Principles of Corporate Governance, a corporation "should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain."[175] In other words, a corporation's primary directive is to make money for those who have financially invested in it. However, the ALI does qualify its prime directive by stating that even if neither corporate nor shareholder gain are enhanced:

> the corporation, in the conduct of its business: (1) Is *obliged*, to the same extent as a natural person, to act within the boundaries set by law; (2) *May take* into account ethical considerations that are *reasonably* regarded as appropriate to the responsible conduct of business; and (3) *May devote a reasonable* amount of resources to public welfare, humanitarian, educational and philanthropic purposes.[176]

These constraints protect shareholders from the unreasonable whims of corporate decision-makers. The underlying theory is that individuals invest money in order to make more money in return. Once the corporation meets expenses, the investors expect the remaining profit to be divided and returned to them. This somewhat limits the amount of mad money that corporate decision-makers can throw into communities under the aegis of social responsibility.[177]

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175. AMERICAN LAW INSTITUTE, PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01(a) (1992) [hereinafter PRINCIPLES].

176. *See* PRINCIPLES, *supra* note 175, § 2.01(b) (emphasis added).

177. *See* Pam Solo, *Trade as Aid: Socially Responsible Foreign Business Investment*, BULLETIN OF ATOMIC SCIENTISTS, July 1995, at 55. This is otherwise known as "capitalism with a heart." *Id.*

B. Corporate Social Responsibility

The corporate responsibility tree has three branches.[178] As outlined above, the first branch burdens governments to lay out the legal boundaries for corporations with respect to human rights and the environment.[179] These parameters can be country specific or they can be multilateral. This branch forces governments to promulgate and adopt any regulation that the government wishes a corporation to follow when operating in a host country. In other words, in order to oblige a corporation to follow the law, lawmakers are forced to create the law that they want the corporations to follow.

The second branch permits the corporation to turn inward to create its own standard of socially responsible conduct.[180] Naturally, corporations argue in favor of self-created, self-imposed, and self-enforced standards developed from a purely internal corporate investigation and analysis over government imposed restrictions. The corporate preference, of course, is driven by a desire to control the standard of legal liability. In other words, only if a corporation breaks a law, and only if liability is enforced, will a corporation in fact be legally liable. A potential threat exists that a court or a jury may impose a substantial penalty, thereby affecting the corporate prime directive. On the other hand, if a corporation violates its own voluntary standard of responsibilities, the corporation has acquired no legally enforceable burden. Hence, there is no threat to the prime directive.

The second branch forks into the third branch. Realizing that governments have little incentive to enact broad-reaching human rights or environmental protections, and realizing that corporations have little incentive to overburden their interpretation of "reasonable,"[181] some commentators have proposed strategies for shareholder initiated, industry wide, or general standards of corporate responsibility.[182] The significance of the third branch is that private individuals or groups could pressure corporations into some measure of voluntary social responsibility.

Advocates of this branch are a cluster of private, direct, corporate

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178. *See* PRINCIPLES, *supra* note 175, § 2.01(b).

179. *See id.*

180. *See id.* For example, a Chief Executive Officer of a corporation can take on the role of "chief environmental officer." STEPHAN SCHMIDHEINY, BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT, CHANGING COURSE: A GLOBAL BUSINESS PERSPECTIVE ON DEVELOPMENT AND THE ENVIRONMENT 193-97 (1992).

181. *See supra* text accompanying notes 176-77.

182. *See* Dominic Bencivenga, *Human Rights Agenda: Corporations Weigh Benefits of Voluntary Plans*, NY L. J., July 13, 1995, at 5. This article also cited a proposal by the Clinton administration to create a set of "model business principles." *Id.* "The voluntary principles *suggest* that companies work with non-profits to develop policies, and establish a clearinghouse to review collected plans. The Administration also *urged* cooperation with foreign nations to develop 'best practices' and intends to reward companies with 'outstanding corporate behavior.'" *Id.* (emphasis added).

accountability organizations. These organizations include various combinations of investors, human rights advocates, environmentalists, public interest groups, churches, and religious groups.[183] The current socially responsible capitalism model appears rooted in the 1970s socially responsive investment efforts of the Interfaith Center for Corporate Responsibility.[184] The Center has used both "positive investment strategies" and confrontation in order to force companies to change business practices.[185] Members of the Center have used shareholder resolutions to direct corporate attention to shareholder concerns.[186] These resolutions have been used to alert corporations to issues such as nuclear arms, apartheid in South Africa, and workers' rights.[187] Other organizations, such as the Social Venture Network (1987),[188] the Business for Social Responsibility (1990),[189] and the Coalition for Environmentally Responsible Economies (CERES) (1989),[190] have formed to practice the social responsibility in which they believe.

However, this noble endeavor has one giant shortcoming. Although the corporation has signed on to "good intentions," that does not mean that the corporation will necessarily follow through with good actions.[191] The voluntary corporate code of ethics lacks the mechanism for accountability. For example, Starbucks Coffee, under pressure from grassroots protests, "became the first company in the agricultural commodities sector to announce a 'framework' for a code of conduct."[192] Although Starbucks has done little to change its actual sourcing practices,[193] it has received many accolades for

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183. *See* Solo, *supra* note 177, at 54-56.

184. *See id.* at 55. The primary focus of the Center was to enable the various churches and religious groups to, in effect, put their money where their mouth was. As they espouse, so shall they invest. *See* Bevis Longstreth & H. David Rosenbloom, Corporate Social Responsibility And The Institutional Investor: a Report to The Ford Foundation 3-4 (1973).

185. Solo, *supra* note 177, at 55.

186. *See id.*

187. *See id.*

188. *See id.* The SVN is a network of 500 leaders in entrepreneurial companies. *See id.* at 56. Its members are involved in international development partnerships, the creation of urban jobs, and enterprise partnerships. *See id.* at 56.

189. BSR is an open membership organization that promotes "best corporate practices in the business community." *Id.* It consists of 500 member companies. *See id.*

190. *Id.* CERES is a coalition of investors, environmentalists, religious organizations, and public interest groups. "The 'CERES Principles' address the protection of the biosphere, the sustainable use of natural resources, the reduction and disposal of waste, energy conservation, risk reduction, safe products and services, the right of the public to know, and audits and reports as a way to measure compliance with the principles." *See id.* Polaroid, General Motors and the Sun Company have endorsed the "CERES Principles." *See id.*

191. John Entine & Martha Nichols, *Blowing the Whistle on Meaningless "Good Intentions,"* CHI. TRIB., June 20, 1996, at 21. Some commentators assert that the real beneficiaries of the well-publicized codes are the "companies who are embarrassed into drafting them, not the people they were designed to help." *Id.*

192. *Id.*

193. Sourcing is the practice of purchasing raw materials from export houses. In this case,

its intentions. It and other socially responsible corporations have been applauded for their mission statements, rather than their corporate practices.[194] Yet, voluntary codes of conduct alone may prove little more than clever public relations or advertising gimmicks.

Within the Ogoni-Shell context, one must ask what is the Shell corporate policy toward the environment in Nigeria. Shell Nigeria (SPDC) claims that its environmental policies have evolved since the 1980s.[195] Today, "all environmental activities are integrated into a single company-wide plan."[196] Shell Nigeria claims to be "committed to a detailed environmental programme aimed at bringing operations up to internationally accepted levels of performance."[197] Shell's policy in Nigeria is that "all activities are designed and executed to minimi[z]e environmental impact."[198] These aspirations undoubtedly qualify SPDC as the unequivocal new Starbucks of the international oil industry.

Despite the SPDC's public relations efforts, Shell has had a presence in Nigeria since 1958.[199] Therefore, today's promises cannot automatically erase yesterday's mistakes. Shell still must address past inequities and environmental degradation.

Shell Nigeria claims that between 1989 and 1994 sabotage by local villagers caused twenty-five percent of all oil spills in Nigeria.[200] Considering the political and economic tensions in Nigeria, that number seems plausible. Thus, seventy-five percent of the oil spills were not known to be caused by sabotage. Shell Nigeria may have withdrawn from Ogoniland because the threat of sabotage made operations difficult, if not impossible. Likewise, the Ogoni may have protested against Shell because seventy-five percent of the oil spills were caused by antiquated machinery or corporate negligence.[201]

Starbucks purchased coffee beans from a Guatemalan exporter who paid workers approximately $2.50 per day—well below the daily living wage. *See id.*

194. *See id.*

195. *See* Shell Website (visited Oct. 31, 1996) <http://www.shellnigeria.com/factfile/index.html>.

196. *Id.*

197. *Id.*

198. *Id.*

199. *See id.*

200. *See id.* Shell asserts that claims for compensation usually accompanied the oil spills in the Ogoni area; thus, it is likely Shell believes the local villagers have been responsible for the sabotage. *See id.*

201. *See* Egunjobi, *supra* note 53, at 288-89. James Kolawole Egunjobi, Professor of Agricultural Biology at the Ibadan University in Nigeria, reported "oil spills can be caused by any of the following factors: blowout, equipment failure, operator-maintenance error, engineering error, sabotage, erosion, and accident." *Id.* at 288-89, 450. One 1983 study showed that "as much as 50% of the spillage each year is attributable to equipment failure. Oil blowouts, although infrequent, often lead to serious, extensive pollution problems." *Id.* at 289. Bomu 11, a well, blew out in 1970 impairing 607 hectares and Funiwa S, an off-shore well in the Bight of Benin, blew out in 1980 spilling 146,000 barrels of crude oil. *See id.* In a statement made in 1989 Egunjobi says, "Although there has been no major blowout since 1980, lay-

Nevertheless, pollution from oil spills account for only some of the Ogoni's claims against Shell.[202]

In a communique' that coincided with the first anniversary of the execution of the nine Ogoni activists, Shell spokesperson Bert Regeer announced that Shell is "looking positively at including an explicit reference to human rights" and "will voice its support for the Universal Declaration of Human Rights in its Statement of General Business Principles."[203] According to this statement, Shell would now modify its previous policy of non-interference, despite its earlier refusal to intercede and prevent the Nigerian regime's hanging of Ken Saro-Wiwa.[204] Many critics have claimed that Shell's refusal to interfere led to the deaths of Ken Saro-Wiwa and his fellow Ogoni compatriots in 1995.[205]

Once again, the noble sentiment of Shell's new Statement of General Business Principles, while laudable, may be directed to the consumers of Shell products rather than to any substantive change of Shell policy in Nigeria. Rather than publicly revising its Statement of General Business Principles, Shell should implement the tenets of its existing Statement. According to former Shell geophysicist Dr. David Cromwell, Shell's existing "statement includes the promotion of 'measures for the protection of health, safety and the environment for all who may be affected directly or indirectly by their activities.'"[206] Another ex-Shell senior executive, Sir Geoffrey Chandler, has argued that corporations risk their reputations and ultimately their profits if they ignore the public attitude toward human rights and the environment.[207] Corporate silence risks complicity, and complicity risks public boycott, condemnation, and eventually loss of profit. To resolve the dispute in Nigeria, more words are not necessary. Commitment to a solution, perhaps the effective enforcement of existing international standards, and the corporation's own Statement of General Business Principles are what may

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scale oil spills have been reported. Such oil spills produce serious damage to marine life, contaminating rivers and inland waters that serve as sources of drinking water." *Id.* "Apart from pollution arising from spills, the dumping of waste by oil companies and individuals using petroleum products also leads to environmental pollution. Other forms of pollution arise from gas flaring, refinement effluents, and formation water." *Id.*

202. *See id.*

203. Philip Blenkinsop, *Shell to Adopt Human Rights as Business Principle*, REUTERS WORLD SERVICE, Nov. 7, 1996.

204. *See id.* Owens Wiwa, Ken's brother, had requested Shell to intercede on Ken's behalf. *See* RIVER FRONT TIMES (St. Louis) *Interview with Dr. Owens Wiwa* (visited Oct. 31, 1996) <http://www.sccs.swarthmore.edu/org/nigeria/interview.html>. *See also* Bielski, *supra* note 25, at 30; *Status of Africa's Environment*, *supra* note 14; *Royal Dutch/Shell Sued in Human Rights Case*, REUTERS FINANCIAL SERVICE, Nov. 8, 1996.

205. *See Status of Africa's Environment*, *supra* note 14.

206. Dr. David Cromwell, *Letter: Execution of Saro-Wiwa Flouted Justice*, THE INDEPENDENT, Nov. 11, 1996, at 11.

207. Geoffrey Chandler, *People and Profits*, GUARDIAN (London), Nov. 14, 1996, at 17.

affect change.

CONCLUSION

This dispute does not offer any easy solutions. In fact, the closer one scrutinizes it, the more one despairs of a tenable solution. Legal despair, however, appears to be the status quo for indigenous and minority groups throughout our current legal environment.

The Ogoni crisis in Nigeria provides a graphic example that law, as we practice it, has limits. The presumptions that the rule of law protects and provides sanctuary for everyone is a myth, and shall remain a myth until those who govern accept the responsibility vested in them. The underlying tenet of the rule of law—human dignity—apparently all too often takes a back seat to economic interests and political expediency. As the Ogoni dispute reveals, many rights and many peoples remain expendable in this global village.

Charles Marecic