

**Complaint to the UK and Dutch National Contact Points
under the Specific Instance Procedure of the
OECD Guidelines for Multinational Enterprises
30 December 2011**

Submitted by:

Amnesty International

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Royal Dutch Shell in the Niger Delta (2)

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Summary

This notification sets out breaches of the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”) by the Royal Dutch Shell group (Shell)¹ in relation to oil pollution in Ogoniland, part of the Niger Delta, Nigeria. It is submitted by:

- Amnesty International - International Secretariat², located at Peter Benenson House, 1 Easton Street, London UK WC1X 0DW
- Friends of the Earth International³, located at Nieuwe Looiersstraat 31, 1017 VA Amsterdam, The Netherlands (“the Complainants”).

The notification is directed to both the UK and Dutch National Contact Points (“NCPs”) as the Complainants believe that both have authority to investigate and make a determination under the Specific Instance Procedure of the OECD Guidelines.

Friends of the Earth International and Amnesty International are concerned by the practices and communications of Shell with regard to its operations in Ogoniland in the Niger Delta. The concerns comprise: presence of severe oil pollution; the company’s slow and inadequate response to oil spills; and insufficient control and maintenance of oil infrastructure. In addition, Shell has provided incorrect, misleading or unsubstantiated information on these matters and has failed to prevent or adequately address adverse human rights, environmental and health impacts.

This submission describes how Shell’s practices and communications constitute a breach of the OECD Guidelines, specifically section III (Disclosure), section IV (Human Rights), section VI (Environment) and section VIII (Consumer Interests).

Friends of the Earth International and Amnesty International have previously filed a notification related to the operations of Shell in the Niger Delta. This notification was submitted on 25 January 2011. It focussed on Shell’s public use of incorrect and misleading information in respect of the cause of oil spills in Nigeria. The Netherlands and UK NCPs decided that the Netherlands NCP would take overall lead on this notification, with support and assistance from the UK NCP as required. The Netherlands NCP has determined that the issues raised merit further examination.⁴

¹ The issues that are the subject of this complaint relate to actions or inaction of Royal Dutch Shell and the Shell Petroleum Development Company of Nigeria (SPDC). Throughout this document, unless directly quoting, the companies will be referred to as ‘Shell’.

² Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. It is independent of any government, political ideology, economic interest or religion – funded mainly by its membership and public donations.

³ Friends of the Earth International (FoEI) is the world’s largest grassroots environmental network, uniting 76 national member groups and some 5,000 local activist groups on every continent. With over 2 million members and supporters around the world, FoEI campaign on today’s most urgent environmental and social issues. It challenges the current model of economic and corporate globalization, and promote solutions that will help to create environmentally sustainable and socially just societies.

⁴ OECD Watch, “Case 197: Amnesty International and Friends of the Earth vs Shell”, <http://oecdwatch.org/cases/Case_197>

Chapter 1:

Background

The Niger Delta is one of the 10 most important wetland and coastal marine ecosystems in the world and inhabited by some 31 million people. The Niger Delta is also the location of massive oil deposits that have been extracted for decades by the government of Nigeria and by multinational oil companies. Oil has generated an estimated \$600 billion since the 1960s.

The oil industry in the Niger Delta started commercial production in 1958 following the discovery of crude oil at Oloibiri by Shell British Petroleum (now Royal Dutch Shell), in 1956. Today, the oil industry is highly visible in the Niger Delta and has control over a large amount of land. According to Shell, the operations of Shell Petroleum Development Company of Nigeria Limited (“SPDC”) alone cover more than 31,000 square kilometres.⁵

The Niger Delta is criss-crossed by thousands of kilometres of pipeline, punctuated by wells and flow stations. Much of the oil infrastructure is located close to the homes, farms and water sources of communities. At night, flares from burning unwanted gas are often the only light visible for miles (gas is separated from oil and in Nigeria it is usually burned as waste).

Oil spills from oil installations (pipelines, flowlines, well-heads, flowstations, storage tanks, etc.) occur frequently in the Niger Delta. According to the Nigerian government, a total of 6,817 oil spills occurred between 1976 and 2001, with a loss of approximately three million barrels of oil. More than 70 per cent was not recovered.⁶ According to the National Oil Spill Detection and Response Agency (NOSDRA), oil companies reported 2,054 cases of oil spill incidents (spills of more than one barrel) between June 2006 and June 2010.⁷ However, the process for reporting and investigating oil spills in the Niger Delta has been subject to criticism by communities, independent environmentalists and NGOs, and many believe that the number of oil spills and volume of oil spilt may be higher than government figures suggest.⁸

Amnesty International and Friends of the Earth International have documented the impact of the oil industry on the environment and human rights in the Niger Delta over many years. During 2008 Amnesty International carried out a detailed investigation into the human rights impacts of oil pollution in the Niger Delta. Researchers visited the Niger Delta to conduct investigations - they visited a number of oil pollution sites and met with communities who have suffered from the pollution, as well as government officials, environmental scientists, and company representatives. This research led to the production of a major report on the human and environmental impacts of the oil industry. Amnesty International researchers have continued to investigate allegations of abuses related to the oil industry, including visits to oil-affected areas in 2010 and 2011.

Friends of the Earth is represented in Nigeria by Environmental Rights Action/Friends of the

⁵ The Shell Petroleum Development Company of Nigeria Limited (SPDC) is a wholly owned subsidiary of Shell. Shell and SPDC documents and officials frequently do not distinguish between the two entities.

⁶ United Nations Development Programme, “Niger Delta human development report”, 2006, <<http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name.3368.en.html>>

⁷ The Federal Republic of Nigeria, “USD 500,000,000 6.75 per cent. Notes due 2021”, 26 January 2011, <http://www.rns-pdf.londonstockexchange.com/rns/1261A_1-2011-1-26.pdf>

⁸ Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), “Niger Delta Natural Resources Damage Assessment and Restoration Project, Phase I Scoping Report”, May 2006.

Earth Nigeria. Environmental Rights Action (ERA) is dedicated to the defence of the human ecosystem in terms of human rights, and to the promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria through the empowerment of local people. It has the following aims:

- To act as a peaceful pressure group campaigning for change in the policies of governmental, non-governmental and commercial organizations where those policies are likely to act against environmental human rights and;
- To enable local people to defend their environmental human rights in law.

The work of ERA is supported by Friends of the Earth International through legal assistance, research and international advocacy work. Friends of the Earth (International and Nigeria) have been active in the Niger Delta for over fifteen years. They have documented the environmental and human rights impacts of oil spills, gas flaring and corruption in numerous reports and case studies and have taken steps to hold both the oil companies and relevant governments accountable for these impacts.

Oil spills, waste dumping and gas flaring are endemic in the Niger Delta. This pollution, which has affected the area for decades, has damaged the soil, water and air quality. Much of the population in the oil producing areas of the Delta relies on fisheries, subsistence agriculture and associated processing industries for their livelihood, meaning that hundreds of thousands of people are affected by pollution. The human rights implications are serious, under-reported and have received little attention from the government of Nigeria or the oil companies. It is in view of the human rights and environmental concerns that currently plague the Niger Delta that the present submission is made and should be considered.

This submission focuses on Ogoniland, part of the Niger Delta. The United Nations Environment Programme (UNEP) has recently conducted a study to determine the environmental and public health impacts of oil contamination in Ogoniland, and options for remediation. The UNEP report, published following this study, forms the main evidence for this Complaint, but evidence, gathered directly by Friends of the Earth and Amnesty International, is also provided in support of this Complaint.

Chapter 2:

UNEP Environmental assessment of Ogoniland

This chapter describes UNEP's environmental assessment of Ogoniland, and the main findings of that assessment. These findings, supplemented by additional evidence gathered by Friends of the Earth and Amnesty International (next Chapter), are the main evidence of this Complaint. In the subsequent chapters of this Complaint, the Complainants will refer back to this evidence. Only the findings of the UNEP report that are relevant to this Complaint are discussed here.

UNEP Report

Following a request from the Government of the Federal Republic of Nigeria, UNEP conducted a study to determine the environmental and public health impacts of oil contamination in Ogoniland, and options for remediation. The assessment began in late 2009 and the final report, *Environmental Assessment of Ogoniland*, was released in August 2011.

Over a 14-month period, the UNEP team examined more than 200 locations, surveyed 122 kilometres of pipeline rights of way, reviewed more than 5,000 medical records and engaged over 23,000 people at local community meetings. Detailed soil contamination investigations were conducted at 69 sites. Altogether more than 4,000 samples were analysed, including water taken from 142 groundwater monitoring wells drilled specifically for the study, as well as soil extracted from 780 boreholes.⁹

Ogoniland

Covering around 1,000 km² in Rivers State, southern Nigeria, Ogoniland has been the site of oil industry operations since the late 1950s. Extensive production facilities were established during the following three decades. The operations were handled by the Shell Petroleum Development Company of Nigeria Limited (SPDC), under a joint venture agreement between the state-owned Nigerian National Petroleum Company (55% share), Shell/SPDC (30% share), Total (formerly Elf, 10% share) and Agip (5% share). SPDC is the operator of the joint venture.

Oil production in Ogoniland ran from 1958 until 1993, when oil production was shut down in the face of public protest against the negative impact of Shell's operations in Ogoniland, including damage caused by oil spills and uncontrolled gas flares, to which the company's response was seen as slow and inadequate. While no oil production has taken place in Ogoniland since 1993, the UNEP study noted that the oilfield facilities have never been decommissioned. Some oil pipelines carrying oil produced in other parts of Nigeria still pass through Ogoniland but these are not being maintained adequately. Consequently, the infrastructure has gradually deteriorated, through exposure to natural processes, but also as a result of criminal damage, causing further pollution and exacerbating the environmental footprint.¹⁰

⁹ United Nations Environment Programme, "Environmental Assessment of Ogoniland", August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 6.

¹⁰ United Nations Environment Programme, "Environmental Assessment of Ogoniland", August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 25.

UNEP's findings in relation to Shell's operations in Ogoniland

General Findings on Oil Industry Practices

UNEP summarized its general findings on oil industry practices as follows (these are direct quotes):¹¹

- The **control, maintenance and decommissioning** of oilfield infrastructure in Ogoniland **are inadequate**. Industry **best practices and SPDC's own procedures have not been applied**, creating public safety issues.
- **Remediation by enhanced natural attenuation (RENA)** – so far the only remediation method observed by UNEP in Ogoniland – **has not proven to be effective**. Currently, SPDC applies this technique on the land surface layer only, based on the assumption that given the nature of the oil, temperature and an underlying layer of clay, hydrocarbons will not move deeper. However, this basic premise is not sustainable as observations made by UNEP show that contamination can often penetrate deeper than 5 m and has reached the groundwater in many locations.
- **Ten out of the 15 investigated sites** which Shell records show as having completed remediation, **still have pollution exceeding the Shell (and government) remediation closure values**. The study found that the contamination at eight of these sites has migrated to the groundwater.
- In January 2010, a **new Remediation Management System** was adopted by all Shell Exploration and Production Companies in Nigeria. The study found that while the new changes are an improvement, they **still do not meet the local regulatory requirements** or international best practices.

Findings of serious and systemic failures in Shell's clean up of oil spills

Over years Shell has claimed that it cleans up oil spills promptly and properly. For example, in a webchat in July 2011, SPDC's Managing Director, Mutiu Sunmonu, stated:

The **quality of clean up is very high and it is in accordance with very strict government regulations and Shell standards which are comparable to other places in Europe and America**. We have always achieved our goal of restoring impacted sites to their natural state in the fastest possible way and by so doing we are able to minimise impact on local livelihoods.” (emphasis added)¹²

The UNEP report is very clear that this has not been the case. On the contrary, the report exposes serious and systemic problems with Shell's clean-up processes in Nigeria. According to the UNEP report:

- “It is evident from the UNEP field assessment that SPDC's post-oil spill clean-up of contamination does not achieve environmental standards according with Nigerian legislation, or indeed SPDC's own standards.”¹³
- Changes made by Shell during the period of UNEP's assessment appear to accept that there were systemic problems prior to 2010, but UNEP states that “the changes proposed

¹¹ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 12.

¹² Shell Dialogues Webchat, “Shell in Nigeria – working in a complex environment, session 2 transcript”, 21 July 2011, <<http://www.shelldialogues.com/sites/default/files/Nigeria%20Webchat%20-%20July%202011%20-%20Session%202.pdf>>

¹³ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 150.

are certainly an improvement.....however, they do not meet the local regulatory requirements or international best practice.”¹⁴

- Remediation by enhanced natural attenuation (RENA), the primary method of remediation of oil impacted sites used by SPDC, has not proved effective and has “failed to achieve either clean-up or legislative compliance.” The report also notes that this method of clean-up was endorsed by Shell Global Solutions following a review of the issues in Nigeria. The UNEP study notes that Shell Global Solutions report, “ Land for SPDC Operations in the Niger Delta” [no date given] makes assumptions that oil spills will not penetrate deeply into the soil (more than 1 meter), and so the RENA method is appropriate. This assumption was shown by UNEP’s research to be unsound.¹⁵
- There “was always a time-lag between the spillage being observed and dealt with...” The UNEP study further noted that the “time-lag between the spill event and the site being comprehensively cleaned up shows that issues of access are not the sole cause of delays.”¹⁶
- The approach to oil spill containment was substandard and “the unethical action of channelling oil into the creeks cannot be laid at the door of the community”.¹⁷
- Until 2010 SPDC used a value of 5,000 mg/kg of TPH [a measure of contamination] to measure soil contamination. UNEP notes that this is actually the Intervention value rather than the Target value under Nigerian law. The use of this figure (5,000 mg/kg of TPH) means Shell declares a site cleaned and closed out in a way that “is failing to achieve either environmental clean up or legislative compliance.”¹⁸

The UNEP report also provides some examples of oil spills that have occurred 20 to 40 years ago, and which have never been properly cleaned up:

- SPDC legacy site at Korokoro flow station: UNEP concluded that the contamination has reached to a depth of at least 5 metres below surface, and areas that are apparently uncontaminated at the surface may be highly contaminated underground. Considering that the oil spills took place between 1986 and 1990, UNEP observed that natural attenuation, or degradation of contaminants, has not proven to be effective in reducing contaminant concentration to safe levels in the affected area.¹⁹
- SPDC pipeline right of way at Ejama-Ebubu, Eleme Local Government Area: During the Biafran War in 1970, the now abandoned Rumuekpe manifold to Bomu manifold trunk line was damaged. Crude oil flowed downwards in an easterly direction into a lagoon approximately 200 metres east of the pipeline. From the lagoon the oil washed further into the creeks, leading to contamination of downstream areas. Part of the area caught fire, evidenced by crusts of ash and tar or bitumen over the main contaminated area. SPDC records show that other spills took place in 1992 and in November 2009. Multiple attempts at remediation have been made. In 2006, a remediation contract was awarded and some

¹⁴ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 149.

¹⁵ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 143/4.

¹⁶ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 151.

¹⁷ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 151.

¹⁸ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 145.

¹⁹ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 119-121.

excavation took place. Burnt and highly contaminated soil was moved to the sides of the area and deposited in two large piles, each of approximately 5,000 cubic metres, near the northern and southern walls of the site. The work was abandoned midway through, though no consistent explanation for this has been forthcoming from SPDC or the community. Apart from the measures described, no significant remediation measures have been undertaken, even though the spill is now over four decades old.²⁰

The clear conclusion of the UNEP report in relation to Shell's practices and performance is that Shell has, for years, not cleaned up oil pollution properly.

Findings in relation to specific Shell sites

UNEP did investigations of pollution at **33 sites along Shell's pipelines** (along the 'rights of way' as they are known):

- At 22 of the sites soil contamination exceeded limits set by Nigerian law.
- At 19 of the sites contamination reached below one meter – therefore below the reach of Shell's standard rehabilitation method.
- At 19 sites groundwater pollution exceeded Nigerian regulatory standards.
- At five of the sites hydrocarbons were detected in drinking water of nearby communities.

UNEP investigated **21 sites beside Shell suspended facilities**:

- At 10 of the 21 sites soil contamination exceed Nigerian limits.
- At all 10 sites contamination had penetrated deeper than 1 meter (so beyond the reach of Shell's standard remediation method).
- At 11 sites groundwater pollution exceed Nigerian standards.
- At four sites hydrocarbons were detected in nearby communities' drinking water.

UNEP investigated **five legacy sites of Shell**:

- At four of the five sites soil contamination exceeded Nigerian limits.
- At three sites contamination had penetrated deeper than 1 meter.
- At four sites groundwater contamination exceeded Nigerian limits.

UNEP examined **15 sites that were classified by Shell** as "remediation completed":

- At 10 sites the pollution exceeded Shell's own site closure criteria, which - as noted earlier - is considered to be an incorrect standard in the first place.
- At 9 of these 10 sites pollution had migrated below 1 meter (so beyond the reach of Shell's standard remediation method).
- At 8 of the 15 sites the contamination of groundwater exceeded regulatory standards but no clean up attempt had yet been made.
- At two sites hydrocarbon contamination was found at community wells.

Findings related to the control and maintenance of oil infrastructure

At the cessation of oil production in 1993, the following oilfield facilities were present in

²⁰ United Nations Environment Programme, "Environmental Assessment of Ogoniland", August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 110-114.

Ogoniland: 12 oilfields; 116 drilled wells; 89 completed wells; 5 flow stations.²¹

UNEP observed that:

“While no oil production has taken place in Ogoniland since 1993, the facilities themselves have never been decommissioned. Some oil pipelines carrying oil produced in other parts of Nigeria still pass through Ogoniland but these are not being maintained adequately. Consequently, the infrastructure has gradually deteriorated, through exposure to natural processes, but also as a result of criminal damage, causing further pollution and exacerbating the environmental footprint.”²²

“Control and maintenance of oilfield infrastructure in Ogoniland has been and remains inadequate: the Shell Petroleum Development Company’s (SPDC) own procedures have not been applied, creating public health and safety issues.”²³

“Some oil facilities that are no longer in operation have never been formally decommissioned and abandoned. Left without maintenance and exposed to the elements in a coastal region these facilities are vulnerable to corrosion. In the specific context of Ogoniland, where site security is at best irregular and unauthorized access commonplace, such facilities are highly prone to damage. Visits to a number of facilities confirmed this understanding. Most alarming was the situation at Bomu flow station in K-Dere. When the UNEP team first visited this location, the fences (since fixed) were broken and oil contamination was visible within the site. Given that the area around this facility is densely populated, this is a very serious situation from the point of view of both community safety and security of the facility. Conditions such as these at oilfield facilities indicate a lack of control on the part of the operators. In a properly maintained facility, a flow station should be secure, with no oil on the ground and minimal fugitive emissions.”²⁴

“While the SPDC database shows a number of pipelines and assets referenced as “abandoned” or “decommissioned”, the way in which some facilities were left does not seem to have adhered to SPDC’s own standards. UNEP’s reconnaissance routinely came across oilfield resources which had evidently been abandoned in an uncontrolled fashion. This varied from pipelines left open and lying in trenches (possibly deserted midway through pipe laying operations), to oil facilities left standing but without subsequent maintenance. The bottom line is that the current state of the abandoned facilities of oil field structure in Ogoniland do not meet with international best practices.”²⁵

“Rights of way consist of land along pipelines and around other oilfield infrastructure which are, by law, owned and managed by oil companies to facilitate easy access for routine maintenance as well as emergency response. SPDC practice is for rights of way around facilities to be fenced, while those along pipelines are kept clear of habitation

²¹ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 24.

²² United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 25.

²³ UNEP, press release “UNEP Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health”, 4 August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>

²⁴ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 98 and 99.

²⁵ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 99.

and vegetation but not fenced. In most cases pipelines are buried. Rights of way act as buffer zones between oil facilities and local communities, so that any incident, such as an oil spill or fire, does not impinge directly upon areas of human habitation. In any well-functioning oil industry operation, maintaining rights of way is both essential to and indicative of good environmental management. On the whole, maintenance of rights of way in Ogoniland is minimal, arising in part from the fact that the oilfield has been closed since 1993 and access for the operator is somewhat limited.”²⁶

²⁶ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&l=en>>, page 96.

BOX 1: Access to Ogoniland

As noted above, Shell was compelled to cease active operations in Ogoniland in 1993. However, oil from other parts of the Niger Delta continues to flow through pipelines that pass through Ogoniland, and Shell remains responsible for maintenance and security of its infrastructure in Ogoniland. It is clear that there are, sometimes, difficulties accessing parts of Ogoniland. In specific cases this may cause some delays in addressing oil spills. However, both the UNEP report and investigations carried out by Amnesty International and Friends of the Earth demonstrate that lack of access cannot be used as a justification for Shell's failure to take appropriate action over many years, and in accordance with national regulations and international standards, to maintain its infrastructure, make it safe from tampering and to stop and clean up oil spills. Moreover, there are instances where Shell has claimed that lack of access prevented the company from addressing a problem, but on investigation the evidence does not support Shell's claims. The following examples are drawn from UNEP's report and recent reports by Amnesty International:

(a) UNEP noted that the "time-lag between the spill event and the site being comprehensively cleaned up shows that issues of access are not the sole cause of delays."

(b) The UNEP report describes numerous cases where Shell had cleaned up, but the clean up was poorly done. Therefore it is clear that lack of access was not the issue in these cases, because Shell was claiming they HAD cleaned up – i.e., they had access. The problem was clearly with the poor quality of the clean up.

(c) UNEP observed illegal tapping of wells in Ogoniland and raised concern about this. "SPDC informed UNEP that by November 2010 all the wells had been sealed and capped..." The inference is that Shell had left wells unsealed until then, which facilitated oil tapping, but when UNEP raised the issue, the company was able, in a relatively short time, to cap and seal the wells. This raises questions about why Shell had not capped and sealed the wells before 2010. It also suggests that access was not the problem, as Shell was able deal with the wells relatively quickly once UNEP had raised the issue.

(d) Amnesty International has investigated an oil spill that took place at Bodo in Ogoniland in 2008 (see Chapter 3, paragraph 3.1). The spill was not stopped for several weeks. Shell is reported to have claimed that the delay in responding was because it "did not get permission to pass through K-Dere community to access the site."²⁷ Amnesty International could not find any connection between Shell's delayed response and permission to pass through K-Dere. The direct route to Bodo from the Saakpenwa-Bori road is the trans-Gokana road from Kpopie junction, not through K-Dere. Amnesty International asked Shell to comment on this issue, but the company has offered no explanation.

²⁷ Email communication with Sue Lloyd Roberts of the BBC, who covered the case in a report on the Niger Delta in 2008. See: Amnesty International reports "The true 'tragedy': delays and failures in tackling oil spills in the Niger Delta", November 2011, available at: <http://www.amnesty.org/en/library/asset/AFR44/018/2011/en/ee69139f-5e19-4760-af62-b3cf0b0a8595/afr440182011en.pdf> and "Petroleum, Pollution, and Poverty in the Niger Delta", 30 June 2009, available at: <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>

General findings on environment, health and human rights

The UNEP report also contains general findings on the impact of oil spills on health, environment and human rights. Most of the findings make no distinction between contamination originating from Shell infrastructure and infrastructure from other operators. It should be noted however that Shell owns and/or operates by far most of the oil infrastructure in Ogoniland. The findings listed below are findings that are important for this complaint.

➤ Contamination of soil and groundwater

The report concludes that pollution of soil by petroleum hydrocarbons in Ogoniland is extensive in land areas, sediments and swampland. The assessment found that because there is no continuous clay layer across Ogoniland the groundwater in Ogoniland (and beyond) is exposed to hydrocarbons spilled on the surface. In 49 cases, UNEP found hydrocarbons in soil at depths of at least 5 metres. At two-thirds of the contaminated land sites close to oil industry facilities which were assessed in detail, the soil contamination exceeded Nigerian national standards, as set out in the Environmental Guidelines and Standards for the Petroleum Industries in Nigeria (EGASPIN). At 41 sites, the hydrocarbon pollution was found to have reached the groundwater at levels in excess of the Nigerian standards set out in EGASPIN.

➤ Impact of oil pollution on vegetation

UNEP found that oil pollution in many intertidal creeks has left mangroves denuded of leaves and stems, and has left roots coated in a bitumen-like substance, sometimes 1 cm or more thick. Mangroves are spawning areas for fish and nurseries for juvenile fish and the extensive pollution of these areas is impacting the fish life-cycle. The UNEP assessment also looked at the impact of pollution on crops: it stated that any crops in areas directly impacted by oil spills would be damaged, and root crops, such as cassava, would become unusable. When farming recommences following an oil spill, plants generally show signs of stress and yields are reportedly lower than in non-impacted areas. When an oil spill occurs on land, fires often break out, killing vegetation and creating a crust over the land, making remediation or re-vegetation difficult.

➤ Impact of oil pollution on aquatic environment

The UNEP investigation found that the surface water throughout the creeks contains hydrocarbons. Floating layers of oil were observed to vary from thick black oil to thin sheens. Fish tend to leave polluted areas in search of cleaner water, and fishermen and fisherwomen must therefore also move to less contaminated areas in search of fish. UNEP noted that where entrepreneurs had set up fish farms in or close to the creeks, these entrepreneurs reported that their businesses had been ruined by an ever-present layer of floating oil.²⁸

The wetlands around Ogoniland are highly degraded and facing disintegration. The UNEP study concluded that while it is technically feasible to restore effective ecosystem functioning of the wetlands, this will only be possible if technical and political initiatives are undertaken.

➤ Public health

The Ogoni community is exposed to petroleum hydrocarbons in outdoor air, in drinking water, and through dermal contact with contaminated soil, sediments and surface water. UNEP noted that, since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives. Hydrocarbon contamination was found in water taken from 28 wells at 10 communities adjacent to contaminated sites. At seven wells the samples were at least 1,000

²⁸ United Nations Environment Programme, "Environmental Assessment of Ogoniland", August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&f=en>>, page 10.

times higher than the Nigerian drinking water standard of 3 µg/l. Local communities are aware of the pollution but some people continued to use the water for drinking, bathing, washing and cooking because they have no alternative. UNEP also found that some benzene concentrations in the air of Ogoniland were higher than those being measured in more economically developed regions where benzene concentrations are declining because of efforts to reduce benzene exposure.

➤ **Human rights**

The UNEP report describes how the oil pollution has affected public health and the environment. While the UNEP report does not specifically refer to human rights, several of the impacts that it describes constitute human rights violations under international law, and also constitute serious failures of the corporate responsibility to respect human rights.²⁹ The corporate responsibility to respect rights is a standard endorsed by the UN Human Rights Council.

BOX 2: Environmental pollution and human rights

The links between human rights and pollution of the environment have long been recognized. The 1972 United Nations (UN) Conference on the Human Environment declared that “man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.”³⁰

Human rights monitoring bodies, and international, regional and national courts, are increasingly recognizing poor environmental quality as a causal factor in violations of human rights. The most common examples include pollution of water, soil and air, resulting in violations variously of rights to an adequate standard of living, to adequate food, to water, to adequate housing, to health and to life.

Judge Weeramantry of the International Court of Justice, the principal judicial organ of the UN, stated in an opinion, “The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate this, as damage to the environment can impair all the human rights spoken of in the Universal Declaration and other human rights instruments.”³¹

The African Charter on Human and Peoples’ Rights recognizes, in Article 24, the right of all peoples to a “general satisfactory environment favourable to their development”. This right is more widely known as the right to a healthy environment. The UN Committee on Economic, Social and Cultural Rights has also clarified that the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including “a healthy environment”.

²⁹ For a full discussion of how oil spills and failure to properly clean up and address oil spills in the Niger Delta (including in Ogoniland) has resulted in human rights abuses, see: Amnesty International, ‘Petroleum, Pollution and Poverty in the Niger Delta’, June 2009, available at: <<http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>> This report provides details on the corporate failure to respect rights.

³⁰ Declaration of the United Nations Conference on the Human Environment, para 1, available at: <<http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>>

³¹ Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia), 1997 ICJ Rep 7 (separate opinion of Justice Weeramantry), page 4.

The responsibility to respect human rights requires that companies take appropriate action to prevent harm to human rights, and to properly and adequately address any harm caused. It is clear from the evidence of the UNEP report that Shell has not taken adequate action to prevent oil pollution from occurring. It is also clear that the company has failed to take adequate action when pollution does occur. One of the most fundamental elements of addressing pollution that affects human rights is to clean up and restore the soil and water in a timely manner. Shell has repeatedly failed to do this.³² Moreover, Shell has not taken any adequate action to monitor negative impacts of oil pollution, despite being fully aware that such pollution is occurring. There is no monitoring of water quality of safety, food safety, air pollution or other key parameters.

The human rights negatively affected by Shell's failure to prevent and/or adequately address oil pollution include³³:

- Right to water: UNEP exposed contamination of water used for drinking and for domestic purposes, due to oil spills, and the failure to adequately clean up oil spills.
- Right to food: UNEP exposed the impact of oil pollution on agriculture and fisheries, which are the source of much of the communities' food.
- Right to health: UNEP's report found evidence of ongoing exposure of the Ogoni community to oil contamination and a clearly unhealthy environment.
- The right to gain a living through work: this is a consequence of widespread damage to agriculture and fisheries, which are the main sources of livelihood for many people in Ogoniland, and the failure of the company to take adequate and appropriate action to prevent and address pollution, as described above.
- Right to effective remedy: proper clean up and remediation are key to an effective remedy when an oil spill occurs; respecting the right to effective remedy requires that these actions are taken promptly, adequately, transparently and in consultation with affected communities. This has not happened in the Ogoniland.

³² Other essential action would include ensuring that communities are provided with emergency access to safe food and clean water, payment of compensation, disclosure of facts, monitoring of impacts and action to prevent recurrence. Amnesty International's report, *Petroleum, Pollution and Poverty in the Niger Delta* addresses all of these elements of remedy. Several oil spill cases in this report are in Ogoniland, and details of the failure of Shell and the government of Nigeria to ensure effective remedy are described. The cases include Bodo and Kira Tai.

³³ Further evidence and information on these issues is contained in: Amnesty International, *'Petroleum, Pollution and Poverty in the Niger Delta'*, June 2009, available at: <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>. This report includes several cases of oil pollution in Ogoniland. In no case was the community provided with any adequate alternative source of safe food or clean water for drinking and other domestic purposes or with adequate compensation for losses or access to medical care for negative health impacts.

Chapter 3:

Additional evidence

In this Chapter, the Complainants provide additional evidence of Shell's poor practice in relation to prevent and clean up of oil spills and maintenance of infrastructure in Ogoniland. These poor practices are directly responsible for harm to the environment and human rights.

3.1 *Three oil spill cases*

Among other, the additional evidence comprises information about three recent oil spills that have occurred in Ogoniland. In each of the three cases described below, the oil spills were due to equipment failure; in each of the cases Shell has either failed to clean up or clean up was wholly inadequate; in each of the cases, Shell has provided information that is disputed by the community and/or by other evidence.

Bodo spill 1³⁴

On 28 August 2008, a fault in the Trans-Niger pipeline caused a major spill in Bodo, Ogoniland. The oil poured into the surrounding swamp and creek for at least four weeks – probably for as long as 10 weeks (the start date of this spill is disputed). According to Shell, 1,640 barrels of oil were spilled in total. However, an independent assessment done for a UK law firm estimated that as much as 4,000 barrels of oil *a day* were leaking from the pipe. The spill was eventually stopped on 7 November 2008. Shell has admitted responsibility for the spill. According to the company-led Joint Investigation Visit (JIV) report, it was caused by a “weld defect”. For three years, the Bodo community has asked Shell to clean up the oil spill, but this has not happened. As of December 2011, no proper clean up has yet taken place, and the community had taken a court action against Shell in the UK. The failure by Shell to clean up the Bodo oil spill is clearly a violation of Nigerian regulations, which require oil companies to act promptly to clean up oil spills.

Bodo spill 2³⁵

On 7 December 2008, a second spill occurred at Bodo. This spill was reported to Shell two days later, on 9 December. However, it was not until ten weeks later, between 19 and 21 February 2009, that Shell carried out the joint investigation, and stopped the spill. Again, Shell has confirmed that the spill was caused by equipment failure as a result of natural corrosion. As with the first Bodo spill, no proper clean up of the pollution has ever been carried out and this spill is subject to the same court action in the UK. The volume of oil which Shell has recorded as spilt during the second Bodo oil spill is 2,500 barrels.³⁶

³⁴ Full details of this spill are contained in Amnesty International, “The true ‘tragedy’: delays and failures in tackling oil spills in the Niger Delta”, November 2011, available at: <http://www.amnesty.org/en/library/asset/AFR44/018/2011/en/ee69139f-5e19-4760-af62-b3cf0b0a8595/afr440182011en.pdf>

³⁵ Full details of this spill are contained in Amnesty International, “The true ‘tragedy’: delays and failures in tackling oil spills in the Niger Delta”, November 2011, available at: <http://www.amnesty.org/en/library/asset/AFR44/018/2011/en/ee69139f-5e19-4760-af62-b3cf0b0a8595/afr440182011en.pdf>

³⁶ Shell has reported that the total leakage of the two Bodo spills in 2008 amounted to 4,140 barrels. As Shell's figure for the volume of oil spilt during the first spill is 1,640 barrels, their figure for the second spill is 2,500 barrels. See: Shell in Nigeria, briefing note “Environmental Performance – oil spills”, August 2009.

Kira spill³⁷

On 12 May 2007 oil seeped out of the Trans-Niger pipeline in an area of Ogoniland called Kira Tai. A Joint Investigation team found three holes in the underside of the pipe and confirmed corrosion as the cause of the spill. The joint investigation team report also stated: “readings taken at leak points and within de-coated pipeline sections shows appreciable loss in pipe thickness.” The spill destroyed crops and killed fish in a local water pond. Shell clamped the pipeline and sent a team to mechanically removed spilled oil. But when Amnesty International visited the site in March 2008, Shell had taken no further action to clean up the site or compensate those affected. Amnesty International raised the issue of the Kira Tai spill with Shell in a meeting in Port Harcourt on 1 April 2008. Company officials stated that the cause of the spill was the closure of a valve by unknown persons, causing a build-up of pressure, and was therefore sabotage. This is contrary to the joint investigation team report. Shell was also unable to offer any explanation for the lengthy delay in clean up. The company stated that containment and recovery of the free phase oil had been done but, 10 months after the spill, the site was only being “assessed for clean-up”.

3.2 The condition of the operational pipelines traversing Ogoniland

As noted above, pipelines carrying oil pass through Ogoniland – the destination of these pipelines is the Bonny export terminal. The following figure shows the main operational pipelines running through Ogoniland.

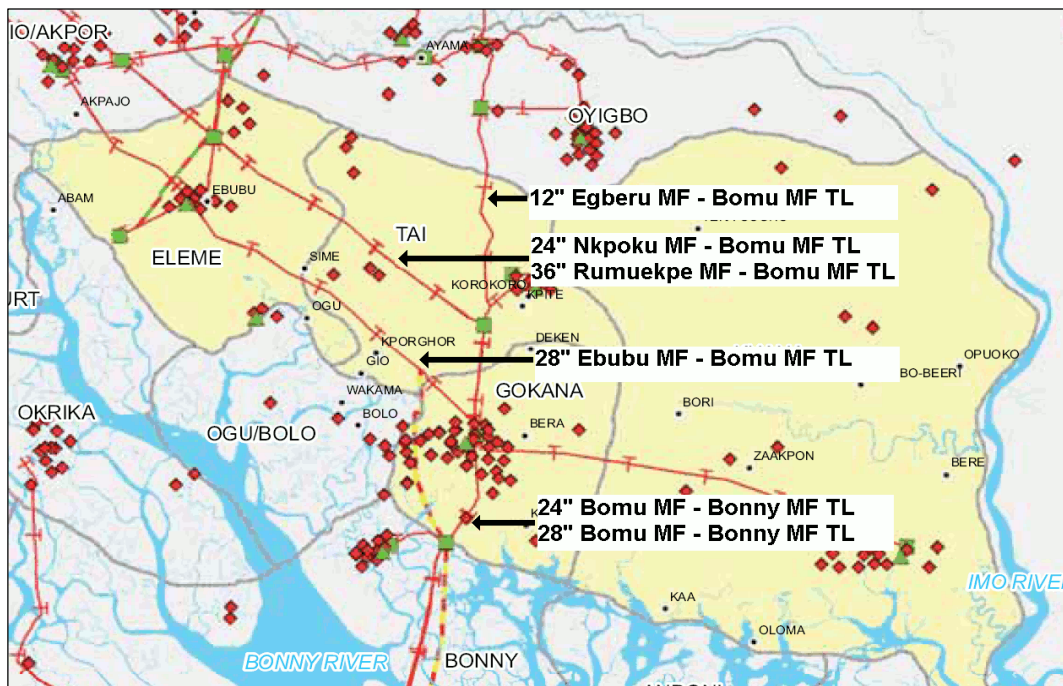


Figure: oil pipelines traversing Ogoniland carrying oil produced in other parts of Nigeria³⁸

Integrity and maintenance of the Bomu-Bonny pipelines

³⁷ The full details and source data are contained in: Amnesty International, “Petroleum, Pollution, and Poverty in the Niger Delta”, 30 June 2009, available at: <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>, pages 31 and 32.

³⁸ The yellow marked surface resembles Ogoniland. The map is copied from the UNEP-report. The names of the pipelines have been added to the map, and have been derived from a SPDC-map from the year 2001. The red dots resemble oil wells. MF means manifold. TL means trunkline.

The main pipelines traversing through Ogoniland are often referred to as the Trans-Niger pipeline, a set of pipelines that moves also further eastwards outside Ogoniland. It is not clear how old the pipelines traversing Ogoniland are, and Shell does not provide information on this, although many communities and NGOs have asked for data on the age and condition of the pipelines. In the absence of disclosure by Shell, Friends of the Earth has estimated the age of the two Bomu-Bonny pipelines (see map above; these are the 24" and 28" pipes that cross Ogoniland), based on data that is publicly available. In 1961, a terminal was opened in the mouth of the Bonny River. The terminal had a capacity to load 70,000 ton tankers. Bonny was connected to the eastern oil fields and Port Harcourt by a series of trunk pipelines.³⁹ At the end of 1963 there were nine established oilfields in Nigeria. Already tied into the Shell-British Petroleum (BP) pipeline system were: Bomu (the major producer), Afam, Imo River, Aoara, and Ebubu fields in the east and Oloibiri in the west.⁴⁰ The oil from the eastern fields was transported through the Bomu-Bonny pipeline or pipelines. From the information above, it can be conservatively estimated that at least one of the Bomu-Bonny pipelines was laid in 1962/1963, as there was clearly oil flowing from Bomu to Bonny by this time. It seems likely that both pipelines were constructed at the same time, as this is more economically viable compared to constructing one after another, and because oil delivery to the Bonny terminal was expected to expand at rapid pace during the early 1960s. The conclusion is that the 24" and 28" pipelines leading from Bomu to Bonny were laid 46 to 50 years ago.

Friends of the Earth have reviewed all available evidence on pipeline replacement and it would appear that the Bomu-Bonny pipelines have not been replaced since the early 1960s. There has been a replacement of the Trans-Niger pipeline in the period 1992-1994, but this replacement stretched from Rumuekpe to Bomu and did not include the Bomu-Bonny pipelines.⁴¹

In a 2004 paper prepared for the International Association for Impact Assessment, two SPDC-employees stated that Shell was planning a major trunk line replacement (MTR) project. Among other pipelines, Shell wanted to replace the 274 km Trans-Niger Pipeline, the 104 km Nembe Creek Trunk Line and the 89 km Greater Port Harcourt Swamp Line. According to the paper, already in 2002 scoping workshops were held with stakeholders on the MTR-project.⁴² During the period March 2003 – February 2004, the German firm Impac worked on a conceptual design for the complete pipeline system for the MTR-project.⁴³ In 2010, Shell completed construction of the Nembe Creek Trunkline replacement.⁴⁴ The other pipelines have not yet been replaced.

Oil pipelines today are generally designed for a lifetime of about 40 years.⁴⁵ The Bomu-Bonny

³⁹ Economic Geography (Vol. 44, No. 1), Alexander Melamid, "The Geography of the Nigerian Petroleum Industry", January 1968, <<http://www.jstor.org/stable/143342>>

⁴⁰ Willbros Group, "History", <<http://www.willbros.com/About/History-324.html>>, as viewed on 5 December 2011.

⁴¹ Willbros, "Trans-Niger Pipeline Replacement — 1992–94", <<http://www.willbros.com/filelib/FileCabinet/Projects/Africa/0179.pdf?FileName=0179.pdf>>

⁴² International Association for Impact Assessment (IAIA), Annual Conference, abstracts volume AIAI'04, Oritsetimeyin J. Dada and Akuro Adoki (both Environmental Assessment Department of SPDC), together with Napoleon O. Umesi (Department of Chemical Engineering of the University of Port Harcourt), "Scoping in Shell Petroleum Development Company (SPDC): the experience with the major trunk line replacement project", <http://www.iaia.org/Non_Members/Conference/AIAI04/Publications/04%20abstracts%20volume%205-70.pdf>

⁴³ Impac, "Major Oil Trunklines Replacement Project – Nigeria", <<http://www.impac.de/index.php?id=majoroiltrunklinesreplacement>>

⁴⁴ Royal Dutch Shell plc, "Sustainability report 2010", 14 April 2011, <<http://sustainabilityreport.shell.com/2010/servicepages/welcome.html>>, page 18

⁴⁵ See for example:
BP, "the Baku-Tbilisi-Ceyhan (BTC) pipeline", <<http://www.bp.com/sectiongenericarticle.do?categoryId=16002865&contentId=7020378>>
Norwegian Petroleum Directorate, "Pipelines and onshore facilities",

pipelines, which are likely to be 46-50 years old, have been exposed to the challenging coastal environment of the Niger Delta,⁴⁶ and, as noted by UNEP, the pipelines running through Ogoniland have not been “maintained adequately”. The combination of these factors – old pipes, not properly maintained, and in an environment that would expose them to corrosion – raise very serious questions about Shell’s due diligence in preventing harm to the environment and human rights.

The US diplomatic cables that were recently released by Wikileaks also shed some light on the possible condition of oil pipelines in the Niger Delta. A cable from December 2008 stated that a contractor with many years experience of laying pipelines in the Niger Delta told the US Ambassador that, “73 per cent of all pipelines there are more than a decade overdue for replacement. In many cases, pipelines with a technical life of 15 years are still in use thirty years after installation.” The cable continued: “because the equipment is corroded and relatively close to the surface, making it more vulnerable to intentional and unintentional damage from natural and human causes, spills occur daily, and it often takes many hours to find the location of the spill and deploy the necessary clean-up equipment. The contractor reportedly suggested that pipelines be replaced with “new, concrete-encased pipes that are placed three to four meters underground” which would reduce spills caused by both bunkering and equipment failure. The cable concludes that this “assessment of the current state of pipelines has been confirmed by other of our interlocutors”.⁴⁷

This Chapter has provided evidence that Shell’s pipelines, including the pipelines through Ogoniland, are not in good condition. In summary:

- Shell has been making plans since 2002/2003 to replace the Trans-Niger pipeline. A replacement is needed only when the old pipeline is no longer in good condition.
- The Bomu-Bonny pipelines traversing parts of Ogoniland are estimated to be 46 to 50 years old; they are therefore likely to have been subject, over a long period, to the corrosive impacts of the Niger Delta’s coastal environment.
- The two major spills at Bodo that occurred in 2008 both originated from the Bomu-Bonny pipelines. The spills were caused by a weld defect and natural corrosion respectively. Both causes are related to the condition of the pipelines.
- In 2007, Basil Omiyi (then managing director of SPDC) was quite clear about the integrity of SPDC’s assets. He stated: “We do (...) have a substantial backlog of asset integrity work to reduce spills and flaring.”⁴⁸ He referred to SPDC’s assets in the Niger Delta, not specifically in Ogoniland.

<<http://www.npd.no/en/Publications/Facts/Facts-2010/Chapter-15>>

Andrew Palmer, research professor in petroleum engineering at Cambridge University, quoted in 2004 Christian Aid, report “Behind the mask, The real face of corporate social responsibility”, January 2004, <<http://www.scribd.com/doc/38236692/Behind-the-Mask>>

⁴⁶ “As a result of deterioration in the integrity of the existing trunkline, occasioned by the harsh Niger Delta environment, vandalism and severe age-related deterioration, the project was initiated to improve, modernize and restore the technical integrity of the facilities.” Source, website content contractor Nestoil as quoted in the following report: Richard Steiner, report on behalf of Friends of the Earth Netherlands “Double standard, Shell practices in Nigeria compared with international standards to prevent and control pipeline oil spills and the Deepwater Horizon oil spill”, November 2010, <<http://milieudefensie.nl/publicaties/rapporten/double-standard>>

Information is no longer on the website of Nestoil, but similar sentences can be found in: Pipelines International, “Maintaining Nigeria’s pipeline integrity”, December 2010,

<http://pipelinesinternational.com/news/maintaining_nigerias_pipeline_integrity/053581>

⁴⁷ U.S. Consulate Lagos, Nigeria, cable “Nigeria: pipeline expert says 73 percent of Niger Delta pipelines need replacement, cause spills”, 17 December 2008,

<<http://wikileaks.org/cable/2008/12/08LAGOS500.html>>

⁴⁸ Royal Dutch Shell, “Shell Sustainability Report 2006”, <http://www.shell.com/static/envirosoc-en/downloads/sustainability_reports/shell_sustain_report_2006.pdf>, page 33.

3.3 Compliance with international standards

International standards and the oil industry

Nigerian law requires oil companies to ensure “good oil field practice” and to comply with internationally recognized American Petroleum Institute (API) and American Society of Mechanical Engineering (ASME) standards. The International Petroleum Industry Environmental Conservation Association (IPIECA), established in 1974, has developed a range of information and guidance documents on issues raised in this Complaint, including oil spill response. All the major multinational oil companies that operate in Nigeria are members of IPIECA, including Shell.

Assessment of Shell’s compliance with international standards

In November 2010 environmental consultant Richard Steiner released a report on behalf of Friends of the Earth Netherlands, in which the ability of Shell to prevent and control oil spills in the Niger Delta was assessed.⁴⁹ For several reasons (listed below), the report concluded that Shell Nigeria continues to operate well below internationally recognized standards in relation to the prevention and control of pipeline oil spills, and consequently was not acting in compliance with Nigerian law, which requires companies to operate in accordance with good oilfield practice. Professor Steiner’s assessment found the following:

- Shell has not implemented “good oil field practise” with regard to pipeline integrity management (particularly the U.S. IM regulations, API standards, and Alaska’s Best Available Technology requirements);
- Delay in initiating an Asset Integrity Review and Pipeline Integrity Management System for Shell Nigeria. Shell Nigeria reports that it did not initiate their Asset Integrity Review (and resulting the establishment of the Pipeline Integrity Management System) until 2003 / 2004, indicating a systemic lack of urgency within Shell for bringing its Nigeria operations up to generally accepted international standards for “good oil field practise”;
- Shell’s Asset Integrity Review and Pipeline Integrity Management System appear inadequate and there is no independent evaluation of these processes;
- Shell has failed to designate the Niger Delta as a High Consequence Area for oil spills, although the area has many of the characteristics of a High Consequence Area;
- Shell has not given adequate attention to the Niger Delta as an area in which oil facilities are susceptible to Intentional Third Party Damage, requiring enhanced pipeline integrity and monitoring procedures;
- Following Shell’s Asset Integrity Review and the Pipeline Integrity Management System, oil spills due to corrosion and equipment failure continue to occur; this raises serious questions about the quality and adequacy of the Review and the Pipeline Integrity Management System, as it would be expected that an effective system would prevent spills;
- There is a lack of transparency in respect of oil spill management – the Asset Integrity Review and Pipeline Integrity Management System, as well as other key documents such as the Joint Operating Agreement, and Shell’s Oil Spill Contingency Plan (OSCP) are not made public.
- Shell’s oil spill response capability and performance were found to be inadequate

⁴⁹ Richard Steiner is an environmental consultant, formerly professor of environmental policy and marine conservation at the University of Alaska, report on behalf of Friends of the Earth Netherlands “Double standard, Shell practices in Nigeria compared with international standards to prevent and control pipeline oil spills and the Deepwater Horizon oil spill”, November 2010, <<http://milieudefensie.nl/publicaties/rapporten/double-standard>>

Chapter 4:

Elements of the Complaint

The Complainants believe that, on the basis of the evidence provided by the UNEP report and the additional evidence supplied by Friends of the Earth and Amnesty International, Shell has breached the Guidelines in relation to requirements on:

- Disclosure of information
- Human Rights
- Environment
- Consumer Interests

In this document we have grouped the breaches of the Guidelines under two headings:

- breaches related to information provided by Shell
- breaches related to the impact of oil pollution on human rights and the environment

4.1 Breaches related to information provided by Shell

Breaches of OECD Guidelines

Shell has breached point 2 (f) of the section on Disclosure (III)⁵⁰, which requires that:

“2. (f) Disclosure policies of enterprises should include, but not be limited to, material information on foreseeable risk factors.”

Shell has also breached point 2 of the section on Environment (VI)⁵¹, which requires the following:

“Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
- b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”

Finally, Shell has breached point 4 of the section on Consumer Interests (VIII)⁵², which states that enterprises should:

“Not make representations or omissions, nor engage in any other practices, that are

⁵⁰ Organisation for Economic Co-operation and Development (OECD), “OECD Guidelines for Multinational Enterprises, 2011 edition”, 25 May 2011, <http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html>, pp. 27-30.

⁵¹ Organisation for Economic Co-operation and Development (OECD), “OECD Guidelines for Multinational Enterprises, 2011 edition”, 25 May 2011, <http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html>, pp. 42-46.

⁵² Organisation for Economic Co-operation and Development (OECD), “OECD Guidelines for Multinational Enterprises, 2011 edition”, 25 May 2011, <http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html>, pp. 51-54.

deceptive, misleading, fraudulent or unfair.”

Evidence

This section focuses on the information that Shell has presented to the public with regard to:

- risk factors related to the oil pollution;
- the company's control and maintenance of oilfield infrastructure.

Shell's information is provided to the public at large, and is clearly intended to communicate with those individuals and groups who have an interest in Shell's operations in the Niger Delta. As the information provided on websites, in annual reports and to the media is the only publicly available information on Shell's activities and impacts in the Niger Delta, it must be assumed to be information for “the public” (as envisaged in Chapter VI, section 2 (a)) and “consumers” (as envisaged in Chapter VIII). While Shell may have provided additional information to affected communities, none of those interviewed by Amnesty International or Friends of the Earth has ever been provided with information on maintenance of infrastructure or the environmental, health or safety risks to which they were exposed due to oil pollution and delayed clean-up of pollution.

In reviewing Shell's disclosure of information, the Complainants have checked the website content of Shell, including reports and other documents, such as briefing notes that are on Shell's website. As far as the Complainants could discover after an extensive check of Shell's public disclosures, in none of its public communications does Shell disclose adequate information on:

- the age of its pipelines and the maintenance carried out on the pipes;
- the reason why spills due to corrosion and equipment failure occur, despite Shell's claims to have in place a system for checking the conditions of pipes.

Nor does Shell disclose any information on the risks to local communities due to the presence of pollution due to oil spills. These risks include:

- Risks to health - Shell has not disclosed any data on the health impacts of exposure to hydrocarbon pollution in the Niger Delta. As far as the Complainants can discover, Shell has never undertaken any monitoring of health impacts following oil spills.
- Risks to livelihood - Shell has not made public any data on the levels of water or soil pollution caused by oil spills, despite the fact that the majority of people in the Niger Delta rely on fisheries and agriculture for their livelihood.
- Risks to water and food - Shell does not disclose any information on water quality in cases where oil spills affect the water. Such information would be needed to ascertain whether the water is safe to drink or for domestic use (such as cooking, bathing). Nor does Shell disclose any information on food safety when soil, crops or fisheries have been affected by an oil spill. As far as the Complainants can discover Shell does not monitor water quality or food safety after oil spills.

Further, Shell does not provide information on the scale and impacts of delayed and inadequate clean-up of oil spills in Ogoniland (or elsewhere in the Niger Delta). On the contrary Shell has repeatedly made claims that its clean up processes are adequate and in line with regulation (see following pages of this Complaint for examples).

The OECD Guidelines require that companies disclose “material information on foreseeable risk factors.” The age and condition of pipelines and other infrastructure, the maintenance records, the extent of oil pollution and its impacts on water, soil and the food chain, as well as the extent of delays in clean up and rehabilitation of land and water are all “material information” for

communities, for the public and for consumers who wish to know about the company's social and environmental impacts. Shell has been asked to provide this information for years.

Since the publication of the UNEP report, Shell now has irrefutable scientific proof of the negative impact of oil pollution on human rights and the environment, as well as proof of the problems with its oil spill clean up procedures. Examples of Shell's statements prior to the release of the UNEP report, and after the report was released, are presented below. They demonstrate that Shell has not significantly changed the way it provides the public with information on the potential environmental, health and safety impacts of its activities. In particular Shell has repeatedly made claims that its clean up processes are adequate and in line with regulation, which the UNEP report exposes as completely incorrect.

Briefing note Shell Nigeria on the management of oil spills, April 2011:

"No matter what the cause, SPDC is committed to stopping and containing all spills, recovering and cleaning up as much oil as possible and restoring sites in compliance with regulations as quickly as possible. In the initial clean-up we remove the free oil and affected vegetation. Thereafter, we carry out full environmental remediation."⁵³

While this statement speaks of "Shell's commitment", it does not reflect the fact that, frequently, Shell does not abide by this commitment.

Almost similar phrases can be found in the briefing note on the management of oil spills that was published by Shell in May 2010.⁵⁴ In neither of these briefing notes does Shell refer to the potential and/or actual presence of pollution in Ogoniland (or elsewhere), and the impact this may have on health and the environment.

Shell Dialogues webchat, July 2011:

Managing director Mutiu Sunmonu of SPDC was asked the following:

"How extensive is environmental degradation in the Delta? How much is due to piracy, theft, etc.? What can and is Shell able to do to assure that its environmental impacts and those on local livelihoods are not compromised by degradation of land, water, marine and other natural resources?"

His answer:

"As you rightly mentioned, the bulk of the spill in the Delta is due to criminal act. However we are committed to cleaning up the spill related to our facilities regardless of the cause. The ***quality of clean up is very high*** and it is in accordance with very strict government regulations and Shell standards which are comparable to other places in Europe and America. We have ***always achieved*** our goal of restoring impacted sites to their natural state in the fastest possible way and by so doing we are able to minimise impact on local livelihoods." (emphasis added)⁵⁵

The evidence of the UNEP report clearly demonstrates that this claim about Shell's clean up practices in the Niger Delta is completely incorrect.

Royal Dutch Shell annual report 2010, March 2011:

"We face various risks in our Nigerian operations. These risks include: security issues

⁵³ Shell in Nigeria, briefing note "Environmental Performance – oil spills", April 2011, <http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/env_perf_oilspills.pdf>

⁵⁴ Shell in Nigeria, briefing note "Environmental Performance – oil spills", May 2010.

⁵⁵ Shell Dialogues Webchat, "Shell in Nigeria – working in a complex environment, session 2 transcript", 21 July 2011, <<http://www.shelldialogues.com/sites/default/files/Nigeria%20Webchat%20-%20July%202011%20-%20Session%202.pdf>>

surrounding the safety of our people, host communities, and operations; our ability to enforce existing contractual rights; limited infrastructure; and potential legislation that could increase our taxes.”⁵⁶

Although Shell includes information on risks to the business in its 2010 annual report, it does not include any discussion of risks faced by communities in the Niger Delta (including Ogoniland) due to the presence of oil pollution, and inadequate clean up of pollution.

Royal Dutch Shell sustainability report 2008, May 2009:

“Despite the security situation, SPDC’s programme to clean up old (pre-2005) oil spills moved ahead. In 2008, it completed the clean up and remediation of seven more sites. By year-end, 68 of the 74 remaining old spill sites had been completed.”⁵⁷

Although Shell has disclosed that some old spills have not been cleaned up and remediated, the company has not provided complete information on the extent of the remaining pollution or the associated risks, such as the risk of oil leaking into the groundwater. As UNEP’s report shows, the claim made by Shell that it has “completed the clean up and remediation” is highly questionable as UNEP found that sites described by Shell as cleaned-up where, in fact, still contaminated.

SPDC press release, August 2010:

“The joint venture’s integrity programme ensures that all its facilities and equipment, including wellheads, pipelines and flowlines, flowstations, terminals and gas plants, are regularly monitored, maintained, equipment replaced where needed, and that staff are trained.”⁵⁸

This information is not correct. It is clear from the UNEP report that this kind of regular monitoring is not taking place in Ogoniland, where Shell remains responsible for its facilities regardless of the fact that it is not active in Ogoniland. As noted above, UNEP found oilfield facilities which had been abandoned and not properly decommissioned and made safe.

Statement managing director Mutiu Sunmonu of SPDC, August 2011 (after the release of the UNEP report):

“The only two assets that are active in Ogoniland are our two pipelines, and I am very confident about the integrity of those two pipelines.”⁵⁹

There are a number of problems with this statement. Firstly, it is misleading in the way it refers to “only two assets that are active”, because Shell is responsible for other assets in Ogoniland that can be an active source of pollution; assets which UNEP found had, in many cases, been abandoned in an uncontrolled fashion. Secondly, the confidence which Shell expresses about the integrity of the two pipelines is not supported by any evidence (the company has never disclosed any verifiable data on its asset integrity review or on maintenance of pipelines). On the contrary, it is countered by evidence in the UNEP report, which shows that pipelines that

⁵⁶ Royal Dutch Shell plc, “Annual report and form 20-F for the year ended December 31, 2010”, 15 March 2011, <http://www-static.shell.com/static/investor/downloads/financial_information/reports/2010/2010_annual_report_20f_01.pdf>, page 14.

⁵⁷ Royal Dutch Shell Plc, “Royal Dutch Shell Plc Sustainability Report 2008”, May 2009, <http://sustainabilityreport.shell.com/2010/servicepages/previous/files/entire_shell_ssr_08.pdf>

⁵⁸ SPDC, press release “SPDC Joint Venture Replaces Major Pipeline”, 30 August 2010, <http://www.shell.com.ng/home/content/nga/aboutshell/media_centre/news_and_media_releases/2010/spdc_pipeline.html>

⁵⁹ AFP, “UN oil devastation report to be taken ‘seriously’: Shell”, 8 August 2011, <http://www.google.com/hostednews/afp/article/ALeqM5i18PUjxLOAMLzNpUS5H72RTFNA_w>

pass through Ogoniland are “not being maintained adequately”.⁶⁰ Moreover, as detailed in section 3.2, above, there is other evidence that the pipelines passing through Ogoniland are not in good condition. Shell has never provided any explanation for the fact that oil spills continue to occur due to corrosion in a pipe system that the company has claimed to be well-monitored and maintained. In addition, Shell has been making plans since 2002/2003 to replace the Trans-Niger pipeline. A replacement is needed only when the old pipeline is no longer in good condition. As of 2012, however, this pipeline has still not been replaced.

In light of the findings of the UNEP report, and the implication of those findings for the hundreds of thousands of people in Ogoniland and in other oil producing areas, the public response of Shell to the UNEP report has been deeply disappointing, and, at times, disingenuous. While on the one hand stating that Shell will accept the UNEP recommendations, the Managing Director of SPDC, Mr. Mutiu Sunmonu, released a public statement in which he claimed that “[Shell] is cleaning up [oil] spills ... and returning sites to their natural state; this work is checked and is approved by government agencies.”⁶¹

By contrast, the UNEP report released just days before this Shell statement clearly stated that the Nigerian government agencies had very limited capacity and that they were “at the mercy of oil companies when it comes to conducting site inspections”. The UNEP report also clearly stated that Shell’s clean up processes frequently do not achieve legislative compliance and sites described by Shell as clean were, in fact, still contaminated. UNEP noted that: “The difference between a cleaned-up site and a site awaiting clean-up was not always obvious.”

Whatever claims Shell can credibly make about its standards and practices going forward, it cannot - in the face of all of the evidence presented - claim it cleans up oil pollution properly.

The OECD Guidelines require companies to apply high standards of quality to the disclosure of information, including non-financial information. The Complainants would argue that Shell has failed to do this in relation to all of the information on control and maintenance of infrastructure in Ogoniland and all information on oil spill impacts and clean up practices. All of the publicly available information from Shell (examples quoted above) excludes material facts, and/or makes claims that are not substantiated – even when stakeholders have repeatedly asked for information to support the claims.

Shell has failed to provide the public, communities and consumers with adequate, verifiable information on the potential environment, health and safety impacts of the activities of the enterprise in Ogoniland. The information that is provided includes representations and/or omissions that are patently misleading. Certain information is clearly incorrect. Any communication and consultation with the communities directly affected by the environmental, health and safety policies and practices of Shell in Ogoniland (and elsewhere in the Niger Delta) cannot be credible when communities lack correct and complete information on the issues referenced above.

⁶⁰ United Nations Environment Programme, “Environmental Assessment of Ogoniland”, August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&I=en>>, page 25.

⁶¹ Shell Nigeria, “Mutiu Sunmonu comments on UNEP Ogoniland oil spill report”, 4 August 2011, <http://www.youtube.com/watch?v=0aHa4VbQBZ8&feature=player_embedded>

4.2 Breaches related to the impact on human rights and the environment

Breaches of OECD Guidelines

Shell has breached points 2, 3, 5 and 6 of the section on Human Rights (IV)⁶², which states that enterprises should:

“[w]ithin the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.”

“Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”

“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”

“Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”

Shell has breached the provision in the section on Environment (VI)⁶³, which states that enterprises should:

“take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.”

Evidence

Human rights

There is incontrovertible evidence that the environment in Ogoniland is highly polluted and that this pollution is due in large part to oil spills. There is evidence that Shell has failed to take action to prevent oil spills, by failing to adequately maintain its infrastructure and make it safe from known and foreseeable risks.

There is also clear evidence that Shell has failed to take adequate action to mitigate negative impacts of oil spills - the scale and severity of the pollution in Ogoniland has been significantly exacerbated by the failure of the responsible party (the operating company, Shell) to properly clean up the oil spills over many years. This failure cannot be defended by claiming the company lacked access (see Box 1: Access to Ogoniland in Chapter 2 for further details).

The human rights to food, livelihood, water, health and remedy have all been infringed as a direct consequence of this oil pollution – both the failure to prevent it and the failure to properly address it. On the evidence of the UNEP report it is clear that soil, air and water are polluted,

⁶² Organisation for Economic Co-operation and Development (OECD), “OECD Guidelines for Multinational Enterprises, 2011 edition”, 25 May 2011, <http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html>, pp. 31-34.

⁶³ Organisation for Economic Co-operation and Development (OECD), “OECD Guidelines for Multinational Enterprises, 2011 edition”, 25 May 2011, <http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html>, pp. 42-46.

with negative impacts on people's access to food, water and livelihoods, as well as posing serious risks to human health.⁶⁴ On the evidence of the UNEP report the remediation of adverse human rights impacts has been highly inadequate.

The UN Guiding Principles on Business and Human Rights state that:

"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."⁶⁵

The evidence of the UNEP report clearly shows that Shell has failed to act with due diligence in relation to the actual and potential human rights impact of the company's operations. The UNEP report notes several due diligence failures in relation to prevention of oil spills. As noted above, these include Shell's failure to properly decommission its infrastructure and the failure to ensure adequate monitoring and maintenance of operational and abandoned infrastructure.

The UNEP report also provides evidence of several due diligence failures in relation to Shell's clean-up and remediation procedures. These include:

1. Failure to ensure that the clean-up approach took into account the prevailing environmental conditions

This failure of due diligence has – at least in part – allowed the contamination of groundwater, as one assumption made by Shell was that the depth of soil contamination was limited - an assumption that UNEP's field work has shown to be false, and which field work by Shell could and should have exposed. This failure of due diligence resulted in greater and more prolonged exposure of the people of Ogoniland to contaminated drinking water.

2. Failure to address problems, despite repeated expressions of concern by various actors

In the context of the oil industry, swift and effective clean up and remediation of land and water affected by oil spills would constitute a core element of mitigation of adverse human rights impacts. Based on the evidence contained in the UNEP report in relation to clean-up and remediation processes, Shell practices have exposed hundreds of thousands of children, women and men to a sustained assault on their economic, social and cultural rights. Moreover, Shell has done this in spite of significant evidence of problems, which Shell has wilfully ignored. This evidence, while not the hard science from the UNEP report that is now confronting Shell, includes: the findings and recommendations of the African Commission on Human and Peoples' Rights which looked at the case of Ogoniland in 2001⁶⁶; the findings of a range of investigations by non-governmental organizations, including Amnesty International and Friends of the Earth,

⁶⁴ All of these rights are recognised in the International Covenant on Economic, Social and Cultural Rights.

⁶⁵ United Nations, Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 21 March 2011, <<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>>

⁶⁶ African Commission on Human & Peoples' Rights, "Re: communication 155/96", May 2002, <<http://www.cesr.org/downloads/AfricanCommissionDecision.pdf>>

and the consistently repeated concerns of the communities themselves.

3. Failure to monitor adverse human rights impacts that the business enterprise may cause or contribute to through its own activities

Due diligence would also require that Shell takes adequate action to monitor human rights that can be at risk due to oil industry operations: no such monitoring is done. There is no monitoring of water quality or air quality post-oil spills. There is no monitoring or assessment of how oil spills have affected food crops or food safety. There is no monitoring of health impacts due to oil spills. Communities are not given any information on the risks to which they are exposed.

In 2008 and 2009 Amnesty International repeatedly asked Shell if the company monitored the health impacts of oil pollution in the Niger Delta, but received no clear response. The evidence of the UNEP report shows that people are exposed to sustained health risks through drinking contaminated water, breathing contaminated air and potentially eating contaminated food.

There is also no effective monitoring of clean up of pollution. As UNEP noted, sites that Shell describes as having been cleaned up and rehabilitated were found to still be polluted, with contamination parameters exceeding government regulations and Shell standards.⁶⁷

The Environment

The findings of the UNEP report, outlined in Chapter 2, clearly demonstrate that Shell has not taken due account of the need to protect the environment and public health. At minimum, protection of the environment would require all reasonable action to prevent the pollution occurring (which Shell has failed to do) and to fully, properly and swiftly clean up the pollution (which the evidence shows Shell has also failed to do). Taking due account of public health would require some level of monitoring of risks to health, particularly where the communities have raised concerns, yet UNEP's report shows that groundwater that people drink is polluted but had not previously even been monitored, and that people in Ogoniland are exposed to sustained pollution.

As noted earlier, the UNEP report notes that Shell has failed to adequately maintain its infrastructure in Ogoniland. This failure has also been documented by Amnesty International and Friends of the Earth (see AI reports: *Petroleum, Pollution and Poverty in the Niger Delta*, 2009, and *The True Tragedy: Delays and Failures in addressing oil spills in the Niger Delta*, 2011). This issue is also dealt with in more detail in Chapter 3 of this document.

⁶⁷ United Nations Environment Programme, "Environmental Assessment of Ogoniland", August 2011, <<http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&l=en>>, page 12.

Chapter 5:

Recommendations

Friends of the Earth International and Amnesty International have the following recommendations with regard to Shell's policies and practices:

- Implement all recommendations made by UNEP as soon as possible, and provide regular updates on progress in implementation of the recommendations.
- Take all steps within Shell's capacity to ensure that the rehabilitation of Ogoniland is fully funded. This should include, at minimum, provision of funds recommended by UNEP.
- Declare the company's support for similar research to be carried out for the rest of the Niger Delta, and provide financial support to this research.
- Respect the human right to effective remedy, including by cleaning up all outstanding oil spill pollution, and by providing adequate compensation to affected individuals and full remediation of adverse human rights impacts, in line with international standards and good practice.
- Make public the Asset Integrity Review conducted by Shell in 2003/4 and the schedule of maintenance for all infrastructure in Ogoniland: i.e., the dates, which elements of infrastructure were subject to maintenance, the reason for maintenance activities – whether regular scheduled maintenance or maintenance due to other factors.
- Publicly disclose the reasons for Shell's decision not to monitor health impacts, food safety and water quality after oil spills in Ogoniland; disclose any monitoring or research into these issues that has been done but has not been made public.
- Establish a transparent system to monitor food safety, water quality and health after oil spills; this should be done in cooperation with affected communities.
- In light of the fact that oil spills due to operational problems continue to occur despite the pipeline integrity system, initiate an independent review of the integrity of Shell's assets in the Niger Delta (i.e., pipelines, wells, flow stations, etc), and ensure that this is fully disclosed.
- Amend or replace existing public statements on Shell's websites and in briefings, annual reports and other documents that:
 - make misleading, incorrect or incomplete claims about the quality of Shell's oil spill clean up processes in the Niger Delta.
 - make claims which the UNEP report has show to be incorrect.
- Replace such statements with corrected information, based on the findings of the UNEP report.
- Provide the public, customers and affected communities with a clean statement about the potential and actual environment, health and safety impacts of Shell's operations in Ogoniland. This should be included in the 2011 Shell Sustainability and Annual Reports.
- For every future oil spill provide the public, customers and affected communities with information on the environmental and human rights impacts and/or risks, the parameters that Shell is monitoring, the outcome of such monitoring and the action taken to clean up and address the environmental and human rights impacts. Such information should be provided without compromising the privacy of individuals.
- For every oil spill disclose the date at which the site is fully cleaned up, and the method of verification of clean up.
- Set up a system for independent and transparent, third party assessment of the causation of oil spills and the adequacy of clean up operations.
- Establish and make public a human rights due diligence process for Shell's operations in the Niger Delta.

Appendix: Oil spill procedures according to Shell

On the website of SPDC, the following information can be found with regard to follow-up procedures after an oil spill is reported.⁶⁸

“To provide transparency with respect to the cause and consequence of the spill, a team including relevant government agencies and SPDC is accompanied by representatives of impacted communities when they visit the site, as quickly as possible after the leak occurs. This Joint Inspection Visit, or JIV for short, determines the spread, the volume and the cause of the spill.

The government agencies include the Department of Petroleum Resources (DPR), the National Oil Spill Detection and Response Agency (NOSDRA), the relevant State Ministry of the Environment and the Police. After the JIV, SPDC’s spill response team makes the necessary repairs and recovers as much of the spilled oil as possible. This is called the clean-up.

After the clean-up, there can still be residual oil that has soaked into the soil, or oil that is sticking to vegetation. A post clean-up inspection, involving representatives from the same parties listed for JIVs, assesses whether the site needs further remediation to comply with international standards. If remediation is not required, then the spill site can be certified clean and the incident closed out.

Remediation is a longer term process aimed at returning the site to its previous state. There are several ways to achieve international standards of restoration depending on whether the spill is on Land or Swamp terrain.

Three methods of Remediation are in use on Land - Remediation by Enhanced Natural Attenuation (RENA), Remediation by Stabilization / Solidification and Low Temperature Thermal Desorption. The RENA technique is the predominant method in use and may be applied in-situ (treating the soil on site) or ex-situ (removing the soil to be cleaned elsewhere and returned site).

Remediation in swampy terrain depends on the nature of swamp, whether seasonal or perennial. A seasonal swamp is dry during the dry season and holds water during rainy season. Remediation of the impacted soil can be undertaken using RENA method in the dry season.

In perennial swamps, free phase oil on water and vegetation is cleaned by flushing and skimming whilst oily sludge is remediated by systematic agitation using swamp buggies coupled with application of suitable nutrient amendment to promote biodegradation and other natural attenuation processes.

After completion of the remediation process, the site is handed over for close-out inspection and certification by the relevant Government agencies. The entire spill response process is governed by performance standards, as prescribed by Nigerian Law, in particular as defined in the DPR EGASPIN 2002 (Department of Petroleum Resources – Environmental Guidelines and Standards for the Petroleum Industry in Nigeria). This standard is applied to all spills, regardless of the cause.”

⁶⁸ Shell Petroleum Development Company of Nigeria Limited (SPDC), “Oil Spill Data”, <http://www.shell.com.ng/home/content/nga/environment_society/respecting_the_environment/oil_spill_s>, as viewed on 18 November 2011.