



Dutch National Contactpoint (NCP) for the OECD Guidelines for Multinational Enterprises

Final Statement

Obelle Concern Citizens (OCC) vs. Shell Petroleum Development Company of Nigeria Limited (SPDC) and Royal Dutch Shell (RDS)

27 February 2020

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Final Statement by the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) further to a specific instance submitted on 29 January 2018 by Obelle Concern Citizens (OCC) concerning an alleged violation of the Guidelines by Shell Petroleum and Development Company of Nigeria Limited (SPDC) and Shell Headquarters in the Netherlands (hereinafter: Royal Dutch Shell; RDS).

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1. Introduction

This Final Statement describes the process and outcomes of the specific instance submitted to the NCP on 29 January 2018, by OCC about an alleged violation of the Guidelines by SPDC and RDS. SPDC is the wholly-owned subsidiary of RDS. According to its website, "SPDC is the operator of a Joint Venture Agreement [called: SPDC JV] involving the Nigerian National Petroleum Corporation (NNPC), which holds 55%, Shell 30%, Total Exploration and Production Nigeria Limited (TEPNG) 10% and Nigerian Agip Oil Company limited (NAOC) 5%."¹

On 1 March 2018 the NCP held a separate telephone meeting with the notifying party as part of its Initial Assessment, and on 24 April 2018 a separate meeting with a delegation of Shell International B.V. as representatives of RDS in the Netherlands, about the specific instance and related matters. All communication in this specific instance was conducted with representatives of RDS, also on behalf of SPDC.

¹ <https://www.shell.com.ng/about-us/what-we-do/spdc.html>

The Final Statement is based on the information received from the parties. Confidential information disclosed to the NCP in the course of this specific instance has not been used in the preparation of this Final Statement.

This Final Statement marks the completion of the procedure by the NCP.

2. Executive summary

On 29 January 2018, the Dutch NCP received a notification of OCC concerning an alleged violation of the Guidelines by SPDC in Nigeria (see also Chapter 3. Summary of the Notification). As part of its Initial Assessment, the NCP held separate meetings with the parties in March and April 2018. Given the fact that SPDC had communicated it has its own grievance mechanism, the SPDC Community Feedback Mechanism (CFM) since 2012 and that OCC has never addressed this CFM with its complaints, the NCP therefore decided that the issues at stake should in the first place be handled by the grievance mechanism of SPDC itself. On the recommendation of the NCP the parties started to discuss the issues mentioned in the notification within SPDC's CFM from November 2018 onwards. In June 2019, when the parties seemed not to have been able to reach a solution within over 6 months, the NCP decided to offer its good offices in support of the ongoing dialogue in the context of the SPDC's CFM, or otherwise. Unfortunately, on 10 July 2019 SPDC rejected the good offices of the NCP. The NCP regrets this and has made recommendations in this Final Statement about the handling of complaints in line with the relevant requirements set out in the OECD Guidelines and United Nations Guiding Principles on Business and Human Rights (UNGPs). The NCP has also recommended that RDS, as parent company, should use its leverage to safeguard a fruitful outcome of this process (see also Chapter 8. Conclusions and Recommendations of the NCP).

3. Summary of the notification

On 29 January 2018, the Dutch NCP received a notification of OCC concerning an alleged violation of the OECD Guidelines by SPDC in Nigeria. In this final statement, the NCP does not express an opinion on the accuracy of the statements made by the notifying parties. The initial decision to further examine this specific instance was not based on substantive research or fact-finding, nor did it represent any judgment as to whether or not SPDC/RDS had violated the Guidelines.

The notification of the specific instance with respect to SPDC can be summarised as follows:

The notification concerns alleged non-observance of the following chapters of the OECD Guidelines, version 1991, 2000 and 2011: Concepts and Principles (Chapter I), General Policies (II), Disclosure (III), Human Rights (IV), Employment and Industrial Relations (V) and Environment (VI).

OCC based its claim regarding non-observance of the OECD Guidelines on the following allegations:

- In February 1998, there was a gas fire eruption that emanated from SPDC East's well 4 at Obelle, Rivers State Niger Delta, Nigeria, that leaked its associated gas into farmland and the environment. This impacted more than twenty-one hectares of arable land and caused several severe environmental hazards to the Obelle Clan. It took SPDC several weeks to intervene and several more weeks before the fire was put out. The resulting chemicals added to the community aquifer in attempt to control the fire, as well as subsequent non-stop gas flaring and occasional oil spillages, have significantly impacted the Obelle people's land, natural resources and livelihoods. Those impacts continue to date and as a result there is inadequate food production, health impacts and the increased marginalization of the Obelle people.
- The source of drinking water available to Obelle people has long been polluted by the activities of SPDC occasioned by the non-stop gas flaring units. Farm production has reduced to 1/10th of what it used to be, income from farming which is the main source of income of the people no longer has the value for sustaining the people. This has led to a high level of poverty and deprivation. Life expectancy has reduced to forty years.
- The environmental impact assessment and the Geo-physical/technical study that was carried out during and immediately after the gas fire, was done without any consultation or meaningful engagement with members of the community leadership. There has not been any meaningful consultation over the impacts experienced to date, with no impact assessment reports or mitigation plans shared with the Obelle people.
- The Obelle community has suffered without any compensation, even the community and local people's farm produce were not compensated. No alternative drinking water, social infrastructure, employment, scholarships or training were offered as a remedy.
- Nigeria's National Assembly passed the Nigeria Content Development and Monitoring Board Act 2010, which allowed the affected Communities some percentage of personnel to work in the Companies domiciled within it. This law has neither been implemented nor obeyed by SPDC. No indigenous person of Obelle has ever been employed by SPDC since it began operating in Obelle in 1963.

The complainants request of SPDC and RDS:

1. to commit to employing qualified indigenous people of Obelle and if they are not considered qualified, provide capacity development training;
2. the acceptance of the recommended community liaison officers;

3. the implementation of the recommendations of the Environmental Impacts Assessment team of the 1998 wild fire to mitigate the adverse social and environmental impacts being experienced in Obelle;
4. compensation provided to the Obelle people who suffered environmental and social impacts from the 1998 wild fire;
5. a continuous supply of portable drinking water;
6. the establishment of oriented programs and scholarships;
7. the full implementation of the Nigeria Content Development and Monitoring Board Act 2010;
8. publication of the Environmental Impact Assessment and the geo- physical/technical study of the 1998 wild fire;
9. renovation and equipping of the Obelle Health Center.

4. Timeline of NCP-procedures followed

On 29 January 2018, OCC notified the Dutch NCP of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises versions 1991, 2000 and 2011 by SPDC in Nigeria.

On 1 March 2018 the NCP held a separate telephone meeting with the notifying party as part of its Initial Assessment, and on 24 April 2018 a separate meeting with a delegation of Shell International B.V. as representative of RDS in the Netherlands, about the specific instance and related matters.

The events in question occurred in 1998. From the notification, the NCP was unable to determine whether or which actions were taken by OCC to make the complaint known to SPDC in the period between 1998 and 2018. SPDC stated that since 2012 a Community Feedback Mechanism (CFM) has been in place, which has further been expanded in 2015, where reports such as these can be submitted.

On 17 July 2018 the NCP decided to give the parties the opportunity to process the complaints through SPDC's CFM, based on the meetings and the provided additional information. The NCP placed a [news item on its website](#) about the suspension of this specific instance. In August 2018 OCC submitted its notification to SPDC's CFM.

In November 2018 a dialogue was initiated and parties expressed their intention to continue this dialogue until a solution has been reached. After that, the NCP has been informed that several meetings had taken place, but that until now no agreement on the outstanding issues has been reached.

In May 2019 the NCP has resumed the case in order to encourage parties to proactively follow up on their intentions to achieve a solution on the issues mentioned in the notification. The NCP drafted a draft Initial Assessment in which it expressed that it was of the opinion that this specific instance merited further consideration. Taking into account the fact that the parties had started to discuss the matters raised in this specific instance in the

context of the SPDC's CFM, the NCP recommended OCC and SPDC to continue the dialogue within that framework with the aim of achieving an agreement on the matters raised in this specific instance.

The NCP offered its good offices to help the parties resolve the outstanding matters, if and in so far as agreed by both parties, in support of the ongoing dialogue in the context of the SPDC's CFM, or otherwise. The NCP thereby intended to promote the effective handling of complaints, compatible with the OECD Guidelines, in a manner that is impartial, predictable, equitable and transparent.

On 4 June the draft Initial Assessment was sent to the parties, in conformity with the Dutch NCP's procedure, inviting them to respond to it in writing within two weeks. The NCP received comments from both parties, which have been summarised in this Final Statement. On 8 July 2019 OCC accepted the good offices of the NCP. On 10 July 2019 SPDC, which holds a 30% stake in the SPDC JV, has stated that it does not have the support of its joint venture partners to proceed to mediation facilitated by the good offices of the NCP. As the NCP's good offices have not been accepted by both parties, the NCP has decided in this specific instance not to publish a separate Initial Assessment but to close this procedure with a Final Statement.

The next chapter, chapter 4, outlines the response of SPDC/RDS to the specific instance and the proceedings before SPDC's CFM from November 2018 onwards. Subsequently, chapter 5 summarises the response of OCC to the proceedings before SPDC's CFM after November 2018. In chapter 6, "The NCP's assessment of the specific instance", a further explanation of the background of the NCP's considerations and decisions is given. Finally, chapter 7 covers the NCP's conclusions and recommendations and chapter 8 explains that within a year time an evaluation of this specific instance will follow.

5. Summary of the response of SPDC/RDS to the specific instance and proceedings before SPDC's CFM

This chapter summarises the response of SPDC/RDS to the specific instance and the proceedings before SPDC's CFM as grievance mechanism. The response is structured around the several requests brought forward by OCC in the specific instance. The NCP does not take a position on the views expressed in this chapter.

Following the proposal of the NCP of 17 July 2018, OCC submitted its original NCP notification, dated 28 January 2018, in the form of a complaint to SPDC's CFM on 8 August 2018. In November 2018 a dialogue has been initiated within the framework of SPDC's CFM. Several meetings with OCC have been held since SPDC received their complaints in August 2018.

According to SPDC the following issues have been discussed within the framework of the CFM, and reflect SPDC's response to the issues raised in the specific instance:

1. *"To commit to employing qualified indigenous people of Obelle and if they are not considered qualified, provide capacity development training"*
SPDC's response: SPDC JV's employment policy is a transparent, equal opportunity one, in line with Nigerian law, and provides opportunity to qualified people from all over the country, including member of the Community, to compete for available vacancies of skilled workers through an open and transparent process. Employment is based on qualification, irrespective of the community of origin. Employment opportunities are advertised in major national newspapers. To promote community participation, notices of employment opportunities are sent to host communities, encouraging qualified indigenes to apply. In addition, SPDC specifically targets community indigenes, particularly in the semi- skilled and unskilled aspects of our operations, where it reserves certain positions. Additionally, SPDC gives all the contracts for its social investment projects in the Community to indigenes of the Community.
2. *"The acceptance of the recommended community liaison officers"*
SPDC's response: SPDC will not be able to accede to this request as it will amount to breaching its employment policy. SPDC employs successful candidates at qualifying interviews who are found to be capable of carrying out business activities on its behalf.
3. *"Publication of the Environmental Impact Assessment and the geo- physical/technical study of the 1998 wild fire" and "the implementation of the recommendations of the Environmental Impacts Assessment team of the 1998 wild fire to mitigate the adverse social and environmental impacts being experienced in Obelle"*
SPDC's response: According to available records, the SPDC JV responded professionally to the 1998 Well Fire incident, including killing the well. Furthermore, in 2016, SPDC conducted an Environmental Evaluation Study (EES) of its facility in the community and found that the Community was not contaminated by the operational activities of the SPDC JV. The report of the evaluation was submitted to and has been approved by the Oil Industry Regulator; the Department of Petroleum Resources (DPR). Also, at the request of the Community, SPDC and the community held a meeting with Prof. Winston Bell-Gam, who carried out the post impact assessment of the community after the incident in 1998². Prof. Winston Bell-Gam was contracted by SPDC to carry out the geophysical and post impact assessment of the gas leak in 1998. He confirmed that the post incident investigations of the Obelle Well fire incident indicated no contamination of the environment by the incident and that there is no outstanding recommendation resulting from the study conducted by him.
4. *"Compensation provided to the Obelle people who suffered environmental and social impacts from the 1998 wild fire"*
SPDC's Response: SPDC JV is not liable to pay compensation as demanded, in the light of Prof. Winston Bell-Gam's findings that no chemical was injected into the soil/aquifer to kill the gas well, as the only substance injected into the Well was sodium chloride (salt). Professor. Bell-Gam pointed out that both vegetation and ants were flourishing even while the investigation was ongoing. There is also no evidence a chemical of any sort having been injected into the aquifer of the community as a result of the incident. To buttress this fact, the findings of an inspection carried out in the Community in 2016 showed no pollution or contamination to the fauna, flora and aquifer of the Community.
5. *"A continuous supply of portable drinking water"*
SPDC's response: There is no evidence to show that the water in the Community is contaminated, according to the said 2016 EES report.
6. *"The establishment of oriented programs and scholarships"*
SPDC's response: SPDC is the operator of the SPDC JV and therefore, cannot commit to training Obelle people in the area of operation in the Obelle field, which is a jointly owned oil field. All actions in the area of operations are taken jointly by the SPDC JV, and SPDC is not permitted to undertake any action not sanctioned by the SPDC JV. Notwithstanding, SPDC funds community skill acquisition programmes for its host communities, including Obelle. SPDC states that SPDC JV has provided scholarships to more than 299 indigenes of the Community at all levels: primary, secondary and university. Furthermore, SPDC has implemented several social development projects in the Obelle Community.
7. *"The full implementation of the Nigeria Content Development and Monitoring Board Act 2010"*
SPDC's response: SPDC JV is compliant with the 2010 NCD Act and has won many awards in this respect, including one from the Nigerian Content Development Board (the regulator) itself. SPDC JV is ready to defend its processes before the regulator.
8. *"Renovation and equipping of the Obelle Health Center"*
SPDC's response: The General Memorandum of Understanding between SPDC and the Community contains the mechanism for the making and reaching agreement on request of this nature.
9. *"SPDC to conduct medical health assessment status of Obelle people"*
SPDC's response: There is no evidence to suggest that there is any basis for the requested assessment. During the meetings with Prof. Winston Bell-Gam it was stated that the allegation of medical health status of Obelle indigenes resulting from the incidence could not be substantiated. In addition, the findings of the said 2016 EES inspection report indicate that the operations of SPDC in the Obelle Community are carried out within the limits allowed by law and do not pose a health risk to the lives of the residents of the Obelle Community.

² Prof. Winston Bell-Gam, Cranfield University, Town Country Planning (Ph.D)

10. “SPDC to commit to respecting the OECD guidelines and the United Nations Guiding Principles on Business and Human rights”
SPDC’s response: SPDC remains committed as always to respecting applicable guidelines and policies including the OECD guidelines and the United Nations Guiding Principles on Business and Human rights.

SPDC stated that it has been engaging the community and remains committed to engagements to the satisfaction of both parties, subject to constraints imposed by law. In response to this NCP notification, SPDC which holds a 30% stake in the SPDC JV, has stated that it does not have the support of its joint venture partners to proceed with a mediation facilitated by the NCP. As a result, according to SPDC, it is unable to accept the good offices of the NCP. SPDC states that it of course will continue its engagement with the Obelle Community and its other neighbours as part of its ongoing normal business.

6. Summary of OCC’s response to the proceedings before SPDC’s CFM

The previous chapter summarised, amongst others, the response of SPDC/RDS to the proceedings before SPDC’s CFM as grievance mechanism. This chapter covers the response of OCC to the proceedings before SPDC’s CFM. The NCP does not take a position on the views expressed in this chapter.

As mentioned before, OCC and SPDC held several meetings within SPDC’s CFM between November 2018 and July 2019. OCC notified the NCP several times on its findings about the dialogue with SPDC, which can be summarised as follows.

Overall, OCC reported a general lack of trust between the parties and mistrust of the good faith attitude of SPDC. OCC noted a disagreement concerning the content of the minutes of the several meetings within SPDC’s CFM, caused by the different views and positions between the parties. According to OCC, it “requested recording of our meetings as to help correct ambiguities from minutes of meetings. It was vehemently opposed by SPDC” (dated: 8 July 2019). Furthermore “In a bid to dialogue and resolve this matter, we moved on however, it is becoming clearer that SPDC is not sincere rather, defensive and deceiving. Our discussion yielded no result, nothing was offered as palliative, other issues disregarded after their initial response. No agreement on all the issues by both parties; SPDC is only acting smart.”

Additionally, according to OCC there was a lack of transparency and information from SPDC towards OCC. OCC requested for the environmental report of Prof. Bel-Gam several times. Which SPDC first stated not to be aware of and later stated not to be able to share. OCC also turned directly to RDS to request the reports. Furthermore, OCC claims not to have been consulted about the different environmental studies conducted by SPDC (both Prof. Bell-Gam’s report and the more recent Environmental Evaluation

Review). OCC states that the “Obelle community has never participated, engaged or consulted in any periodic Environmental Evaluation Review (EER) of the area by either SPDC or DPR, neither have we seen any of this report from 1963 till date.” Therefore, “the community representatives rejected the said study and reports.” Furthermore OCC claims that prof. Bell-Gam has “said that the hydrocarbon was heavily noticed at the top of the soil”. Additionally he would have said “that hydrocarbon was found in our [OCC’s] water but within tolerable limit as prescribed by DPR. Remember, DPR standard is not that of the world.” Besides this lack of information OCC claims that the “SPDC framework has no time band.”

Subsequently, OCC has expressed discontent about the social investments of SPDC in Obelle. According to OCC: “The cassava processing mill was never completed and implemented, we have requested for a joint visit for all to see the state of the project. Only the Chapel Hall renovation was completed, the remaining two projects have been abandoned.”

To conclude, according to OCC little progress has been made within SPDC’s CFM-procedure. On the 2nd of September 2019 OCC stated to RDS that: “We have not made much progress in resolving the issues, however, Obelle community is ready for peaceful resolution but some of your staffs here in Nigeria are not open and ready for justice and equity. We call on you to intervene to save Obelle community. We are only asking for what is possible as a result of what the community had faced and is still facing.” Furthermore, on the 1st of November 2019 OCC notified the NCP that: “We appreciate your intervention which has enabled us to commence discussion with SPDC Nigeria. However, we could not point to a single agreement. SPDC has made everything difficult including not given us the Prof. Winston Bell-Gam’s reports amidst their claim of the report. They have also stopped meeting with the community representatives for months now. We have done everything humanly possible to resolve the complaint and SPDC is playing smart and not ready. We have exhausted all the available means and wish that things could change for the benefit of the parties.”

7. The NCP’s assessment of the specific instance

In accordance with the Guidelines and the Dutch NCP’s specific instance procedure, the Dutch NCP concluded in the first phase of the procedure that, in light of the following considerations, the notification merited further consideration and offered its good offices.

Is the Dutch NCP the right entity to assess the alleged violation?

The NCP notes that, in principle, a notification should be filed with the NCP of the country where the alleged problems caused by a company occur. However, there is no NCP in Nigeria and SPDC JV is owned 30% by a subsidiary of Royal Dutch Shell (RDS),

headquartered in the Netherlands. Therefore, the Dutch NCP could assess the alleged breaches by SPDC.

What is the identity of the reporting party and its interest in the case?

The notifying party, Obelle Concern Citizens (OCC) forms a local community living in the village Obelle, Rivers State Niger Delta, which claims to have been affected by the operations of SPDC. OCC identifies itself as ‘a social cultural, social economic and political group made up of around 70 Obelle well-educated sons and daughters’, whose interest is the development and peace of the community. OCC stated that it has been active since 2014.

Does there seem to be a link between SPDC’s activities and the issues raised in the specific instance?

Shell Petroleum Development Company of Nigeria Limited (SPDC) “is the operator of a Joint Venture Agreement [called: SPDC JV] involving the Nigerian National Petroleum Corporation (NNPC), which holds 55%, Shell 30%, Total Exploration and Production Nigeria Limited (TEPNG) 10% and Nigerian Agip Oil Company limited (NAOC) 5%.”³ SPDC JV is owned for 30% by a company in the Shell Group, whose parent company RDS, a multinational enterprise, is headquartered in the Netherlands. The NCP established that there seems to be a link between SPDC’s activities and the issues raised in the specific instance by the complainant. The NCP is of the opinion that RDS has a substantial amount of leverage in SPDC JV, due to 30% ownership.

The NCP, as stated above, has initially concluded that this case was sufficiently materialised and substantiated, taking into account that matters concerning this notification were being discussed within the CFM of SPDC. The NCP has taken into account the following considerations:

Are the issues raised by OCC material and substantiated?

The specific instance concerns the impacts on local communities as a consequence of a gas fire eruption that twenty years ago emanated from a well of SPDC in February 1998. The complainants state that past efforts to raise this complaint have been made in 2008, by some members of New Wave, a socio-cultural association that was active in Obelle at the time, but the issues at stake were not resolved. According to SPDC there seemed not to have been any contact of (representatives of) the Obelle clan with SPDC and/or RDS between 2008 and 2017 on the issues raised in the notification. The NCP was unable to determine whether or which actions were taken by OCC to make the complaint known to SPDC in the period between 1998 and 2018 and if SPDC made itself known to the people in the area as the constructor of the operations.

Also, the NCP was not able to determine whether or not the claims of SPDC, that the Obelle clan and their complaints were not known to SPDC before OCC brought this specific instance to the NCP, were correct. However the NCP wants to draw attention to the fact that SPDC in its recent statements regarding the proceedings in SPDC’s

Community Feedback mechanism (CFM) refers to ‘several General Memoranda of Understanding that have been in operation with OCC for a long time’. SPDC stated to have a CFM in place since 2012, which has been functioning in its actual form since 2015. Furthermore, SPDC stated that this CFM gave local communities the opportunity to ask questions and inform the CFM about concerns by email, by telephone and via the Community Liaison Officers.

After the NCP had suspended the case on 17 July 2018 and encouraged the parties concerned to consider making use of the CFM of SPDC first, OCC followed up and submitted its notification to SPDC’s CFM in August 2018. In November 2018 a dialogue had been initiated within the framework of SPDC’s CFM, and parties have expressed at the beginning of the process their intention to continue this dialogue until a truce has been reached. However, when the NCP asked for information about progress made in May 2019, the responses the NCP received from both parties showed that there had not yet been any agreement reached on the outstanding issues. Amongst others, the NCP received remarks on disagreements about the content of the minutes of the meetings, issues with accessibility of information and continued distrust between the parties.

What is the relevance of applicable legislation and procedures, including court rulings?

To the best of knowledge of the NCP there were no relevant legal issues causing concern for parallel proceedings.

Would the consideration of the specific instance contribute to the Guidelines’ objectives and effectiveness?

With regard to the contents of the complaint (dating back to 1998), the NCP applied – to the extent relevant – the 1991 version of the Guidelines. The forward-looking section of this final statement, the NCP’s current procedures and recommendations about SPDC’s CFM are based on the current (2011) version of the Guidelines and its Procedural Guidance.

Finally, the Dutch NCP was of the opinion that dealing with this notification would contribute to the Guidelines’ purpose and effectiveness by helping to clarify the notified issues, because of the considerations set out above.

Therefore, the Dutch NCP, regarding the issues raised and considering the ongoing CFM-procedure in Nigeria, was of the opinion that this specific instance merited further consideration and thus offered its good offices to help a resolution of the case.

Taking into account the fact that the parties had started to discuss the matters raised in this specific instance in the context of SPDC’s CFM, the NCP therefore recommended OCC and SPDC to continue the dialogue within that framework with the aim of achieving an agreement on the matters raised in this specific instance, and offered its good offices to help the parties resolve the outstanding matters, if and in so far as agreed by both parties, in support of the ongoing dialogue in the context of the SPDC’s CFM, or otherwise.

³ <https://www.shell.com.ng/about-us/what-we-do/spdc.html>

8. Conclusion and recommendations of the NCP

On 8 July OCC notified the NCP that it accepted the good offices of the NCP. However, on 10 July 2019 RDS notified the NCP on behalf of SPDC that SPDC declined the good offices of the NCP. As the offer of the NCP's good offices has not been accepted by SPDC, the NCP hereby issues a Final Statement.

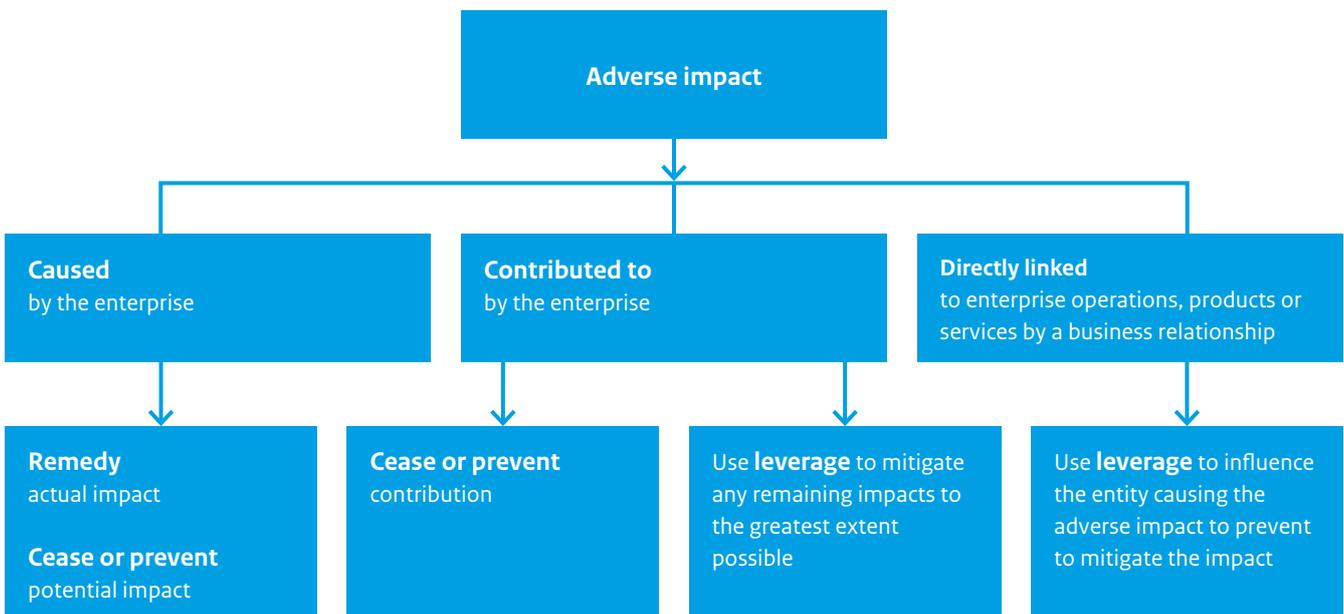
The NCP refers to art. 35 of the OECD Guidelines, Procedural Guidance Part II, *"If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementations 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."*

The NCP notes, on the basis of the information the NCP received from both parties, that both parties have started to discuss the matters raised in this specific instance in the context of SPDC's Community Feedback Mechanism (CFM). Nevertheless the parties unfortunately were unable to conclude an agreement and the parties have stopped meeting since the summer of 2019. The NCP regrets that a dialogue between both parties on the basis of the good offices of and mediation by the NCP has not been accepted by SPDC.

In the light of the OECD Guidelines and the United Nations Guiding Principles (UNGPs) the NCP, when closing this procedure,

would like to highlight the requirements these Guidelines and Guiding Principles pose for effective grievance mechanisms. According to these standards, effective grievance mechanisms should deal with complaints in a manner that is legitimate, accessible, impartial, predictable, equitable, transparent and compatible with the OECD Guidelines and international human rights. Furthermore, grievance mechanisms should be a source of continuous learning and based on engagement and dialogue. For example, for a grievance mechanism to be transparent there should be public information available about the procedure it offers, including timeframes, and there should be clear and frequent communication about the progress of individual complaints in order to keep the parties to a grievance procedure informed. Additionally, aggrieved parties should have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on equal, fair, informed and respectful terms. Furthermore, providing transparency about the mechanism's performance (i.e. statistics, case studies) to wider stakeholders can be important for the legitimacy of the system (Source: UNGPs, 2011, pp. 33-35).

The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement for the Extractive Sector (pp. 60-78) adds to this that: *"Clear and functional processes to respond to grievances should be established to enable mitigation and provide early and direct remedy. Enterprises should consult with stakeholders and identify and respond to challenges to providing appropriate remediation. Stakeholders should be involved choosing how adverse impacts are remediated and in assessing the value of damages. Remedy may include apology, restitution, rehabilitation, financial or nonfinancial compensation, satisfaction and guarantees of*



Source: OECD

non-repetition, modification in procedure, structure or communication.” Finally it states that: “Enterprise or community established grievance mechanisms should not preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points for the OECD Guidelines.”

In the absence of receipt of sufficient information on SPDC’s CFM procedures and their alignment with the OECD Guidelines and UNGPs, it is the assessment of the NCP that SPDC has failed to demonstrate that its grievance mechanism functions in a manner that can be considered to be consistent with the OECD Guidelines and the UNGPs.

Furthermore, as the NCP has already mentioned in its Final Statement regarding a specific instance notified by Amnesty International, Friends of the Earth International and Friends of the Earth Netherlands concerning oil spills in the Niger Delta by RDS (21 March 2013): “According to the NCP there is a role to play for the parent company when international governance standards require more than just compliance to local law. In this specific instance under the OECD Guidelines RDS cannot ignore its own ultimate responsibility and accountability concerning local operations of SPDC.” Additionally, the NCP wants to bring forward that if a company is directly linked to an impact, for example in the role of mother company such as RDS, the company can be expected to take a role in remediation. For example, it should use its leverage to the greatest extent possible to stimulate its subsidiary to provide for remedy or participate in processes to provide for remedy (source: OECD Due Diligence Guidance, 2018, p. 90).

The NCP recommends that SPDC provides for more transparency regarding its CFM and further develops its grievance mechanism until it meets all the relevant requirements as outlined in the OECD Guidelines and UNGPs. Additionally, the NCP recommends that RDS, as the mother company, uses its leverage within the Joint Venture to further develop the SPDC grievance mechanism and to ensure its full compliance with the OECD Guidelines and

UNGPs as a matter of urgency. Finally, as the NCP’s involvement in this notification has ended at this stage, the NCP expresses its hope that both parties continue their dialogue through SPDC’s CFM until a solution has been reached that will do justice to the interests of the parties concerned.

If the parties at the local level fail to handle this complaint within SPDC’s CFM in line with relevant requirements of the Guidelines and UNGPs and reach a joint solution within a reasonable amount of time (after the publication of this Final Statement), the NCP recommends that RDS, as the parent company, takes its responsibility under the OECD Guidelines and seeks ways to find solutions at a higher level in the company.

9. Monitoring and evaluation

The NCP recommends that one year after the publication of the Final Statement, an evaluation be conducted of the NCP’s recommendations. The NCP will invite both parties for a separate meeting for this purpose. The outcomes of the evaluation will be published on the NCP’s website.

10. Abbreviations

CFM	Community Feedback Mechanism
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
OCC	Obelle Concern Citizens
OECD Guidelines	OECD Guidelines for Multinational Enterprises
SPDC	Shell Petroleum Development Company of Nigeria Limited
SPDC JV	Shell Petroleum Development Company Joint Venture
RDS	Royal Dutch Shell
UNGPs	United Nations Guiding Principles on Business and Human Rights

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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 decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch 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.