

The Potential Application of the International Criminal Court's Rome Statute to the Conduct of Oil Multinationals in the Niger Delta

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ABSTRACT

The Niger Delta, a biodiverse African wetland, has suffered decades of environmental devastation and human rights abuses from oil extraction by MNCs like Shell. Over 880 oil spills (2019–2021) polluted ecosystems, displaced communities, and destroyed fishing/agricultural livelihoods. Systemic negligence—aging infrastructure, gas flaring, and poor waste management—has turned areas into "ecological wastelands." While the Rome Statute (governing the ICC) lacks explicit environmental crime provisions, advocates propose recognizing ecocide—severe, deliberate environmental harm—as a prosecutable offense. Recent legal milestones, such as UK courts permitting Nigerian communities to sue Shell, signal growing corporate accountability. Challenges include the ICC's focus on individual liability, political pushback, and ambiguous ecocide definitions. Codifying ecocide in the Rome Statute could revolutionize global environmental justice, deterring large-scale destruction and aiding vulnerable regions like the Niger Delta. This article stresses urgent legal reforms to hold corporations accountable and secure redress for affected communities.

KEYWORDS

Environmental Justice; Corporate Accountability; International Criminal Court (ICC); Niger Delta Environmental Degradation

1 Introduction

The Niger Delta, a biologically diverse region in southern Nigeria, has long been a target for oil exploration and exploitation. Encompassing an area of approximately 70,000 square kilometers, this vast wetland stands as the most extensive in Africa and ranks among the world's largest. Spanning nine states, it's inhabited by over 30 million people from diverse ethnic groups. This densely populated area is full of oil pipelines and wells operated by multinationals like Shell, Chevron, Exxon Mobil, and Total. However, intense oil extraction has caused significant environmental damage, pollution, ecological degradation, and human rights violations.

Frequent oil leaks in the Niger Delta have severely harmed the local ecosystems. A report by the National Oil Spill Detection and Response Agency (NOSDRA), between January 2019 and April 2021, 881 oil spill incidents were recorded across 12 states in Nigeria, with 77% occurring in just three oil-producing states^[1]. These spills have contaminated water sources, soil, and air^[2], causing the obliteration of mangrove ecosystems, diminishing biological diversity, and interrupting age-old occupations including fishery and agriculture^[3].

Oil drilling and extraction in the Niger Delta carry complex environmental impacts. Seismic surveys, canalisation, poor waste disposal practices, oil spillages, and gas flaring have all contributed to the region's environmental degradation^[4]. Research indicates that between 9 and 13 million barrels of oil have leaked over the last half-century, a volume akin to 50 incidents similar to the Exxon Valdez spill. The negative impact of these oil spills on the biodiversity in the Niger Delta has been stark. Once boasting diverse ecosystems encompassing mangrove swamps, freshwater swamps, and rainforests, the area has, in numerous instances, been transformed into an ecological wasteland.

Oil industry generates immense wealth, but Niger Delta residents suffer from poverty, displacement, and health issues due to environmental degradation caused by oil exploration. Irresponsible operations by oil firms have turned the Niger Delta into one of the ecosystems most heavily afflicted by petroleum degradation globally.

The potential application of the Rome Statute pertaining to the actions of oil multinationals operating within the Niger Delta poses intricate and multifaceted legal inquiries. The environmental harm and human rights breaches stemming from oil extraction in the area might potentially be classified under established categories such as crimes against humanity or war crimes^[5]. However, the lack of a specific provision for environmental crimes poses challenges in holding corporations accountable for their actions.

Acknowledging ecocide as an offense within the Rome Statute's framework may offer a judicial path to tackle the extensive, enduring environmental harm inflicted by oil conglomerates in the Niger Delta. Ecocide has been defined as "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts"^[6]. This definition might include the extensive contamination, destruction of ecosystems, and breaches of human rights associated with the oil exploration operations in the area.

The potential incorporation of ecocide into the Rome Statute would strengthen corporate accountability and

environmental justice. This amendment would enable the ICC to prosecute individuals and corporations responsible for causing widespread environmental degradation, potentially discouraging future crimes and providing a formal redress mechanism for affected communities.

2 The rome statute and the international criminal court (ICC)

Adopted in 1998, the Rome Statute formally established the International Criminal Court (ICC) as a lasting global judicial entity, endowed with the authority to adjudicate over the gravest offenses deeply troubling the international community. The Statute defines four core international crimes^[7]: genocide, crimes against humanity, war crimes, and the crime of aggression^[8]. Genocide involves the calculated, methodical extermination, whether in whole or in part, of a group identified by nationality, ethnicity, race, or religion. Crimes against humanity encompass grievous, abhorrent acts conducted as part of extensive or methodical attacks against any civilian populace, including murder, enslavement, and torture. War crimes are serious breaches of the laws and norms governing international and internal armed conflict. In 2010, the Rome Statute amendments formally recognized the crime of aggression, relating to a State's use of force against the sovereignty, territorial integrity, or political autonomy of another State. Currently, while the Rome Statute does not expressly classify environmental crimes, there's an increasing advocacy to add "ecocide" to its framework as a separate offense. This addition would allow for the prosecution of illegal activities causing significant, widespread, or long-term environmental damage.

The Rome Statute, a pivotal international treaty, led to the establishment of the International Criminal Court (ICC). Ratified in Rome, Italy, on July 17, 1998, and coming into force on July 1, 2002, it represented a landmark in the progress of international law. The ICC's creation aimed at bringing individuals to account for the gravest international crimes, addressing a gap not covered by ad-hoc tribunals like those set up for Rwanda and the former Yugoslavia^[9]. The creation of the ICC signifies the inception of a perpetual entity dedicated to upholding responsibility for crimes that jeopardize global peace, safety, and welfare^[10].

The International Criminal Court (ICC) operates on the complementarity principle, which dictates that the Court will only assume jurisdiction when national courts are either unable or unwilling to prosecute authentically. This principle maintains the supremacy of national legal systems, establishing the ICC as a tribunal of last resort. Its jurisdiction is limited to offenses perpetrated within the territories of State Parties or by their nationals, with certain exceptions like cases referred by the United Nations Security Council. The ICC's operational framework includes the Pre-Trial Chamber, Trial Chamber, and Appeals Chamber, each playing a crucial role in executing the Court's mandate. The ICC's procedures and evidence standards are designed to ensure fair trials and the rights of the accused, while also providing appropriate protection and participation for victims and witnesses^[11].

3 The concept of ecocide

'Ecocide' refers to significant harm, devastation, or depletion of ecosystems in a specific area, to an extent that the inhabitants' ability to peacefully enjoy their environment is greatly reduced. The concept was initially proposed by biologist Arthur Galston during the Vietnam War. Over the decades, the definition has evolved and expanded to encompass not only wartime environmental destruction but also peacetime activities that significantly harm ecosystems^[12].

Recent years have seen a growing push to establish ecocide as a recognized international offense. In 2019, Pope Francis advocated for its designation as a fifth crime against humanity. This stance is supported by nations such as Vanuatu and the Maldives, which are profoundly affected by climate change. These countries propose the integration of ecocide into the Rome Statute to fill a legal void, allowing for the prosecution of significant environmental degradation that extends beyond national boundaries. This initiative seeks to enable the International Criminal Court (ICC) to hold individuals and corporations responsible for substantial environmental harm^[13].

Acknowledging ecocide as an international offense under the Rome Statute could offer a crucial mechanism for environmental safeguarding, furnishing a legal foundation for litigating the gravest instances of environmental devastation. This recognition could deter large-scale environmental harm and promote more sustainable practices among nations and corporations. However, defining and implementing ecocide poses substantial challenges. The main difficulty lies in establishing a clear, universally accepted legal definition that encompasses various forms of environmental damage without overlapping significantly with existing legal frameworks. Additionally, there are concerns about the political and economic implications of such a statute, as it could impact major industries globally. Despite these challenges, the potential to provide a legal remedy for severe environmental damages makes the pursuit of recognizing ecocide a compelling issue in international law.

4 Case studies of environmental harm in the niger delta

The Niger Delta, an expansive and richly biodiverse area in southern Nigeria, has faced significant environmental damage and human rights abuses due to the operations of multinational oil corporations within the region. The major corporate entities engaged in the region have been implicated in numerous incidents involving oil spills, gas flaring, and other forms of pollution.

One of the most recent and significant occurrences transpired in June 2023, when a major oil spill from the Trans-Niger Pipeline operated by Shell severely contaminated farmland and the Okuku River in Ogoniland, a region situated within the Niger Delta. The spill, initially reported by local communities, adversely impacted the livelihoods of thousands of farmers and fishers who depend upon the land and water resources for their sustenance. According to reports from environmental organizations and local authorities, the spill covered an area of approximately 20 square kilometers, with oil seeping into the Okuku River and its tributaries, threatening the fragile ecosystem and the health of the local population^[14].

This recent spill is part of a longstanding pattern of environmental neglect and mishaps that have characterized the operations of multinational oil companies in the Niger Delta. Over the years, these companies have been accused of failing to maintain their infrastructure adequately, leading to frequent pipeline leaks and spills that have contaminated vast areas of land and water resources. According to Amnesty International, Shell and Eni were blamed for over 500 oil spills in the Niger Delta in 2014 alone, resulting in widespread contamination of water bodies, destruction of agricultural land, and loss of biodiversity^[15].

One of the most notorious cases of environmental degradation in the region is the Ogoniland crisis, which gained international attention in the 1990s. The Ogoni people, an indigenous group in the Niger Delta, had long protested against the environmental and social impacts of oil exploration activities by Shell and other companies in their homeland. In 1993, the Movement for the Survival of the Ogoni People (MOSOP) initiated a sequence of peaceful demonstrations against Shell, seeking reparation for environmental harm and a larger portion of the oil wealth from the region. These protests faced harsh suppression from the Nigerian government, culminating in the execution of nine Ogoni leaders, among them the distinguished author and activist Ken Saro-Wiwa.

The environmental impact of these spills and pollution is profound, with oil contaminating water bodies that are crucial for fishing, a primary source of income for the local populace. The spills also result in the destruction of agricultural land, further impoverishing the residents of an already vulnerable region. These events have collectively resulted in substantial biodiversity depletion and disruption of ecological equilibrium, positioning the Niger Delta among the world's ecosystems most severely affected by oil pollution.

Moreover, the environmental degradation in the Niger Delta is not only a result of accidental spills but also due to systemic issues such as inadequate maintenance of oil infrastructure. A notable case is the 2014 Bodo court case, where it was ruled that Shell's failure to maintain its infrastructure contributed to the environmental damage. This negligence has led to prolonged exposure of the environment and local communities to harmful pollutants, exacerbating the already dire situation in the region.

In the face of mounting evidence and public pressure, legal actions have been taken to hold multinational oil companies accountable for their actions in the Niger Delta. In 2013, a landmark ruling by the Dutch Court of Appeal in The Hague found Shell's Nigerian subsidiary liable for oil spills in the region^[16]. The court ruled that Shell Nigeria was responsible for the damage caused by the spills and ordered the company to compensate affected local communities and initiate cleanup efforts. This case set a precedent for international legal accountability and highlighted the potential for jurisdictional reach over multinational corporations in their home countries.

The momentum for legal accountability continued with the 2021 ruling by the UK Supreme Court, which acknowledged that there was a 'good arguable case' against Shell plc, the UK parent company, for its role in the pollution of the Niger Delta^[17]. This acknowledgment opened the door for further legal actions against Shell, providing a basis for affected Nigerian communities to seek justice and compensation in the UK courts. The ruling reinforced the concept of corporate responsibility at a global level, suggesting that parent companies could be held accountable for the actions of their subsidiaries, even in foreign jurisdictions.

Building upon the previous legal developments, the 2023 decision by the UK High Court further strengthened the legal standing of Nigerian farmers and fishers, affirming their right to bring claims against Shell for environmental harm^[18]. This ruling is significant as it ensures that affected communities can seek justice and compensation directly from Shell plc in London, bypassing the often less effective local judicial processes in Nigeria.

The decision underscores the importance of access to justice for communities suffering from corporate environmental negligence and sets a precedent for future cases involving multinational corporations and environmental harm. By allowing Nigerian farmers and fishers to bring claims against Shell in the UK, the ruling acknowledges the transnational nature of environmental damages and the need for legal mechanisms to hold corporations accountable across borders.

The series of court rulings from 2013 to 2023 demonstrate a growing recognition of the legal responsibilities of

multinational corporations like Shell for environmental damage in the Niger Delta. These decisions not only highlight the severity of the environmental issues but also the potential for legal frameworks to hold corporations accountable for their actions, even in foreign jurisdictions.

The implications of these legal proceedings are vast, suggesting a shift towards greater corporate accountability and the possibility of more stringent regulatory oversight for multinational corporations operating in vulnerable regions like the Niger Delta. These cases also highlight the role of international courts in addressing and mitigating the complex issues of cross-border environmental damage and human rights violations.

5 Universal criminal jurisdiction and its application

Universal criminal jurisdiction (UCJ) grants states the power to indict individuals for serious international offenses regardless of where the crime occurred or the nationalities involved, either of the offenders or the victims. UCJ is crucial for international criminal justice, as it ensures that perpetrators of serious crimes, including genocide, war crimes, and crimes against humanity, cannot escape justice by fleeing to a different jurisdiction. It is an essential instrument in combating global impunity, particularly when local jurisdictions are unable or disinclined to pursue legal action^[19].

The application of UCJ to multinational corporations like Shell, especially in cases involving environmental harm, is a complex yet emerging area of international law. Traditionally, UCJ has been applied to individuals, but recent developments suggest a shift towards holding corporations accountable for their actions that qualify as international crimes. For instance, cases of severe environmental damage could potentially be framed as crimes against humanity, thereby falling within the scope of UCJ. This approach would require a redefinition of international legal frameworks to explicitly include corporate entities under UCJ provisions^[20].

While there are limited precedents directly applying UCJ to environmental crimes by corporations, the evolving legal opinions are supportive of such an extension. Legal scholars argue that severe environmental destruction caused by corporate activities, like those observed in the Niger Delta, could be construed as part of a systematic attack against a civilian population, thus qualifying as a crime against humanity. The cases against Shell in European courts, based on UCJ, underscore a growing willingness to use this jurisdiction to address serious environmental harms, setting a legal groundwork for future prosecutions of similar nature.

6 Challenges and implications

Applying the Rome Statute to multinational corporations like Shell presents several challenges. Legally, the ICC has traditionally focused on individual criminal responsibility rather than corporate accountability, which complicates direct application to corporations^[21]. Politically, there may be resistance from powerful states that host major corporations, potentially hindering consensus or cooperation. Practically, the complexity of corporate structures and the international scope of their operations pose significant hurdles in establishing direct liability and effective prosecution^[22].

Incorporating ecocide as an offense under the Rome Statute has the potential to profoundly transform international law and corporate responsibility. It would extend the ICC's jurisdiction to environmental crimes, providing a legal tool to address severe environmental damages caused by corporate activities. This recognition could also shift corporate behavior globally towards more sustainable practices, as corporations would need to avoid severe legal repercussions^[23].

For the victims and the environment in the Niger Delta, recognizing ecocide could offer a path to justice and remediation that has been elusive under current legal frameworks. It could facilitate more direct and effective legal recourse for affected communities, and potentially lead to greater environmental restoration efforts. Moreover, it could serve as a deterrent against future environmental negligence by other corporations operating in similar contexts^[24].

7 Conclusion

This article elucidates the nuanced challenges and prospective consequences of invoking the Rome Statute against multinational entities like Shell for ecological damages in the Niger Delta. Classifying 'Ecocide' as a penal transgression could substantially enhance the International Criminal Court's (ICC) ability to tackle these concerns internationally. It is recommended that international law be expanded to explicitly codify environmental crimes, such as 'Ecocide,' within the framework of the Rome Statute, thereby ensuring that multinational corporations are held accountable for environmental harm. The ICC could assume a pivotal role in global environmental governance by adapting its legal framework to encompass crimes that directly impact the environment, thus providing a robust mechanism for addressing and deterring environmental damages perpetrated by multinational corporations.

References

- [1] Bello T and Nwaeke T. Impacts of Oil Exploration. [J]. *Oil and Gas Conflicts: Niger Delta as a Case Study*, 2022(2):56-64.
- [2] Julius O, Bayode A and Adewunmi EA. Environmental Implications of Oil Exploration and Exploitation in the Coastal Region of Ondo State, Nigeria: A Regional Planning Appraisal. [J]. *Journal of Geography and Regional Planning*, 2011(4):110.
- [3] Ayuba A. Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria. [J]. *Journal of Environmental Management and Safety*, 2012(1):159-183.
- [4] Ugochukwu CNC and Ertel J. Negative Impacts of Oil Exploration on Biodiversity Management in the Niger Delta Area of Nigeria. [J]. *Impact Assessment and Project Appraisal*, 2008(2):139-147.
- [5] Freeland S. Crimes Against the Environment: What Role for the International Criminal Court?' in Edgardo Sobenes, Sarah Mead and Benjamin Samson (eds). [J]. *The Environment Through the Lens of International Courts and Tribunals*, 2022(6):159-188.
- [6] Branch A and Minkova L. Ecocide, the Anthropocene, and the International Criminal Court. [J]. *Ethics & international affairs*, 2023(1):51-79.
- [7] Nations. Preparatory Commission for the U. [J]. *Rome Statute of the International Criminal Court*, 2010(1):14-16.
- [8] Werle G and Jeßberger F. *Principles of International Criminal Law*. [J]. Oxford University Press, 2020(4):372-383.
- [9] Gane C and Mackarel M. Statute of the International Tribunal for Rwanda. [J]. *Human Rights and the Administration of Justice*, 1997(2):43-66.
- [10] Lee RS. The International Criminal Court: The Making of the Rome Statute. [J]. *Issues, Negotiations and Results*, 2023(3):47-61.
- [11] Schabas W. Treaty crimes. [J]. *The Cambridge Companion to International Criminal Law*, 2016(1):214-219.
- [12] Stancu R. European Law Institute (ELI) Annual Conference and Meetings. [J]. *Viena' Stud. & Legal Rsch*, 2023(5):1-6.
- [13] Robinson D. Ecocide — Puzzles and Possibilities. [J]. *Journal of International Criminal Justice*, 2020(2):313-347.
- [14] Adebayo T. Oil Spill from Shell Pipeline Fouls Farms and a River in a Long-Polluted Part of Nigeria. [J]. *AP News*, 2023(6):14-15.
- [15] Camillus Eboh and Felix Onuah. Nigeria: Shell Must Clean up Devastating Oil Spills in the Niger Delta. [J]. *Amnesty International*, 2023(8):3-7.
- [16] Kennedy M. Shell Ordered To Compensate Nigerian Farmers Affected By Oil Spills. [J]. *NPR*, 2021(2):15-18.
- [17] Shell Petroleum Development Company. UK: High Court to Hold Multi-Day Hearing on Shell's Legal Liability in Ongoing Niger Delta Pollution Case. [J]. *Business & Human Rights Resource Centre*, 2023(7):1-8.
- [18] Matthew Renshaw. High Court Rules Nigerian Communities Can Bring Human Rights Claims against Shell for Oil Pollution. [J]. *Leigh Day*, 2023(11):3-5.
- [19] Krebs J, Rynjaert C and Jeßberger F. Universal Jurisdiction and International Crimes: Constraints and Best Practices. [J]. *European Parliament*, 2018(9):1-60.
- [20] UN Sixth Committee. Speakers Disagree on How, When, Where Universal Jurisdiction Should Be Engaged, as Sixth Committee Takes up Report on Principle. [J]. *UN Press*, 2022(7):56-62.
- [21] Killian R. The Benefits, Challenges, and Limitations of Criminalizing Ecocide. [J]. *The International Peace Institute*, 2022(3):4-10.
- [22] Mackintosh K and Oldring L. Momentum Toward an International Crime of Ecocide. [J]. *Just Security*, 2022(12):3-7.
- [23] LG Minkova. Ecocide: The Fifth International Crime?. [J]. *Centrum pro lidská práva a demokracii*, 2023(2):62-83.
- [24] Hotz D BA.LL. Ecocide as the Missing Fifth Crime under International Criminal Law?. [J]. *Gesamte Strafrechtswiss.* 2021(3):861-905.