



OECD GUIDELINES  
FOR MULTINATIONAL  
ENTERPRISES

NATIONAL CONTACT POINT  
FOR RESPONSIBLE BUSINESS  
CONDUCT THE NETHERLANDS

## Initial Assessment

# Aminigboko Community vs The Shell Petroleum Development Company of Nigeria Limited and Shell Headquarters

**Date: 3 June 2021**

**Notification to the Dutch National Contact Point for the OECD Guidelines for Multinational Organisations from the Aminigboko Community, Nigeria concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by The Shell Petroleum Development Company of Nigeria Limited, Nigeria, and Shell Headquarters, Netherlands.**

## Table of Contents

1. Executive Summary.....	1
2. Summary of the Notification.....	2
3. Summary of SPDC's and Shell HQ's Initial Response .....	4
4. Initial Assessment .....	5
5. Conclusion.....	7
6. Next Steps .....	7

## 1. Executive Summary

On 16 May 2019, the representatives of the Aminigboko Community, Nigeria, notified the Dutch National Contact Point (hereinafter: NCP) of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by The Shell Petroleum Development Company of Nigeria Limited, based in Nigeria, and Shell Headquarters, based in the Netherlands (hereinafter resp.: SPDC and Shell HQ).

The NCP informed both parties that under the given circumstances, unfortunately, it was not able to meet the OECD indicative period standard of publishing an initial assessment after three months of receiving a specific instance. The NCP has devoted considerable time to carefully look into both parties' comments.

As part of its initial assessment, the NCP held separate, confidential conversations with the notifying parties (on 1 October 2019) and with the enterprises concerned (on 28 May 2020), about the specific instance and related matters. On 4 November 2019 and July 8, 2020, the NCP received written submissions from the company. On 14 May 2020 and 21 December 2020 the NCP received additional updates from the notifying party.

The Dutch NCP concludes that this notification merits further consideration, based on the following considerations:

- the Dutch NCP is the right entity to assess the alleged violation by the companies concerned;
- the notifying parties have a legitimate interest in the issues raised in the notification;
- SPDC and Shell HQ are multinational enterprises within the meaning of the Guidelines as the GL are applicable to all entities in a group;
- the issues raised by the notifying parties are material and *prima facie* substantiated;
- there is a link between the enterprises' activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The decision on behalf of the Dutch NCP to examine this specific instance further is not based on substantive research or fact-finding, nor does it represent any judgment as to whether or not the enterprises concerned have violated the Guidelines.

In this initial assessment, the NCP explains its decision to offer parties its good offices to come to a solution through dialogue, with reference to the Dutch NCP Specific Instance Procedure for handling notifications

(<https://www.oecdguidelines.nl/notifications/documents/publication/2018/12/05/dutch-specific-instance-procedure>).

In conformity with the Dutch NCP's procedures, the draft initial assessment was sent to the parties involved, inviting them to respond to the assessment in writing within two weeks, after which the initial assessment was finalised, taking into account the parties' comments. This initial assessment has been published on the NCP's website: [www.oecdguidelines.nl](http://www.oecdguidelines.nl).

## 2. Summary of the Notification

On 16 May 2019, the Dutch NCP received a notification from the Uwema (Paramount Traditional Ruler) of the Aminigboko Community, Council of Chiefs and Elders and Community Development Committee in Aminigboko Community, Emughan Clan in Abua/Odual Local Government Area of Rivers State, Nigeria against SPDC, based in Nigeria, and Shell HQ, based in the Netherlands. In this initial assessment, the NCP does not express an opinion on the accuracy of the statements made by the notifying parties.

According to the notifying party, Shell has breached the OECD Guidelines for Multinational Enterprises in its operations in the Enwhe Field Development Project – Gbaran Phase 3 of OML 22. This project is located in Aminigboko Community, Emughan Clan, Abua/Odual Local Government Area of Rivers State, Nigeria. As a result, this project has, allegedly, negatively impacted the peaceful co-existence, cultural and traditional systems, human rights, community existing interface structure, and fundamental labour rights.

The notifying party claims that SPDC has not observed the Guidelines' Chapters I to VIII in 28 instances. Summarized, the alleged violations include:

- Non-implementation of the Freedom to Operate (FTO) agreement and of the Shell Global Memorandum of Understanding (GMOU) (Chapter I paragraph 4, II paragraph A.14 and A.15.)
- Declining to approve a community recommended Community Liaison Officer (CLO) for the project, instead, SPDC appointed and imposed representatives onto the Aminigboko Community (Chapter II paragraph A.1, A.2, A.6, A.7, A.10, A.11, A.14, A.15)
- Declining to approve the Rivers State government interface representative; while establishing parallel leadership structures
- Declining to disclose to the public the project's Environmental Impact Assessment Final Report, including information on the project's risk management plans (Chapter III paragraph 1, 2, 4, Chapter VI paragraph 3, 5 and 6.)
- SPDC's forceful entry into the land of Akiro family (Enwhe West) and Ogbolo family (Enwhe East) in Aminigboko community with military protection without engagement and/or consent (Chapter II paragraph A.14 and A.15, Chapter IV paragraph 1, 3, 4.)
- Declining to provide social/sustainable intervention following devastating oil pollution in 2010 by provision of portable drinking water & reopening of the Aminigboko Cottage Hospital, built by SPDC in the Aminigboko Community, which remained closed since 2013. (Chapter II paragraph A.1, A.3, A.6, A.7, A.12, Chapter V paragraph 1e, 5, Chapter VI paragraph 2a.b, 3, Chapter III paragraph 1.)
- SPDC facilitated the signing of the Freedom To Operate (FTO) license by unknown persons, without the consent of the Aminigboko Community, using heavy security for protection to have unrestricted access to the land for SPDC's contracting firms, for re-surveying, road construction and site preparation. (Chapter II paragraph A.14, A.15, Chapter IV paragraph 1, 3, 4 and Chapter VIII paragraph 7.)
- Refusal of SPDC Community Relations to grant audience request for community engagement and attend to the community's plights, and failure of its correspondence platform to attend to the myriad of complaints in respect of the project. (Chapter II paragraph A.2, A.7, A.14, Chapter IV paragraph 1, 4).

The notifying party informed the NCP in its updates that SPDC is still operating on Aminigboko land while currently four cases against SPDC are pending in Nigerian courts concerning SPDC's, allegedly unlawful, activities on Aminigboko land. According to the notifying party, SPDC is not allowed to proceed with its project while court cases are pending.

According to the notifying party, the complaints listed above cover the period of October 2017 until the present, apart from the, allegedly, devastating oil spill that occurred in 2010, which also demands comprehensive remediation. The notifying party requests: *"that the Dutch NCP offer its good office's and services to facilitate dialogue and help resolve the ongoing crisis in the Aminigboko Community caused by SPDC. SPDC Community Contact has ignored all couriered letters / emails via [spdccommunitycontact@shell.com](mailto:spdccommunitycontact@shell.com), which leaves the notifying party out of other options."*

As mentioned before in this initial assessment, the NCP makes no comment on the accuracy of the notifying parties' claims.

### 3. Summary of SPDC's and Shell HQ's Initial Response

On 4 November 2019 and 8 July 2020 the NCP received written responses from the company (SPDC and Shell HQ jointly) to the notification. In this initial assessment, the NCP does not express any opinion as to the accuracy of the company's response.

According to the company: *"the issues contained in the notification are solely related/linked to disagreements between factions within families in the Aminigboko community, and are currently being managed by the State Government whilst some are pending in the law courts in Nigeria. [...] one of which relates to the headship of the Akiro family [...] it is important to mention that neither the Uwema (Paramount traditional ruler) nor Promise Igoma (one of the Aminigboko family chiefs) are recognized traditional rulers of Aminigboko Community according to the list of recognized traditional rulers issued by the Rivers State Government. It is also noteworthy to state that there is a court ruling that prohibits the same Promise Igoma from parading himself as the head of the Akiro family, as well as barring us from doing any business with him as the representative of the Akiro family."*

Concerning the allegations relating to the FTO license, the company states: *"The FTO license referred to is actually the Community Trust Support (CTS) agreement, which is a signed agreement between the community representatives, the SPDC JV contractor and SPDC JV. SPDC JV followed the due process of engaging the relevant and accredited community representatives and obtained the relevant documented support to progress with SPDC JV activities in the community. In fact, some of the CTS agreements were signed by Mr. Promise Igoma."*

Regarding the allegedly forceful entry into land with military protection without previous engagement or consent of landowners, the company claims: *"This is a false allegation. It is important to note that engagements were held with relevant stakeholders and accredited representatives of the community and permission to access the land was secured from all relevant parties, further to payment for the land surface rights."*

Concerning the remediation of the alleged oil pollution of 2010, the company responds: *"From our records, there was no oil pollution in Aminigboko community in 2010 as alleged. However, it is important to note that SPDC JV takes very seriously its legal obligations to clean up and remediate oil spills from SPDC JV-operated facilities (irrespective of cause of spill) working in collaboration with all relevant stakeholders, including government regulators and the community."*

*Further, be informed that the SPDC JV operates a community feedback mechanism (CFM) through which it reviews and resolves complaints/instances from local communities including the Aminigboko community with whom we have been in regular dialogue".*

Concerning its possible participation in an NCP mediation process, the company states it does not have the mandate to participate in any mediation process due to the fact that it operates on behalf of a joint venture, : *"... the Enwhe Field Development project is a project within the operations of the Shell Petroleum Development Company of Nigeria Limited (SPDC) joint venture (JV). The SPDC Joint Venture comprises the Federal Government of Nigeria through the Nigerian National Petroleum Corporation 55%; SPDC 30%, Total E&P Nigeria Limited 10%; and Nigeria Agip Oil Company Limited 5%. SPDC as operator of the SPDC JV does not have the consent of the NNPC and other JV partners, in line with the Joint Operating Agreement, to participate in any mediation process specifically in*

*respect of the issues raised in the said letter from the community or any other issues relating to its joint operations.”*

*“Furthermore, as stated earlier, the issues contained in the notification relate solely to disagreements between various factions within the Aminigboko community, and these are currently being managed by various government institutions, including law courts in Nigeria.”*

#### 4. Initial Assessment

The NCP has decided to accept the submission. This decision has been taken following an assessment by the NCP as to whether the issues raised are i) “bona fide”, i.e. real or authentic and ii) relevant to the implementation of the Guidelines, i.e. within the scope of the Guidelines. To achieve this, the NCP took into account the following criteria:

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

In principle a notification should be filed at the NCP of the country where the alleged issues are occurring or have arisen, which in this specific instance is Nigeria. According to Royal Dutch Shell’s 2019 annual report ([Shell Annual Report and Accounts 2019](#), p. 295), SPDC is a wholly owned subsidiary of Royal Dutch Shell plc. Shell HQ, the other company addressed in the notification, is based in the Netherlands.

As Nigeria does not have an NCP, based on the above, the Dutch NCP is the right entity to assess the alleged violation.

##### **What is the identity of the notifying parties, and what is the nature of their interest in the case?**

The notifying party is the Aminigboko Community based in Rivers State, Nigeria. The notification is submitted by the Paramount Traditional Ruler, the Council of Chiefs and Elders and the Community Development Committee. The community consists of four families, each headed by a family chief. The community claims to be directly affected by SPDC’s operations on their land. According to the company, some of the persons who submitted the notification are not the legitimate representatives of the community as official procedures on this matter are pending in judicial and state bodies. The NCP points out that this issue is related to one of the elements of the specific instance (see above: ‘SPDC appointed and imposed representatives onto the Aminigboko Community’), subsequently, this should be resolved during mediation.

Based on the above, the Dutch NCP is of the opinion that the notifying parties have a legitimate interest in the issues raised as it is undisputed that they are inhabitants of the land where the alleged business operations take place.

##### **Are the issues raised by the notifying parties material and substantiated?**

The NCP interprets ‘material and substantiated’ to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines. They concern the alleged non-observance of the Concepts and Principles (Chapter I, paragraph 4), General Policies (Chapter II, paragraphs A.1, A.2, A.3, A.6, A.7, A.10, A.11, A.12, A.14, A.15), Disclosure (Chapter III, paragraphs 1, 2, 4), Human Rights (Chapter IV, paragraphs 1, 3, 4), Employment and Industrial Relations (Chapter V, paragraphs 1e, 5), Environment (Chapter VI, paragraphs 2a.b, 3, 5, 6), Combating Bribery, Bribe Solicitation and Extortion (Chapter VII, paragraphs 1,5) and Consumer Interests (Chapter VIII, paragraph 7).

**Is there a link between the activities of the enterprise and the issues raised in the specific instance?**

The notification concerns issues which, according to the notifying party, have taken place under the responsibility of SPDC and Shell HQ. Therefore, the Dutch NCP believes there to be a link between the enterprises' activities and the issues raised in the specific instance.

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

The NCP notes that it will not assess whether domestic law requirements were met by the company or the notifying party. The Guidelines expect companies to act in line with domestic law. However, even if the company is compliant in terms of Nigerian domestic law, this is not equivalent to observing the Guidelines, as the Guidelines "extend beyond the law in many cases" (OECD Guidelines (2011), Chapter 1 par. 2). Expectations from companies can exceed domestic obligations with respect to the questions at stake, which is often the case concerning due diligence expectations. Also, companies are expected, as a minimum, to make reference to international human rights and labour standards (OECD Guidelines (2011), Commentary Chapter IV par. 39).

Also other international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples and the ILO convention 169 on Indigenous and Tribal Peoples, apply.

Furthermore, the NCP draws attention in this context to the recent ruling of the Court of Appeals ('Gerechtshof') of The Hague (Netherlands), which delivered its judgement on 29 January 2021 in the case of Four Nigerian Farmers and Milieudefensie vs Shell. In its judgement, the Court ruled that Shell's Nigerian subsidiary, SPDC, was responsible for several oil leaks and therefore had to compensate the complainants, and also ruled that the parent company, Royal Dutch Shell, in this case had violated its duty of care.

(ECLI:NL:GHDHA:2021:133, Gerechtshof Den Haag, 200.126.843 en 200.126.848 (rechtspraak.nl), English translation not available at moment of publishing underlying statement; Nigeria: In win against Shell, Dutch court finds Shell Nigeria liable for oil spills & Shell parent company has a duty of care to prevent future spills - Business & Human Rights Resource Centre (business-humanrights.org))

**How have similar issues been, or are being, treated in other domestic or international proceedings?**

Several court cases against SPDC filed by individuals belonging to the Aminigboko community are pending in Nigerian courts. They concern the start of consultations and negotiations on the Freedom to Operate license and Community Trust Support without the family chiefs' signatures as well as the exclusion of the community list and the alleged imposition of an illegal nominee by SPDC.

Also in Nigeria, there is a court injunction dated 18 February 2020, pending the substantive suit, against one of the Aminigboko family chiefs, filed by 10 members of the same family. It restrains this family chief from acting as the head of his family. It also restrains both SPDC and the disputed family chief from doing any business with each other.

According to the NCP, the latter should not impede a possible dialogue between the parties as the notification is filed by the Paramount Traditional Ruler, the Council of Chiefs and Elders and the Community Development Committee, and the disputed family chief has been replaced.

At the Rivers State Ministry of Chieftaincy and Community Affairs there is an ongoing mediation procedure between Aminigboko families and SPDC to resolve community leadership issues related to the execution of certain project activities by SPDC.

The NCP is not aware of other parallel proceedings.

The NCP considers that – if and in so far there are currently parallel proceedings on the same or related issues - these are not an obstacle to accepting the submission for further examination, and that an offer of good offices could i) make a positive contribution to the resolution of the issues raised and ii) would not create serious prejudice for either of the parties involved in these other proceedings.

**Would considering this specific issue contribute to achieving the Guidelines’ objectives and enhancing their effectiveness?**

The NCP believes that dealing with this notification will contribute to the objectives and effectiveness of the Guidelines. By facilitating a dialogue between the parties it could contribute to a resolution between the parties and clarify the expected conduct from multinational enterprises regarding their responsibility for the issues raised, including meaningful engagement with communities who are directly affected by business operations and concerning due diligence and use of leverage by headquarters towards subsidiaries and business relations. The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector as well as the OECD Due Diligence Guidance for Responsible Business Conduct can be useful tools in this regard.

Although some of the issues raised started to occur when the previous version of the Guidelines (published in 2000) was in force, the companies continued to be active also after the current version (published in 2011) was adopted. Moreover, the alleged harmful operations on Aminigboko land are ongoing. Therefore the current version of the Guidelines applies to the specific instance.

## 5. Conclusion

The NCP concludes that this specific instance merits further consideration. The conclusions reached by the NCP in this initial assessment rest on the criteria laid out in the commentary to the Procedural Guidance, para 25 and are based on the information received from both parties. The NCP does not express an opinion on the correctness of the statements of the parties or the validity of the documentation provided by them.

## 6. Next Steps

In accordance with the Dutch NCP Specific Instance Procedure, the NCP has accepted this case for further examination and offers its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, with the aim of agreeing how the issues can be successfully addressed.

The notifying parties have accepted NCP’s good offices, the enterprise has not. In accordance with the NCP procedure, the NCP will examine the issues raised and may provide recommendations concerning the observance of the Guidelines. It will complete the procedure by issuing a final statement, which it will publish on its website.

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 the [NCP Website](#)

**Published by:**

© National Contact Point OECD Guidelines  
for Multinational Enterprises

Ministry of Foreign Affairs

P.O. Box 20061

2500 EB The Hague

The Netherlands

[NCP Website](#)