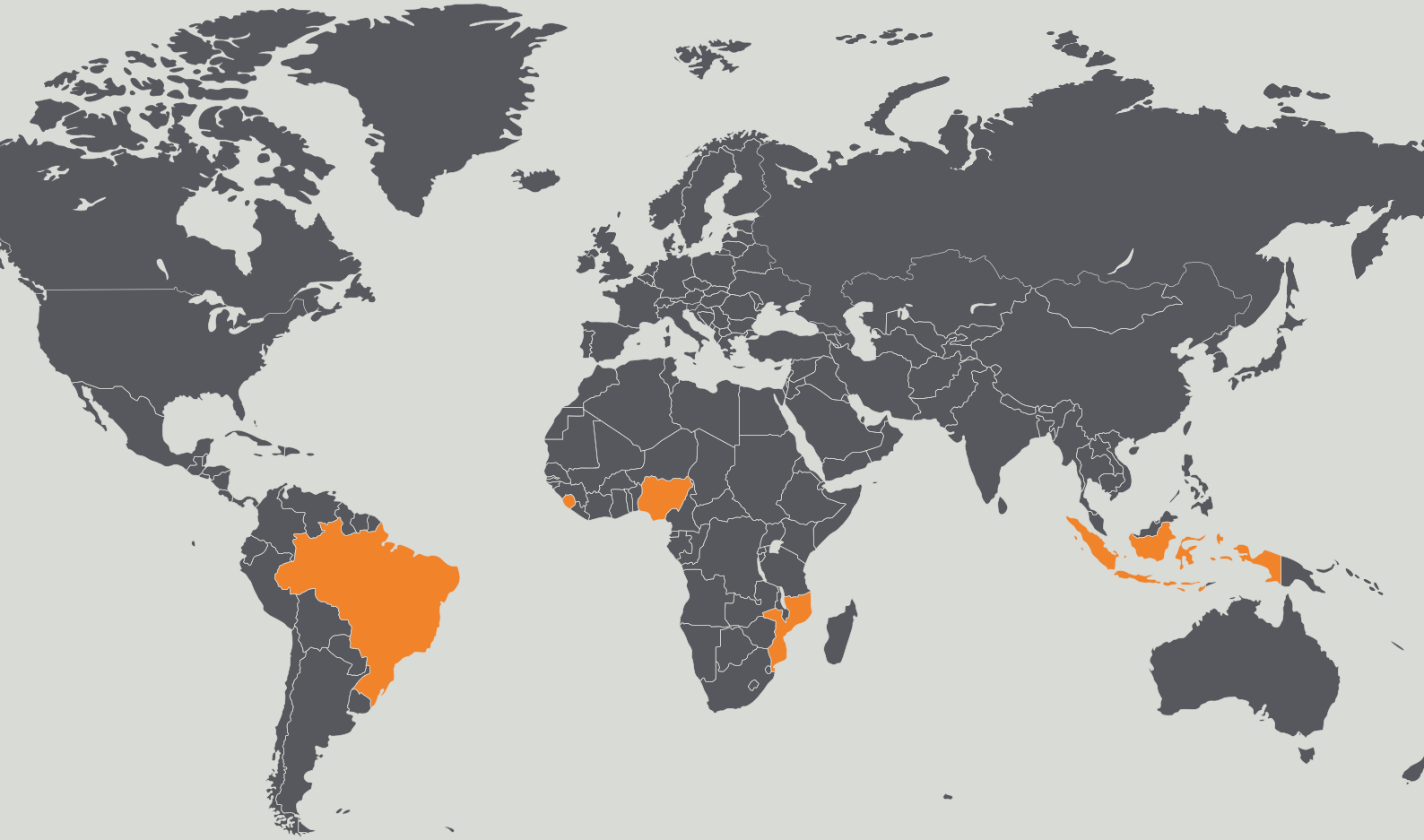

DO NO HARM:

THE CASE FOR AN EU LAW TO HOLD BUSINESS LIABLE FOR HUMAN RIGHTS VIOLATIONS AND ENVIRONMENTAL HARM

October 2020

Friends of the Earth Europe

A truck full of oil palm in Sierra Leone

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AUTHORS

Ike Teuling, **Jill McArdle** and **Layla Hughes**

ACKNOWLEDGEMENTS:

Arthur Walber Viana, Amigos da Terra Brasil

Tara Burke, Movimento dos Trabalhadores Sem Teto

Barr. Chima Williams, Environmental Rights Action/Friends of the Earth Nigeria

Albert ten Kate

Muhammad Al Amin, WALHI South Sulawesi

Niels Hazekamp, Both Ends

Florence Kroff, FIAN Belgium

Anabela Lemos, **Ilham Rawoot**, **Dipti Bhatnagar**, **Erika Mendes**, JA! FOE Moçambique

Cécile Marchard, **Juliette Renaud**, Amis de la Terre

E. Barrett Ristroph

INTRODUCTION

A plane flying above Vila Nazaré in Brazil

This report tells five stories of how companies based in the EU are implicated in human rights violations and environmental destruction across the world, from South America to sub-Saharan Africa to Southeast Asia.

The cases in this report underline why the EU should urgently bring in mandatory human rights and environmental due diligence (mHREDD). But equally important is that such a law makes transnational EU companies liable for the harms committed by their subsidiaries and in their global value chains, and that victims of corporate abuse have access to courts in the home countries of these companies.

From bulldozed homes in Brazil, poisoned villages in Nigeria, stolen land in Mozambique, destroyed fisheries in Indonesia and intimidation and violence in Sierra Leone, these are stories of injustices inflicted on communities in the Global South who have very little power to take on big transnational corporations from the North.

These stories paint a grim picture of how EU companies continue to violate human rights and the environment around the world, and how the corporate drive for profit is undermining the EU's policy ambitions on sustainability and climate justice. They illustrate that many EU companies are doing little to address the systemic human rights violations in their operations.

Beyond telling the stories of victims, this report explains why EU companies are still getting away with abusing human rights and destroying the environment abroad. To do this, we analysed our cases to see what they could tell us about how the current international legal order works for companies and doesn't work for victims.

One thing jumps out in several of the cases: how big companies often use corporate law to shield themselves from responsibility or 'liability' for harms they caused or contributed to. They create complex corporate structures to artificially separate the rich parent company in the EU from the subsidiary that carries out the company's activities in other parts of the world.

This creates a system where, when victims try to bring a case against an EU transnational – like Royal Dutch Shell or the French company Total – they are often blocked from suing them directly in the home country of that transnational. They are forced instead to deal with a subsidiary - who may not have the resources to offer them remedy - and have to go to court in the country of that subsidiary, where they often can't get a fair trial. Victims are denied justice from rich EU companies, even though these companies are the ones who take the profits from their subsidiaries and who have the power, resources and means necessary to provide remedy, and are often the ones designing the human rights and sustainability policies for their global subsidiaries.

On top of this, there are other EU legal rules that currently make it hard for victims to get justice. Our stories highlight how rules on ***where*** a lawsuit can be brought against a company, or ***which*** country's law can be applied in a case, are not set up to give victims around the world the best shot at successfully bringing cases against EU companies.

This system is working very well for transnational companies: who can profit without responsibility, reaping the benefits of the economic activity and washing their hands of it when things go wrong. It embodies the power imbalances between North and South and rich and poor that globalisation has entrenched.

Within the EU there are efforts underway to bring in rules to hold companies accountable. In April 2020, the EU Commissioner for Justice announced plans to bring forward EU legislation on human rights and environmental due diligence in the global value chain. This law has the potential to be a huge step toward ending corporate human rights violations. It could force companies to identify risks of harms in their global value chains and to take steps to prevent, mitigate and remedy those harms.

An EU mHREDD law could encourage companies to prevent and clean up pollution like oil spills, ensure that compensation has been paid to relocated communities, or that their contracting partners are not involved in corruption, crimes or other illegal activities.

But in order to fulfill that potential, such an mHREDD law must include a number of key elements.

This law must be mandatory, and **companies must be legally liable, not only where they fail to comply with their due diligence obligations, but also for harm caused by them.** Companies must not be able to escape their liability merely by showing they have conducted due diligence.

Our report shows that **new EU legislation must allow victims to go to court in the home country of a transnational corporation** and bring a case against the headquarters or the parent company. And it argues that new legislation should allow victims to choose which law applies in their case to ensure the the law with the highest protection of human rights is applied.

The rules of the game in court cases should be made more fair for victims. **The burden of proof on key issues in the trial should be shifted from victims to the companies.** Victims should also have much better access to company-documents that are crucial for the court case.

The goal of any legislation on business and human rights must be preventing and remedying corporate abuse. As the cases in this report show, a law that makes companies legally liable for the harms of their subsidiaries (and in their global value chains) would oblige powerful companies to avoid harm by empowering local communities to protect themselves and their environment.

But ultimately, such obligations should not only be imposed on companies based or operating in the EU. Transnational corporations from all over the world need similar accountability rules. The best way to achieve that is to agree on a global Treaty on business and human rights, for which negotiations have started in 2014. The EU must finally take up its responsibility to engage constructively in the negotiations for such a UN treaty. An ambitious UN treaty, combined with effective regional legislation, is the best way to put an end to transnational corporate impunity.

FAMILIES LIVING AMONG RUBBLE IN BRAZIL

The peace in Vila Nazaré is brutally disturbed every hour, when an aircraft takes off from the landing strip that borders directly with the yards of the last houses in this suburb of the Brazilian metropolis Porto Alegre.

When the first people started building their houses on this empty plot of land next to Salgado Filho International Airport about sixty years ago, it was still a small state-owned regional airport. Now, it is a major international transport hub with ambitions to grow even further[1].

In 2018, the German private airport operator Fraport Brasil – Porto Alegre, a full subsidiary of Fraport AG Frankfurt Airport Services Worldwide, became the operator of the airport, after the company won the rights to the airport for 25 years in an auction organized by the Brazilian government[2]. Fraport made plans to expand the capacity of the airport to receive larger airplanes, mainly for cargo. They announced that they would **extend the runway from 2,280 meters to 3,200, using the exact plot of land where Vila Nazaré is located** [3].

LOCALS FORCIBLY EVICTED FROM THEIR HOMES

The people living there learned about the planned evictions via the media. ***"I heard it only on the television. That the Germans had bought the land, that it belonged all to them and the people of Vila Nazaré had to leave"***, remembers Sônia Regina Alves, who has lived in Vila Nazaré for 30 years[4].

Shortly after taking ownership of the airport, Fraport hired controversial eviction company Itazi - who had previously been investigated for abusive evictions in Sao Paulo[5] - to start knocking on people's doors and informing them about the planned runway extension and upcoming evictions. These visits were often accompanied by the police[6]. They offered the 2000 families in Vila Nazaré relocation deals at two different resettlement locations, both far away from Vila Nazaré.

Vania Maria Soares was one of the many residents who were not happy with the offers for resettlement. ***"The place where they want to put us is not good for us. Nobody wants to go"***, she said.

The two settlements where people are offered new houses are far away from the city centre and lack facilities. A lot of people risk losing their job in the informal economy of Vila Nazaré because small businesses are disappearing. ***"The story of my life is here. I raised my children here, now I'm raising my grandchildren here. I don't want to leave Nazaré. Here are my roots, here is my life"***, adds Soares[7].

NEIGHBOURHOOD DESTROYED BY BULLDOZERS

Soares was one of the first inhabitants of the settlement, when there were only fields and bushes around her and one water tap for the whole community. When people first settled in the neighborhood, they didn't have official land titles but occupied unused land.

According to Brazilian law, the families that have occupied this land for so many years are automatically the land owners.

In complete disregard of this reality, in 2012 the Rio Grand do Sul government seized the land Vila Nazaré sits upon[8], even though thousands of people lived there in a neighborhood full of shops and small businesses.

In July 2019, the municipality started evicting families from their homes, after which the buildings were destroyed by a bulldozer, leaving the remaining inhabitants to live among the rubble.

Lots of families accepted bad resettlement deals under pressure. Vanessa Bueno, a resident who has already been removed, states: ***"I never requested that my house be replaced by the apartment that I have today. My house in Nazaré was much better than this apartment that I live in today. The safety that I felt in Nazaré was much better than what I have today"*** [9].

FRAPORT KNOWINGLY AVOIDS ITS RESPONSIBILITY

Fraport has failed to recognise its responsibility in relation to the removal of the families from Nazaré. The company claims that that Vila Nazaré is an illegal settlement and that therefore they don't bear responsibility for the relocation of the residents. ***"We at Fraport have nothing to do with the decision. Relocating people was one of the preconditions for signing the contract between the authorities and the company,"*** said CEO of Fraport Stefan Schulte, at its shareholders meeting in May 2019[10].

But the contract between Fraport and the Brazilian ministry of transport shows the opposite: as concession holder, Fraport is directly responsible. The contract clearly states that 'any eviction from areas located on the airport site, in the possession or possession of third parties, prior to or after the conclusion of the Contract, will be the full responsibility of the Concessionaire'[11].

Shortly after the first evictions took place, the Brazilian public prosecutor started a court case against Fraport, claiming the right to housing for the families in Vila Nazaré and demanding that Fraport pay for the costs of the forced removal and the housing that was constructed for resettlement[12]. The public prosecutor stated that neither Fraport nor the city government can forcibly remove families unless the process occurs in an appropriate and transparent manner. Until then, no family should be removed.

THRIVING COMMUNITY TURNED INTO WASTELAND

The court case temporarily halted the evictions, but they continued soon after Fraport won an appeal against a granted injunction. Despite being threatened and intimidated, the community business owners and residents are resisting the eviction from their businesses without any guarantee of reparations. Some families continue to live among the rubble, facing violence from public authorities and Fraport, with the hope of remaining in the area and with the right to due reparations.

In the meantime, the remaining people of Vila Nazaré fear that their home will become uninhabitable. The city of Port Alegre has already stopped investing in the area: with schools and healthcare centers closed down, streets riddled with potholes, and abandoned and demolished houses, the once-thriving community has started to look like a wasteland.

"THE STORY OF MY LIFE IS HERE. I RAISED MY CHILDREN HERE, NOW I'M RAISING MY GRANDCHILDREN HERE. I DON'T WANT TO LEAVE NAZARÉ. HERE ARE MY ROOTS, HERE IS MY LIFE"

- VANIA MARIA SOARES

Sônia Regina Alves protesting against the eviction of Vila Nazaré - Alass Derivas

LEGAL ANALYSIS

Before starting the project, Fraport should have been required to conduct due diligence, where it would have identified the human rights issues involved in building the airport, including the issues of land ownership, forced eviction and compensation of the inhabitants. A mHREDD law with strong enforcement could have forced the company to address these issues.

As part of its due diligence obligations, Fraport should have been required to consult the local community. If Fraport failed to conduct the due diligence properly and cause harm for the community, a strong EU mHREDD law should impose liability for that harm.

Companies can cause harm even when they conduct due diligence, so **mHREDD laws must be accompanied by provisions that impose liability on parent corporations for the violations they cause** regardless of the due diligence they have conducted.

Vila Nazaré residents have faced insurmountable challenges in holding Fraport Brazil's German parent company (Fraport AG Frankfurt Airport Services Worldwide) liable. Even though the parent company fully owns Fraport Brasil – Porto Allegre and created it for the sole purpose of upgrading and operating the airport, **the parent company's separate corporate structure limits the possibility of its liability in EU courts.**

- **The victims who have been forced from their homes should not bear the burden of having to prove that the German parent company controls the activities of its subsidiary** in order to establish the parent company's liability, as is currently required.

- **It is essential that victims are able to take the company to court in the EU court, because the host state legal system is inadequate.** Although a Brazilian public prosecutor did bring a case against Fraport Brasil, this only temporarily stopped the destruction of Vila Nazaré and did not provide any compensation to those who have lost their homes and livelihood.

- Typically, EU courts will apply the law of the country where the violation took place. They should be able to apply EU law in lawsuits, to ensure that EU-based companies comply with EU standards. It is possible the EU court would determine that because land rights would not be recognised under Brazilian law, no compensation was due. Thus, **EU law should ensure that host state law would not apply when such law does not provide an adequate remedy**. Such exception exists already for environmental damage, and the EU should extend this exception to human rights violations as well.

DEATH BY OIL IN NIGERIA

The Niger delta in Nigeria is one of the most polluted areas in the world. Since the discovery of oil reserves in this densely populated tropical river delta in the fifties, crude oil has been leaking into the environment continuously.

Sign warning for oil pollution in Goi - Ike Teuling

"People in this area eat, drink and breath polluted air as direct result of gas flaring and oil spills", explained Michael Azabi, director of the hospital of Oruma, a small town in the middle of the delta. Over 30 million people[13] are living in this highly polluted delta while transnational oil companies like Shell[14] and Total continue to pump up – and spill – oil.

"If you go to the river you can't catch many fish and the few you catch are polluted," said Azabi. ***"You see oil floating on the water and you can imagine what happens if people don't have money to buy water. They are drinking oil."*** [15]

PREMATURE DEATHS FROM OIL POLLUTION

Most pollution is caused by leaking pipelines, due to poor maintenance or badly secured pipelines that are vulnerable to sabotage by people who steal oil to make a living in an area where traditional livelihoods have been destroyed. Oil spills are often not cleaned up quickly or effectively, leading to widespread pollution of water, soil and air. Gas flaring - eliminating unwanted gas that is a byproduct of oil extraction by burning it - adds even more pollution to the atmosphere[16].

Scientific studies show that constant exposure to oil pollution has a dramatic impact on health. ***"Life expectancy has reduced. A lot of young men and women are dying"***, said Azabi.

A major scientific study shows that Nigerian babies growing up in oil-contaminated areas are twice as likely to die prematurely[17]. Queen Victor, mother of ten children, has experienced this firsthand. ***"When you're pregnant, you often lose your baby because of the oil spill"***[18]. Six of her ten children are still alive.

The people living in the delta have spent decades trying all possible legal ways to stop the pollution, force companies to clean up their spills, and compensate for damage done to farmland, fishponds and public health.

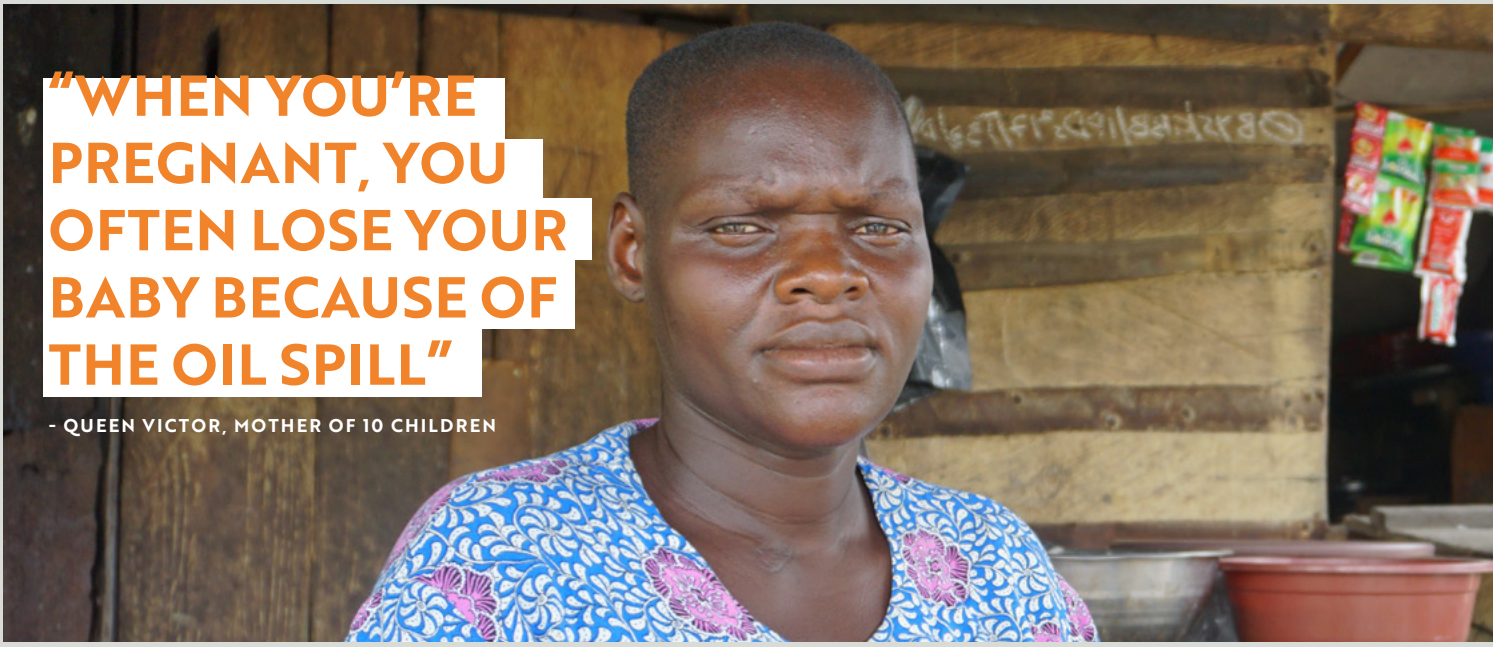
SHELL SABOTAGES SUCCESSFUL COURT CASES

New cases are submitted to the courts in Nigeria daily. Even though favourable court decisions have occasionally been obtained by victims, these are rare and legal actions almost never lead to compensation of damages or redress. Oil companies often refuse to abide by such decisions and use various tactics to sabotage compliance.

The Ejama-Ebubu community, that have suffered from oil pollution caused by Shell since 1970, won a court case against the company in 2010. The Nigerian court ruled that Shell had to pay half a billion dollars plus interest and clean up the polluted lands[19].

When the company refused to abide by the court's decision, the community turned to the UK courts in the home country of the parent company to try to enforce the payment. But without success. In 2019, the judge decided in favour of the oil transnational, leaving the villagers empty-handed[20].

Another example of companies avoiding responsibility is the ban on gas flaring. In 2005 the Nigerian High Court ruled that gas flaring is illegal, in a case started by communities close to gas flares. But instead of halting this harmful and polluting practice, oil companies like Shell chose to pay the fines for non-compliance. These fines are so low that they could just be added to the operational costs[21].



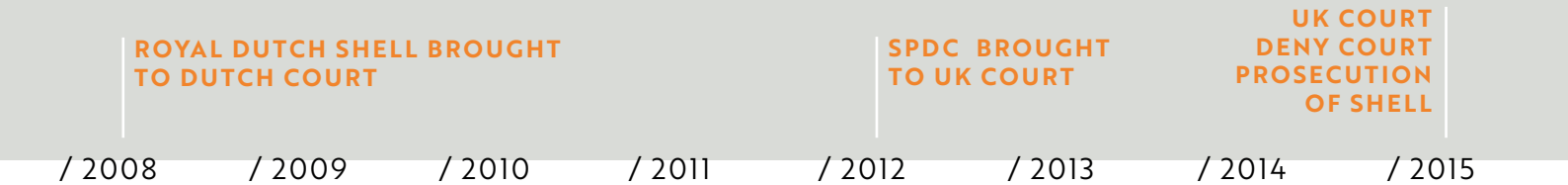
Queen Victor in front of her shop - Ike Teuling

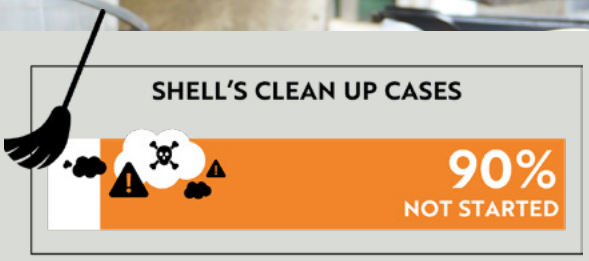
TAKING THE CASE TO THE COMPANY'S HOME COUNTRY

Because even successful decisions in legal actions in Nigeria were not being adhered to or implemented, the affected communities turned to the courts in the home countries of the oil companies present in the Niger delta.

With the support of European NGOs, several court cases were started to condemn the European mother companies for human rights violations committed by their subsidiaries outside Europe.

- In the Netherlands in 2008, four Nigerian farmers that had lost land and fish ponds due to oil spills brought Royal Dutch Shell to court to demand compensation and clean-up. Twelve years later this case is still ongoing, and two of the four plaintiffs have died. Even though it was a big victory for the Dutch court to accept to prosecute the mother company in its home country for violations committed by a daughter company - Shell Petroleum Development Company (SPDC) - , the slow progress means that the communities of the four plaintiffs still live amidst pollution.
- UK courts were also asked to prosecute Shell for pollution caused in Nigeria, but in this case only Shell's subsidiary, SPDC, was brought to court in 2012. The company reached a settlement with the claimants and paid the Bodo community 70 million US dollar compensation for damage done during two oil spills in 2008. Shell also promised to clean up the area but this only started six years later in 2019, and is far from finished[22].
- After the success of the Bodo community, in 2015 the Ogale and Bille communities tried to get access to justice in the UK. But the court ruled that the communities could not seek redress against Shell in UK courts[23]. Shell argued ***"Claims by Nigerian communities against a Nigerian company about events in Nigeria should be heard in Nigeria and not the UK"***[24]. The Ogale and Bille communities appealed the court's decision in May 2020, and are still waiting for the judgement.
- A case against oil company ENI, started in 2017 in an Italian court by the Ikebiri community. They demanded to be compensated for the damage caused by a spill in 2010. The case, also resulted in a settlement. But in this case no direct payments were made. Instead, the company only agreed to invest in infrastructure for the community like roads and electricity. ENI claimed in the Italian court that it was not responsible for the spill and pointed to its subsidiary in Nigeria.





LIVING IN TOXIC POLLUTION

In 2011, the United Nations Environmental Program (UNEP) exposed the extreme high levels of pollution in Ogoniland, a part of the Niger delta[25]. It reported extremely high levels of pollution of water and soil in for instance the Ogale community[26], destruction of vast mangrove forests and grave impacts on health. Now, nine years later, none of the oil spill sites that were identified by UNEP have been cleaned properly. In fact, **clean-up has not started in 90% of the cases and people continue to live amidst toxic pollution**[27].

Fish and crops contains toxic chemicals as well. *"What we eat here is pure poison"*, says Veronica Adda Kobani from the Nigerian village of Goi. *"People who can, leave here or buy their food somewhere else. But some don't have that choice and still eat it"*[28].

"Sometimes I take my children to the river to tell them stories about how beautiful it was here", she says. *"But actually, I shouldn't do that. The air you breathe here is too polluted."*

ENI BROUGHT TO ITALIAN COURT

OGALE & BILLIE COMMUNITIES APPEAL UK COURT DECISION OF 2015

/ 2016 / 2017 /2018 / 2019 / 2020

LEGAL ANALYSIS

- **An EU mandatory human rights and environmental due diligence legislation should impose an obligation on EU companies to conduct due diligence for the activities of their subsidiaries**, and even their contractors or others in their global value chains. mHREDD should be strictly enforced, and the failure to conduct due diligence in accordance with the law should be subject to penalties that are high enough to act as a deterrent to ignoring due diligence in the future.

- Companies like Shell and ENI always argue that claims should be taken against their subsidiary in Nigeria and that EU courts should not take on human rights violations that happen outside the EU ('extraterritorial' cases). **EU laws should therefore include liability for parent companies.** The corporate structure and layers of subsidiaries make it difficult for the victims in Nigeria to hold the parent company liable, since this involves 'piercing of the veil.' In the court case in the Netherlands, the Nigerian subsidiary was found liable, but not the parent company. Further, the subsidiary is partially owned by the Nigerian government, which may claim sovereign immunity in the event of a suit.

- **Victims have a limited ability to uncover the information that is necessary** to show a parent company's control over the subsidiary and to therefore establish the parent company's liability. **New EU laws could reverse this burden of proof.**

- As the situation in Nigeria demonstrates, **allowing parent companies to be sued in EU courts is important because many host state legal systems are inadequate.** Local agencies lack enforcement ability, such that transnational companies can flout local court rulings, and penalties for damages do not act as a deterrent to future violations. It is notable that the only occasions where plaintiffs have been able to get limited compensation were settlements resulting from lawsuits in European courts (the Bodo case against Shell in England and the Ikebiri case against ENI in Italy).

- EU courts usually apply the law of the host country, with some exceptions. **It is important for EU courts to have the power to apply the law that will be most protective of human rights and the environment.** For example, if EU courts hear a case related to the pollution and human rights violations in Nigeria, they could be required to apply Nigerian law, which includes the Nigerian Oil and Navigable Act of 1968, a law permitting companies to discharge hazardous substances when this is due to a leakage. Applying such a law will make it much harder for victims to obtain justice. Therefore, EU courts should be able to apply EU laws on issues such as pollution, health protection, compensation for damages, etc.

TRANSNATIONAL CORPORATIONS FORCE MOZAMBICAN FAMILIES FROM THEIR HOMES

In 2010, the lives of the fisherfolk and farmers living in the sleepy town of Palma were turned upside-down. A huge gas field was discovered in the Cabo Delgado region off the coast of northern Mozambique, very close to a UNESCO protected nature reserve. Transnational companies started arriving to develop onshore infrastructure and an industrial complex, taking the lands and fishing grounds, and leaving the locals with no way to sustain themselves and their families.

Fisherman at the beach of Palma - Ike Teuling

Office of oil company Anadarko - Ike Teuling

"They gave me a house but I have no field to produce [food] and support myself. They consider the two sacks of rice they gave me to be enough, but do they think this amount is enough for me?" complained an elderly woman from the village of Milamba[29], a small fishing village which was wiped off the map completely for the construction of an airport.

LOCALS EVICTED WITHOUT COMPENSATION

In the area, a total of 556 families were evicted from their villages and partly resettled in new settlements, and over a thousand more families were affected. These new houses are far from the coast and fishermen have lost their access to the sea. ***"I'm a fisherman. From the money I make fishing, my kids go to school. But now that Anadarko is forcing us to move, I don't know what to do"***, Abibu Nivsiami[30] explained in a video made in 2018, just before the resettlement.

The US oil company Anadarko developed the first infrastructure for the huge liquid natural gas (LNG) complex, forcing people to leave their homes and machambas, small plots of land to farm crops like cassava and yam. Confiscated farmland was not properly compensated and many villagers report not having received enough land in return to sustain their families. Several villagers were promised financial compensation but have never been paid[31].

INVASION OF EUROPEAN CORPORATIONS

This all happened under a DUAT[32] licence, granted to Anadarko by the Mozambican government before the company even had a first conversation with the local inhabitants about resettlement[33]. This is against the Mozambican law, which allows the state to transfer the right to use land – not the ownership – to a third party, but only after 'prior, informed consent from the local population'.

In 2019, Anadarko was bought by Oxydental Petroleum, who in turn sold the project to French oil giant Total[34]. Total's full subsidiary, Total E&P Mozambique Area 1 Limitada, became the operator of the gas field and the planned gas liquefaction plant, owning 26.5% of the shares[35].

A gas field further off shore is operated by Mozambique Rovuma Venture S.p.A, a joint venture of US company ExxonMobil, Italian Eni and China National Petroleum Corporation[36].

European involvement in the project does not stop with the owners of the concessions themselves. The industrial developments attracted a wide array of other European companies, including Dutch dredger Van Oord[37] and Belgium construction company Besix[38]. Dutch oil company Shell has plans for a gas-to-liquid-refinery[39] and Norwegian company Yara is interested in building a fertilizer plant that uses the gas as feedstock[40].

Export credit agencies from the UK, Netherlands and Italy are planning or have already decided to provide millions of euros for this project.

Christina Raimundo in her rice field - Ike Teuling

FRAGILE SECURITY SITUATION PUSHES MORE LOCAL PEOPLE TO LEAVE

The European interest in this remote region didn't benefit the locals. Instead, insurgent groups supposedly linked to a local group called Al Shabaab, but whose real affiliations remain unconfirmed, started attacking communities in the area, sowing fear and forcing even more villagers to leave their communities[41].

There remains a lot of uncertainty about the exact reason behind these attacks and the link to the industrial boom, but it has led to a heavy militarization of the area. Villagers accuse the installed military of harassment and mainly protecting the interests of transnational corporations instead of the safety of civilians[42]. Yet for the transnationals in the area, this explosive security situation has not been a reason to leave.

Local people are suffering from the situation. ***"I am a trader, fisherman and healer. I used to cure many diseases, but now I don't do this work anymore because I am afraid to go into the bush to look for plants"***, said an elderly man from Milamba. ***"The military can confuse me with the insurgents, so I gave up this activity"***[43].

AFFECTED COMMUNITIES STRUGGLE TO BE HEARD

For the affected communities in Cabo Delgado, most of whom lack a formal education, getting access to justice is not easy. In 2019 the people from Milamba wrote an official complaint to the Mozambique LNG project operated by Total. They never received a reply. In May 2020, 37 families of the Milamba community sent another complaint to Total about the loss of land and lack of compensation. So far, this letter also remained unanswered.

Since official complaints to Total didn't result in any improvement of the situation, the affected communities turned to the financiers of the project, with the help of European NGOs. In July 2020, Dutch NGO Both Ends, together with a farmers union (União Provincial de Camponeses), sent a complaint letter to the African Development Bank[44]. Friends of the

"WE NEED THIS LAND TO GROW FOOD. WE HAVE NOTHING ELSE TO LIVE OFF. WITHOUT LAND, WE CANNOT GROW FOOD, WE CANNOT SURVIVE."[46]

- CRISTINA RAIMUNDO, SENGA

Earth England Wales and Northern Ireland started a court case against the governments export credit agency UK Export Finance, claiming the 1 billion dollar support of the gas project is incompatible with the Paris climate agreement[45].

AN OPPORTUNITY TO PREVENT FUTURE DAMAGE

The Mozambique LNG project is still in the early stages, with developments being slowed down by the security situation. There is still a chance to halt future damage, for instance to the nearby Quirimbas Archipelago UNESCO-protected Biosphere and prevent more human right violations, if local residents have the means to confront the wide range of transnationals that are planning to move into the area.

"They should leave us alone so we can work in the fields", said Cristina Raimundo from Senga. "We need this land to grow food. We have nothing else to live off. Without land, we cannot grow food, we cannot survive"[46].

LEGAL ANALYSIS

- **If human rights and environmental due diligence were mandatory and included enforcement and adequate penalties,** a proper due diligence review could have revealed the issues related to displacement, compensation, and environmental assessment.
- **mHREDD could also provide a decision-making framework for companies operating in areas of violence,** helping them to determine when it is impossible to adequately protect against human right violations that occur in relation to their presence and therefore to terminate business activities in the area.
- **If mHREDD required the disclosure of information about corporate structure and relationships,** this information would be helpful for victims seeking justice.
- **The EU needs to provide for access to justice by allowing victims to take the parent company to court in the EU.** Residents have been forced out of their homes and livelihoods with little to no compensation and have been unsuccessful in seeking compensation through the transnational companies' dispute resolution mechanisms.
- **The necessity of providing access to justice in EU courts is demonstrated by this case.** The legal system in Mozambique is unable to ensure justice: The Mozambique government violated its own law in granting the land to Anadarko. The government has militarized the zone, which has intimidated residents and further curtailed their livelihoods.
- **The EU needs to provide for parent company responsibility for damage caused by its subsidiaries and for foreseeable damage caused by those in its global value chains.** The corporate structure and layers of the many companies and subsidiaries involved in the area make it very difficult to hold the parent companies liable.
- **The EU should make clear that its courts can hear cases of human rights violations and apply the EU's human rights laws in these.** EU companies would be held accountable on European standards and victims would be entitled for adequate compensation for harm caused through forced resettlement.

SUFFERING SILENCED IN SIERRA LEONE

The Malen chiefdom in south Sierra Leone used to be a diverse ecosystem where villagers of the Malen community could make a living with small scale farming, hunting and gathering. Until SOCFIN arrived in 2011 to sign a lease agreement with the Sierra Leone government to use the land for palm oil plantations.

Socfin plantation in Sierra Leone - Fian Belgium

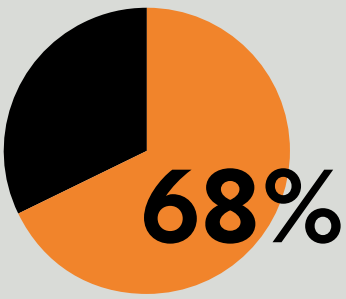
Two more contracts followed and SOCFIN, a Luxemburgish-French-Belgium agro-industrial company, **took control of 18,473 hectares of the Chiefdom's total 27,000 hectares of land.** Even though the Paramount Chief of the Malen kingdom had agreed to cede land to the government, a large part of the communities in the area claimed the agreement was illegitimate. The 32,000 people living in 53 villages had never been consulted and had never given their 'free prior and informed consent'[47].

"SOCFIN never holds participatory consultation processes in the villages. They tried only to achieve the consent of two or three landowners in the villages by making promises, and after that they claim that the whole village accepted to lease the land", a villager from Bassaleh town explained to FIAN Belgium in 2012[48].

SOCFIN was supposed to pay fair compensation for the loss of land and crops, but villagers reported that the compensation paid was insufficient and not according to the agreements.

"We had 60 acres of palm trees but after the survey, they considered it was only 10," a resident of Gandorhun Town told FIAN Belgium in 2018[49].

What followed is a still ongoing process of villagers trying to get justice while the palm oil plantations of SOCFIN - and the multiple negative impacts that comes with it, in relation to access to land, working conditions, pollution or criminalisation - encroach further and further on the land of the Malen people.



18,473

OF 27,000 HECTARES TAKEN

AGGRESSIVE COMPANY TACTICS SILENCE CRITICS

Sierra Leone is not the only country where SOCFIN is accused of violating human rights. In Cameroon[50], Cambodia[51] and Nigeria[52] NGOs also report land-grabbing, followed by environmental pollution and repression of villagers trying to get justice.

SOCFIN, originally a Belgium agri-industrial company founded in colonial times, is registered in Luxembourg and owned by the Belgium businessman Hubert Fabri (54,2% of the shares) and French businessman Vincent Bolloré (39% of the shares). The company has a highly complex ownership structure with many subsidiaries active in 10 countries in Africa and Asia and owns 192 900 hectares of palm-oil and rubber plantations.

SOCFIN is known for its aggressive strategies against those who criticise their behavior. In 2018 SOCFIN started a SLAPP suit (strategic lawsuit against public participation)[53] against a group of French NGOs and journalists[54], followed by a similar case against a group of Belgium NGOs later that year[55]. Since 2009 more than 20 libel cases have been launched mainly against European journalists and NGOs writing about SOCFIN or Bolloré[56].

Locally, villagers protesting landgrabs often claim that they face repression by the company itself and/or the state that protects the transnational corporation. In Sierra Leone, victims organized themselves in the Malen Affected Land Owners and Land Users Association (MALAO) and filed a complaint to local authorities and the Human Rights Commission of Sierra Leone (HRC)[57]. When neither process led to any outcome, they started organising protests. In reaction to that, six members of MALAO were arrested and accused of 'destruction of growing plants', 'conspiracy' and 'incitement'. They were convicted in 2016 and had to pay heavy fines.

This repression strategy effectively prevents access to justice for victims of the company. ***"It's not conceivable for MALOA to introduce a complaint in front of the very same jurisdictions which have convicted them time and time again for riotous conducts or incitement",*** explained Florence Kroff from FIAN Belgium.

Truck full of oil palm - Fian Belgium

THE CONVOLUTED ROUTE TO JUSTICE

The repression at national level has actively blocked access to justice in Sierra Leone and other countries where SOCFIN is active. Therefore European NGOs started several court cases in the home countries of SOCFIN, targeting the parent company and their subsidiaries doing harm abroad. The complex ownership structure of the company complicated these processes.

In 2015 a group of 80 Cambodian farmers started a case against Bolloré Group at the regional French court of Nanterre[58]. In 2019 a group of Belgium and French NGOs went to the same court to trial the Bolloré Group. They contested the fact that Bolloré, the second largest shareholder of SOCFIN, refused to implement an action plan that was agreed in front of the French OECD National Contact Point in 2013[59], following a complaint related to the impact of Socapalm (SOCFIN subsidiary in Cameroon) on local communities rights. They demanded from the Bolloré Group that Socapalm implement the plan **to improve the living and working conditions of the affected communities.** Both cases are still ongoing.

The 2019 case clearly illustrates the dysfunctionality of the OECD complaint mechanism, a non-legal remedy. After a lengthy procedure that started with a complaint in 2010 and years of mediation with the company, a voluntary action plan was agreed by Socapalm in 2013. But when Socapalm refused to implement the action plan, the involved NGOs had to turn to legal means to order its execution.

In 2019 three NGOs from the Netherlands, Liberia and Indonesia tried another route to bring justice to the victims of SOCFIN, by filing a complaint against the Dutch bank ING, one of the financiers of SOCFIN. This complaint was accepted by the Dutch National Contact Point and is now in process.

FAMILIES CONTINUE TO SUFFER WHILE THEY WAIT

For the people in the Malen Chiefdom the situation has not improved. Victims are awaiting justice while court cases and complaint mechanisms take years to come to conclusions. "All the land is now plantation. Everywhere is occupied", said Fassie Vandy, a cassava farmer from the village of Bannaleh[60]. "I want them to pay for my plantation that was destroyed. I am requesting that the company halts its expansion and not enter new lands."

"We have lost livelihoods and have suffered indignities as a result of the SOCFIN investment. We have been criminalized for speaking out against human rights abuses that characterize the land deal in Malen. We continue to suffer in silence", MALOA said in a letter to the Chief of Staff of the President of Sierra Leone[61].

"WE HAD 60 ACRES OF PALM TREES BUT AFTER THE SURVEY, THEY CONSIDERED IT WAS ONLY 10."

- RESIDENT OF GANDORHUN TOWN, 2018

Malen people protesting against Socfin - Fian Belgium

LEGAL ANALYSIS

- **A mandatory human rights and environmental due diligence legislation with strong enforcement mechanisms** could have required SOCFIN to consider whether adequate consultations took place, including respecting the need for free, prior and informed consent, and fair compensation was given.
- **This case demonstrates the importance of access to courts** in situations like these, since non-judicial mechanisms such as the OECD complaint mechanism were ineffective at addressing the violations that did arise as the company refused to implement what it had agreed to.
- **The complex corporate structure of SOCFIN makes it difficult for victims to prevail in legal challenges** to the company's alleged human rights violations. Although some cases are still ongoing, there have been several cases in various forums against SOCFIN that, to date, have not provided an adequate remedy. Another challenge is that the Cameroonian subsidiary is partially owned by the Cameroonian government, which may claim sovereign immunity in the event of a suit.
- **A mHREDD law must therefore be accompanied by the imposition of liability on the parent company for the harm caused by it or its subsidiaries.** SOCFIN should bear the burden of proving that it has no influence or control over its subsidiaries or contractors.
- **The EU should ensure EU courts have jurisdiction over cases such as this because of the inadequacy of host state system.** In Sierra Leone, the government did not ensure that adequate consultation took place. When victims were unsuccessful in their complaint to local authorities and the Human Rights Commission of Sierra Leone (HRC), they organized protests which the government reacted to by putting the victims in jail and imposing heavy fines.
- Agricultural communities in countries like Sierra Leone and Cameroon may have a difficult time claiming compensation, as their rights may not be recognized or enforced by local courts. **It is important that EU courts are able to apply EU law if the host state law would not provide an adequate remedy or does not provide sufficient protection of the environment or human rights.**

INDONESIAN FISHERS IN UNFAIR FIGHT AGAINST DREDGING

In July 2020, hundreds of small fishing boats blocked the gigantic ship *Queen of the Netherlands* in front of the coast of Makassar, the capital of Sulawesi, Indonesia. *"Go away, we have nothing to eat anymore"*, the fisherfolk screamed in their attempt to stop the ship from destroying more of their fishing grounds[62].

The fishermen in Makassar are protesting the mining of sand by Dutch dredger Boskalis for the extension of the harbour[63]. ***"The activities of Boskalis make fisherfolk angry, because our income has decreased, the water is cloudy and the waves are big"***, explained fisherman Zakia[64].

Boskalis claims that funds have been set up to compensate the fisherfolk for the loss of fishing grounds. But the impacted fishermen, mainly those from the Kodingareng island, were not aware of the existence of these funds and were never informed by Boskalis of the potential impacts of the project[65]. They were caught by surprise when the first gigantic dredging ships suddenly appeared in their fishing spots.

European dredging companies not only cause damage to ecosystems and fisheries in Indonesia, but also in many other countries around the world[66]. When Dutch journalists questioned the impact of the project, Boskalis referred to the responsibility of the local owner of the sand-concession[67] for doing the environmental and social impact assessment. This is a method often practised by dredging companies to avoid their responsibility to local communities.

FISHERS FAILED BY COURT SYSTEM IN INDONESIA

The conflict between Boskalis and the fisherfolk of Makassar goes back to 2014, when more than 40 families were violently evicted from their land by the government to make way for an earlier land reclamation project carried out by the Dutch dredger[68]. This project, supported by the Dutch state via export credit agency Atradius, led to coastal erosion and a dramatic decrease of fish stocks.

Fishermen were never involved in the development phase of the project or compensated for their losses[69]. WALHI, Friends of the Earth Indonesia, started several court cases against the local government, denouncing the illegally granted sand concessions, but lost all of them[70]. In 2017 the project was finished, leaving the fisherfolk behind with their uncompensated losses[71].

When Boskalis returned to the area in 2020, this time to complete the Makassar Newport project started by Belgium dredger Jan de Nul, the fishermen decided not to go for the long and unrewarding legal route but instead turned to a more direct method: blocking the huge dredging vessels with their little boats to prevent more harm from being done. Both Ends, a Dutch environmental justice organisation, turned to the Dutch court to get access to documents on the social and environmental impacts of the project, but without success[72]. Fisherfolk are now facing criminalization while they bravely continue their protests[73].

SUCCESSFUL LOCAL RESISTANCE IN JAKARTA

The fishermen of Makassar follow the example of Jakarta's fishing community. In Jakarta, fishermen put up a successful yearlong resistance to a controversial Jakarta bay land reclamation project, consisting of 17 artificial islands. In the end, only four have been constructed[74].

Jakarta Bay is a traditional fishing area for ten thousand small fishermen. During the dredging activities for the land reclamation, the water became so muddy that fishermen had to stop their fishing activities completely. ***"There is too much mud, there's nothing in it"***, one fisherman said[75].

In a study from 2016, **the losses for fisherfolk caused by the dredging activities in Jakarta Bay were estimated at IDR 207 billion per year (equivalent to EUR 12 million)**[76], not taking into account the losses of fisherfolk operating in the areas where sand is extracted[77].

Three European dredgers were involved in this project: Dutch Boskalis and Van Oord and Belgium Jan de Nul Group. All three companies avoided responsibility by not asking the fisherfolk for their free, prior and informed consent and not providing enough financial compensation for damage done.

Women protesting against boskalis - WALHI South Sulawesi

EUROPEAN COMPANIES SHIRK RESPONSIBILITY

In response to criticism on the impact of the project on fisheries in Jakarta Bay, Boskalis and Van Oord said that they had agreed that the responsibility lies with the Indonesian property developer and that they should therefore be the first point of contact for the fishing communities[78]. Jan de Nul Group did not reply at all to information requests by journalists and NGOs[79].

In May 2016 the Indonesian Minister of Environment and Forestry ordered by decree an immediate suspension of all work on the artificial islands in Jakarta Bay[80]. The ministry concluded that fisherfolk had never been involved in the planning, the companies had violated their permits and the Environmental Impact Assessments were not in order.

The Dutch and Belgium dredgers appeared to have gone into business with private developers that did not have their environmental management in order. A private developer of one of the islands was even involved in a corruption case, having paid EUR 130,000 bribe to help bypass spatial planning regulations for one of the islands. Both the giver and recipient of the bribe were convicted[81].

The fisherfolk in Jakarta Bay have seen the success of their protest, but the fisherfolk of Makassar are still in the middle of their struggle for justice. ***"We have taken action five times, but the company and the government have ignored it. We ask the government to stop the activities of Boskalis"***, said Zakia[82].

IDR 207 BILLION (EUR 12 MILLION)

LOST BY FISHERFOLK FROM DREDGING ACTIVITIES / YEAR

"WE HAVE TAKEN ACTION FIVE TIMES, BUT THE COMPANY AND THE GOVERNMENT HAVE IGNORED IT. WE ASK THE GOVERNMENT TO STOP THE ACTIVITIES OF BOSKALIS"

- ZAKIA, FISHERMAN OF JAKARTA BAY

Children protesting against Boskalis - WALHI South Sulawesi

LEGAL ANALYSIS

- **The EU dredging companies should have been required to conduct mHREDD before starting operations**. A mandatory law with robust enforcement and penalties for non-compliance would have obliged the companies to assess whether **the local company they contracted with** was adequately consulting with the affected community, and whether the compensation to be paid was adequate or even paid at all.

- Yet, **even when a company conducts due diligence in its global value chains, it should be liable for the human rights violations that arise when due diligence is not successful** at preventing those harms.

- Victims have difficulty establishing such liability given complex supply and value chain relationships, and the blatant efforts companies make to distance themselves from the activities of their subsidiaries **or contractors**. It would be difficult, if not impossible, for the fishing communities to prove that the contractors acted under the European companies' control. **There should exist a presumption that the European companies do have control or influence over their subsidiaries and others in their global value chains** and therefore bear a responsibility to ensure the contractors respect human rights.

- **Providing for access to courts in the EU is important because it can be extremely difficult for victims to seek justice in their home countries**. Thus far, neither the Indonesian nor the local government have adequately addressed the environmental damage caused by the dredging that was unauthorized. The Indonesian government did temporarily cease the dredging in response to protests, but such reactive and temporary political decisions cannot substitute for the strong domestic regulation and liability regimes that the local and Indonesian governments lack.

- EU courts are typically required to apply the law of the "host" country in cases this. Yet these often do not adequately support protection of human rights and the environment. Under Indonesian law it is not clear if the fishermen's right to access fisheries to sustain their livelihoods would be recognized. Thus, **EU courts must be free to apply EU laws and EU standards to ensure an adequately remedy.**

- This case illustrates that **the EU should also consider providing courts the power to temporarily cease destructive action pending the outcome of cases**. Although it is possible that the victims could seek environmental damages in EU courts, such litigation can be lengthy and costly and in the meantime the ecosystem could be destroyed.

CONCLUSION

Fisherman at the beach of Palma - Ike Teuling

As we grapple with the urgent global challenges of Covid-19 and ecological crises, we must create new rules to end the impunity of corporations who reject sustainability & solidarity in favour of profit.

The cases in this report show why **we urgently need mandatory human rights and environmental due diligence (mHREDD) in the EU**. Strong enforcement of such a law, with penalties and sanctions for non-compliance, would have put pressure on the companies in this report and would have incentivised them to comply with these procedures.

It might have led Fraport to identify and address the risks of human rights violations when relocating the Nazaré community. In Jakarta, it might have pushed the Belgian and Dutch dredgers to check whether their contractors had consulted with the local fishing community, or encouraged SOCFIN to confirm whether adequate compensation would be provided to the Malen people forced off their land. It might have lead Shell to invest in better maintenance of its corroded pipelines and prevented some of the toxic pollution of the Niger Delta.

At the same time, mHREDD may not by itself have prevented these harms. It does not guarantee that companies will avoid causing or contributing to human rights violations, and the mere fact that a company complied with due diligence obligations should not absolve it from liability. **An EU law must be accompanied by provisions that strengthen liability against European companies for the harm they caused, even when they have conducted due diligence**, so that we ensure that companies work proactively to prevent violations.

Take the case of Shell's pollution of the Niger Delta. Shell has a human rights and environmental due diligence policy in place, and were also subject to urgent UN recommendations to clean up the area. Yet they ignored their own policies and UN demands, repeatedly failed to remedy their harms, choosing instead to pour their immense resources into delaying court rulings and holding up justice for victims.

The plight of communities in Mozambique and Sierra Leone show that alternative 'non-judicial' remedy mechanisms don't work. Victims there have so far had no success seeking compensation through the transnational corporations' own dispute resolution mechanisms. Justice cannot be left to voluntary corporate social responsibility policies and box-ticking due diligence obligations. **Empowering local communities to hold big companies to account in the courts is the key to preventing and remedying harms.**

To get justice, victims in global value chains must be able to bring a legal case against all the relevant companies, in the right place, under the fairest rules. Yet this is far from guaranteed today. Instead, we have a perverse international system that often prevents these conditions being met.

The relevant companies are those with the power and resources to remedy harms and the ultimate responsibility to do so. But transnational companies are deliberately comprised of a complex web of corporate structures and entities, which makes it hard for victims to determine where and how decision-making takes place.

Shell created a company in Nigeria to extract oil for profit, then claimed it was not responsible for what this subsidiary did. The French transnational Total has a similar parent-subsidiary set up in Mozambique, as does the German giant Fraport in Brazil, who created its subsidiarity for the sole purpose of upgrading its airport. The Belgium agro-industrial company SOCFIN is masterful at using its staggeringly complex system of ownership to avoid responsibility.

To hold such companies liable, victims must untangle this complex web of ownership to prove that the parent company controls the subsidiary. Because there are no rules forcing companies to turn over documents, meeting this burden of proof is often impossible for poor victims. And imposing liability becomes even more impossible when the relationship is further along the value chain, like the fishing communities of Jakarta who could not prove that the contractors in Indonesia acted under the European companies' control.

EU liability law must reverse this burden of proof and ensure that companies like these will be presumed liable for the harms caused by their subsidiaries or other business relationships in their global value chains.

The right place to bring a case means the jurisdiction where victims have the best chance at real justice. **Providing victims with the option to go to court in the EU is crucial** because justice systems in their own countries, where harms occur, are often incapable or unable to provide justice.

There may be gaps in civil rights and environmental laws. Even when victims win in domestic court, the legal system may not be able to ensure the enforcement of the decision, like in the case of Shell's refusal to abide by the Nigerian court decisions. And **those who defend human rights and the environment can have their voices silenced by the state through intimidation and violence,** like the Malen chiefdom fighting for justice in Sierre Leone.

National governments may also partner with corporations, like the Nigerian state and Shell's subsidiary, which can compound corruption and conflicts of interest. This can also shield perpetrators from liability: the Cameroonian subsidiary of SOCFIN is partially owned by the Cameroonian government, which may claim sovereign immunity in the eventof a lawsuit.

In international civil suits, EU courts must generally apply the law of the host country (the country 'hosting' the EU company – where the victims live and where the damage has occurred). But host state laws often cannot offer effective remedy. For the Nazaré residents in Brazil, or the agricultural communities in Sierra Leone, their rights to their land are not recognized by local laws. Under Indonesian law the Jakarta fishermen may not have any clear rights to their fishing grounds. As EU courts are bound to apply the laws of these countries, they might be forced to refuse compensation. **An EU mHREDD law must be accompanied by provisions that give EU courts freedom to apply EU law**, which would ensure that EU environmental and human rights standards are applied to EU companies operating abroad.

This report focuses on the prevention and remedy of corporate human rights and environmental violations. It affirms that **an EU mHREDD law, if accompanied by provisions imposing liability on EU companies in EU courts for harms in their global value chains, could empower victims to get justice and protect themselves from future harm** and create a powerful deterrent for companies.

But it is important to remember that **due diligence is not an end in itself**, it is a tool that amounts to a requirement to put in place processes to prevent and address harms. It is a "floor and not a shield": it does not guarantee that a company will do everything it reasonably can to prevent harm. Imposing liability for harms means recognizing that companies should still have to pay compensation to their victims for harm, even if they applied human rights due diligence. Courts can consider what due diligence was done when determining whether a company met its wider duty of care towards those affected by economic activity, but it is not the primary consideration.

EU due diligence obligations must not become a shield against liability or a substitute for remedy. If liability is only imposed for the failure to do due diligence, rather than for the harms themselves, we risk creating a 'get out of jail free' card for business. Worse, we would do a disservice to victims, robbing them of their right to seek justice.

Criminal law, although it does not provide compensation to victims, could also significantly improve the power of the law to deter human rights violations by companies by holding powerful executives directly accountable. This report limited itself to civil liability and did not explore how cases like these could be addressed through criminal law, however this is an important area that needs further consideration.

Houses in Vila Nazaré are directly destroyed after eviction of the families - Luiza Dorneles

To conclude, this report demonstrates how an EU mHREDD law, if accompanied by provisions imposing liability on parent companies in EU courts, could empower rights-holders and prevent and remedy human rights violations and environmental harm. In order to reach that potential, such a law must have a number of key elements:

THE EU MUST BRING FORWARD A MANDATORY HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE LEGISLATION WITH CIVIL LIABILITY PROVISIONS.

- EU human rights and environmental due diligence law should require companies to **identify** and **mitigate** risks of harms arising from their business activities and relationships in their global value chains, take measures to **prevent and remedy** those harms, **monitor** the effectiveness of those measures, and **communicate** to the public about the outcomes.
- If a company fails to follow their due diligence obligations, the EU should provide for proportionate, effective and dissuasive **penalties and sanctions**.
- While companies should be **liable for the failure to conduct due diligence,** this must **not** absolve them from their separate liability for harm.
- **Business enterprises must be liable for harms in their operations, and in those of companies they control or have the ability to control, and in their global value chains.**

TO IMPROVE VICTIMS ABILITY TO HOLD COMPANIES LIABLE FOR HARM:

- **Parent companies must be liable for harms** they or a company they control or have the ability to control, by acts or omissions, caused or contributed to.
- **Companies must additionally be liable for harms linked to their operations through their global value chains unless the company can prove they acted with due care** and took all reasonable measures that could have prevented such harm.
- **Companies should a priori be considered to have control or influence** over a subsidiary or other companies in their global value chains and to have the possibility of exercising, or actually exercises, control or decisive influence in the business relationship.[1]
- Companies and entities they control or have the ability to control shall be **jointly and severally liable** for harms.
- **Due diligence must not be the primary factor in determining liability - it is only one of many factors[2] that a court should take into consideration when determining whether a company has met its broader duty of care.**
- If the presumption of control is adequately rebutted, liability should still apply to the parent company if the subsidiary no longer exists or was underfunded to avoid liability, or if there is no adequate avenue to pursue a remedy in the host country.

- **Laws should be introduced facilitating discovery and disclosure of evidence** in the EU to provide better access for victims to relevant company documents, given the challenges of obtaining evidence in litigation against transnational companies.
- To reduce financial hardships, victims should have the rights to pursue a case through some form of **collective redress**, akin to a class action.
- The EU should provide **expedited temporary relief for victims,** empowering EU courts to order temporarily ceasing of destructive action pending the outcome of the court's final decision.
- The EU should clarify that the **applicable law should be the one most favourable to protecting victims' rights**, and the choice of applicable law should be made by the victim. To achieve this, **Article 7 of Rome II (**which recognizes the right of victims of environmental damage to elect whether the court will apply the law of the State in which the harm occurred or the law of the State in which the event that gave rise to the harm took place) should be **expanded to cover human rights violations.**
- The European Commission should introduce a proposal to add a **'forum necessitatis'** provision to the Brussels I Regulation, where European courts must exercise jurisdiction if no other forum guaranteeing the right to a fair trial is available, and the dispute has a sufficient connection with the Member State concerned (i.e., by virtue of a parent company to the defendant being domiciled in or operating in the State, or having substantial business interests there).

IN ADDITION:

- The right to **Free, Prior and Informed Consent** must be respected in consultation processes. It should apply beyond indigenous communities, to peasants and other affected people.
- The EU should adopt an **anti-SLAPP regulation** that would give investigative journalists and human rights advocates the power to request to rapidly dismiss vexatious lawsuits filed by companies that are attempting to silence critics.[3]
- To ensure that all internationally operating companies can be held accountable, the EU must engage proactively and constructively in **UN negotiations for a international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations** and other business enterprises.

[1] Including over human rights, labor, environmental or health and safety policies or practices, on the basis of rights, contracts or any other means.

[2] Including the severity or significance of the impact, the size and sector of the company, ownership, structure and resources of the company, industry practices, the level of leverage which the company has and whether this was exercised, and what the company knew or should have known.

[3] While Australia, Canada, and some U.S. states have "anti-SLAPP" statutes in place, the EU has none.

ENDNOTES

1 Fraport Brasil – Porto Alegre signs contract with consortium HTB, TEDESCO and Barbosa Mello for the execution of expansion works at Porto Alegre Airport (2018) https://s3-sa-east-1.amazonaws.com/tcm-assets/fraport-portoalegre-enus/media/2018.02.01_Release_construction%20 contractorPOA.pdf

2 Fraport Brasil takes over Fortaleza and Porto Alegre operations (2018) https://www.aircargoweek.com/fraport-brasil-takes-fortalezaporto-alegre-operations/

3 BNDES approves BRL 1.25 billion financing to Fraport Brasil - Porto Alegre (2018) https://s3-sa-east-1.amazonaws.com/tcm-assets/fraport-portoalegre-enus/media/2018.12.14_Release_Assinatura%20do%20 Contrato%20Fraport%20e%20BNDES_EN.pdf

4 NAZARÉ UNIDA NA LUTA - capítulo 1 https://www.youtube.com/watch?v=6WcRmPwM23A

5 Comissão ouve Artesp, SPMar e moradores sobre Rodoanel leste (2013) https://www.al.sp.gov.br/noticia/?id=335946 6

6 Cronologia do processo de remoção das famílias da Vila Nazaré https://infogram.com/e615b7b9-e4ad-4f0b-ae5e-c5b79d6922a3

7 NAZARÉ UNIDA NA LUTA - capítulo 1 https://www.youtube.com/watch?v=6WcRmPwM23A

8 In 2012, the Rio Grande do Sul State government indemnified the owners who were named on documents at the Land Registry but who had for more than 60 years not legitimately possessed the land nor contested the occupation where thousands had constructed their homes, reared their families, with the irrefutable and obvious right to ownership.

9 Ruim pra quem sai, pior pra quem fica: os futuros incertos das famílias da Vila Nazaré https://www.youtube.com/watch?v=7aBpUrDw7HU

10 "Nada a ver"? Fraport deve assumir sua responsabilidade no reassentamento da Vila Nazaré! (2019)http://www.amigosdaterrabrasil.org.br/2019/05/31/nada-a-ver-fraport-deve-assumir-sua-responsabilidade-no-reassentamento-da-vila-nazare/

11 Contrato de Consessao para Ampliacao, Manutencao e Exploracao dos Aeroportos de Porto Alegre (2016)

12 Familias divididas escombros e desinformacao frente a violacoes de direitos instituicoes brasileiras levam Fraport a justica (2019) http://www.amigosdaterrabrasil.org.br/2019/07/06/familias-divididas-escombros-e-desinformacao-frente-a-violacoes-de-direitos-instituicoes-brasileiras-levam-fraport-a-justica/

13 https://en.wikipedia.org/wiki/Niger_Delta

14 Shell Oils Spill Data https://www.shell.com.ng/sustainability/environment/oil-spills.html

15 People in Nigeria are still dying of oil pollution https://www.youtube.com/watch?v=nuhHvDaMJ10&t=198s

16 A review of the effects of gas flaring on the Niger Delta environment (2009) https://www.tandfonline.com/doi/abs/10.1080/13504500109470082

17 'Absolutely shocking': Niger Delta oil spills linked with infant deaths (2017) https://www.theguardian.com/global-development/2017/nov/06/niger-delta-oil-spills-linked-infant-deaths

18 People in Nigeria are still dying of oil pollution https://www.youtube.com/watch?v=nuhHvDaMJ10&t=198s

19 Ogoni: The people of Ejama Ebubu compensated for oil spill after a 40 year wait (2010) https://unpo.org/article/11398

20 Shell Wins Ruling Blocking Enforcement of Nigerian Spill Case (2019) https://www.bnnbloomberg.ca/shell-wins-ruling-blockingenforcement-of-nigerian-spill-case-1.1358012

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22 On trial: SHELL in Nigeria – Legal Actions agianst the Oil Multinational (2020) https://www.amnesty.org/en/documents/afr44/1698/2020/en/

23 Shell lawsuit (re oil spills & Ogale & Bille communities in Nigeria - Okpabi v Shell) (2018) https://www.business-humanrights.org/en/shell-lawsuit-re-oilspills-ogale-bille-communities-in-nigeria-okpabi-v-shell

24 UK Supreme Court hears Nigerian communities' case against Shell (2020) https://www.reuters.com/article/nigeria-oil/update-1-uksupreme-court-hears-nigerian-communities-case-against-shellidUSL8N2E04YR

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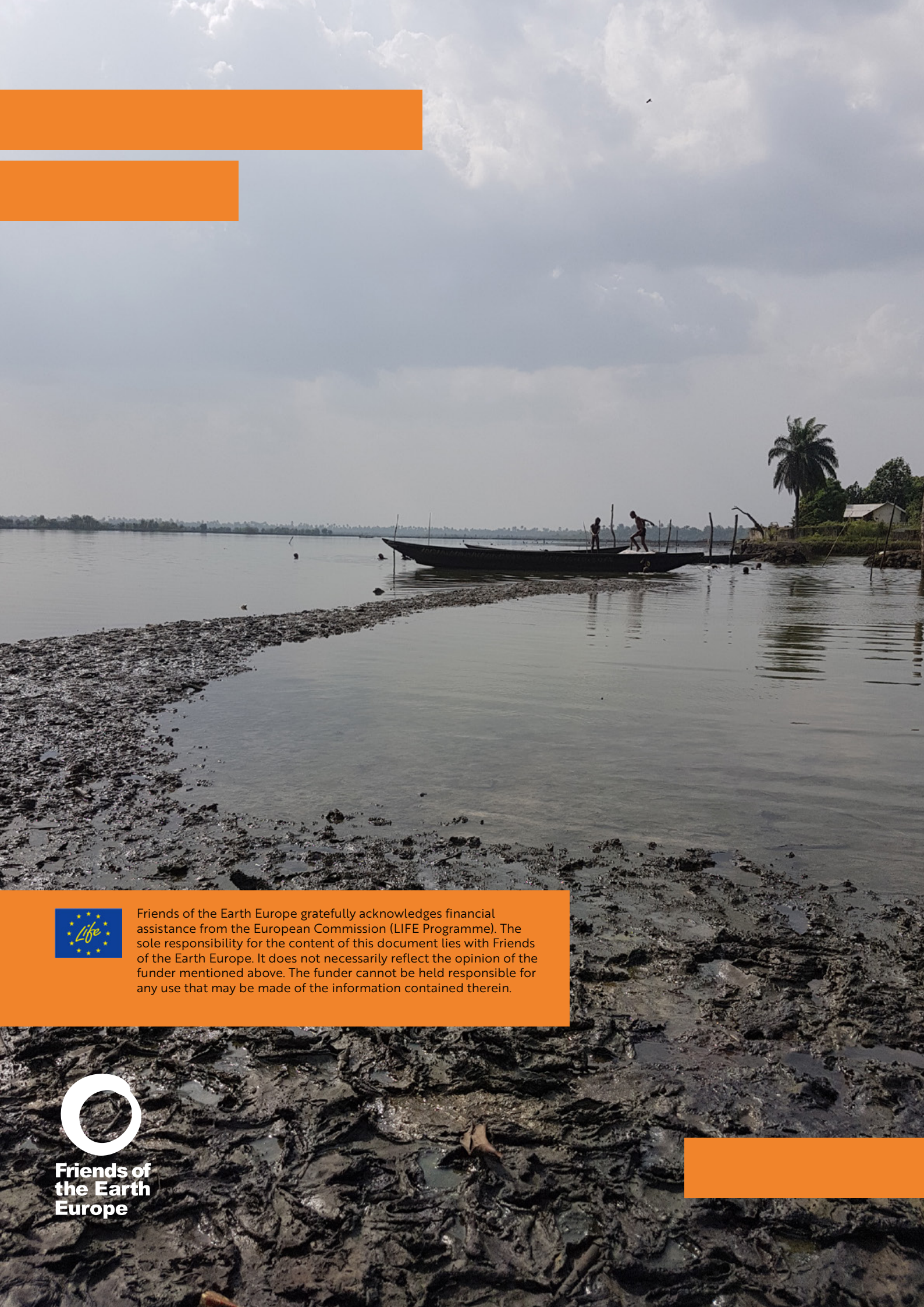

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