



Final Statement Aminigboko Community vs. the Shell Petroleum Development Company of Nigeria Limited and Shell Headquarters

Date: 10 February 2023

Notification to the Netherlands National Contact Point by 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, based in the Netherlands at the time of the submission.

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

As one of the parties was unwilling to participate in the procedures, the NCP is issuing the following final statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also includes conclusions of the further examination and recommendations made by the NCP to the enterprise on the implementation of the Guidelines and outlines the reasons why there has been no dialogue facilitated by the NCP leading to an agreement between the parties .

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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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 at the time of the submission (hereinafter resp.: 'SPDC' and 'Shell HQ'; 'the enterprise' collectively).

The notification concerns 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).

The Dutch NCP concluded that this notification merited further consideration, based on the following considerations:

- the Dutch NCP is the right entity to assess the alleged violation by the enterprise 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;
- the issues raised by the notifying parties are material and *prima vista* substantiated;
- there is a link between the enterprise's activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The conclusion that this notification merited further consideration was based on an initial assessment of the information submitted and did not represent a conclusion as to whether SPDC and Shell HQ observed the Guidelines, nor as to whether the statements made by the notifying parties are accurate. The NCP published the [initial assessment](#) on 3 June 2021.

Following the conclusion that this notification merited further consideration, the NCP offered its good offices to the parties on 2 March 2021 to address the concerns raised by the notifying parties and seek a solution through dialogue, in accordance with the [Dutch NCP Specific Instance Procedure for handling notifications](#). The good offices were accepted by the notifying parties on 15 March 2021. The enterprise informed the NCP on 26 March 2021 that it would not accept the good offices.

Subsequently, the NCP conducted a further examination, to assess whether the enterprise concerned observed the OECD Guidelines on the grounds put forward in the notification. The further examination resulted in this final statement. The NCP makes the following assessment regarding the issues raised in the specific instance:

Based on the detailed information provided by the notifying party and the lack of meaningful response by the enterprise on questions posed by the NCP in the examination phase, the NCP assesses that the enterprise has failed to demonstrate that it acted in line with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed the chapters General Policies, paras 1, 3 and 7; Disclosure, paras 1, 2 and 4; Human Rights, paras 1-3; Employment and Industrial Relations, para 5; Environment, paras 2a, 2b, 3 and 5.

The NCP makes the following assessment regarding cooperation in the NCP Procedure and related responsibilities:

While the enterprise displayed a certain cooperative stance throughout the procedure in terms of providing some basic information, it is the NCP's assessment, given i) the lack of information provided in relation to the possibilities of exercising leverage over the SPDC JV, ii) its non-acceptance of the good offices and iii) the lack of a meaningful response to the questions the NCP posed in the examination phase, that the enterprise has not acted as could have been expected from it under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to "Provide for or cooperate in remediation when appropriate", based on Chapter II General Policies, para A.10 and A.12 of the Guidelines. The lack of cooperation in the NCP procedures by the enterprise therefore means it also has not acted as could have been expected from it under paragraph 21 of the Commentary on the Procedural Guidance.

The NCP recommends to the enterprise:

Concerning the issues raised in the specific instance:

- a) to align its conduct with the Guidelines as explained in the section 'Examinations and conclusions' concerning all the issues raised in the specific instance, where current practices are not yet fully aligned.

Concerning the findings related to this specific instance:

- b) to cooperate in good faith and more meaningfully with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rightsholders. (Due Diligence Guidance, section 6.2);
- c) to exercise to the fullest extent possible its leverage on the SPDC JV partners in order for them to cooperate with remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed by the enterprise. (Due Diligence Guidance, section 6.2)
- d) In the event that the enterprises' leverage has been exercised to the fullest extent possible without the expected behavioral change of the SPDC JV, the NCP recommends the enterprise to consider ways to build additional leverage with the SPDC JV partners, including for example through outreach from senior management and through commercial incentives. In addition, to the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in the industry (Due Diligence Guidance, section 3.2.d)
- e) In the event of failed attempts of exercising leverage on its business partners, the NCP recommends disengagement from the SPDC JV so as to cease or prevent the enterprise's possible contribution to the real or potential adverse impacts, thereby taking into account the recommendations of the Guidelines on responsible disengagement. Should the enterprise decide to remain in the relationship it should be prepared to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection. (Due Diligence Guidance, section 3.2.h, 3.2.i)

Based on the general context of the oil industry, the regional context in which the enterprise operates and the common risks identified generally in the upstream supply chain, the NCP recommends the enterprise:

- f) To engage more directly and meaningfully with its stakeholders, including the local communities that are directly affected by the enterprise's operations, in order to foster a relationship of confidence and mutual trust. These stakeholders should be informed and consulted as part of project planning and provide their consent prior to decision making for projects or other activities that may significantly impact them. (Chapter II, para 3,7, commentary 14). Stakeholder engagement is an essential part of the due diligence process and involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings.

With the publication of the final statement the NCP procedure is concluded. The follow-up will consist of an evaluation of the recommendations and will take place one year after publication of the final statement.

2. Substance of the submission, relevant provisions and the enterprise's response

The parties

The notification was filed by 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. The community consists of four families, each headed by a family chief.

SPDC is an oil and gas enterprise based in Nigeria, a wholly owned subsidiary of Royal Dutch Shell plc. SPDC is the operator of the SPDC JV and has a stake of 30% in the joint venture. Shell HQ, the other enterprise addressed in the notification, was based in the Netherlands at the time of the submission and publication of the Initial Assessment. Shell HQ moved to the UK on 31 December 2021. Together with the UK NCP it was decided that, since at the time of the IA Shell HQ was still based in the Netherlands, the Dutch NCP would continue with the handling of the notification.

Substance of the submission

On 16 May 2019, the Aminigboko Community, Nigeria, notified the Dutch National Contact Point of a specific instance regarding an alleged non-observance of the Guidelines by SPDC and Shell HQ.

According to the notifying party, Shell 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, existing community interface structure, and fundamental labour rights of the communities represented by the notifying party.

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 parties requested the NCP to *"facilitate a dialogue and help resolve the ongoing crisis caused by SPDC."*

Relevant provisions

The relevant provisions of the Guidelines referred to by the notifying parties in the specific instance and which have, according to the notifying parties, not been observed by SPDC and Shell HQ, can be found in the Annex.

Summary of the enterprise's response

The enterprise's response with regards to the issues raised in the submission reads as follows:

According to the enterprise: *"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 enterprise 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 enterprise 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 enterprise 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 enterprise 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.”*

The enterprise concludes with *“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.”*

3. Initial assessment by the NCP

The NCP concluded the notification merited further consideration. The full text of the initial assessment including the reasons why the NCP decided it merited further consideration can be found [here](#) on the NCP’s website under notifications.

Subsequently, the NCP has offered 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 raised can be successfully addressed.

4. The proceedings of the NCP

Below is a chronological overview of what the NCP has done since receiving the submission.

Date	Action that occurred
	Receipt and Initial Assessment
16 May 2019	Receipt of the specific instance
27 May 2019	Notification of the submission including the submission sent to enterprise
28 May 2019	Confirmation of receipt sent to notifying parties
1 October 2019	Telephone conversation between NCP and notifying party
9 October 2019	Receipt of additional documents sent by notifying party
8 November 2019	Receipt of written response of enterprise
20 February 2020	Receipt of additional documents sent by notifying party
11 March 2020	General introductory meeting between NCP and Shell International BV delegates
8 May 2020	Questions for clarification on received documentation sent to notifying party
15 May 2020	Receipt of response from notifying party to questions for clarification
28 May 2020	Video meeting between the NCP, SPDC and Shell HQ
2 June 2020	Follow up questions sent to enterprise
8 July 2020	Receipt of response to follow up questions from enterprise
13 August 2020	Second set of follow up questions sent to enterprise
29 September 2020	Receipt of response to second set of follow up questions from enterprise
6 October 2020	Questions related to information provided by enterprise sent to notifying party
26 October 2020	Receipt of response from notifying party to questions relation to information provided by enterprise
25 November 2020	Receipt of additional documents sent by notifying party
21 December 2020	Receipt of additional documents sent by notifying party
18 January 2021	Video meeting between NCP and expert organization on communities in Nigeria
2 March 2021	Draft initial assessment shared with parties for comments and good offices offered

15 March 2021	Receipt of response to draft IA and acceptance of the offer of good offices by notifying party
26 March 2021	Receipt of response to draft IA and rejection of the offer of good offices by enterprise
2 April 2021	Second draft IA sent to parties for factual corrections
9 April 2021	Receipt of response to second draft IA from notifying party
12 April 2021	Receipt of response to second draft IA from the enterprise
3 June 2021	Publication of the initial assessment on the NCP's website
	Further examination
14 December 2021	Questions sent to enterprise
4 February 2022	Response received from enterprise
30 May 2022	Questions sent to notifying party
31 May 2022	Response received from notifying party
13 December 2022	Draft final statement shared with parties for comments
6 January 2023	Receipt of response to draft FS by notifying party
20 January 2023	Receipt of response to draft FS by enterprise
6 February 2023	Final version sent to parties
10 February 2023	Publication of the final statement on the NCP's website and closure of the specific instance

In addition to the account given above the NCP has also corresponded on various occasions throughout the process with both parties to give updates on the procedure and explanations for delays.

The NCP has not met the indicative timelines due to the high workload which is primarily created by the increasing number of new notifications and the complexity of some specific instances.

5. Parties' responses to the offer of good offices

Following the conclusion that the notification merited further consideration, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, facilitated by the NCP, with the aim of agreeing how the issues raised can be successfully addressed. In response to the NCP's offer of good offices, the notifying parties accepted the offer, the enterprise did not.

The enterprise rejected the offer because “*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.*”

As the NCP’s good offices were only accepted by the notifying parties, the NCP, in accordance with its procedure, initiated the examination of the issues raised and the drafting of a final statement.

6. Examination and conclusions

For the purpose of the examination the NCP has studied the information provided by the parties and gathered additional information on two levels: 1) on a general level, to understand what the risks of the oil and gas sector are when operating in the upstream value chain, dealing with stakeholders such as communities, as well as the context of operating in Nigeria, and 2) on specific instance level, i.e. with respect to the issues raised in the notification. The NCP also examined whether the enterprise’s cooperation with the NCP procedure was in line with the Guidelines’ expectations.

Considerations regarding the general context of the oil and gas sector

The most important risks of the oil and gas sector are related to the extraction of oil and gas, the upstream part of the supply chain. These risks are water scarcity, greenhouse gas emissions, land use in vulnerable areas, depletion of natural resources and depriving communities of a clean, safe and healthy environment. The sector is also identified as being relatively prone to bribery as it is often operating in emerging markets and dealing with government officials. In other parts of the supply chain labour rights pose a risk. The [NCP oil and gas study](#) identified that the most common risks relate to the Guidelines’ chapters Human Rights, Employment and Industry Relations, Environment and Bribery.

Oil companies often operate in remote areas, in natural environments and where indigenous peoples live in harmony with nature. Indigenous peoples are considered vulnerable groups and enjoy a protected status in several international standards. The Guidelines also refer specifically to the need for the protection of rights.

Many enterprises active in the oil and gas sector are also present in countries with a defective government, and/or in countries with conflict situations where enforcement of human rights is under pressure or even absent. Some countries do not have a strong rule of law, are listed high-up on the corruption index and lack the necessary regulation to ensure oil companies operate in an effective regulatory environment where people and the environment are duly protected. As a result, enterprises may be operating in ‘weak governance zones’ where local communities are particularly vulnerable to adverse impacts from private armed groups and security forces such as involuntary displacements and violations of humanitarian law. The [OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#) provides guidance for enterprises to avoid causing or contributing to such adverse impacts.

One key aspect as to how companies may address the rights of e.g. local populations is by applying the process of FPIC (Free, Prior and Informed Consent). In essence this means that all relevant stakeholders are meaningfully involved in the development stage of a project (e.g. pipeline development or site development) in order to create a solution that respects human rights and enjoys the consent of the stakeholders. The OECD has developed a specific [guide for stakeholder management in the extractive sector](#) as an essential part of the due diligence process. Therefore it is

important that oil companies conduct extensive environmental and human rights impact assessments and engage meaningfully with relevant stakeholders throughout the process, especially with vulnerable groups like indigenous peoples.

According to an [EU guide for the oil and gas sector](#), responsible oil and gas companies have become increasingly active in recent years in understanding and addressing the range of human rights, environmental and corruption impacts through their operations, products and services. The sector plays an important role in supporting development through the generation of significant revenues. The global industry association Ipieca has developed several tools to help their members to address human rights in their activities. Moreover, many oil companies have joined the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights.

Nigeria is the 15th largest oil producer worldwide, 1,6 million barrels a day are extracted. The government of Nigeria has many laws and institutions in place to regulate the extractive sector. It has a state oil enterprise that is a partner in joint ventures with other oil companies. Nigeria is known for the high level of oil polluted areas, causing vast areas to be unsafe and unsuitable to live for people, flora and fauna. It also has a history of internal conflicts and military interventions connected to the oil sector. The country ranked 154th out of 180 on Transparency International's Corruption Perception Index in 2021, 16th out of 179 on the Fund for Peace's Fragile States Index in 2022, indicating Nigeria has serious issues in both areas.

One of the major oil companies operating in Nigeria is Shell. Since 1956 it has been extracting oil in different areas. SPDC, Shell's subsidiary, is the operator in the field. There are many reports, studies and court cases that report that these activities have caused, contributed to or been linked to pollution, corruption and conflicts with and between communities, related to land and ownership rights. Along with other international oil companies, Shell has been divesting operations in Nigeria in the last decade while national oil companies have become more active.

The NCP took note of a recent court case in the Netherlands, in which the Hague Court of Appeal ruled that Shell Nigeria was responsible for the oil spills in dispute and that Royal Dutch Shell had violated its duty of care towards the plaintiffs, who were local Nigerian farmers living in the vicinity of the pipelines from which the oil spills had occurred. See [here](#) for the news item and [here](#) for the English translation of the ruling.

In light of the above general context of the oil and gas sector, in particular in Nigeria, the NCP considers this sector to be a high-risk sector. In accordance with the Guidelines and OECD Due Diligence guidance, enterprises operating in such high-risk sectors and areas can be expected to exercise a heightened due diligence and stakeholder engagement to identify, prevent and mitigate real or potential adverse impacts through their operations and business relationships.

Findings regarding this specific instance

The NCP notes that it did not establish whether or not parallel leadership was established by the enterprise, and/or oil pollution was duly remediated, and/or forceful entry has taken place, etc. Although documentation has been provided by both parties and a local expert organization was consulted, the NCP was unable to examine the local circumstances and facts on the ground and draw definitive conclusions regarding these allegations.

For this reason, the NCP examined whether or not the enterprise has demonstrated that it acted in accordance with the Guidelines concerning the issues raised. Also, since the notification concerned a

multitude of alleged violations, the NCP focused its examination on the most relevant and overarching issues.

In light of this approach, the NCP posed additional questions to the enterprise with the aim of gathering information as to whether or not the Guidelines were observed regarding the issues raised in the specific instance. The enterprise did not respond to these questions in a meaningful manner.

The NCP would like to mention that in the examination phase both parties reported activities related to the dump of toxic waste. The notifying party stated, substantiated by pictures of contaminated land, that toxic waste was being dumped by the enterprise which was affecting the environment, while the enterprise reported that it had received a complaint from the notifying party that it would have dumped toxic waste. According to the enterprise, the joint assessment team (comprising of local regulators, SPDC and community representatives) found that the complainant was not the legitimate representative of the Aminigboko community and that no evidence of illegal toxic disposal was found.

Findings on the issues raised about General Policies (Chapter II):

Following paragraphs 1, 3 and 7 of the chapter on General Policies, a MNE is expected to contribute to the economic, environmental and social progress in the countries where it operates, cooperate with local communities and foster a relationship of confidence and mutual trust. In the light of the notification, these paragraphs relate to, amongst others, the allegations on establishing parallel leadership and responding to complaints and requests made by the Aminigboko community concerning remedy.

Based on the detailed information provided by the notifying party and the lack of meaningful response by the enterprise to questions related to these paragraphs, the NCP assesses that the enterprise has failed to demonstrate that it acted in line with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraphs 1, 3 and 7 of the chapter General Policies.

Findings on the issues raised about Disclosure (Chapter III) and Environment (Chapter VI):

In accordance with paragraphs 1, 2 and 4 of the chapter on Disclosure, MNEs are expected to timely and accurately disclose information on material matters regarding their activities and on issues regarding workers and stakeholders. They are also expected to apply high quality standards for non-financial disclosure, including environmental and social reporting where applicable. In accordance with paragraphs 2a, 2b, 3, and 5 of the Environment chapter, MNEs are expected to provide the public and workers with adequate, measurable and timely information on potential health, safety and environmental impacts of their activities, engage in adequate and timely communication and consultation with the communities directly affected, and prepare an environmental impact assessment where these activities may have a significant impact. Also, MNEs are expected to maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations. In light of the notification, these paragraphs relate to allegations concerning, amongst others, the non-disclosure of the environmental impact assessment (EIA), not communicating nor consulting with the community on potential health, safety and environmental impacts such as the status of the ground water, and declining to mitigate the oil pollution in 2010 by e.g. the provision of portable drinking water. Note: At the time of the oil pollution the previous (2000) version of the Guidelines was applicable and the expectations mentioned above were also included in that version. The relevant paragraphs in the previous version are also 2a, 2b, 3 and 5.

On the enterprise's website the NCP has found the EIA that was submitted to the government of Nigeria in December 2018, but it did not find information showing that it was disclosed publicly in a timely fashion, or when it was published on the website.

Given the detailed information provided by the notifying party and the lack of a meaningful response by the enterprise to questions related to these paragraphs, which could have included sharing the EIA, the NCP assesses that the enterprise has failed to demonstrate that it acted in line with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraphs 1, 2 and 4 of the Disclosure chapter and 2a, 2b, 3 and 5 of the Environment chapter.

Findings on the issues raised about Human Rights (Chapter IV):

In accordance with paragraphs 1-3 of the chapter on Human Rights, MNEs are expected to respect human rights, avoid causing or contributing to adverse human rights impacts within the context of their own activities and address these impacts when they occur, and seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations. These paragraphs relate to the alleged violations concerning heavily armed forceful entry, use of violence by a security officer appointed by SPDC, and non-compensation for the acquisition and use of land belonging to the families of the Aminigboko community.

Based on the detailed information provided by the notifying party and the lack of meaningful response by the enterprise to questions related to these paragraphs, the NCP assesses that the enterprise has failed to demonstrate that it acted in line with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraphs 1-3 of the Human Rights chapter.

Findings on the issues raised about Employment and Industrial Relations (Chapter V):

In accordance with paragraph 5 of the chapter Employment and Industrial Relations, MNEs are expected to employ local workers in their operations to the greatest extent possible and provide training with a view to improve skill levels. In light of the notification, this paragraph relates to alleged violations concerning SPDC's declination to employ and train workers as well as hire contractors belonging to the Aminigboko community.

Given the detailed information provided by the notifying party and the lack of meaningful response by the enterprise to questions related to these paragraphs, the NCP assesses that the enterprise has failed to demonstrate that it acted in line with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraph 5 of the Employment and Industrial Relations chapter.

Cooperation in the NCP Procedure and related responsibilities, Chapter II General Policies

Apart from its findings on the issues raised, the NCP would like to share the following observations concerning the cooperation of the enterprise in the NCP procedure.

As mentioned in section 5 'Parties' responses to the good offices', the enterprise has declined the offer of the NCP's good offices to facilitate a dialogue to assist the parties in dealing with the issues through non-adversarial means such as conciliation or mediation. The reason the enterprise provided for not accepting the good offices, was that it does not have the mandate of the SPDC joint venture (in which they hold 30%) to participate in a mediation procedure with the NCP.

Subsequently, the enterprise chose to respond in a non-meaningful manner to the questions the NCP posed in the examination phase as regards the enterprise's observance of the Guidelines in this specific instance.

The NCP draws the attention to the following expectations under the Guidelines.

First, enterprises are expected to carry out risk-based due diligence according to Chapter II General Policies, para A.10 *“Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.”* As part of that due diligence, enterprises are expected to cooperate with legitimate grievance mechanisms such as the NCP. In the OECD Due Diligence for Responsible Business Conduct Guidance it is explained that due diligence consists of six steps. Step six reads: *“[Enterprises should] provide for or cooperate in remediation when appropriate”*. Further elaboration on this in section 6.2 reads: *“When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise. Referral of an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided.”* This para is followed by an explicit reference to cooperation with the NCP: *“[Enterprises should] cooperate in good faith with judicial or non-judicial mechanisms. For example if a specific instance is submitted to an NCP or through initiatives that provide other types of grievance mechanisms involving the conduct of the enterprise.”*

As mentioned above, the NCP was unable to establish the extent to which the alleged adverse impacts have occurred. However, the due diligence process is risk-based and due diligence should also be exercised to prevent adverse impacts from actually occurring. Therefore, in this specific instance the expectation to cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise (which is part of step 6 of the due diligence process) is applicable.

Second, the scope of the responsibility to provide for or co-operate in remediation is determined by whether the enterprise has caused, contributed to or is directly linked to the possible adverse impact. If the enterprise has caused an adverse impact or contributed to it, it should *“address the impacts by providing for or cooperating in their remediation”* (OECD Due Diligence Guidance p. 34). Concerning the expected cooperation with a remediation mechanism if an enterprise is directly linked to the impact *“it may still take a role in remediation, despite not having an expectation to provide for remedy itself. For example, the enterprise may use its leverage, to the extent practicable, with its business relationship to compel the business relationship to participate in processes to provide for remedy. Where relevant, the enterprise may provide information which can facilitate investigations or dialogue.”* (OECD Due Diligence Guidance, p. 90).

In this specific instance, two entities of the enterprise are involved: SPDC and Shell HQ. SPDC is part of the joint venture (JV) allegedly causing the impacts; as the JV's operator it is actually carrying out the activities in the field. Shell HQ is involved via its wholly owned subsidiary SPDC, with a stake of 30% in the JV. Shell HQ is also the entity that houses the entity Shell International BV, which lays out the global policies for the corporate group entities and to which they report on policy implementation. In addition, Shell International BV oversees the activities of SPDC. The Guidelines are addressed to all entities within an MNE, parent and local companies; they are expected to cooperate and assist one another to facilitate observance of the Guidelines (Chapter I, para 4). This implies that each entity within a corporate group carries responsibility to take action to observe the Guidelines. Therefore, the same expectation applies to both entities which is, at the minimum, to

cooperate with the NCP process with a view to providing for or cooperating in the remediation, i.e. accept the good offices and respond meaningfully to questions.

The Due Diligence Guidance further explains that *“The degree of leverage an enterprise has over the business relationship causing the adverse impact is useful in considering what it can do to persuade that entity to take action, however enterprises have a responsibility to carry out due diligence and effectively exercise any leverage they may have”* (Q.37, p. 79).

Concerning the reason given by the enterprise that it does not have the mandate of the SPDC JV, it should have, following the paragraphs above, exercised their leverage on the other partners of the JV to ensure they participate in the NCP procedure. This was also explained to Shell International BV during the general introductory meeting on March 11, 2020.

While the enterprise displayed a certain cooperative stance throughout the procedure in terms of providing some basic information, it is the NCP’s assessment, given the lack of information related to the possibilities of exercising leverage towards the SPDC JV, the non-acceptance of the good offices and the lack of a meaningful response to the questions the NCP posed in the examination phase, that the enterprise has not acted as could have been expected from it under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to *“provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise”*.”, based on Chapter II General Policies, para A.10 and A.12 of the Guidelines.

Furthermore, as outlined in the Guidelines’ Commentary on the Procedural Guidance for NCPs, paragraph 21, the effectiveness of the specific instance procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines. The lack of cooperation in the NCP procedures by the enterprise therefore means it also has not acted as could have been expected from it under paragraph 21 of the Commentary on the Procedural Guidance.

7. Recommendations

To advance observance of the Guidelines, the NCP makes the following recommendations to the enterprise:

Concerning the issues raised in the specific instance, the NCP recommends:

- a) to align its conduct with the Guidelines as explained in the section ‘Examination and conclusions’ concerning all the issues raised in the specific instance, where current practices are not yet fully aligned.

Concerning the specific findings on cooperating with legitimate grievance mechanisms and exercising leverage in this regard, the NCP recommends:

- b) to cooperate in good faith and more meaningfully with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rightsholders. (Due Diligence Guidance, section 6.2);
- c) to exercise to the fullest extent possible its leverage on the SPDC JV partners in order to cooperate with remediation mechanisms through which impacted stakeholders and

rightsholders can raise complaints and seek to have them addressed by the enterprise. (Due Diligence Guidance, section 6.2)

- d) In the event that the enterprises' leverage has been exercised to the fullest extent possible without the expected behavioral change of the JV, the NCP recommends the enterprise to consider ways to build additional leverage with the SPDC JV partners, including for example through outreach from senior management and through commercial incentives. To the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in the industry (Due Diligence Guidance, section 3.2.d)
- e) In the event of failed attempts of exercising leverage on its business partners, the NCP recommends disengagement from the SPDC JV so as to cease and prevent the enterprise's own contribution to the real or potential adverse impacts, thereby taking into account the recommendations of the Guidelines on responsible disengagement. Should the enterprise decide to remain in the relationship it should be prepared to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection. (Due Diligence Guidance, section 3.2.h, 3.2.i)

Based on the general context of the oil industry, the regional context in which the enterprise operates and the common risks identified generally in the upstream supply chain, the NCP recommends the enterprise:

- f) To engage more directly and meaningfully with its stakeholders, including the local communities that are directly affected by the enterprise's operations, in order to foster a relationship of confidence and mutual trust. These stakeholders should be informed and consulted as part of project planning and provide their consent prior to decision making for projects or other activities that may significantly impact them. (Chapter II, para 3,7, commentary 14). Stakeholder engagement is an essential part of the due diligence process and involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings.

Effective stakeholder engagement is characterized by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities (Chapter II, commentary 7). The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector provides further practical guidance in this regard, including the application of FPIC. Ipieca, the global oil and gas association for advancing environmental and social performance across the energy transition, also provides manuals for stakeholder engagement and establishment of grievance mechanisms.

Concluding, the NCP underlines the responsibilities of each entity within the enterprise group. The SPDC is responsible for its own actions irrespective of corporate structures, e.g. with joint venture partners. Shell HQ is responsible for the actions of each subsidiary in its group and has the duty to exercise its leverage both on its subsidiaries as well as on the business partners of the subsidiaries.

The NCP regrets it has not been able to play a role in resolving the issues raised by the notifying party. It regrets that the enterprise, despite the meeting with Shell International's delegates representing the enterprise in March 2020, did not accept its good offices and did not cooperate meaningfully with the NCP in the procedure.

8. Follow Up

As an important part of the NCP's non-judicial role, follow-up on agreements and recommendations supports the effectiveness of the specific instance process. In particular, follow-up can further the Guidelines' effectiveness by encouraging parties to remain engaged with the issues and companies to implement the recommendations and agreements adopted in accordance with the Guidelines.

The NCP will follow up the specific instance one year after the date of publication of the final statement. The NCP will follow up with the parties in writing in order to evaluate the recommendations made. The outcomes of the follow-up proceedings will be shared via a publication on the NCP's website.

With this Final Statement, the NCP closes the specific instance procedure.

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](#)

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ANNEX

Provisions of the Guidelines referred to by the notifying parties in the specific instance and which have, according to the notifying parties, not been observed by SPDC and Shell HQ:

Concepts and Principles (Chapter I, paragraph 4)

4. A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

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),

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development. 2. Respect the internationally recognised human rights of those affected by their activities.

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups. 7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation. 11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

15. Abstain from any improper involvement in local political activities.

Disclosure (Chapter III, paragraphs 1, 2, 4)

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Disclosure policies of enterprises should include, but not be limited to, material information on:

a) the financial and operating results of the enterprise;

b) enterprise objectives;

c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;

d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;

e) related party transactions;

f) foreseeable risk factors;

g) issues regarding workers and other stakeholders;

h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.

4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Human Rights (Chapter IV, paragraphs 1, 3, 4)

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

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

4. Have a policy commitment to respect human rights.

Employment and Industrial Relations (Chapter V, paragraphs 1e, 5)

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.

Environment (Chapter VI, paragraphs 2a.b, 3, 5, 6)

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

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

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

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and

d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource

utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

Combating Bribery, Bribe Solicitation and Extortion (Chapter VII, paragraphs 1, 5)

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments.

Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion.

Consumer Interests (Chapter VIII, paragraph 7).

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.