

Business and human rights – access to remedy

Italy – Case study

2019

FRANET contractor: Fondazione Giacomo Brodolini

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1. Country where the incident took place	Nigeria
2. Country where the remedy was sought	Italy
3. Type of remedy used (reasons why this remedy was used)	Both judicial and mediation
4. Deciding body - (in original language /and in English)	<i>Tribunale di Milano</i> / Ordinary Court of Milan
5. Date (month/year) when the remedy was initiated Date, if available, of the (final) decision	May 2017. The court has never come to a decision; a private negotiation between the parties was initiated and is still ongoing.
6. Reference details, (type and title of court/body; in original language and English [official translation, if available])	The court dismissed the proceedings; it is therefore not possible to provide a reference to the case.
7. Web link to the decision/procedure (if available)	N/A
8. Did the incident receive media attention? If so, please provide links	<p>Amnesty International Italia (2017), 'Nigeria: la comunità di Ikebiri fa causa all'Eni', 7 May 2017, available at: https://www.amnesty.it/nigeria-la-comunita-ikebiri-causa-alleni/.</p> <p>Associazione A Sud and Documentation Centre on Environmental Conflicts (<i>Centro documentazione conflitti ambientali</i>, CDCA) (eds.) (2018), <i>Speciale Ikebiri. La comunità nigeriana e il processo in Italia contro ENI</i>, available at: http://asud.net/wp-content/uploads/2018/04/IKEBIRI-SPECIALE.pdf.</p> <p>Business & Human Rights Resource Centre [2018], 'Nigerian Agip Oil Company (NAOC) (joint venture Nigerian National Petroleum Corporation, Eni, ConocoPhillips)', available at: https://www.business-humanrights.org/ja/node/83761?text_only=true.</p> <p>P. Colonnello (2017), 'La tribù degli Ikebiri nigeriani denuncia l'Eni: "Un oleodotto esploso ha rovinato le nostre terre"', <i>La Stampa</i>, 4 May 2017, available at:</p>

	<p>https://www.lastampa.it/2017/05/04/edizioni/milano/la-trib-degli-ikebiri-nigeriani-denuncia-leri-un-oleodotto-esploso-ha-rovinato-le-nostre-terre-WArqI5R9BKC0ed69rXHnLJ/pagina.html.</p> <p>Facing Finance (2018), 'Eni SpA Digging for Justice: Progress on previously reported cases', <i>Dirty Profits</i>, No. 6, available at: http://www.dirtyprofits.de/files/2018/09/Eni.pdf.</p> <p>Friends of the Earth Europe (2019), 'Ikebiri reach settlement with company, Niger Delta still awaits justice', 28 May 2019, available at: http://www.foeeurope.org/issues/27/news?page=1.</p> <p>L. Gaita (2017), 'Eni, comunità nigeriana fa causa al gruppo per l'inquinamento del delta del Niger: "Ci risarcisca con 2 milioni di euro"', <i>il Fatto Quotidiano</i>, 4 May 2017, available at: https://www.ilfattoquotidiano.it/2017/05/04/eni-comunita-nigeriana-fa-causa-al-gruppo-per-linquinamento-del-delta-del-niger-ci-risarcisca-con-2-milioni-di-euro/3558936/.</p> <p>C. Guasco (2017), 'La comunità Ikebiri del delta del Niger fa causa all'Eni per uno sversamento di petrolio', <i>Il Messaggero</i>, 4 May 2017, available at: https://www.ilmessaggero.it/economia/economia_e_finanza/nigeria_comunita_ikebiri_delta_niger_causa_eni_sversamento_di_petrolio-2418615.html.</p> <p>F. Sironi (2017), "'Eni ha inquinato le nostre terre": così una comunità della Nigeria fa causa al colosso', <i>L'Espresso</i>, 3 May 2017, available at: http://espresso.repubblica.it/attualita/2017/05/03/news/una-comunita-contro-il-gigante-gli-ikebiri-fanno-causa-all-eni-in-italia-1.300863.</p>
<p>9. Legal basis in national/EU/international law of the rights under dispute</p>	<p>Article 2043 of the Italian Civil Code on non-contractual liability</p>
<p>10. Parties</p>	<p>The Nigerian Ikebiri community, the Nigerian Agip Oil Company (NAOC), and ENI, an Italian multinational oil and gas company headquartered in Rome.</p>
<p>11. Form of abuse/violation, and rights involved¹</p>	<p>The community's environmental rights, as well as its right to survival and life</p>
<p>12. Type of business involved</p> <p><i>(sector of activity, name of the company perceived as being responsible for the abuse, country of origin of</i></p>	<p>NAOC is the Nigerian local branch of the ENI multinational holding (which is based in Italy). It is active in the oil sector, and is 100% controlled by ENI.</p>

¹ The rights affected may include the entire spectrum of internationally recognised fundamental rights – civil and political rights, as well as economic, social and cultural rights; for example: the right to non-discrimination, the right to private and family life, freedom of expression, the right to health, the right to protection of life and physical integrity, property rights, consumer rights or environmental rights.

<i>the company, form of business entity)</i>	
<p>13. Profile of the victim(s) - individuals /population affected - can be broader than actual parties to the proceedings</p> <p><i>(e.g. country of origin, belonging to a particular minority – ex. ethnic, gender, age, occupation, social status, relations with the responsible company)</i></p>	<p>The victims belong to the Ikebiri indigenous community of Nigeria.</p>
<p>14. Any legal or institutional factors in the Member State that facilitated the abuse of the (fundamental) rights in questions?</p>	<p>Many factors can be considered in this respect:</p> <ul style="list-style-type: none"> - the Italian legislation does not qualify local communities as legal entities, since they are neither individual subjects nor a legal entity that is recognised by Italian legislation, such as an association, a company, an NGO etc. : for this reason, ENI and NAOC tried to avoid court proceedings, claiming that the lawyer of the local community was representing an entity that does not actually exist; - due diligence tools – even when adopted – are not mandatory in nature, nor are they enforceable from a legal point of view; - the liability upon local affiliates of multinational corporations is not automatically extended to mother companies; and - ENI is a corporation that is financially, politically, structurally controlled by the Italian government: managers of ENI are also professionals of the Italian Government; the company is heavily finances with public resources.
<p>15. Key facts of the case</p>	<p>On 5 April 2010, an oil pipeline managed by NAOC – the local affiliate of ENI – exploded 250 metres away from the river located in the northern part of the territory belonging to the Nigerian Ikebiri community. The contamination and pollution caused by the incident severely threatened the life of the community members, as well as their environmental rights: the community’s survival mostly relies on agriculture and fishing. ENI initially offered €22,000 worth of compensation; however, the offer was rejected by the local governor because it was deemed insufficient to redress the violation.</p>
<p>16. With respect to the case described in this template - <u>what worked well</u> from the standpoint of the complainant/victim? What</p>	<p>The role of an international NGO, Friends of the Earth (FoE), proved to be crucial. First of all, the NGO – due to its long-standing experience and expertise in the field – immediately collected the complaints, communicated with the community, and negotiated with its members the most effective litigation strategy to obtain compensation from the company. In this respect, the NGO suggested resorting to the Italian justice system, and contacting the lawyer. Moreover, the NGO shouldered all costs incurred by the lawyer to travel to Nigeria, as well as for evidence-gathering activities. The NGO also covered 100% of costs related to the tests necessary to prove that the river was still polluted because of the spillage that had occurred.</p>

<p>were the reasons for it?</p>	
<p>17. With respect to the case described in this template – what did <u>not</u> work well from the standpoint of the complainant/victim? What were the reasons for this?</p>	<p>The main problems raised by this case are described below:</p> <ul style="list-style-type: none"> • the necessity for the complainants to collect a huge amount of documents to prove: a) the causal link between the damage suffered by the victims, on the one hand, and the company’s activities, on the other; and b) the pollution caused by the spillage. Moreover, a Nigerian law professor was involved to provide Italian judicial authorities with an official written report explaining the Nigerian legislation in this field. This legal advice was needed since – as far as financial compensation cases are concerned – the amount of compensation is established in compliance with the legislation of the State where the violation was perpetrated, or the damage occurred (Nigeria, in the case at hand); • the legal status of the community: in the Nigerian legal system, communities are officially recognised as legal entities. This is not the case with the Italian legislation: communities – such as the Ikebiri one – do not fall under any of the categories envisaged by law. Moreover, the concept of ‘community land’ – i.e. land owned and managed by the community as a whole, and not as an addition of its members – is ruled by the Nigerian legislation (through the Oil Pipelines Act),² but does not exist in the Italian legal system; • the high costs of the judicial proceedings initiated in Italy, also considering that the complainant – the community, in the case at hand – was not entitled to legal aid, a right enshrined in the Italian legislation. As a matter of fact, the community does not exist as a legal entity in the Italian law system, and cannot therefore submit a request to receive the tax identification number, which is necessary to apply for legal aid. The impossibility for the community to have a tax identification number also prevented the complainants from accessing the software application (managed by the Ministry of Justice) through which all pending judicial cases are registered. More in detail, the case could not be registered since ‘tax identification number’ is a mandatory field. For this reason, the complainants had to insert a ‘fake’ tax identification number; and • the difficulties faced in demonstrating that the Italian judicial authorities were competent in deciding on the case. According to Italian legislation and international private law, a case can be decided on in Italy if one of the parties involved in the dispute is an Italian subject. Neither the community nor NAOC was, but ENI is an Italian corporation. NAOC argued that it cannot be judged by Italian authorities because it is a Nigerian company, and thus rejected the court jurisdiction. However, this problem was tackled by leveraging the so-called ‘related-proceedings principle’, i.e. the possibility for the court to decide not only on those cases that fall under its jurisdiction, but also on those cases that are linked to the former ones. In the case at hand, a complaint was filed against ENI, and the complaint against NAOC was linked to it (and could therefore be decided on by Italian judicial authorities).
<p>18. Main reasoning / argumentation (of the parties and the court: key issues /concepts</p>	<p>In order to seek justice, the community resorted to the FoE NGO, and initiated judicial proceedings against the holding in Italy. The decision to resort to an Italian court was due to the incapacity of Nigerian courts to meet the requests of the community in view of the excessive length of proceedings, as well as of the risk of corruption: the NGO – thanks to its long-standing experience – was aware that this type of proceedings against international (and national) companies in Nigeria never lead to a</p>

² Oil Pipelines Act, Chapter 338, Laws of the Federation of Nigeria 1990, available at: <http://www.nigeria-law.org/Oil%20Pipelines%20Act.htm>.

<p><i>clarified by the case)</i></p>	<p>decision that is in favour of local communities, inasmuch as companies' interests are always considered as a high priority.</p> <p>The goal of the proceedings was to obtain €2 million worth of compensation from ENI: this sum was calculated considering the standards generally applied by Nigerian courts, as well as in view of the fact that, during the period stretching from the incident to the beginning of the proceedings, no actions had been adopted either by NAOC or by ENI. The community also called upon the holding to reclaim the area where the incident had occurred. This case represents the first legal action initiated by a third-country complainant against an Italian company for a fundamental rights violation perpetrated abroad.</p>
<p>19. What was the outcome?</p>	<p>In order to avoid a negative impact on the public image of the holding, NAOC decided to negotiate with the community, thus avoiding the continuation of judicial proceedings. The lawyer travelled to Nigeria in 2018 to support the community in this negotiation phase. The deal the parties entered into envisaged both financial compensation for the community, and the commitment by NAOC to developing some projects in order to improve environmental conditions in the area, as well as to reduce the impact of the company's activities. This implied an interruption of judicial proceedings. It is impossible to provide additional details on the negotiation phase since the content of the agreement is confidential.</p> <p>At the end of May 2019, it was reported in the media that the agreement between NAOC and the local community had eventually been signed.³</p>
<p>20. Did the case lead to legislative or policy developments?</p> <p><i>(including more general measures introduced to stop future incidents)</i></p>	<p>No, it did not. However, ENI introduced due diligence tools aimed at promoting human rights protection and corporate social responsibility. These tools have been extended also to the local branches of ENI.</p>
<p>21. In case the remedy sought was not of a judicial nature, was there eventually any follow up on the case in the court? Or followed by a different type of procedure?</p>	<p>This question does not seem to be relevant to the case at hand. Legal action was the first mechanism victims resorted to. They then decided to give it up to start negotiating with the company. This negotiation is still ongoing, and the content of the agreement is not publicly available.</p>
<p>22. Any other comments</p>	<p>There are no additional comments.</p>

³ Friends of the Earth Europe (2019), 'Ikebiri reach settlement with company, Niger Delta still awaits justice', 28 May 2019, available at: www.foeeurope.org/ikebiri-settlement-niger-delta-280519.

relevant to case?	
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