Ministry of Foreign Affairs

National Contact Point
OECD Guidelines for Multinational Enterprises

Final Statement
Shell in the Niger Delta II

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Final Statement

Final Report of the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises on the Specific Instance notified by Amnesty International and Friends of the Earth International concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Royal Dutch Shell (Shell).

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1. Introduction

This report describes the process initiated and the good offices offered by the Netherlands National Contact Point for the OECD Guidelines after receipt of a notification by Amnesty International and Friends of the Earth International on 30 December 2011.

On 17 June 2013 Amnesty International and Friends of the Earth informed the NCP about their decision to withdraw this notification.

2. The NCP procedure

2.1 NCP procedure in this specific instance

On 30 December 2011 Amnesty International and Friends of the Earth International notified a specific instance with the National Contact Points of the United Kingdom and The Netherlands with regard to an alleged breach of the OECD Guidelines for Multinational Enterprises by the Royal Dutch Shell Group (Shell) in relation to oil pollution in Ogoniland, part of the Niger Delta, Nigeria. The notification was directed to both the UK and Dutch National Contact Points ("NCPs") as the notifiers believe that both have authority to investigate and make a determination under the Specific Instance Procedure of the OECD Guidelines.

The Netherlands NCP confirmed receipt of the notification on the notifying parties on 13 January 2012. In its letter (initial assessment) of 7 February 2012 the Netherlands NCP informed parties that the Netherlands NCP, by mutual agreement with the UK NCP, had decided to accept the notification for further examination under the OECD Guidelines NCP procedures. The NCP believed that the notification merits further examination and offered its good offices to help parties resolve the issue. By publishing the initial assessment, the official NCP process was started.

2.2 Details of the notifiers

The notification was submitted by two civil society organizations, Amnesty International and Friends of the Earth International.

Amnesty International, a global movement with 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.

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.

2.3 Details of the enterprise

Shell is a global group of energy and petrochemical companies. Shell's headquarters are in The Hague, the Netherlands. The parent company of the Shell group is Royal Dutch Shell plc, which is incorporated in England and Wales. Shell Petroleum Development Company Nigeria is a subsidiary of Shell.

3. The NCP's assessment of the specific instance

3.1 Specific instance Amnesty International / Friends of the Earth – RDS, 30 December 2011

The notification of Amnesty International - International and Friends of the Earth International did set out breaches of the OECD Guidelines for Multinational Enterprises by the Royal Dutch Shell group (Shell) in relation to oil pollution in Ogoniland, part of the Niger Delta, Nigeria.

Summarizing notifiers stated in their notification:

"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 had 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."

3.2 Previous specific instance Amnesty International / Friends of the Earth – RDS, 25 January 2011

The above mentioned specific instance of 25 January 2011 has been brought to an end by the Netherlands NCP in its final statement of 21 March 2013. The NCP concluded that after intensive discussions no agreement between the parties was reached. Among its recommendations for the further implementation of the OECD Guidelines it urged both parties to continue the discussion on the best way to communicate about the oil spills. Parties should take a positive, constructive and solution focused approach in a non-judicial forward looking problem solving process and by doing so create trust in the dialogue about the steps that have to be taken to solve the Nigeria oil pollution problem.

Amnesty International and Friends of the Earth reacted in a press release by stating that:

"Because of these serious deficiencies in the Dutch NCP process, Amnesty International and Friends of the Earth International do not believe that the system can produce meaningful resolution of issues with a company like Shell. The two organizations have therefore decided to withdraw a second complaint to the NCP about Shell's longstanding role in oil pollution of Ogoniland in Nigeria."

3.3 Withdrawal of a specific instance – OECD Guidelines

The OECD Guidelines and its procedural guidance do not recognize the possibility of withdrawal of a notification of a specific instance. Article 35 of the commentary on the procedural guidance gives instructions for a situation that resembles the situation that confronts the Dutch and UK NCP:

"35. If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement."

3.4 Initial Assessment specific instance of 30 December 2011

In its initial assessment of 7 February 2011 the Netherlands NCP concluded that the notification merits further examination and that it is prepared to offer its good offices to help parties resolve the issue:

"Evidently, the parties involved should agree to the substance and the procedural outlines of the handling of this specific instance. The NCP does not dictate the content of informal problem-solving, but rather facilities conversations or exchanges of messages along the lines agreed to by the parties. The commitment of the NCP is independent of the fact that the NCP procedure might result in the need to formulate a final finding with respect to the claim that the Guidelines have been violated.

Since our initial screening indicates that the NCP may play a useful problem-solving role, the NCP would like to invite you to one or more exploratory meetings to determine whether conciliation, mediation or a formal findings process might be appropriate. Before such a is made, the NCP is, according to the OECD Guidelines, expected to help the parties identify and clarify issues, identify necessary participants, determine whether some type of neutral assistance would be useful, and if so, select a mutually acceptable intermediary. (..)

It should be noted that we distinguish our role in the exploratory phase from roles in subsequent problem-solving and findings processes. This, however, does not preclude the NCP from taking on these additional roles if needed. If necessary it is possible, with the agreement of or recommendation of both the parties, to select a professional mediator who is not part of the NCP.

The NCP must manage the various stages in a problem-solving process if our exploratory meetings lead to that next step. During a full assessment and subsequent mediation, the NCP's duties include, but are not limited to: identifying the appropriate parties; suggesting possible ground rules for the convening meetings, as well as for subsequent mediation if this is how the parties wish to proceed; preparing, distributing, and safekeeping relevant documents, including summaries of all convening meetings; ensuring adherence to agreed upon protocols; and maintaining whatever confidentiality was agreed to.

The NCP should be able to supervise any problem-solving efforts that follow the exploratory stage, whether we serve as a neutral mediator or the parties choose an independent mediator. As the effectiveness of the problem solving efforts depends of good faith behaviour of all parties involved in the procedures, as described in Commentary on the Implementation Procedures of the Guidelines (no. 21), we call upon parties to act accordingly.

The Netherlands NCP hopes that the above described procedure will convince you that its involvement will be helpful for all parties concerned. In a few days we will contact your company to schedule a meeting in this regard.

Please note that the notification concerning Shell in Nigeria d.d. January 2011 is still under the NCP's examination. In the scheduled meeting we will consider both notifications, including the question if or how they are related and accordingly, how they should be dealt with."

The above announced meeting never took place, since parties agreed that it would be better to discuss and conclude the notification of 25 January 2011 first, before trying to solve the issues in the notification of 30 December 2011.
The NCP agreed to that decision. But in accordance with the procedures of the OECD Guidelines the NCP has now to make a final statement not based on the use of a dialogue or even a mediation.

3.5 Notification of the specific instance of 30 December 2011

The notification of the specific instance of Amnesty International and Friends of the Earth states, quoting from the UNEP report of August 2011, among other, that:

Quote: "At the cessation of oil production in 1993, the following oilfield facilities were present in Ogoniland: 12 oilfields; 116 drilled wells; 89 completed wells; 5 flow stations. 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." (...)

"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." (...)

"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." (...)

"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." (..)

"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 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." (End of quote of the UNEP report by the notifiers)

Based on own research and on the findings in the UNEP report the notifiers conclude:

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

- 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."

3.6 RDS Report on the SPDC commitments towards the UNEP report

The NCP, after receiving the message from the notifiers that they withdrew the notification based on their experience in the earlier case, asked RDS to give the NCP an update on the progress of actions in Nigeria taken by SPDC and RDS.

In September 2013, the NCP received a reply from RDS in which they state the following:

"In August 2011, the United Nations Environment Programme published an 'Environmental Assessment of Ogoniland' – a study of oil pollution in Ogoniland in Rivers State, a region of the Niger Delta. The report was commissioned by the Federal Government of Nigeria as part of an ongoing Ogoni reconciliation process. The SPDC joint venture supports the government—led Ogoni reconciliation process. On the request of the government, SPDC and its joint venture partners financed the UNEP report and provided data as required. The report highlighted significant environ-

mental impacts from oil pollution in parts of Ogoniland and called on government, industry and communities to take action to put an end to all forms of oil contamination (including crude oil theft and illegal refining) and begin a comprehensive clean up.

SPDC has welcomed the UNEP report and is advocating more concerted efforts by all stakeholders in the hopes that the report will drive real change in Ogoniland and the wider Niger Delta."

The complete reaction of RDS, in which they set out the actions taken by RDS and SPDC, is annexed to this final statement.

4. Remarks of the notifying organizations

On 30 December 2013 the NCP sent the draft final statement for comments to Amnesty International/Friends of the Earth and RDS. The notifying organizations reacted on January 17, 2014, by stating that they did not agree with the interpretation by the NCP of the situation that exists after the so called "withdrawal of the complaint."

They say that both organizations have expressed very clearly to the NCP why they withdrew the complaint.

"One of the primary reasons was that, having participated in a lengthy process previously in good faith, both organizations felt that there had been no meaningful consideration of evidence presented and that the NCP was unable to prevent Shell from obstructing the OECD process."

These reasons, repeated in their recent reaction, show clearly that it is the NCP procedure that they did not want to participate in anymore, not any developments related to the content of the specific instance itself. So the procedural interpretation of the NCP has to stand. The organizations in their latest comments also note that *"the draft final statement contains assertions made by Shell to the NCP. From our review of the text we note that these statements are, in many cases, biased, unsupported and incorrect. However, we do not intent to rebut these statements because there is – as we have said – no complaint and no process initiated."*

On 4 February 2014 the NCP discussed its formal position on the situation after the so-called "withdrawal" of the notification and the remarks above with representatives of the notifying organizations. This discussion led to a better understanding of the procedural position of the NCP and that of the notifying organizations. The NCP explained that with the release of a final statement after the withdrawal of the notification by notifiers – after the initial assessment had been issued – it acts in accordance with the current practice given various final statements and procedures of other NCPs, which is endorsed by the OECD.

Notifiers interpreted this differently and reiterate that they believe that by withdrawing the complaint, there was no complaint anymore and there is no basis to say that they are unwilling to engage or participate in good faith. Regarding the interpretation of the NCP notifiers chose to react on the statements of Shell (section 3.6) on February 21, 2014.

In their reaction notifiers note that from their review of the text, the statements of Shell are in several cases, biased, unsupported and/or incorrect. They state that as withdrawal has not been an option, they want to highlight some of the serious inconsistencies in the text provided by Shell. The reaction of notifiers, which addresses these inconsistencies, is annexed to this final statement.

5. Concluding remarks of the NCP

The NCP concludes that RDS and SPDC do not deny that the complex situation in Ogoniland has a very negative impact on living circumstances and the rights of many people and that SPDC were part of that problem. The notifying organizations are very critical on, as they see it, the lack of progress in the implementation of the UNEP report in Ogoniland. The NCP, on the basis of the information provided by RDS and SPDC, expects the companies to have started on a route to not only recognize but also respect the rights of the people of Ogoniland, as stated in the OECD Guidelines, and will clearly and transparently give access to remedy as described in the Ruggie report and as referred to by the OECD Guidelines. The NCP is of the opinion that an open discussion that includes Amnesty International and Friends of the Earth on the progress of the actions as supported by the companies is urgent. Since January 2012 the IUCN lead panel for the restoration of the Niger Delta offers an opportunity to do so. That platform can also be used by the notifiers to speak about the situation in the Niger Delta in a broader context, since RDS made it known that the organizations are welcome to participate in that process.

The NCP repeats therefore its recommendations as stated in its former Final Statement in the Specific instance of January 2011. The changing positions of RDS and SPDC and the involvement of other NGO stakeholders should offer new opportunities for a veritable dialogue. The NCP is prepared to play a role in this if parties so desire.

Annex 1

RDS Report on the SPDC commitments towards the UNEP report (September 2013)

"In August 2011, the United Nations Environment Programme published an 'Environmental Assessment of Ogoniland' – a study of oil pollution in Ogoniland in Rivers State, a region of the Niger Delta. The report was commissioned by the Federal Government of Nigeria as part of an ongoing Ogoni reconciliation process. The SPDC joint venture supports the government—led Ogoni reconciliation process. On the request of the government, SPDC and its joint venture partners financed the UNEP report and provided data as required. The report highlighted significant environmental impacts from oil pollution in parts of Ogoniland and called on government, industry and communities to take action to put an end to all forms of oil contamination (including crude oil theft and illegal refining) and begin a comprehensive clean up.

SPDC has welcomed the UNEP report and is advocating more concerted efforts by all stakeholders in the hopes that the report will drive real change in Ogoniland and the wider Niger Delta.

The UNEP report was commissioned by and delivered to the Federal Government of Nigeria. Many of the most important UNEP recommendations – such as the creation of an Ogoniland Environmental Restoration Authority and an Environmental Restoration Fund for Ogoniland – are directed at the government and require the government to take the lead to co-ordinate the activities of the many stakeholders involved.

In July 2012, the Minister of Petroleum Resources announced the creation of the Hydrocarbon Pollution Restoration Project (HYPREP), with a pledge to fully implement the UNEP report. SPDC welcomes this announcement and has expressed its willingness to support HYPREP in realizing its objectives in Ogoniland.

SPDC understands that HYPREP is in the process of developing a detailed program and work plan for the implementation of the UNEP report. SPDC is hopeful that this process will be speedily concluded to enable government to take the lead in Ogoniland Restoration, as recommended by the UNEP report.

SPDC is willing to support and contribute its share to the Ogoniland Environmental Restoration Fund, once a satisfactory framework and governance structure is fully established by the Federal Government.

Prior to the establishment of HYPREP, SPDC had undertaken a number of activities in Ogoniland, which addressed some of the emergency issues raised by UNEP. For example, SPDC and its joint venture partners are working with the Rivers State Government (RVSG) in financing the emergency supply of eight million litres a month of clean drinkable water (one of the UNEP-recommended emergency measures) to the most affected communities: Ogale, Okrika and Ebubu.

These supplies started two weeks after the report was published and have been ongoing for almost two years. The water, sourced from the Rivers State water corporation, is being trucked to villages by the State Government (RVSG), with financial contribution from the SPDC joint venture.

The SPDC JV has also worked with Eleme Local Government to design and produce signs and notices as recommended by UNEP, to warn members of the public around impacted locations. The signs have been installed by the local government authorities.

SPDC JV and the RVSG have also embarked on a project to construct permanent water distribution facilities to Eleme local government area (LGA) in Ogoniland. Some 27km of new pipelines have been constructed that will provide running water to local residents. The 450,000 litre capacity facility is expected to be commissioned shortly. The facility has potential to serve an estimated 30,000 people a day. The work is being executed by local contractors, ensuring that economic benefits of the project remain in the country.

Following the UNEP report, in June 2012, SPDC JV launched a community health outreach programme – 'Health in Motion' – in Ogoniland. Under this initiative, delivered in partnership with the RVSG, communities and local governments, medical teams toured towns and villages across Ogoniland providing primary health care services direct to communities, including eye testing, dental care, blood sugar testing, HIV/AIDS and malarial tests and minor surgeries. About 35,000 adults and 15,000 Ogoni children benefitted from the health outreaches.

Where communities grant SPDC access, the company cleans up and remediates oil spills from SPDC JV facilities, irrespective of the cause of the spill. SPDC has remediated over 170 impacted sites across Ogoniland covering over 120 hectares since 2004. In Ogoniland, clean up and remediation is ongoing at several locations along SPDC JV right of way, where SPDC has access, including sites such as Sime, Mogho, Biara and Kpoghor. SPDC JV has completed the remediation of the Ejama Ebubu site, while final certification scheduled for later in 2013. The co-operation of communities to grant permission to access the sites has been and will be key success factors in making progress.

As UNEP indicated, a thorough clean up of Ogoniland, which includes large areas not associated with SPDC JV facilities or operations, will take many years. Before it can be effective, ongoing sources of oil contamination including crude oil theft and illegal refining must come to an end. Otherwise, cleaned up areas will be re-impacted by further contamination, particularly in riverine and swamp areas where water-borne oil can spread from elsewhere causing re-contamination as well as new pollution. The UNEP report contained a number of findings regarding SPDC

practices and performance. SPDC reviewed these findings and has taken the following specific actions since the report was published:

- Completed a comprehensive review of its Remediation Management System (RMS) and made a number of changes in line with best industry practice;
- Reviewed its clean up and remediation practices and confirmed that SPDC uses Bioremediation as the principal technique for soil and groundwater contamination. Other methods are used singly or in combination for different contaminant streams, this includes thermal methods, physical methods (fixation), and biochemical methods.
- SPDC has since contracted professional service providers to assess ground water impacts at each of these sites and six of these sites, 24-inch TNP at Bera, Bomu well-18, Yola well 4/5, Yorla well- 8, Yorla well-10 and Sibari - Gbe Bomu well-33 had some shallow groundwater contamination as a result of re-pollution from sabotage activities-. Corrective action is ongoing.
- Re-trained contractors and their supervisors on clean up and remediation techniques and assigned dedicated clean up and remediation supervisors to a number of project sites to ensure daily and effective supervision and compliance;
- Convened meetings with relevant government regulators to discuss and clarify aspects of the Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN). EGASPIN is currently being reviewed by the regulators in conjunction with oil companies (including SPDC JV) and an updated version is expected to be published by the regulators;
- SPDC JV holds joint field trips with regulators to selected sites in Ogoniland and continues to hold quarterly meetings on the UNEP report and certification of remediated sites.
- In 2012 SPDC completed an inventory of its assets in Ogoniland and initiated on-site physical verification of assets. This exercise, which is a precursor to developing a de-commissioning plan, is substantially complete.

With respect to site restoration:

- There are 15 sites identified by UNEP. SPDC JV has established that 9 of the 15 sites are in compliance in both soil and groundwater. Six of the sites were found to have shallow groundwater contamination, as a result of re-pollution from sabotage activities. Out of these 6 sites, 3 have been remediated and certified. Work is about to commence on one of the two remaining sites.
- Remediation of Impacted sites along SPDC JV Right of Way: As of end July 2013, SPDC has documented 223 spill incident impacted sites within its Right of Way in Ogoniland that require remediation. Of these, 170 sites have been remediated to date and 15 sites are active. 21 sites in Bodo and 2 in K-Dere are suspended due to crises in these communities.
- HYPREP is expected to lead remediation of sites impacted outside of SPDC's RoW, which is an estimated 95% of overall impacted areas in Ogoniland. This impact is largely due to crude oil theft and illegal refining.
- Ejama Ebubu spill site clean-up: SPDC JV has completed the remediation of Ejama Ebubu (spill incident caused by an explosion during Nigeria's civil war), internal assessment is ongoing, while final certification with Regulators is later in 2013. Post certification plan is to transform Ejama Ebubu site into a football field and a park. Proper engagement for full buy-in of the community is ongoing
- Benzene Pollution: The benzene pollution highlighted in the UNEP report is not from an SPDC JV facility and is attributable to possible leaks in lines conveying refined products. The active involvement of these parties is critical for sustainable positive action in this area.

Since UNEP published its report, SPDC JV has also started working with two organizations to strengthen and provide further transparency around SPDC's environmental performance:

1. Bureau Veritas: In February 2012, SPDC executed a contract with Bureau VERITAS, an independent international standards verification agency, to review SPDC's emergency spill response and clean up practices. Since signing the contract, Bureau VERITAS has made visits to spill sites in selected parts of the Niger Delta, alongside SPDC, representatives of civil society and NGOs, to verify ongoing work. Bureau VERITAS' verification exercise has been divided into phases.

The first phase focused on assessing the adequacy of documents, procedures and execution activities during the initial stages of response: identification of causes, extent of impact and initial clean up. The next phase will focus on verification of available spill data, improvements following phases 1 & 2 work as well as the Clean-up and Remediation processes.

2. IUCN panel: SPDC invited the International Union for the Conservation of Nature (IUCN) – a body of academics and environmental NGOs amongst others, to set up an independent scientific panel to advise the company and make recommendations to help restore the biodiversity and habitats at spill sites related to SPDC's facilities. The panel began work in January 2012. SPDC will work closely with IUCN to put into practice those recommendations which relate specifically to SPDC and are appropriate for SPDC to implement."

Annex 2

Remarks of the notifying organizations Amnesty International and Friends of the Earth International on the RDS Report on the SPDC commitments towards the UNEP report of September 2013 (February 21, 2014)

"As mentioned in our earlier reaction to the final statement, we note the draft final statement contains assertions made by Shell to the NCP. From our review of the text we note that these statements are, in several cases, biased, unsupported and/or incorrect. As withdrawal has not been an option, we want to highlight some of the serious inconsistencies in the text provided by Shell.

In its response RDS claims that it cleaned up 170 spills since 2004. But the UNEP report (2011) exactly stated that many of these clean ups were insufficient. So restating clean up activities since 2004 is not taking the UNEP recommendations into consideration.

Further on regarding remediation. Shell said that it "Reviewed its clean up and remediation practices and confirmed that SPDC uses Bioremediation as the principal technique for soil and groundwater contamination." In the UNEP report (page 206) it was mentioned that „The current approach by SPDC to clean-up contaminated sites through remediation by enhanced natural attenuation (RENA) should be discontinued". By continuing a clean up method that UNEP clearly identified as insufficient, Shell is not taking one of the most crucial UNEP recommendations serious.

RDS has highlighted the responsibilities of other actors involved, e.g. the Nigerian government, saboteurs. We are concerned by an approach that focuses on other actors rather than on RDS explaining what it has done itself to address the situation.

Shell reports on joint efforts with Rivers State government to post warn signs and set up a water distribution system. However, research by our organizations and our partners shows serious problems persist. Signs posted have not been accompanied by adequate information on risks. People now have an increased dependence on the water supplied to them by the authorities. However, the supply of water is reported to be inadequate, the intervals of supply vary and the water is sometimes delivered in rusty tanks and tastes bad.

Shell also states that it has started a primary health monitoring programme on HIV/Aids, dental care etc. However, this is a general programme and does not monitor the health effects of pollution. Despite the fact that the UNEP report raised very serious concerns about the health impacts of exposure to hydrocarbons, neither the government or Shell have taken any meaningful action to address this issue. Shell cannot point to this as solely a government responsibility. The corporate responsibility to respect human rights would require that Shell acted on the information in the UNEP report to assess and mitigate the health risks. To point to health programmes that are distinguished only by the failure to look at the oil pollution issues is highly troubling and we wonder if the NCP has considered this issue?

Shell states that "where communities grant SPDC access, the company cleans up and remediates oil spills from SPDC JV facilities, irrespective of the cause of the spill". On November 7, Amnesty International sent the NCP a copy of our report, **Bad Information** which contains information on the false, untrue and misleading information that Shell provides with regard to oil spill monitoring, oil spill investigation and oil spill clean up. The claims made by Shell on the implementation of the UNEP recommendations, and reflected in the final statement, in this (as in other regards) are incorrect and evidence has been published that demonstrates this. AI and FoE are concerned by the fact that the NCP was not willing to base its statement on evidence contained in our notification, which was supported by sources, but appears to have accepted un-sourced information provided by Shell.

In section 3.6 Shell mentions: "As UNEP indicated, a thorough clean up of Ogoniland, which includes large areas not associated with SPDC JV facilities or operations, will take many years. Before it can be effective, ongoing sources of oil contamination including crude oil theft and illegal refining must come to an end."
In the UNEP report is mentioned on page 207 is written that: "Prior to discussing clean-up options, one issue needs to be clarified. It is often stated that unless ongoing pollution is stopped, any clean-up undertaken is futile. However, this statement is only **partially valid.** In the case of land contamination, the locations of pollution sources and the extent of contamination emanating from them are relatively clearly defined and can be cleaned up independently from spills in other areas. The potential for future spillages, either from operational accidents or illegal activities, should not preclude the decision to initiate clean-up action where the source and extent of contamination are known." (emphasis added)

Finally we would note that there are numerous references to meetings, advisory committees, trips and surveys without being clear on the outcomes/ results.

The above are only some examples of the information that we consider to be highly problematic and refuted or seriously questioned by research published by our organisations and, indeed, by UNEP."

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The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl

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