



The Ecumenical Council  
for Corporate Responsibility

# Shell in the Niger Delta: A Framework for Change

Five case studies from civil  
society

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## **Acknowledgements**

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The views expressed outside the case study written by Pro-Natura International (Nigeria) (PNI) are not necessarily those of PNI.

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**Stakeholder Democracy Network** ([www.stakeholderdemocracy.org](http://www.stakeholderdemocracy.org)) works with local communities and civil society to empower those who have been negatively affected by the activities of extractive industries. SDN is piloting its approach in the Niger Delta, supporting those who have chosen non-violence to collectivise their bargaining power. It currently works in four key areas: good governance, community empowerment, human rights and peace building.

**Dr Emmanuel O. Emmanuel** is Executive Director of Transborder Missionaries Interface Initiative ([www.tmiinigeria.org](http://www.tmiinigeria.org)), a pro-democracy non-governmental organisation working in the Niger Delta. He is a chartered mediator and conciliator with international mediation accreditation, holds a doctorate in environmental sciences and is a member of the Nigerian Environmental Society. Dr Emmanuel has held management positions in the extractive industries and government and was a member of external stakeholder teams that reviewed Shell/SPDC's community development projects in 2002, 2004 and 2006.

## Glossary and acronyms

ADR	Alternative dispute resolution
AGM	Annual General Meeting
associated gas	Natural gas co-present with crude oil in the same reservoir
BP	British Petroleum
bpd, b/d	Barrels per day
bunkering	Illegal oil theft from pipelines or wellheads
CSCR	Centre for Social and Corporate Responsibility
DPR	Department of Petroleum Resources, Nigeria
ECCR	Ecumenical Council for Corporate Responsibility
EIA	Environmental Impact Assessment
ESR	External Stakeholders Review
FID	Financial Investment Decision
GMoU	Global Memorandum of Understanding
IOGP	Integrated Oil and Gas Project
IPCC	Intergovernmental Panel on Climate Change
JIV	Joint investigation
JOA	Joint operating agreement
JV	Joint venture
LGA	Local government area
LNG	Liquefied natural gas
MEND	Movement for the Emancipation of the Niger Delta
mmscf/d	Million standard cubic feet per day
MOSOP	Movement for the Survival of the Ogoni People
MOU	Memorandum of Understanding
NAOC	Nigeria Agip Oil Company
NGO	Non-governmental organisation
NNPC	Nigeria National Petroleum Corporation
OPEC	Organisation of Petroleum Exporting Countries

OPPG	Operational Policy and Procedure Guidelines
PDP	People's Democratic Party
PNI	Pro-Natura International
PTI	Petroleum Training Institute
RENA	Remediation by Enhanced Natural Attenuation
SCD	Sustainable Community Development
shut in	Oil production that has been halted in specific locations
SDN	Stakeholder Democracy Network
SNEPCO	Shell Nigeria Exploration and Production Company
SNG	Shell Nigeria Gas
SPDC	Shell Petroleum Development Company of Nigeria
TMII	Trans-Border Missionaries Interface Initiative
TNTL	Trans-Nigerian Trunk Line
TPH	Total petroleum hydrocarbon
UPR	Universal Periodic Review
VPs	Voluntary Principles on Security and Human Rights

## Executive summary

This report provides an update on oil company Shell's social and environmental impacts in the Niger Delta. Comprising case studies from five civil society organisations that work with Delta communities, it assesses the operations of Royal Dutch Shell's Nigerian subsidiary, the Shell Petroleum Development Company (SPDC), and explores potential solutions to problems identified.

Questions that the report seeks to address include: How far has life for communities improved or worsened in recent years? What measures do the Delta's people and civil society identify as priorities to be addressed and good practices to be followed? What should faith- and values-based investors urge Shell and SPDC to do to improve matters?

Not all the Niger Delta's problems can be laid at an international oil company's door. Recognising the state as the primary bearer of the duty to *protect* human rights, our report's premise is the increasingly recognised corporate duty to *respect* human rights. In the words of Professor John Ruggie, Special Representative of the UN Secretary-General on business and human rights: '[T]he responsibility to respect requires companies to ... become aware of, prevent and address adverse human rights impacts.'<sup>1</sup>

The case studies largely concur with the widespread civil society view that benefits from the oil industry's operations in the Niger Delta are outweighed by the very considerable local human and environmental costs. Shell, as the largest international oil and gas company operating in Nigeria, is central to these outcomes.

### The case studies

#### **1. Shell's Social Licence to Operate: A Case Study of Ogoni**

The first case study, from the Movement for the Survival of the Ogoni People (MOSOP), describes the culture and traditions of the Ogoni and their early interactions with Shell, before summarising the transformative impact that commercial oil extraction has had on Ogoni lives.

Among the effects noted are environmental insecurity; all too frequent oil spills, with poorly executed clean-ups and unfair compensation; a devaluation of community opinion and culture; unequal and unjust revenue allocation; a series of unsuccessful community development initiatives; militarisation; the arrest, trial and hanging of the Ogoni Nine; and overall a sense of betrayed trust.

The case study concludes by advocating a new approach to dialogue and community development in the Delta – embracing principles such as informed consent; application of international standards to the clean-up of oil pollution; and an end to gas flaring.

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<sup>1</sup> *Business and human rights: Towards operationalizing the 'protect, respect and remedy' framework*, report of the Special Representative of the Secretary-General, UN Human Rights Council, April 2009, [www.business-humanrights.org](http://www.business-humanrights.org)

## **2. Shell's Poor Stakeholder Engagement**

The second study, by the Centre for Social and Corporate Responsibility, focuses on SPDC's recent implementation of Environmental Impact Assessment (EIA) and Participatory Rural Appraisal methodologies in developing the major Gbarain-Ubie Integrated Oil and Gas Project in the Gbarain-Ekpetiama local government area of Bayelsa State.

Contrasting the quality of delivery with the high standards laid down in the Nigerian regulatory framework and the company's own policies and manuals, the case study alleges a range of shortcomings such as exclusion of public scrutiny; inaccurate scope and content of EIAs; questionable claims by the company of community representation; apparent lack of transparency in compensation for relocation of people's homes; and poorly run community development.

Among its recommendations, the study urges more transparent and credible public participation in future impact assessments; independent monitoring and verification; an environmental audit leading to restoration and rehabilitation; and a bottom-up community-led approach to development programmes.

## **3. Three Challenges Facing Shell in the Niger Delta:**

Stakeholder Democracy Network's case study highlights key challenges that in its opinion confront the company and how these can be addressed: reliance on security-focused surveillance contracts; tolerance of corruption regarding oil spills; and the failure to end gas flaring.

Regarding security-focused surveillance, the study argues that the company's contracting of a network of local power-brokers and 'strongmen' has damaged its credibility and operational security. On oil spills, the poor integrity of a largely ageing pipeline network allows unacceptable levels of pollution to continue that are an opportunity for exploitation by unscrupulous actors. And gas flaring constitutes 'a daily reminder to communities of Shell's apparent valuing of production above environmental and public health concerns'.

The case study recommends that Shell and SPDC adopt a reformed approach to security; rigorously apply Shell's General Business Principles; end gas flaring as part of a comprehensive energy generation strategy; and improve operational transparency.

## **4. Shell in Nigeria: A Conflict Perspective**

The study from Trans-Border Missionaries Interface Initiative considers the situation in terms of conflict generation and transformation. Based on a survey of communities' living conditions, common problems requiring immediate attention are identified: poverty and hunger; unemployment; underdevelopment; high maternal and child mortality; and environmental degradation. In most cases, oil industry activities are identified as a major causative factor.

The case study examines several instances of conflict between SPDC and communities before concluding that the company has contributed to conflict through its poor fulfilment of regulations and standards and its failure to fully respect the human rights of claim holders.

Recommendations include an immediate end to gas flaring; a major environmental



rehabilitation programme; learning lessons from past external stakeholder reviews; transfer of economic empowerment and human capital development to community trusts; retraining of field staff; and the establishment of community-level peace centres.

### **5. SPDC's Global Memorandum of Understanding**

The fifth case study, from Pro-Natura International (PNI), moves from an assessment of the limitations of SPDC's past approaches to community development to consider the current Global Memorandum of Understanding (GMOU) model, in whose delivery PNI is involved.

Analysing the GMOU framework and intended process, the study identifies far-reaching shortcomings in the way the work has been implemented, and only limited successes. It concludes that while the model is a significant improvement on previous SPDC community engagement, rushed roll-out by the company has resulted in the essential participatory principles being ignored.

The case study's recommendations centre on training and refresher courses for SPDC implementation staff; removal of staff with limited competency in sustainable development; linking GMOU communities with state and local government; and affirmative action to address women's marginalisation from the programme.

## **Conclusions and recommendations**

Despite their differences of emphasis, the case studies reveal a consistent thread of concerns. These include a continuing failure by Shell and SPDC to operate in the Niger Delta fully according to robust international social and environmental standards; severe pollution of air, land and water, with disastrous impacts on health and livelihoods; inadequate inclusion of communities in decisions affecting their lives; a failure to dialogue respectfully, address critical needs and maintain trust; short-termism and lack of vision.

Shell's own General Business Principles, if rigorously implemented, would go some way to meet these concerns. So would the recommendations of the 2008 *Report of the Technical Committee on the Niger Delta*, set up by the Nigerian Federal Government and chaired by MOSOP President Ledum Mitee. Also worth consideration are practices of other international oil companies that are said to have secured more community consent in the Delta than Shell and SPDC have achieved.

### **Recommendations**

The report makes the following ten overall recommendations to Shell and SPDC:

1. Stop gas flaring as a matter of urgency, prioritising flares closest to communities, if necessary halting production while flares are eliminated.
2. Mobilise resources without delay to address communities' need for sustainable sources of clean drinking water.
3. Embark on a Delta-wide environmental audit and rehabilitation programme, cleaning up the legacy of oil spills, polluted land and waterways, and rapidly replacing old pipelines to international standards.

4. Transform SPDC's operating culture through a continuous programme of staff training in human rights, conflict management and community relations.
5. Apply effective social and environmental impact assessment methodologies; respect principles of open dialogue and community consent; establish independent monitoring and effective grievance mechanisms.
6. Scale back operations in localities where significant unfulfilled commitments remain and community tensions exist until problems have been remedied.
7. Transform community development programmes through participatory, inclusive and empowering strategies.
8. Implement a policy of fully disaggregated revenue and expenditure transparency.
9. Affirm the findings of the *Report of the Technical Committee on the Niger Delta* and publicly commit to work with others in implementing its recommendations.
10. Link the remuneration of senior company executives responsible for Niger Delta operations to satisfactory progress on human rights and environmental issues.

### **SPDC's comments on the draft text**

ECCR provided Shell with this report in draft form and invited it to comment. In response, SPDC stated its view that the report is not a sufficiently complete or balanced assessment – because 'the primary and overriding authority and responsibility' for what takes place in the Niger Delta 'rests with the state'.<sup>2</sup> The company also commented that the text makes 'many unsubstantiated claims'. On the few specific points that SPDC challenged, ECCR has conferred with the respective contributors, modified the text and/or inserted a footnote indicating SPDC's view.

The company did, however, acknowledge 'a convergence of ideas and themes' and said that it had already embraced some of the report's recommendations. ECCR has replied to Shell and SPDC by stating its willingness to help build a common agenda for action around such points of agreement.

### **Using the report**

ECCR hopes that the report will contribute to improvement in the lives of the Niger Delta's communities by helping clarify priorities for Shell and SPDC and providing a framework for constructive dialogue and prompt action. We would welcome engagement on the part of faith-based and responsible investors – and others who seek a more equitable and sustainable global economy – in sharing concerns with Shell directors and urging changes along the lines recommended.

The report arguably also prompts broader questions about how companies wishing to operate in resource-rich but poorly governed and infrastructure-poor developing countries should conduct themselves.

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<sup>2</sup> Mutiu Sunmonu, Managing Director, SPDC, email communication with ECCR, September 2009.

## Introduction

*Impacts of Niger Delta oil and gas operations • Corporate responsibility to respect human rights • Shell in Nigeria • Report aims and methodology • Using the report*

ECCR became aware of the impacts of oil exploration and extraction on communities in Nigeria in the 1990s. Since then we have sought practical ways of working with and for Niger Delta communities to help them defend their rights to health, livelihoods and a habitable environment. This led ECCR and others to bring a shareholders' resolution to the AGM of Shell Transport & Trading in 1997, followed by a fact-finding visit to the Niger Delta in 2001, a report in 2002,<sup>3</sup> and continuing contacts with Delta civil society and engagement with Shell, including another shareholders' resolution in 2006.

It would be wrong to suggest that all the Niger Delta's well-documented problems can be laid at any international oil company's door. Corruption and mismanagement on the part of the Nigerian authorities have undermined the protection of citizens, despite progress on some fronts. Nigeria receives a huge income from oil yet largely fails to invest in human development in the Delta, and often enough the Nigerian security forces have been among the worst oppressors of their own people.<sup>4</sup>

Nevertheless, business does not operate in a vacuum. No multinational company can claim to be ethical if it extracts resources and generates wealth from a society mired in poverty and human rights abuse – unless the benefits of its presence clearly outweigh the negative consequences.

Royal Dutch Shell and its subsidiary companies in Nigeria have sought to provide, and to show, social benefits from their presence in the country, and in some areas they have made progress. Shell cites examples of contracting to local companies, employment creation and training opportunities in construction work, community development, scholarship programmes and other initiatives.<sup>5</sup> Case study 5 in this report gives an insight into the potential benefits of development programmes if undertaken with sufficient care and commitment.

However, the prevailing civil society view in the Niger Delta and beyond is that currently and cumulatively the benefits of the oil industry's presence are far outweighed by the negative consequences with which Shell, as the region's largest operating oil and gas company, continues to be closely associated.<sup>6</sup>

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<sup>3</sup> ECCR, *Telling Shell*, 2002, [www.eccr.org.uk/module-htmlpages-display-pid-21.html](http://www.eccr.org.uk/module-htmlpages-display-pid-21.html)

<sup>4</sup> Heavily criticised, e.g., by Archbishop Felix A. Job, President, Catholic Bishops Conference of Nigeria, in 'Violence and hostilities are not the answer', public statement, Abuja 29 May 2009.

<sup>5</sup> Shell's account of its corporate responsibility undertakings in Nigeria is available at [www.shell.com/home/Framework?siteId=nigeria](http://www.shell.com/home/Framework?siteId=nigeria) [accessed June 2009].

<sup>6</sup> See e.g. Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009; and Professor Richard Steiner, *Double Standards? International Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria*, report for Friends of the Earth Netherlands (Milieudefensie), November 2008.

## Impacts of Niger Delta oil and gas operations

Life expectancy is a key indicator of such consequences. In 2008 the *Economist* reported that 'Life expectancy, once just below 70 years in the Niger Delta, is now around 45.'<sup>7</sup> Formerly a net food exporter, the Delta now reportedly imports 80 per cent of its food. Its indicators of poverty have deteriorated markedly since 1980, although with some stabilisation since 1996, and its 'health and educational facilities ... are in a deplorable state of neglect in many areas outside the state capitals'.<sup>8</sup>

In 2006 a joint mission of Nigerian, UK and US environmental scientists concluded that:

- the Niger Delta has become one of the most petroleum-polluted environments in the world;
- an estimated 9 to 13 million barrels (1.5 million tons) of oil have been spilled in the Delta during the past 50 years, equivalent to the full volume of oil spilled from the *Exxon Valdez* in Alaska in 1989 every year;
- the cost of environmental damage resulting from five decades of oil and gas activities – including habitat degradation, pollution from gas flaring and operational discharges, and increased population pressure from immigration – runs to tens of billions of dollars;
- impacts of operations are cumulative and have acted synergistically with other environmental stresses to impair ecosystems and severely compromise human livelihoods and health;
- oil companies have not used best available technology in the Delta or followed practices they employ elsewhere in the world.<sup>9</sup>

A recent Nigerian civil society submission to the United Nations Human Rights Council for Nigeria's Universal Periodic Review emphasises the human rights costs:

'The Niger Delta Region, the epicentre of oil exploitation and exploration ... has suffered monumental maltreatment through political/economic marginalization, violence and environmental degradation ...

'The standard response of the government to crush community protests in the Niger Delta has been the militarization of the area in order to ensure the protection of oil facilities and the continued flow of crude oil. This militarization has resulted in indiscriminate arrests, torture, rape and the extrajudicial execution ... contrary to the principles of increasing the wellbeing of the people of Niger Delta and avoidance of adverse impacts ...

'[L]ands and backyards ... are being divided, partitioned and allocated to Lagos and Abuja in the name of oil blocks and wells without the knowledge and participation of Niger Delta peoples.'<sup>10</sup>

<sup>7</sup> *Economist*, 'Nigeria: Another deadline goes up in flames', 3 April 2008, [www.economist.co.uk](http://www.economist.co.uk)

<sup>8</sup> United Nations Development Programme, *Niger Delta Human Development Report*, Abuja, 2006, <http://hdr.undp.org>

<sup>9</sup> WWF-UK and IUCN Commission on Environmental, Economic and Social Policy, *Niger Delta Natural Resource Damage Assessment and Restoration Project, Phase 1 Scoping Report*, report to Nigerian Federal Ministry of Environment and Nigeria Conservation Foundation, unpublished, May 2006.

<sup>10</sup> Niger Delta Civil Society Forum on the UPR, *Oils of Injustice: Nigeria, the UPR and the Niger Delta*, submission to the Universal Periodic Review of Nigeria, United Nations Human Rights Council, Geneva, February 2009, executive summary, available at [www.stakeholderdemocracy.org](http://www.stakeholderdemocracy.org); organisations submitting this report included four contributors of case studies to the present ECCR report; on the UPR see [www.ohchr.org](http://www.ohchr.org)

The *Report of the Technical Committee on the Niger Delta* commissioned by Nigeria's Federal Government concludes similarly: 'The Committee recognises that the tragedies of the Niger Delta are not only by way of environmental degradation and infrastructural dilapidation but also the devaluation of values, erosion of community and family ethos, and the loss of those practices that privilege the dignity of the human person over material wealth.'<sup>11</sup>

## Corporate responsibility to respect human rights

A degree of consensus on the responsibilities of business for human rights is emerging through the work of John Ruggie, Special Representative of the UN Secretary-General. Professor Ruggie has helped establish and clarify the active nature of the corporate duty to respect rights. His recent report to the UN Human Rights Council states:

'Company claims that they respect human rights are all well and good. But the Special Representative has asked whether companies have systems in place enabling them to demonstrate the claim with any degree of confidence. He has found that relatively few do. What is required is an ongoing process of human rights due diligence, whereby companies become aware of, prevent, and mitigate adverse human rights impacts ...

'What is the appropriate scope of a company's human rights due diligence process, the range of factors it needs to consider? Three are essential. The first is the country and local context in which the business activity takes place ... The second factor is what impacts the company's own activities may have within that context ... The third factor is whether and how the company might contribute to abuse through the relationships connected to its activities ...

'Companies do not control some of these factors, but that is no reason to ignore them ...

'[T]he responsibility to respect requires companies to ... become aware of, prevent and address adverse human rights impacts. Moreover, for companies to know they are not infringing on others' rights requires mechanisms at the operational level, to which affected individuals and communities can bring grievances concerning company-related impacts and which companies may need to establish where none exist.'<sup>12</sup>

Professor Ruggie elsewhere provides a helpful definition of due diligence as 'a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it'.<sup>13</sup> While businesses may not have the full responsibilities of state actors to protect human rights, their duty to 'do no harm' is unambiguous.<sup>14</sup>

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<sup>11</sup> *Report of the Technical Committee on the Niger Delta*, Vol. 1, November 2008, [www.nigerdeltatechnicalcommittee.org](http://www.nigerdeltatechnicalcommittee.org). The committee was set up by Nigeria's Vice President Dr Goodluck Jonathan to collate and review past reports, appraise recommendations and make proposals to help the Federal Government achieve 'sustainable development, peace, and human and environmental security' in the Niger Delta.

<sup>12</sup> *Business and human rights: Towards operationalizing the 'protect, respect and remedy' framework*, report of the Special Representative of the Secretary-General, op. cit.

<sup>13</sup> *Protect, Respect and Remedy: A Framework for Business and Human Rights*, report of the Special Representative of the Secretary-General, UN Human Rights Council, April 2008.

<sup>14</sup> 'The corporate responsibility to respect human rights [means], in essence, to do no harm' – *Presentation of Report to United Nations Human Rights Council*, Special Representative of the Secretary-General, Geneva, 3 June 2008.

## Shell in Nigeria

Shell is the longest-established international oil company in Nigeria. Known at first as Shell D'Arcy, it was granted exploration rights in 1938. In 1956 Shell Nigeria was renamed the Shell-BP Petroleum Development Company. From 1973 onwards the Nigerian Federal Government has owned shares in the company, nationalising BP's shareholding in 1979.

Today Royal Dutch Shell operates through several companies in Nigeria, most notably the Shell Petroleum Development Company (SPDC), Nigeria's largest private sector oil and gas operator. SPDC is a Shell-owned company operating a joint venture agreement in which the state-owned Nigerian National Petroleum Corporation (NNPC) holds 55 per cent, Royal Dutch Shell 30 per cent, Total/Elf Nigeria 10 per cent and Agip 5 per cent.<sup>15</sup>

Royal Dutch Shell and SPDC are two distinct legal entities, a point noted by Shell in correspondence with ECCR:

'Shell is active in Nigeria through a number of companies, of which SPDC is one. SPDC is a wholly Shell-owned operating company and operator of a joint venture (JV) that is principally responsible for onshore operations ... SPDC operates within the limits that are set by the JV.'<sup>16</sup>

From the perspective of local communities and of natural justice, however, this legal difference and the restrictions set by the joint venture to which Shell has acceded are of minor significance. Shell is the operator and it considers SPDC a 'Shell-run company'.<sup>17</sup> As such, Shell has moral responsibility to ensure that SPDC observes the principle 'do no harm' at all times.

## Report aims and methodology

How far has life for communities in the Niger Delta improved or worsened in recent years? What measures do the Delta's people and civil society identify as priorities to be addressed and good practices to be followed? What should faith- and values-based investors, and people of conscience generally – including those working with and within the company – urge Shell to do to improve matters?

ECCR's concern to clarify such questions has led to this report, which has evolved from contacts and dialogue with civil society organisations working in the Delta.<sup>18</sup>

The report seeks to highlight key problems for Delta communities arising from Shell's and SPDC's operations; to identify weaknesses in the implementation of Shell's corporate responsibility policies, as well as examples of good practice that offer a better way; to give voice to the rights and aspirations of local communities; and to make realistic proposals for addressing the problems for which Shell is morally responsible. In doing so, the report

<sup>15</sup> Source: [www.shell.com](http://www.shell.com). Other Shell operating companies in Nigeria are the Shell Nigeria Exploration and Production Company and Shell Nigeria Gas.

<sup>16</sup> Email communication, October 2008.

<sup>17</sup> See e.g. Malcolm Brinded, 'It is time to move on', *Guardian*, 10 June 2009, [guardian.co.uk](http://guardian.co.uk); Shell also refers to 'Shell Nigeria' – see [www.shell.com/home/Framework?siteId=Nigeria](http://www.shell.com/home/Framework?siteId=Nigeria) [accessed June 2009].

<sup>18</sup> In recent years this aspect of ECCR's work has benefited from partnership with international development organisations Cordaid (Netherlands) and Trócaire (Republic of Ireland).

acknowledges, but does not discuss in detail, the context of weak and corrupt governance for which Nigeria's institutions and politicians are largely responsible.

We have adopted a multi-perspective case-study approach by inviting five civil society organisations to draw on their experienced and knowledge of the Niger Delta to describe and analyse issues they see as central to the subject matter. These organisations are the Centre for Social and Corporate Responsibility (CSCR), the Movement for the Survival of the Ogoni People (MOSOP), Pro Natura International (Nigeria) (PNI), Stakeholder Democracy Network (SDN) and Trans-Border Missionaries Interface Initiative (TMII).

ECCR has had contact with, or worked with, most of these organisations for several years. With one exception, all were at the time of writing grant-supported by the Dutch international development agency Cordaid, the sponsor of this report. All are well acquainted with the oil industry. One of them, PNI, works with SPDC to support its community development programme.

Each contributing organisation focuses on its own area of experience and expertise. There is, perhaps inevitably, some overlap in coverage, while differences in perspective and the complexity of the situation mean that contributors may not always agree on every detail. In ECCR's view such differences are relatively minor and point to the need for deliberative dialogue on some issues as well as urgent action on others. There is very considerable unanimity overall.

After the individual studies were completed, each with its own conclusions and recommendations, ECCR in consultation with the contributors compiled a set of overall conclusions and recommendations, which complete the main body of the report.

Following our standard practice, ECCR informed Royal Dutch Shell at an early date that work on the report was under way and invited the company to provide relevant information. The company responded helpfully to some, although not all, requests for information. Subsequently, we provided Shell with the complete report in draft form and invited it to comment. In reply, SPDC expressed the view that

'[W]e do not believe the report presents a sufficiently complete and balanced assessment of the different and complementary responsibilities of each of the relevant parties.

'The report "acknowledges but does not address the context of governance". Such a selective approach does not reflect the complexity of the situation and the practical dilemmas and constraints that shape the options available to all the relevant parties. In this respect the role of government is crucial. In SPDC we fully recognise our responsibilities but we also operate in an environment where the primary and overriding authority and responsibility rests with the state [...] Blaming SPDC, or other Shell companies for that matter, for problems where solutions lie with others is not helpful.'<sup>19</sup>

SPDC added that in its view there were 'many unsubstantiated claims made against us and conclusions drawn' and cited a small number of specific instances of these.<sup>20</sup> In each

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<sup>19</sup> Mutiu Sunmonu, email communication with ECCR, op. cit.

<sup>20</sup> Ibid.

such instance ECCR has conferred with the respective case study contributor, modifying the text and/or inserting a footnote indicating the different view expressed by SPDC as appropriate.

The company also stated that ‘In some areas of the report [we] do see a convergence of ideas and themes with SPDC and [we are] pleased to see that a number of recommendations made in the report are already part of SPDC’s work practices and plans.’<sup>21</sup>

ECCR offered the company the option to have its complete response published as an appendix to the report, but this was not taken up.

The report also provides a glossary and list of acronyms, a chronology of key dates and the text of Royal Dutch Shell’s General Business Principles, reproduced with the company’s permission.

## Using the report

The primary aim of this report is to contribute to improvement in the lives of the Niger Delta’s people, whose destinies are so deeply affected by the presence of the international oil and gas industry, particularly by SPDC as the largest operating company.

ECCR hopes that Shell and SPDC directors and managers will accept the validity and importance of the concerns raised and the recommendations offered, and find ways to address them with urgency and due diligence.

We also hope that faith- and values-based investors and all who seek a more equitable and sustainable global economy will give careful consideration to the report, raise issues with Shell directors, and support calls for the necessary changes highlighted in the recommendations.

For the contributors of the case studies and wider civil society, the report offers a vehicle for constructive dialogue with Shell and SPDC about ways of doing business better.

Beyond such specific uses, the report invites us to consider a broader question. Where a global extractive industry operates in a resource-rich but poorly governed and infrastructure-poor developing country, how can and should the companies involved conduct themselves to prevent significant harm to people and planet? And if they cannot operate without doing such harm, should they operate there at all?

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<sup>21</sup> Ibid.



# 1. Shell's Social Licence to Operate: A Case Study of Ogoni

*Legborsi Saro Pyagbara, Movement for the Survival of the Ogoni People*

*Introduction and background • The Ogoni: a history of resistance • Shell's acquisition of legal and social licence • How Shell lost its social licence • Conclusions • Recommendations*

## Introduction and background

This case study discusses the concept of 'social licence to operate' in the light of the situation of oil exploration in the Niger Delta and the initial oil strikes made by Shell Petroleum Development Company (SPDC) in the Oloibiri and Ogoni communities. In the beginning, these strikes were heralded with jubilation among members of these communities, who saw the event as the dawn of a new era of socio-economic development. The study examines the transitory nature of these celebrations resulting from increasing discontent and friction between the communities and the oil company, which led to the impairment of the business operations of Shell not only in Ogoni but also in other parts of the Niger Delta.<sup>22</sup>

Our analysis of the conflicting situation that surrounded Shell operations in Ogoni indicates that maintenance of a social licence is a function of the interaction of several factors, and the response of Shell and the Nigerian government to most of these factors led largely to a breakdown of the company's social licence.

The study concludes by offering recommendations on how Shell can improve its social licence in the Niger Delta. This includes establishing a direct relationship with communities based on mutual respect and consultation, an end to the use of divide-and-rule tactics among community members, the company's use of its leverage with the Federal Government to ensure that benefits from exploiting oil resource reach communities, and the adoption of culturally sensitive and conflict-sensitive approaches to community relations.

### ***Nigeria's oil industry and the Niger Delta***

Nigeria joined the league of oil producing nations on 3 August 1956 when oil was discovered in commercial quantities in the Niger Delta in Oloibiri in present-day Bayelsa State.<sup>23</sup> Today the country ranks as the second leading oil and gas producer in Africa, having lost its pre-eminent position to Angola in recent times, and the eighth largest oil exporter in the world.<sup>24</sup> Nigeria is also Africa's most populous nation, with 140 million people as recorded by the National Census in 2006.<sup>25</sup>

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<sup>22</sup> Ogoni refers both to the Ogoni people and to their lands, sometimes called Ogoniland.

<sup>23</sup> Dr Goodluck E. Jonathan, *Niger Delta: Challenge of Sustainable Development*, 2004.

<sup>24</sup> 'Angola overtakes Nigeria as top African oil nation', *Independent*, 4 June 2008.

<sup>25</sup> 2006 Population and Housing Census, Facts and Figures, [www.population.gov.ng/2006\\_final\\_results/nationafinal.pdf](http://www.population.gov.ng/2006_final_results/nationafinal.pdf)

The Niger Delta consists of a total landmass of approximately 75,000 square km, with the third largest mangrove forest in the world of almost 20,000 square km, extensive freshwater swamp, coastal ridges, and fertile dryland forest and tropical rainforest characterised by great biological diversity.<sup>26</sup> Seasonal flooding and sediment deposits over thousands of years have made the land fertile. The Delta sustains the largest wetland in Africa and one of the largest in the world. Its innumerable creeks and streams have in the past provided habitat for an abundance of fish and marine life.

Plentiful rainfall and the fertility of the land, rivers and sea have enabled the Delta to have one of the highest rural population densities in the world. All of Nigeria's oil and gas resources come from this region, which is occupied by more than 31 million people,<sup>27</sup> made up of a mosaic of distinct minority and indigenous nationalities among whom are the Ogoni.

Although there has been other unrest in the Niger Delta both preceding Nigeria's independence and after, none of this conflict has had so much impact on the issue of social licence or focused as much attention on industry activities as the case of the Ogoni people.

### **The Ogoni: a history of resistance**

The Ogoni people are an indigenous minority nationality living in an area of about 1,046 square km on the south-eastern fringe of the Niger Delta, in what is geopolitically referred today as the South-South of Nigeria. The Ogoni number around 840,000 based on the last census, with a population density of 800 per square km, one of the very highest in any rural setting worldwide, compared with the Nigerian national average of 150 people per square km.

As an indigenous people, the Ogoni had a well-established social system that placed great value on the environment before the advent of British colonial rule. Living on fertile alluvial soil and blessed with a necklace of rivers and creeks, the Ogoni made use of these resources to become great fishers and farmers, producing not only for their own subsistence but also for their neighbours. Their lands were appropriately referred to as the Delta's 'food basket'. The Ogoni's traditional system of agriculture ensured the sustainable management of natural resources. Socio-culturally, the Ogoni live in closely knit communities and are more self-reliant than many of their neighbours.

Ogoni traditions are deeply rooted in nature, which helped them protect and preserve the environment for generations. They view their land and rivers not just as natural resources for exploitation but as having deep spiritual significance.

Respect and reverence for land mean that forests are not merely a collection of trees and the abode of animals but an intrinsically sacred possession. Forest trees cannot be cut indiscriminately, because they are seen as having influence on the wellbeing of the community. Some animals cannot be killed because they are said to be totems

<sup>26</sup> UNDP, *Niger Delta Human Development Report*, 2006, [hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html](http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html)

<sup>27</sup> *Report of the Technical Committee*, op. cit., quoting 2006 census.

(animations of the spirit of a person); if they are killed, something disastrous will happen to the person.<sup>28</sup> Rivers and streams, apart from being the source of water for life, are bound up with the life of the community and not to be desecrated or polluted. Thus a dynamic interaction exists between Ogoni men and women and the rest of the natural world.

These were the natural rights that our people understood over the years. Within the community belief system, every person is obliged to take action to protect those rights, which include rights to lands and natural resources. It is believed that grave consequences follow any human action desecrating the environment, and failure by the custodian community to protect the natural world attracts the wrath of the gods and disaster.

The pre-colonial social system ensured sustainable exploitation of natural resources and protection of biodiversity. Most of these practices still exist today, which explains why the Ogoni are unanimous when it comes to taking decisions that affect their environment. It also explains why the Movement for the Survival of the Ogoni People (MOSOP) achieved success in mobilising the Ogoni to stand against the desecration of their environment in the early 1990s when the struggle against Shell began.

The Ogoni were long known to be fiercely independent and resisted all attempted intrusion into their territories, including attempts at their forced assimilation by prevailing economic forces, such as the slave trade and the oil palm trade. Ogoni was one of the last frontier lands to be conquered by the British in a war lasting from 1901 to 1913, when the Ogoni were finally subdued in the great battle of Deeyor under the British Commander Lt Rose.<sup>29</sup>

Even under British control, and despite being relatively few in number, the Ogoni continued to clamour for a distinct administrative unit for themselves, which manifested in the creation of the Ogoni Division in 1947. Ten years later the Ogoni joined forces with other communities to make their case before the Willinks Commission set up by the departing British to look into the fears of minorities on the eve of Nigeria's independence. One of the main recommendations of the Commission was that a special Niger Delta Development Board be set up. In Legal Notice No. 192 of 1959 the colonial government proclaimed the area of the Niger Delta as comprising 'the Western Ijaw Division of Delta Province and Yenagoa Province, Degema Province and the Ogoni Division of Port Harcourt Province'.<sup>30</sup>

### **Shell's acquisition of legal and social licence**

Shell sought and received both a legal and a social licence to operate when it began oil exploitation in Ogoni.

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<sup>28</sup> G.N. Loolo, *A History of the Ogoni*, 1981.

<sup>29</sup> Dr Ben Naanen, unpublished paper delivered on Ogoni Day 2000, and 'The Ogoni: an endangered indigenous people', *Indigenous Affairs*, 2, 1995.

<sup>30</sup> Ledum Mitee, 'Oil exploitation and the challenges of a non-violent struggle in Nigeria's Niger Delta', paper for the Institute of African Studies, Emory University, Atlanta, Ga, 2007; League for Human Rights, *Sir Henry Willink's Report of the Commission Appointed to Enquire Into The Fear of Minorities And Means of Allaying Them*, 1958, reprinted, [www.boellnigeria.org](http://www.boellnigeria.org)

## ***Legal licence***

Shell D'Arcy, as the company was then known, was first granted a legal licence to operate in Nigeria in November 1938 by the British colonial government under the Mineral Oil Act Laws of Nigeria 1914, and this initially covered the entire country.<sup>31</sup> The licence was renegotiated after Nigeria's independence in 1960 and with promulgation of the Petroleum Decree of 1969. Several changes were introduced into the oil industry, including state participation in the sector. The licence which conferred on Shell the authority to explore provides the statutory legal basis for the company's operations.

Shell's legal licence was granted by the Federal Government. The authorities neither involved communities where the company would operate nor set up any mechanism for community input into the oil development. Yet the support and goodwill of those communities occupying the land where the company would explore for and extract oil would be required for such activities to succeed.

## ***The Ogoni welcome Shell***

Shortly after Shell-BP, the precursor to the present-day SPDC (the new name was adopted in 1979), struck oil in Oloibiri, Bayelsa State, the company followed with finds in early 1957 in the Ogoni community of K-Dere, popularly and mistakenly called the Bomu oilfields. Subsequently SPDC made more discoveries in Ogoni communities including Ebubu, Yorla, Bodo West and Korokoro. SPDC was the sole licensed oil extractor in Ogoni.

In 1957 the majority of the Ogoni, who knew little about the oil industry, welcomed and accepted the arrival of Shell. The oil company appeared to be the harbinger of a new and better way of life, a catalyst and agent for socio-economic transformation and a partner worth striving to please. Ogoni elders warned against any actions that might displease the company. They believed that the benefits from the intervention of Shell would change their neighbours' perception of them as backward. Such was the initial acceptance that the company enjoyed.

## ***Social licence and social risk***

The combination of community support, goodwill and broad acceptance constitutes the social licence to operate required by any company seeking to conduct its business in a conflict-free environment and ensure the success of its investment. Such social approval can only be granted by the local communities where the company operates, although to some extent it also concerns the company's wider public image and acceptance outside those communities.

Social licence should not be confused with higher requirement that companies obtain the 'free, prior and informed consent' (FPIC) of indigenous peoples, now an agreed legal entitlement under the UN Declaration on the Rights of Indigenous Peoples.<sup>32</sup> Though important, FPIC will not be discussed in detail here.<sup>33</sup>

<sup>31</sup> See 'Shell in Nigeria – history', [www.shell.com](http://www.shell.com); Nigerian National Petroleum Corporation, 'History of the Nigerian petroleum industry', [www.nnpcgroup.com/history](http://www.nnpcgroup.com/history)

<sup>32</sup> UN Declaration on the Rights of Indigenous Peoples, Articles 19 and 32.

<sup>33</sup> For a useful discussion, see Keith Slack, 'Corporate social license and community consent', *Policy Innovations*, November 2008, [www.policyinnovations.org/ideas/commentary/data/000094](http://www.policyinnovations.org/ideas/commentary/data/000094)

By 1993 Ogoni had five major oilfields with 110 oil wells, hooked up to five flow stations at Bomu, Korokoro, Yorla, Bodo West and Ebubu by a network of interconnecting pipelines that criss-crossed Ogoni villages. Unfortunately, as Chief Victor Nwinee put it, the history of oil exploitation in Ogoni has been one of mixed blessings and missed opportunities.<sup>34</sup>

Gas flares, for example, were alight for 24 hours a day for approximately 40 years from 1957, when Shell commenced operations in Ogoni, in close proximity to human habitation in several Shell-run oil locations.<sup>35</sup> In MOSOP's opinion, Shell has shown little regard for the negative impacts on people and the environment in Ogoni and at the time of writing has undertaken no environmental impact assessment in the area.

Shell apparently mistook initial social acceptance by the Ogoni for social approval to operate for ever. Armed with its legal licence, nothing in the records indicates that the company attempted to engage in discussion with Ogoni communities about its operations. Nor did the Nigerian government take steps to inform the people on whose lands these activities would take place, apart from informing community leaders that oil exploration would bring about the development of their area.

Right from the outset, then, the social risks that Shell's projects might encounter at the different oil exploratory sites were little anticipated or evaluated. For Shell, the legal licence to operate was apparently enough.

### **How Shell lost its social licence**

As oil was struck in commercial quantities in the Niger Delta a profound transformation of the political, social and economic landscape began. The denial of basic rights such as the right to land and its resources, and to basic social infrastructure that the Nigerian government should provide, and the violence visited on Delta communities, particularly in Ogoni, worsened as oil became the country's dominant income earner, accounting for almost 85% of public revenue.

With the ascendance of oil, the political elites of the majority ethnic nationalities who control power at the federal level began to enact questionable laws aimed at transferring the wealth of Ogoni and of other parts of the Niger Delta to their territories,<sup>36</sup> while providing weak regulatory frameworks for oil companies to operate with maximum profit.

The Niger Delta became a vortex of human and environmental rights violations – including of the right to life, to a safe and healthy environment and to sustainable livelihoods – and unparalleled violence, which the government used to maintain oil flows in the face of community agitation. A direct relationship can be seen between oil extraction, the

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<sup>34</sup> Chief Victor Nwinee, former traditional ruler of Kpean community, one of the landlords of Shell's Yorla oilfield, statement to MOSOP researchers.

<sup>35</sup> SPDC has stated in its comments on the draft text of this report that the figure of 40 years for gas flaring in Ogoniland is erroneous because 'we have not produced oil or flared gas [in Ogoniland] for more than 15 years' – Mutiu Sunmonu, email communication with ECCR, op. cit. However, MOSOP observes that 'Shell's operation in Ogoni began in 1957 and it is well known that its operation also began with the act of flaring gas. Shell abandoned its oilfields in Ogoni in mid-1993. However, reports indicated that some oilfields in the Eleme area of Ogoni were still flaring till late 1997 or early 1998, and the Eleme refinery was still flaring gas till early 2000' – email communication with ECCR, October 2009.

<sup>36</sup> Laws such as the Petroleum Act of 1959.

incidence of human and environmental rights violations and Shell's loss of social licence in Ogoni, and key elements of this are considered here.

### ***Militarisation and absence of conflict mediating mechanisms***

The first sign of trouble in the Shell–Ogoni relationship became manifest after less than 10 years of operations. Facing community protest in K-Dere in 1966, Shell requested the government to draft in security officers – at that time known as riot police – to quell the protest. The police officers arrested and subsequently allegedly tortured several community members involved in the protest,<sup>37</sup> most of whom were detained for upwards of three months without charge until they were released.

The Ogoni people began to start seeing Shell as part of the oppressive alliance of the majority class whom they had spent years resisting. This perception of Shell's alliance with what was considered an enemy central government and its security agents was to redefine the Shell–Ogoni relationship.

In October 1990 a massacre took place in the neighbouring Rivers State community of Umuechem, with 80 unarmed people reported murdered by the military, after Shell had asked the authorities to intervene in the face of another community protest.<sup>38</sup> Shell expressed regret, but the incident strengthened Ogoni perceptions of an alliance between the company and the Nigerian government.

### ***The arrest, trial and hanging of the Ogoni Nine***

The crisis in Ogoni–Shell relations reached its high point on 10 November 1995 with the hanging of the Ogoni Nine including the Ogoni leader Ken Saro Wiwa. They had been convicted on questionable charges in a sham trial before a special tribunal that was widely condemned by observers including the United Nations and by UK Prime Minister John Major.<sup>39</sup> The arrest of these leaders was followed by a military campaign in Ogoniland resulting in the destruction of villages and the killing of hundreds of citizens.

### ***Disrespect for community opinion and culture***

A widespread view among the Ogoni is that Shell failed to give due respect, or to listen, to community views and opinions. Company staff were perceived as operating in an arrogant manner, reinforcing the belief that Shell was not a good neighbour. Linked to this was Shell's lack of respect for community culture and tradition. Nigerian law forbade oil extraction in sacred shrines and forests, but this appears not to have stopped Shell.

Shell did not strive to understand the customs of the Delta communities in order to work with these traditional rules but rather appeared from the outset to seek to impose its set of 'civilised values'. The arrest of community leaders and members who were seen to be defending collective interests appeared to the community as an act of disrespect for its traditional institutions.

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<sup>37</sup> Interview with community elder in K-Dere (name withheld).

<sup>38</sup> Umuechem incident documented by Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 1999, [www.hrw.org](http://www.hrw.org)

<sup>39</sup> John Major: 'a fraudulent trial, followed by judicial murder', quoted in *The Independent*, 11 November 1995, [www.independent.co.uk](http://www.independent.co.uk)

### ***Environmental insecurity***

As an indigenous community, the Ogoni people place a premium on the environment and the land. Their entire worldview is shaped by how the environment and its resources are treated, and their survival depends on the wellbeing of the environment. However, the start of oil exploration and exploitation in Ogoni was accompanied almost immediately by the impacts of seismic surveys, gas flaring and oil spills. All these have negative consequences for biological diversity and imperil water systems, undermining the integrity of the environment as the source of Ogoni wellbeing, reducing food sovereignty and health security, and aggravating poverty.

The Ogoni realised that they no longer had control over their environment and that their destiny was imperilled. Hence arose the peaceful agitation for justice championed by MOSOP whereby the Ogoni sought to reclaim a measure of control over their lives and to participate in the development processes affecting them.

### ***Lack of benefits and denial of rights***

Nigerian government officials and Shell had told the Ogoni that oil extraction would bring about socio-economic development and transform Ogoniland. But the promised benefit sharing did not occur, and communities were left in deepening poverty.

Before the discovery of oil, when Nigeria relied on the export of agricultural produce from the territories of the majority ethnic groups who control political power, the government adopted a revenue sharing formula in which the region producing agricultural exports received 50% of the revenue generated.<sup>40</sup> However, this formula was changed by the majority ethnic groups once oil from minority and indigenous territories of the Niger Delta became the mainstay of the economy.

The government's revenue allocation and distribution formula is unequal and unjust. Nigeria's Land Use Act of 1978 vests control over and ownership of all lands in the hands of the Federal Government. Inherent in the Act is that subsurface mineral resources belong to the state, while ownership of surface resources rests with individuals, communities and other entities. Thus the right to explore and exploit oil is granted by the Nigerian government to companies. The companies then make separate arrangements with owners of surface rights in the name of compensation, but this leaves landowners far poorer than before.

Under this arrangement, royalty payments go to the Federal Government, which is supposed to distribute this wealth in a manner that enables all parts of the country to develop. However, because the region where oil is extracted comprises largely indigenous and minority communities in a country where their rights are overlooked, benefits do not trickle down to Ogoni or other Delta people. The Delta today has some of the poorest infrastructure in the country, lacking for instance functional health services and sustainable livelihoods.

Before the inauguration of the Ogoni struggle, SPDC appeared to consider that, having provided some forms of menial employment and additional community assistance projects, it had fulfilled its responsibility towards the Ogoni. As far as SPDC appeared

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<sup>40</sup> Louis Okoh, in the *Pointer* newspaper, 16 August 2001; Odje M. Akpo, *Oil, Niger Delta and Nigeria*, 2003.

concerned, the Nigerian government would thereafter be the duty bearer towards the community. However, in MOSOP's opinion Shell must know how limited and uneven the government's distribution of oil wealth has been.

While Ogoni has borne the full impact of oil pollution, it has received close to zero percentage of the benefits of oil exploitation. With the absence of accountable and representative governance, the main de facto duty bearer that the community has come into contact with is Shell, as a partner in the joint venture agreement with the Federal Government.

In most circumstances, Shell constructs a camp within or adjacent to any community where it operates. Here it supplies for its workers the trappings of modern life, including 24-hour electricity and running water. This is a display of affluence unimaginable to the neighbouring community outside the camp, which lives in poverty, and gives the impression that Shell is indifferent to the wellbeing of host communities.

The failure of Nigeria's government to distribute the benefits of oil exploitation violates the rights of the Ogoni people set forth in the UN Declaration on the Rights of Indigenous Peoples. This states: 'Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control such lands, territories and resources that they possess.'<sup>41</sup>

### ***Trust betrayed***

A key factor in Shell's loss of social licence has been the depletion of the Ogoni's original trust in the company. Promises of a better life are, after decades of operations, no longer believed. Instead, the Ogoni have received a poisoned and devastated environment, loss of pristine biodiversity and traditional livelihoods, and an overall decline in quality of life.

Worse, some community members allege that in the late 1950s and 1960s Shell staff advised Ogoni in K-Dere and other communities that they could drink crude oil as a medicine for stomach problems and use it as a rub for skin diseases.<sup>42</sup> Owing to their ignorance and the trust they had at the time, community members reportedly followed this advice, so that such 'remedies' have been reported as causes of ailments that community members suffer today.

Trust in Shell was also betrayed by the company's apparent use of divide-and-rule tactics in Ogoni. Community members see the company as having often pitted elders against youths and vice versa, and having set communities against one another.

One of the greatest impediments to trust was the lack of information from the company relating to its activities in the area. This violates the International Covenant on Civil and Political Rights, which recognises the right of citizens to 'receive and impart information' about issues that affect their wellbeing.<sup>43</sup>

The whole architecture of oil exploration in Ogoni and the country at large has been shrouded in secrecy that negates people's right to information. One possible reason for

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<sup>41</sup> UN Declaration on the Rights of Indigenous Peoples, Article 26.

<sup>42</sup> Testimony of a community elder in K-Dere (named withheld).

<sup>43</sup> ICCPR, Article 19, [www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm)



this has been an assumption in Shell that information may be used by the Ogoni against the company, arising partly from unease about making promises that the company cannot fulfil.

The details of Shell's Memorandum of Understanding with the Nigerian government have never been made known to the people. Such information as the quantity of oil produced at each well or flow-station, and breakdowns of the company's expenditure on different community development activities, remains unavailable.<sup>44</sup> Even where the company claims to have undertaken environmental impact assessments, the reports are almost impossible to access and confirm. The company has not provided the community with a long-term plan for development, nor substantial information about the scope, impact and duration of its major projects.

The Nigerian government and Shell are required by international environmental and human rights standards to disclose to communities the risks associated with their development intervention of oil exploitation – or any other potential project to be carried out – so that people can make informed decisions and assess potential harms. This falls in line with principles of avoidance of adverse impacts and increasing the wellbeing of people<sup>45</sup> and the precautionary principle.<sup>46</sup> The inclusion and participation of communities as equal partners in the design and implementation of projects and the securing of informed consent are key elements of these principles. In this area, Shell has not measured up, despite its assertion to uphold principles of transparency and accountability.

The lack of effective information sharing and participation has left the company vulnerable to misinformation and rumours that feed grievances against it. There is now an assumption among the Ogoni that Shell's lack of transparency means it is likely to be hiding the truth about its activities.

### ***Oil spills, clean-ups and compensation***

Shell's poor handling of oil spills has transformed an environmental problem into a political one. Ogoni has experienced a very large number of oil spills since oil extraction commenced in the area some 50 years ago. Under Nigerian law oil companies are not obliged to pay compensation when spills are caused by sabotage.<sup>47</sup> On many occasions, Shell has hastily alleged sabotage as the cause of spillages, often without investigation or verification.<sup>48</sup> Even when investigation is undertaken, Shell has rarely made joint

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<sup>44</sup> Interview with Dinebari Kpalap, youth leader, Bodo community, April 2009.

<sup>45</sup> Articles 2,4, 5 of the UN Declaration on the Rights of Minorities; Articles 7,16,17 of ILO Convention No. 169; Articles 18,19 and 32 of the UN Declaration on the Rights of Indigenous Peoples.

<sup>46</sup> Principle 15 of the 1992 Rio Declaration.

<sup>47</sup> Human Rights Watch, *The Price of Oil*, op. cit.

<sup>48</sup> SPDC has stated in its comments on the draft text of this report: 'Deliberate damage to oil wells and pipelines caused by armed militant groups and criminal gangs, who tap into oil pipelines to steal crude oil, has become the leading cause of oil spills ... 85% of the volume of oil spilled in 2008 was due to sabotage of our facilities' – Mutiu Sunmonu, email communication with ECCR, op. cit. However, such assertions have been contested, for example in June 2009 by Amnesty International: 'The proportion of oil spills caused by sabotage, as opposed to corrosion and equipment failure, cannot be determined because the causes of oil spills in the Niger Delta have not been subject to any independent assessment or verification' – *Petroleum, Pollution and Poverty in the Niger Delta*, op. cit.

investigation team reports available to the public, and there have been allegations of corruption associated with the reports.<sup>49</sup>

For example, in the case of the Goi oil spill incident in Ogoni in August and September 2004, the company gave its standard response, alleging sabotage, while the spill remained for three months before any containment was undertaken. It took intervention of European Union ambassadors visiting the area in mid-October 2004 to have the spill dealt with.

Shell's response to oil spills smacks of disrespect for communities in distress, whose water and food sources may be polluted or destroyed by such incidents. On most occasions, community members allege that the cause is the age of Shell's pipelines, many of which are in urgent need of replacement.

Community members also report that many if not most spills are never properly cleaned up. So-called clean-ups are very often little more than cover-ups. Many of those employed on clean-up operations lack the requisite expertise for bio-remediation of a devastated environment. The standard exercise often involves a superficial process of scooping up the surface soil and covering the area with white sand transported from elsewhere. The scooped-up soil is either buried in pits or burnt, which generates other health concerns. Clean-up exercises carried out by Shell in Ogoni and other parts of the Niger Delta generally fall well below internationally accepted standards and are completely different from what the company does in other parts of the world.<sup>50</sup>

Sites polluted by oil spills are often abandoned and left to the mercy of natural recovery processes, which can take years. For example, Ejamaa-Ebubu was the site of Shell's first major oil spill blow-out in Nigeria (the exact date, between the late 1960s and 1970, is disputed). For almost 40 years a vast area of land has remained deforested and lost to the ravages of the spill.

Another troubling issue related to oil spills is Shell's payment of compensation to affected communities. Disputes over compensation payments have often ended up in the Nigerian courts and taken years to settle, by which time some of those involved may have died. In some cases, communities believe that Shell tricked them into going to court in the knowledge that they lacked the financial resources to support a lengthy legal process.<sup>51</sup> When not settled in the courts, the amount of money paid by Shell has often paled into insignificance compared with the losses of the victims of oil spills, although compensation is supposed to put someone back to the position they would have been in had the incident not occurred.

Compensation has again been an issue lacking in transparency in terms of the identity of the beneficiaries, amounts paid and how levels of payment are determined.

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<sup>49</sup> Joint investigation teams – usually comprising community representatives, the company and the Department of Petroleum Resources, with appropriate experts – are responsible for investigating the cause of oil spills and must agree a joint report; the oil companies finance such exercises, enabling them to largely control the process.

<sup>50</sup> See Steiner, *Double standards?*, op. cit.

<sup>51</sup> G.U. Ojo et al., *Ogoni Trials and Travails*, Lagos, Civil Liberties Organisation, 1996; Ken Saro-Wiwa, statement to Ogoni Civil Disturbances Tribunal, 1995, [www.ratical.org/corporations/KSWstmt.html](http://www.ratical.org/corporations/KSWstmt.html)

### ***'Community development', patronage, appeasement and conflict***

Shell has moved from one experiment to another in an attempt to inspire confidence in its community development projects. In 1997 it announced the renaming and upgrading of its community assistance projects to a full-fledged Community Development Programme. The latter was in turn reorganised in 2003 with the declared intent of empowering communities and building partnerships.

However, some years into the programme, there is little to celebrate. The programme demonstrates the usual lack of community consultation, top-down approach, failed projects, sporadic crises and questionably close ties to locations of company operations. Most projects appear to be less a response to priorities of communities than guided by the company's logic of providing access to locations and comfort for its staff.

An example of a conflict-ridden project was the Shell-sponsored road project in K-Dere community in 2000. This was opposed by community members on grounds that there had been inadequate consultation and the project was closely linked to Shell's facilities in the area. In the ensuing dispute, the Mobile Police Force became involved, who ended up shooting and killing a young community member, Barinaadaa Gbaraka, and burning several homes including the family home of MOSOP President Ledum Mitee.<sup>52</sup>

A Shell-commissioned assessment in 2001 acknowledged that less than a third of the company's community development projects had been successful.<sup>53</sup> Since then, little has changed. By 2004 Shell had entered into a new partnership with the United Nations Development Programme (UNDP) whereby the latter would undertake community development projects on the company's behalf.<sup>54</sup> But the record after five years has been dismal, virtually the only activity undertaken by the UNDP being the publication of the *Niger Delta Human Development Report*. Some communities in Ogoni have described Shell's development projects as effectively little more than platforms for recruiting or appeasing violent youths and local thugs, including pro-company contractors.<sup>55</sup>

Shell has at times awarded 'surveillance' and 'maintenance' contracts and stay-at-home payments to violent youths, thugs and cult members. These people have used their new found economic power to purchase ammunition with which – although unbidden by the company – to terrorise their communities.<sup>56</sup>

The case of Chief Kamanu of Gio community in Tai local government area, Rivers State, illustrates this point. During an interview with MOSOP, Chief Kamanu said that on 18 February 2005 he had gone to Shell's offices in Port Harcourt with a colleague to report an oil spill in his community. According to Chief Kamanu, hardly had he finished meeting with Shell official Engineer Paschal in the office when Paschal telephoned the Shell

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<sup>52</sup> MOSOP, *More than Rhetoric: A Look at Nigeria at the 66th Session of CERD*, 2006.

<sup>53</sup> SPDC, *Report of the Stakeholder Review of SPDC Community Development Projects Completed in the Year 2000, 2001*, cited in Legborsi Saro Pyagbara, *The Ogoni of Nigeria: Oil and Exploitation*, Minority Rights Group International, 2004.

<sup>54</sup> UNDP, *Bulletin*, 2006, [www.us.undp.org/pastbulletins/06%2027%2006.pdf](http://www.us.undp.org/pastbulletins/06%2027%2006.pdf)

<sup>55</sup> MOSOP interviews with community members.

<sup>56</sup> *Ibid.*

surveillance contractor in the area, Chief Monday Ngor. The latter was known locally for committing human rights abuses on behalf of the ruling People's Democratic Party.

Chief Kamanu stated that when they drove to inspect the site of the spill along with Engineer Paschal, they were met at the site by Chief Ngor and his band of thugs fully armed. According to Chief Kamanu, on arrival he attempted to take photographs of the spill, but on noticing this Paschal spoke with Ngor, who directed his thugs to give Kamanu a beating, alleging that he was trying to take pictures to embarrass Shell. Kamanu fell unconscious, only recovering later in a clinic where he had been rushed for treatment.<sup>57</sup>

Shell's latest version of this appeasement model is its 'Community And Shell Togetherness' (CAST) programme, which it advocates as a new form of enhanced community contracting. From all indications, at least in the Ogoni area, this programme follows the same pattern of recruitment of local thugs. Responding to a MOSOP press release, Shell Nigeria public affairs manager Precious Okolobo stated that the CAST initiative aims to work with communities especially with regard to surveillance. Ostensibly the initiative involves the use of community contractors who in turn employ community surveillance guards to watch over SPDC oil and gas facilities and, where necessary, alert the company and law enforcement agencies to threats of sabotage and theft, spills and illegal refineries. 'CAST surveillance is assisting to protect wellheads, manifolds and pipelines in the Niger Delta,' the statement asserted.<sup>58</sup>

In the Ogoni community of K-Dere, the youths who have been drawn into this programme are largely those known to have criminal backgrounds. Some have been declared wanted by the police. Yet these are the elements that Shell has recruited into the programme apparently to protect its facilities.

## Conclusions

The cumulative impact of the above factors has been the erosion of the trust that the Ogoni community originally gave as an investment of their own social capital in the operations of Shell. This has drastically reduced the legitimacy of Shell's operations in Ogoni eyes, resulting in the withdrawal of the community's social licence for the company to operate in their lands. The likelihood of Shell's losing its legal licence to operate in Ogoni as a result – on grounds of a 'total loss of confidence between Shell Petroleum and the Ogoni people', in the words of Nigeria's President Yar'Adua – was reported in mid-2008.<sup>59</sup>

From the onset, Shell's approach to community engagement has been, in the opinion of MOSOP and many community members, ad hoc, hollow and lacking in seriousness. This was an invitation to crisis. Initial mistakes during the exploratory phase of operations came to haunt the company later. Had Shell put in place a community engagement mechanism built on trust and mutual respect, conflicts arising in the early years would have been mediated rather than escalated.

<sup>57</sup> Interview with Chief Kamanu, 5 May 2009. On Monday Ngor, see also case study 3, page 42.

<sup>58</sup> 'Shell, MOSOP trade blame over renewed Ogoni violence', *Punch* (Nigeria), 20 February 2009, [www.punchontheweb.com](http://www.punchontheweb.com)

<sup>59</sup> 'Another oil firm to replace Shell in Ogoniland – Yar'Adua', *Punch* (Nigeria), 5 June 2008.

It can no longer be business-as-usual for Shell in Ogoni. But other companies still do business in Ogoni provided they adhere to appropriate standards of conduct. Social licence once acquired requires maintenance to avoid erosion. This involves navigation through relationship building and constant assessment on the part of the company, and the modification of practices where necessary to keep the licence at optimal level. In this regard, as in other matters, Shell failed in Ogoni.

## **Recommendations**

In view of Shell's loss of social licence in Ogoni, these recommendations can help the company avoid a similar future occurrence elsewhere.

1. Disengage from community development programmes and establish neutral mechanisms comprising community members of the highest reputation, in collaboration with communities at the appropriate level, to implement programmes according to community priorities.
2. Work with the Federal Government in setting aside a proportion of oil revenue to address community priorities.
3. Establish a mechanism for direct dialogue with communities where the company operates based on principle of respect, inclusion and informed consent; ensure that communities have good access to information relating to activities that affect them.
4. Overhaul SPDC's Community Relations Department; establish a culturally sensitive and conflict-sensitive approach to community relations; and elevate the department to a higher and more substantive role within the company, with more qualified and professional staff who are knowledgeable in managing community expectations and fears.
5. Stop using community development projects as channels of patronage, recruitment and appeasement of violent youths, thugs and community elites.
6. End the double standards employed in oil pollution clean-up exercises and apply international standards.
7. Voluntarily stop gas flaring in the Niger Delta.

## 2. Shell's Poor Stakeholder Engagement

***Patrick B. Ereba and Boniface B. Dumpe, Centre for Social and Corporate Responsibility***

*Introduction and background • Origin and development of the oil industry in Gbarain and the IOGP • The Environmental Impact Assessment process • EIA compliance and implementation failures • Participatory Rural Appraisal and community development • Conclusions • Recommendations*

### **Introduction and background**

Environmental Impact Assessment (EIA) and Participatory Rural Appraisal (PRA) are tools deployed prior to the implementation of major development projects. They incorporate stakeholder participation in the collection of critical social and environmental information and data. The common objective is to generate reliable indicators for planning towards mitigating disruptions to communal livelihood resources and subsistence, ensuring sustainable environmental management against adverse impacts, and meeting the human development needs of the local population.

Well-conducted EIA and PRA processes can facilitate project implementation by identifying and addressing potential technical problems and social conflict issues that could result in costly delays. The processes can also help to secure the support of vulnerable host communities through awareness of the inherent benefits of projects and mitigation of their negative impacts.

This case study reviews the application of EIA and PRA in the execution of the Integrated Oil and Gas Project (IOGP) by the Shell Petroleum Development Company of Nigeria (SPDC) in Gbarain and Ekpetiama clans, Bayelsa State.<sup>60</sup>

#### ***Gbarain oilfield***

The localities of the four Gbarain and Ekpetiama clans, situated in the Gbarain-Ekpetiama local government area of Bayelsa State and found along the Nun River, a tributary of the Niger, are not new on the map of SPDC. Gbarain oilfield was discovered in 1967 on swampland and covers an area of approximately 30 hectares that encompasses four clans: Gbarain, Epie, Atissa and Ekpetiama. Each clan is made up of several fishing and farming communities.

The area these communities occupy has a diverse ecology ranging from lowland tropical rainforest to wetland swamps characterised by natural vegetation rich in biodiversity and water bodies supplied with diverse aquatic resources. Several creeks, rivulets and rivers cross the landscape. Most of the land is prone to seasonal flooding as a result of overflowing waters from the lower Niger River. Some of the communities, especially in Ekpetiama and its farmlands, are totally submerged during the peak flooding season. Riverbank erosion is common along the Nun River and Taylor Creek.

<sup>60</sup> In the Nigerian context, a clan is an aggregation of autonomous communities subject to one traditional ruler; clan communities are mostly contiguous and share a common cultural and social affinity.

The high agricultural potential of the area is reflected in the perennial rich harvest in major crops such as cassava, cocoyam, plantain, banana, sugarcane, garden egg, yam and rice. The forest of the Gbarain oil field communities is a source of timber and provides opportunities for lumber activities. Non-timber forest products include raffia palm, snails, fruits, bamboo, rattan, and medicinal plants. Fishing and harvesting of shrimp and lobster in creeks, lakes and floodplains is a major livelihood source for Gbarain communities, especially during the flood season.

### **Origin and development of the oil industry in Gbarain and the IOGP**

According to Onosode, oil exploration in Nigeria dates to 1903 when the colonial government set up the Mineral Survey Corporation.<sup>61</sup> In 1907 the Nigerian Bitumen Corporation was formed and it drilled 15 shallow wells in the old Abeokuta province between 1908 and 1910, but no discoveries were made. In 1938 Shell D'Arcy was granted the whole country as a concession block, and between 1937 and 1939 it carried out preliminary subsurface geological investigations. After interruption during the Second World War, the first well (Imo-1) was drilled in 1951 without oil. In 1956 the first successful well, Oloibiri-1, was drilled, with production capacity of 4,000 barrels per day (b/d) reached in 1958.

Shell maintained oil production in Gbarain oil fields from 1967 onwards. In early 1990 the company, now operating as SPDC, made a major discovery of some 400 million barrels of oil and over half a trillion British cubic feet of gas in Gbarain (then in Rivers State, now in Bayelsa State), with potentially significantly larger volumes of oil present.<sup>62</sup> In April 1991 SPDC discovered additional reserves of 722 million barrels from two explorations and eight appraisal wells in the same area. Nigeria's Ministry of Petroleum Resources confirmed these discoveries in an official statement.

SPDC referred to these discoveries in 1990-1 as 'the biggest and largest find from any community throughout its operation in the West African sub-region'.<sup>63</sup> To extract, process and later export oil from the Gbarain deep oil field, the company constructed the Etelebou flow station in Ogboloma community.

The indigenous communities have reported that, as regional oil exploration and exploitation increased, the Federal Government of Nigeria ordered the acquisition of land through the 1978 Land Use Act. This took place without consultation or meaningful compensation. Crude oil from the region had been exported since at least 1972, so the four Gbarain and Ekpetiama clans have played host to Shell and SPDC for more than 35 years. But like many Niger Delta communities, the clans consider that they have nothing to show for the many years of oil production.

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<sup>61</sup> G.O. Onosode, 'Selected speeches and presentations 1995–2001', in B.A. Choker (ed.), *Environmental Issues and Challenges of the Niger Delta Perspectives from the Niger Delta Environmental Survey Process*, GBN Press, Lagos, 2003.

<sup>62</sup> Reported in the *Shell Bulletin*, August 1990.

<sup>63</sup> Quoted in T. Ebimo Dadiowej, 'Women, environmental impact assessment (EIA) and conflict issues in the Niger Delta: a case study of Gbarain oilfield communities in Bayelsa State', Centre for Social Science Research and Development Workshop on Gender, Politics and Power, Lagos, July 2003.

The people of the four Gbarain and Ekpetiama clans relied from the earliest times on the land and water for their social, economic, cultural and religious wellbeing. They lived as farmers, fishers and hunters, and in some cases as artisans. Very conscious of the importance of land and environment, the communities adopted a caring attitude towards the exploitation of forest and other natural resources. Any act that was destructive to the environment was discouraged. Today the average Gbarain and Ekpetiama community member knows that the availability of these resources must be sustained to guarantee access and benefits for present and future generations.

### ***The Integrated Oil and Gas Gathering Project (IOGP)***

The Gbarain-Ubie Integrated Oil and Gas Gathering Project (IOGP), currently SPDC's largest oil and gas project, covers 12 producing fields and 15 new fields. The project is an essential component of SPDC's growth, flares reduction and gas utilisation programmes.<sup>64</sup> <sup>65</sup> Project activities include dredging of waterways for marine transport and hydraulic sand-filling, bush site clearing for project facilities, land drilling for the laying of pipelines, cable networking, and construction of a central processing facility and field logistics base.

The IOGP has as its objectives the supply of 1,000 to 1,400 mmscf/d<sup>66</sup> of gas to a plant run by Nigerian Liquefied Natural Gas (NLNG); provision of a platform for oil growth via a liquid processing capacity of 120,000 b/d;<sup>67</sup> and the gathering and processing of up to 240 mmscf/d of associated gas in compliance with SPDC's flares reduction commitments.<sup>68</sup>

SPDC's IOGP and Eastern Gas Gathering System Phase 2 pipeline development (EGGS2) are aimed at guaranteeing the company's gas supply to NLNG. The EGGS2 40-inch diameter pipeline will transport gas from the Gbarain-Ubie processing facility to connect to EGGS1 at Soku, a distance of about 60 km, from where the gas will be transported to the export terminal on Bonny Island. The activities of the two projects will impact on two states and over 90 communities.

## **The Environmental Impact Assessment process**

Environmental Impact Assessment (EIA) can be defined as 'the systematic identification and evaluation of the potential impacts (effects) of proposed projects, plans, programmes, legislative action relative to the physico-chemical, biological, cultural, and socio-economic components of the total environment'.<sup>69</sup> Its primary purpose 'is to encourage the consideration of the environment in planning and decision making and to ultimately arrive at actions which are more environmentally compatible'.<sup>70</sup>

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<sup>64</sup> V. Dania (Manager, Gbarain-Ubie IOGP), 'Gbarain-Ubie Integrated Oil and Gas Project: opportunity for better community-government-SPDC partnership', welcome address, Gbarain-Ekpetiama GMOU signing ceremony, 2006.

<sup>65</sup> Shell Nigeria, 'Gas flare out', [www.shell.com/home/content/nigeria/about\\_shell/issues/gas\\_flaring/gasflare.html](http://www.shell.com/home/content/nigeria/about_shell/issues/gas_flaring/gasflare.html) [accessed June 2009].

<sup>66</sup> Million standard cubic feet per day.

<sup>67</sup> SPDC, 'Sustainable community development (SCD) strategy and implementation plan for the IOGP'.

<sup>68</sup> Associated gas is natural gas found dissolved in, or as a cap above, crude oil.

<sup>69</sup> M.C.K. Sridhar, 'Environmental Impact Assessment (human health effects)', National Workshop on Environmental Impact Assessment, Centre for Environmental Protection and National Resources, University of Ibadan, November 2001.

<sup>70</sup> Ibid.



Nigeria's EIA Decree No. 86 of 1992 was enacted as a response to the need to ascertain the environmental impact of any project embarked upon by either the private or the public sector.<sup>71</sup>

### ***SPDC's commitments and policies on EIA***

In his foreword to *Environmental Impact Assessment (EIA) Process: A Manual for EIA Execution in SPDC*, the former Managing Director of SPDC Ron Van den Berg wrote:

'SPDC must continue to work with external stakeholders to manage the impact of our operation on the environment in which we operate. If we don't get this process right, SPDC and its host communities can have no sustainable future. However, in the specific area of EIAs there have been a number of gaps in our approach to date. For example, up to now we have been stronger at describing the environment than at identifying ways to manage and optimize our impact on the natural environment and the people who inhabit it ... Perhaps more important still, our EIA process up till now has been very largely about the natural environment, much less about the human environment.'<sup>72</sup>

He continued:

'We are just starting an "Enhanced Social Programme" with our moves away from the conventional community assistance mentality towards more sustainable community development. The social impact of our operations – and the specialist area of health impact – need to get far more emphasis from now on in impact assessment and management ...

'[T]he impact on the communities where we operate is in many ways more critical to the success of a project than our impact on the natural environment ...

'[L]ine managers implementing engineering projects should feel a very personal responsibility for ensuring that their EIA teams carry out proper EIAs, and that projects are then managed according to the plans developed in the EIA during the entire life of the project. This is not a task that can be wholly delegated to a group of specialists – it is a task like any other as important to project success as optimizing commercial impact, and needs line commitment. And let's not forget, the task continues through the operating life of an asset.'<sup>73</sup>

SPDC policy requires an EIA study to be carried out for all categories of operations, irrespective of size. The operation could be exploration drilling, seismic survey, dredging, laying of flow lines, drainage construction, or any other activity with potential to impact on the natural and social environment. SPDC policy is here in line with Royal Dutch Shell policy and conforms to the Nigerian regulations regarding environmental management.<sup>74</sup>

### ***Legal and regulatory framework***

Applicable legislation and regulatory frameworks guiding the EIA process in Nigeria include the 1992 EIA Decree and other Federal Ministry of Environment regulations,

<sup>71</sup> Environmental Impact Assessment Decree No. 86 of 1992, Laws of the Federation of Nigeria, [www.nigeria-law.org](http://www.nigeria-law.org)

<sup>72</sup> SPDC, *Environmental Impact Assessment (EIA) Process: A Manual for EIA Execution in SPDC*, December 2000.

<sup>73</sup> Ibid.

<sup>74</sup> SPDC, *Environmental Impact Assessment (EIA) Process: Stakeholders Guide*, 2003.

Department of Petroleum Resources (DPR) requirements, State Ministry of Environment/ Environmental Protection Agency standards, and applicable international standards.

EIA Decree No. 86 mandates the ministry to regulate EIA in Nigeria and sets out procedures and methods enabling the prior consideration of EIA for certain public or private projects. The decree specifically requires an EIA for any project that involves seismic exploration drilling operations (onshore, near-shore and offshore), construction of crude oil production, tank-farm and terminal facilities, laying of crude oil and gas delivery lines and of flow lines and pipelines longer than 50 km, and hydrocarbon processing gas plant.

The decree also requires EIA for such non-oil and gas activities as land reclamation, dredging and construction (e.g. for housing estates, sewage systems, landfill and road construction). All major upgrades of facilities must also be subjected to the EIA process. However, the final decision on whether a project requires an EIA rests with the regulators, based on the proposal submitted to them by project owners. EIA guidelines published in 1995 are intended to assist in the proper and detailed execution of EIA studies for all categories of industries including oil and gas projects.

Nigeria's Department of Petroleum Resources (DPR) is empowered by section 191 of the NNPC Act of 1979 to supervise the entire operations of the oil industry. The Act empowers the DPR to ensure that oil operators do not degrade the environment, to enforce the clean-up and restoration of oil spills and impacted environments, and to control new projects that may adversely impact the environment.

The DPR has the power to issue licences as well as to establish environmental guidelines, standards and procedures as required by the Petroleum Act of 1969.

The DPR's regulations require all holders of petroleum exploration, prospecting, exploitation, refining, transportation and marketing licences to take all practicable precautions to prevent pollution, and to cause as little damage as possible to the environment in their areas of operation. The use of EIA as an environmental management tool is mandatory, reinforced in Nigeria's Environmental Guidelines and Standards for the Petroleum Industry of 2002.

Apart from the Federal Ministry and DPR, states also have power under the constitution to make laws with respect to the environment. It is therefore necessary to consult with the Environmental Protection Agency in states that would be impacted during a project life cycle, especially during the scoping and review stages of the EIA process.

Nigeria is signatory to several applicable international agreements and conventions. Royal Dutch Shell has committed itself to international standards of EIA implementation. And SPDC has policies governing environmental assessment, community development, and health, safety and environment (HSE). Thus a more than sufficient established framework of laws, regulations, agreements and standards exists to govern the conduct of EIAs. In the case of SPDC's Niger Delta operations, the critical issue has been failures of compliance and implementation.

## **EIA compliance and implementation failures**

### ***Exclusion of public scrutiny***

As part of preliminary activity towards development of the IOGP, in 2001-2 SPDC commissioned an EIA for drilling two new appraisal wells near the site of the central processing facility in Gbaraintoru in Ekpetiama clan. This facility was to raise production in the Gbarain field from 17,000 to 40,000 b/d.<sup>75</sup> The Centre for Social and Corporate Responsibility (CSCR) has established that this EIA process did not provide for public scrutiny. According to the United Nations Environment Programme (UNEP), 'public involvement including measures related to availability of information and opportunity to comment on the content of EIA reports and documentation' is one of the recognised approaches for making the EIA process effective.<sup>76</sup>

Local community representatives were concerned that copies of the EIA report were not publicly displayed in Yenegoa, the Bayelsa State capital, or Okolobiri, headquarters of the local government area, as statutorily required. Nigeria's regulatory framework provides for a 21-day public display of the EIA report for stakeholders to raise claims and objections regarding its content.<sup>77</sup>

### ***Inaccurate scope and content***

In the same instance stakeholder communities have informed CSCR that they consider the EIA does not accurately reflect the risks created by the new drilling and fails to consider one community, Tombia, that falls within the area and is likely to be affected. They claim that the EIA report does not consider potential social and health impacts, as required by Nigerian law, or ecologically sensitive areas.

The access road to the central processing facility site was cut through community forest rich in biodiversity and containing sacred sites, breeding grounds for aquatic species and fishing ponds. The gas pipelines to the central processing facility are routed through community settlements including the Ogboloma cemetery grounds. If the EIA had been carried out properly with stakeholder engagement, the access road and pipelines would have been re-routed to minimise impacts on critical community resources and revered sites.

Communities have discovered what they describe as 'desktop sections' in the EIA report that do not reflect the reality on the ground. For example, the Gbarain environment is one of freshwater swamp, but sections of the report appear to have been copied verbatim from a saltwater case.

### ***Communities' rejection and dubious claim of representation***

In 2003 SPDC commenced construction of the Gbarain-Ubie IOGP and undertook another EIA. Stakeholder communities vehemently rejected the report from the new EIA, threatening to stop the project because, they said, the process had excluded all

<sup>75</sup> SPDC, 'Environmental Impact Assessment: Gbarain Phase I field development plan (well drilling campaign)'.

<sup>76</sup> H. Abaza, R. Bisset and B. Sadler, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach*, UNEP, 2004.

<sup>77</sup> SPDC has stated in its comments on the draft text of this report: 'Environmental Impact Assessments (EIAs) have been – and are being – completed in compliance with regulations and in accordance with SPDC's own standards. This includes participation by, and consultation with, affected communities' – Mutiu Sunmonu, email communication with ECCR, op. cit. However, no specific response was given by SPDC to this reported failure to comply with statutory requirements.

communities within the project's scope of impact. SPDC had even included in the EIA report the name of one Gbarain community member and presented him as having represented his community, when it would have known that he had not participated.

The communities demanded a new EIA assessment with local stakeholder involvement and that the company negotiate a Memorandum of Understanding (MOU) with them.

### ***Project site preparation before EIA completion***

In 2005 SPDC commenced IOGP location site preparation despite the communities' request for a proper EIA process. The communities protested and prevented the company from performing the task. SPDC reported this to the then Governor of the state, Chief Diepreye Alamieseye, and sought his assistance. In July 2005 the Governor invited community stakeholders of the IOGP to Bayelsa State Government House for a meeting, where he informed the leaders of the Gbarain and Ekpetiama clans that work on the IOGP would commence and urged them to cease agitation for a participatory EIA or an MOU.

SPDC's apparent resort to government coercion and suppression of legitimate community demands for a proper EIA contravenes Shell's avowed core value of 'respect for people'.<sup>78</sup> The reasonable expectation for a project of such magnitude with huge potential to impact on livelihoods and environmental sustainability is that proper stakeholder consultation would be conducted from the outset. Without a participatory EIA, the IOGP is in violation of Nigeria's EIA Decree.

### ***Rush for IOGP second phase***

In the latter part of 2007 SPDC invited stakeholder communities to a hotel in Yenagoa for a scoping workshop on the second phase EIA for the IOGP. When the company made its intention known about the proposed second phase EIA, there was pandemonium in the hall, according to community representatives. Those present unanimously voiced their objections and at once appointed a representative from among them, the paramount ruler of Nedugo community, Chief Ugwuh Boudeigh, who made their position clear to the company.

The representatives informed SPDC that they had yet to see the benefits of the first phase of the project, for which they had signed a Global Memorandum of Understanding (GMOU) with the company, and cautioned against the rush for the second phase. SPDC had signed a GMOU with stakeholder communities in the Gbarain-Ekpetiama clans in 2006 as part of its community engagement programme for delivery of development projects in host communities. The Yenagoa meeting ended in deadlock.

Following this, the company reportedly began to access individual communities within the Gbarain-Ekpetiama GMOU cluster, such as Obunagha and Polaku, seeking to conduct the second phase EIA in defiance of the general opposition. However, this strategy of divide-and-rule did not always succeed. In Obunagha community, for example, company officials were driven away when they came for the exercise.

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<sup>78</sup> Royal Dutch Shell, General Business Principles, [www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/sGBP/sGBP\\_30032008.html](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/sGBP/sGBP_30032008.html) [accessed June 2009] and Appendix II of this report.

### ***Laying of pipelines without EIAs***

According to Nigeria's EIA Decree of 1992, each major project activity requires a separate EIA with local stakeholder involvement. SPDC has commenced laying pipelines to supply and evacuate oil and gas from the IOGP without a separate EIA as required by law.<sup>79</sup> For eleven days in February 2009, hundreds of women of Ogboloma community prevented the company from working on the proposed pipeline route through the community because of what they called the insensitivity of the company. The women stated that they objected to the gas and oil pipeline 'crossing over our river' because of hazards associated with such pipelines within the community. The pipeline is also routed through the cemetery grounds.

Resettlement and compensation of all families in Ogboloma whose homes and property stand in the way mapped out for the pipeline have not, at the time of writing, been fully addressed. The new site acquired and sand-filled by SPDC is still very close to the pipeline route. The process employed to determine compensation rates for relocation lacked transparency. The beneficiaries were denied the freedom to choose their preferred new location, and the houses depend on public power.<sup>80</sup>

In the case of Mr Godspower Opute – a retired warrant officer discharged from the Nigerian Navy whose right leg was amputated due to an accident – and his wife Mrs Erebodise Opute, their home suffered serious cracks resulting from the use of heavy construction machinery in the vicinity and was mapped for demolition to give way to the pipeline. Mr Opute at first refused to accept the offered amount of Naira 12 million (approximately US \$80,000) for resettlement and demanded an independent re-evaluation of his ancestral property – including a five-bedroom bungalow, land and the grave of his late brother, which he had to relocate according to traditional rites.

SPDC subsequently barred Mr Opute from attending further meetings of property owners due for compensation and resettlement. He petitioned the Bayelsa State House of Assembly, which invited the company to respond. SPDC's response was that rather than negotiate with Mr Opute it would lay the pipelines and allow the house to remain standing in its present location, in spite of the danger to it. In the event, Mr Opute confirmed to CSCR in September 2009 he had accepted SPDC's payment of about Naira 12 million for resettlement because his demand for independent re-evaluation of his ancestral property had been ignored.

SPDC evidently has not learned from past exercises in poor stakeholder engagement in the conduct of the EIA process. Improving EIA performance would help build stakeholder confidence and defuse potential conflicts arising from community agitation. It appears that the company still excludes legitimate community participation in contravention of legal and regulatory provisions.

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<sup>79</sup> SPDC has stated in its comments on the draft text of this report that 'Pipelines were included in the EIA scope' – Mutiu Sunmonu, email communication with ECCR, op. cit.. However, as stated above, the pipeline should have been covered by a separate EIA rather than being bulked into the EIA for the Gbarain-Ubie IOGP.

<sup>80</sup> SPDC has stated in its comments on the draft text of this report: 'We were pleased to take ECCR advice and are successfully relocating families from the pipeline route at Ogboloma. Fifteen families have already moved to new houses constructed by them with funding from SPDC at a location acquired, prepared and provided with water, electricity and other amenities by SPDC'- *ibid*.

## **Participatory Rural Appraisal and community development**

Participatory Rural Appraisal (PRA) is an approach to development centred on the incorporation of the knowledge, experience and opinions of local people (urban as well as rural) in planning and implementation. Owing much to the work of Robert Chambers at the Institute of Development Studies in the UK, PRA is recognised by the UN Food and Agricultural Organisation, the World Bank and others.

PRA's value lies in the adoption of participatory methods enabling local communities to make their own appraisal, analysis and plans. PRA uses group animation and exercises to facilitate information sharing and collective analysis and action. The involvement of local people with knowledge of local conditions, traditions and social structure is essential.

In recent years SPDC has adopted PRA as the basis for its approach to 'sustainable community development' in the Niger Delta,<sup>81</sup> but this objective has been largely negated by poor implementation.

### ***Defective implementation***

SPDC's IOGP operations began in earnest in 2004. In association with its oil and gas operations, and to address community concerns and expectations, it has undertaken PRA exercises to identify developmental priorities. PRA discussions in the villages are supposed to be the basis for decision-making on community development. An effective PRA process would be a credible way of determining programmes and projects with good potential to meet communities' development priorities. The communities would be involved in identifying needs and in ongoing project implementation.

However, SPDC's PRAs have lacked several critical elements. To begin with, information on the exercise is not well disseminated to ensure broad participation. Some communities claim they have never been involved in the process. Others state that SPDC's staff have not exercised the patience and time required to carry out a meaningful PRA.

CSCR learned from community members that SPDC's community development officers alleged that under pressure to produce PRAs they did not have time to announce an upcoming visit to far-away communities. In some cases officers spent only a few days in a village, which was often insufficient to discover the real needs and capacities of a community. SPDC staff have sometimes reportedly offered a pre-determined list of projects from which communities can choose rather than facilitated an appraisal of underlying needs and priorities. This 'shopping list' approach feeds into allegations of deals between SPDC officers and contractors. In other cases staff simply left questionnaires in stakeholder communities for community members to complete.

Communities also report that SPDC's PRAs have sometimes been hijacked by elites who reside in urban areas but originate from the communities. Such elites may insist on the company providing similar services in the rural area to those they enjoy in the cities, such as tennis courts. This leads to conflict with the rest of the community, and in some cases development projects have been destroyed as a result, such as in Nembe. The exclusion of some communities from the scope of projects also occurs.

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<sup>81</sup> On SPDC's 'sustainable community development' programme, see [www.shell.com/home/content/nigeria](http://www.shell.com/home/content/nigeria) [accessed October 2009].

In cases where SPDC has commissioned independent non-governmental organisations to undertake PRAs on its behalf, however, the process has been more usefully focused on capacity building and providing vocational training as opposed to infrastructure.

### ***Defective delivery of community development***

Inadequate PRAs have led inevitably to weak delivery of community development projects, and to agitation over the choice of projects. Selection of project type and location is undertaken by SPDC's community development officers and community affairs co-ordinators based on a combination of the needs expressed in the community development plan and the 'business case' – that is, the risk of community interruption of company operations and the local production volume involved. Allocation and selection of projects are sometimes made on the spot, communities say, not based on a needs assessment at all, especially when SPDC faces a threat of work stoppage. Promises are made without verification of the capacity of the community to handle a project and without a feasibility study to ensure sustainability.

Development projects are often divided into components without a guarantee of follow-up and completion. For example, an electrification project requires three sub-projects for completion: erection of poles, wiring and installation. The rig team may only fund the poles without co-ordinating with the pipeline team or the flow station team as to whether they can provide the wires and transformers. Such poor co-ordination leads communities to believe that SPDC wants only to buy time to meet its production targets uninterrupted.

The Gbarain IOGP impacts negatively on numerous communities in the Gbarain-Ekpetiama area of Bayelsa State. An Environmental, Social, and Health Impact Assessment (ESHIA) conducted and published by SPDC in 2001/2 identified a range of negative effects, such as pressure on existing economic and social infrastructure, a decline in incomes from traditional fishing, an increase in water turbidity (especially through dredging of the Taylor Creek for appraisal well drilling and central processing facility construction), and displacements and distortions in the local economy and social life.<sup>82</sup> An increase in the prevalence of sexually transmitted infections especially HIV/AIDS is expected due to the presence of thousands of contractor staff employed and camped without spouses or partners.

Among mitigation measures adopted and negotiated with communities through the PRA process, SPDC's 'sustainable community development' programme is intended to involve partnerships with local community-based organisations and higher-capacity local and national NGOs. SPDC and stakeholder communities reached an understanding that IOGP construction work and agreed community development projects would be undertaken simultaneously. However, while the IOGP has attained more than 55 per cent completion according to SPDC,<sup>83</sup> most of the community development projects have stalled, showing little or no progress.

Despite SPDC's claims that its 'comprehensive community development programme ... is providing social infrastructure, promoting public health and connecting communities

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<sup>82</sup> As described in SPDC, *Sustainable Community Development Strategy and Implementation Plan: Gbarain & EGGS/2 Project*.

<sup>83</sup> SPDC presentation to CSCR, August 2008.

to electricity for the first time',<sup>84</sup> some communities have informed CSCR that their development projects have not been awarded and are yet to commence. According to reports, SPDC has complained of lack of funds to execute projects, despite the fact that the IOGP development has not been delayed and therefore is presumably adequately funded. Communities are also extremely unhappy that the company promised to address abandoned 'legacy projects' of previous MOUs in the Gbarain-Ekpetiama clans yet has not discussed this further with them.

## Conclusions

SPDC states in its *Sustainable Community Development and Implementation Plan*:

'The Gbarain-Ubie IOGP presents an opportunity to resolve the past issues and lay the foundation for sustainable mutual benefits to SPDC and the communities in the project area. Indeed, if managed well, the Integrated Oil and Gas Project could prove to be a new chapter in SPDC's relationship with the Gbarain-Ekpetiama communities. As the highest investment ever to be made in the region, it could represent a new era of positive stakeholder engagement, community development and standards-based operations. With such improved relationships, the company is more likely to gain community support for this and other activities, as well as the favor of NGOs and stakeholders.'

These are encouraging words, but SPDC's handling thus far of the IOGP is continuing a history of poor stakeholder engagement and a lack of transparency. A continuing failure to dialogue with local communities and to address their critical needs will increase the risk of SPDC further losing support for its operations and its social licence to operate. Concerns are particularly acute because of the potential danger of the high pressure gas pipeline linking SPDC's IOGP sites now being laid through living community settlements in Gbarain-Ekpetiama.

To succeed in its relationships with Niger Delta communities, SPDC needs to undertake a very different form of engagement to what has been practised in the past. Indications of how this can be done are given below.

## Recommendations

1. Ensure transparent and credible public participation in the EIA process. This should include informing local communities about the carrying out of EIA scoping and making available the scoping report for review and comment by communities before forwarding it to the government supervising agency. The process should ensure that each oil operation has the consent of those who will suffer its negative consequences.
2. Properly adjust the EIA process to the realities of the particular environment without compromising its integrity. The process should be interactive, incorporating lessons learned throughout the project proposal's life cycle.

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<sup>84</sup> From SPDC comments on the draft text of this report: Mutiu Sunmonu, email communication with ECCR, op. cit.



3. Ensure that competent knowledge of ecologically sensitive sites is taken into consideration in the EIA process.
4. Provide in the EIA process appropriate opportunities for communities to share their local and traditional environmental knowledge and to address their concerns.
5. Make effective use of credible and neutral civil society organisations, not necessarily SPDC-funded NGOs, in the EIA process.
6. Operate with transparency and allow independent monitoring of activities. Support and arrange independently funded verification, by national and international NGOs and other appropriate bodies, of company compliance with international human rights and environmental standards.
7. Conduct an environmental audit of impacted operational locations to ascertain programmes required to restore and rehabilitate the environment.
8. Operate in the Niger Delta to internationally recognised and practised environmental standards, fully complying with all legislation in force in Nigeria or international standards if higher.
9. Ensure that 'sustainable community development' projects have a bottom-up community-led approach, with support from the top.
10. Cease to resort to government intervention to avoid compliance with legal and regulatory requirements for legitimate stakeholder participation.

### 3. Three Challenges Facing Shell in the Niger Delta

#### *Stakeholder Democracy Network*

*Introduction and background • Security-focused surveillance contracts • Tolerance of corruption regarding oil spills • Gas flaring • Conclusions • Recommendations*

#### **Introduction and background**

Since the end of military rule in Nigeria in 1999 the Niger Delta has seen major political and social changes. Non-violent protests led by the Ogoni have been superseded by increasing militancy, politically sponsored violence and crime. Oil company activities, on which Nigeria depends for most of its foreign exchange, have become the frontline of the region's frustration and anger.

The impact on oil production has been significant. Output in the Delta was reported by Shell Petroleum Development Company of Nigeria (SPDC) in May 2008 as showing a two-thirds drop in production.<sup>85</sup> While Nigeria is capable of producing 3.2 million bpd according to official estimates, and its OPEC quota is 2.4 million bpd, it has been producing approximately 2.1 to 2.2 million bpd at most in the period under civilian rule. About half the total lost barrels are operated by SPDC.<sup>86</sup>

A conflict assessment that SPDC commissioned in 2003 warned that the company would have difficulty operating within parent company Royal Dutch Shell's business principles by 2008 unless major changes in strategy, policy and practices were made.<sup>87,88</sup> From the evidence presented below, it appears that SPDC has made only limited progress in response to these warnings.<sup>89</sup>

Neither Shell nor any other company can be held responsible for all the Niger Delta's problems. But every major operator present has areas of responsibility and a contribution to make. Shell as the operator of SPDC, Nigeria's largest private sector oil and gas company, has a particular duty to address a range of impacts in which it has played a central part.

<sup>85</sup> 'Shell's crude oil production drops to 336,000 bpd', *Punch* (Nigeria), 11 May 2008.

<sup>86</sup> The other major international oil companies present in the Delta are Agip (Italy), Chevron (US), ExxonMobil (US), Total (France).

<sup>87</sup> WAC Global Services, *Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report – Working Paper for SPDC*, internal report, 2003.

<sup>88</sup> Royal Dutch Shell, *General Business Principles*, op. cit.

<sup>89</sup> An ECCR Board member who visited the Delta in 2004 found that only one out of 12 senior SPDC managers he spoke with had read the WAC report, op. cit.

### ***Focus of this study***

This case study highlights three key challenges that SPDC faces in the Niger Delta and what the company needs to do to address its moral obligations to local stakeholders in these areas:

- Reliance on security-focused surveillance contracts.
- Tolerance of corruption regarding oil spills.
- Failure to end gas flaring.

After considering these problems – which all stem from the dominance of short-term exploration and production interests within SPDC’s company culture – we consider potential solutions.

### ***Company-led community development***

Although not examined in detail in this case study,<sup>90</sup> SPDC’s unsuccessful approach to community development in the Niger Delta has compounded frustrations against the company and undermined the stability of its operating environment. SPDC as the largest oil operator onshore in Nigeria has had the largest number of community projects, with annual spending in recent years ranging between \$25 million and \$57 million.<sup>91</sup> Examples of its poorly executed and unsustainable development projects abound. The Shell Nigeria website reported in 2008 that 581 community projects were ‘stalled’ in 2005, of which 82 were completed the following year.<sup>92</sup> There has been little specific reporting of these projects since. Failed development projects have lost SPDC public trust to a huge extent.

### **Security-focused surveillance contracts**

In theory, SPDC and other Shell companies operating in Nigeria maintain security in line with Royal Dutch Shell’s General Business Principles. In practice, disproportionate use of force by state security operatives and those locally who believe they are paid to protect SPDC’s assets remains a major destabilising factor.

SPDC commonly maintains short-term operational functions through a loose network of local power-brokers, ‘strongmen’ and those who would pose most risk were they not co-opted by the company in the form of surveillance contracts. The rise of instability in the Delta has increased the volume and perceived need for such contracts. However, in the medium and longer term these relationships have damaged SPDC’s credibility and operational security.

Surveillance contracts appear nominally to be a passive observation system whereby contractors are paid to report to SPDC problems such as oil spillages or other disruptions. In effect, SPDC pays local men to watch over stretches of oil pipeline. The contracts are frequently held by individuals, through a company name, and it appears routine for contracts to be made with powerful actors in communities, including political office holders such as local government chairmen. Such people often secure contracts because of their overbearing influence on security and local patronage.

<sup>90</sup> On community development, see other case studies in this report, especially case study 5.

<sup>91</sup> Shell Nigeria, *The People and the Environment Report*, published annually, [www.shell.com](http://www.shell.com)

<sup>92</sup> [www.shell.com/nigeria](http://www.shell.com/nigeria) [accessed 2008; the statistics are no longer published on the Shell Nigeria website].

There is little or no transparency or accountability involved. SPDC has classified these arrangements as falling outside its formal security system, distancing implementation from Shell's guiding security principles, which include championing the Voluntary Principles on Security and Human Rights.<sup>93</sup> It is inconceivable that some of the incidents that occur – and the appointment of some contractors – would not face review and sanctions if adequate security practices and oversight were in place.

SPDC states that it has applied the Voluntary Principles through its NGO-run security and human rights training programme for police guarding its installations and for district security supervisors, with more than 200 trained. It also states that its human rights and conflict resolution training programme for staff who work regularly with communities, run by staff trained by the Danish Institute for Human Rights and supported by a Nigerian NGO, has trained more than 1,500 staff and contractor staff in the last three years.<sup>94</sup> Such efforts, commendable as they are, have so far proved inadequate.

Among other examples of the risk that can flow from association with local 'strongmen' is Human Rights Watch's documentation of a brutal attack ahead of the 2003 general elections by Monday Ngor, a People's Democratic Party (PDP) leader in Tai local government area (LGA), Rivers State.<sup>95</sup> Ngor held SPDC surveillance contracts long after this incident was reported. Other reports linked him to two other serious assaults in relation to his surveillance of the limited oil operations in the area.<sup>96</sup> In the same 2003 election cycle an LGA chairman who by local accounts had a surveillance contract was witnessed shooting, wounding and reportedly killing bystanders as he fled the scene of a political gathering.

Allegations of similarly shady contracts have been made on numerous occasions, in many cases indicating that contracts are awarded by SPDC subcontractors, which obscures the paper trail and allows SPDC to distance itself from responsibility. Occasionally information about such 'backdoor' payments leaks into the public domain, such as the inflated contract for leasing houseboats from a company controlled by former Delta State governor James Ibori, cited in the Federal Government case against him for corruption.<sup>97</sup>

Leaders of armed groups in the Niger Delta have held contracts that obscure the channelling of protection money and bribes. Examples from Rivers State include Soboma George in the Corthorn Channel, Ateke Tom in Wakerikese, and Prince Igodo in Tombia.<sup>98</sup>

## **Tolerance of corruption regarding oil spills**

In theory, SPDC operates a network of modern pipelines and facilities, and oil spills are dealt with promptly by specialist teams equipped with appropriate equipment. The reality in the Niger Delta is that, while SPDC has made some progress in pipeline replacement,

<sup>93</sup> [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org): see also Shell's own security standard addressing human rights, [www.shell.com/home/content/responsible\\_energy/working\\_safely/security\\_and\\_human\\_rights/security\\_human\\_rights\\_02042008.html](http://www.shell.com/home/content/responsible_energy/working_safely/security_and_human_rights/security_human_rights_02042008.html) [accessed June 2009].

<sup>94</sup> Comments from Shell personnel on an earlier draft of this case study, October 2008.

<sup>95</sup> [www.hrw.org/repots/2003/nigeria0403/nigeria0403.pdf](http://www.hrw.org/repots/2003/nigeria0403/nigeria0403.pdf)

<sup>96</sup> See L. Ganago, 'Nigeria in the valley of destiny', 9 April 2003, <http://nigeriaworld.com/articles/2003/apr/090.html>, and case study 1, pages 25-6, in this report.

<sup>97</sup> 'Governor "hid stolen £20m" in UK banks', *Sunday Times*, 17 November 2007, [www.timesonline.co.uk](http://www.timesonline.co.uk)

<sup>98</sup> See also 'Shell uses Nigerian companies linked to rebels', *Financial Times*, 26 April 2006.

much oil still flows through pipes up to 40 years old.<sup>99</sup> Oil spills in the Delta have been estimated as equivalent in volume to the Exxon Valdece disaster every year.<sup>100</sup>

It is common to delay inspecting oil spills for 24 hours, allowing much of the pollution to disperse and reducing the size of spill reported. The response to spills is usually further delayed by days, weeks or even months. Not only SPDC but all the oil companies in Nigeria have become embroiled in a policy breakdown that is exploited by corrupt actors inside and outside the companies. But this does not excuse SPDC for failing to uphold its environmental responsibilities.

Royal Dutch Shell's annual People and the Environment reports have been upbeat about progress made in improving environmental performance.<sup>101</sup> Yet unacceptable levels of pollution continue. The company has recently described a leap in oil pollution that calls into question whether production from areas of chronic violence can be defended.<sup>102</sup> Operations that undermine traditional livelihoods will become increasingly vulnerable.

Oil spills have become an opportunity for exploitation by unscrupulous actors. Incidents often involve a company staff member, a contractor and proxies in the community who provide access to the spill, personal security and a cover for delays that result in clean-ups being hugely expensive, poorly conducted or often not undertaken at all. According to Nigeria's Centre for Environment, Human Rights and Development (CEHRD), contractors often just transport topsoil from elsewhere to mask contaminated sites.<sup>103</sup>

Because of the breakdown of trust, communities often refuse entry to SPDC personnel and subcontractors sent to assess oil spills. This leads to further delays, worsening pollution and bigger eventual contracts for the subcontractors and their sponsors. Community members with vested interests may take advantage of the situation by claiming that spills resulting from bunkering and failed surveillance are the result of a pipeline fault. On occasions, individuals identified as responsible for damaging pipelines are said to have become directly involved with clean-up or surveillance contracts.

Community tensions often arise over compensation paid to local people whose land and fishing grounds have been affected by oil spills. Such tensions were one of the main factors behind the infamous massacre in Odioma, Bayelsa State, in February 2005.<sup>104</sup>

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<sup>99</sup> On the age of the pipes, see e.g. 'Dispute over blame for Shell oil spill', *Ethical Corporation*, 30 June 2004, [www.ethicalcorp.com](http://www.ethicalcorp.com); and 'Shell, clean up your mess in Nigeria', Friends of the Earth Netherlands, [www.milieudefensie.nl/globalisering/doemee/earthalarm/ea109\\_engels\\_shell](http://www.milieudefensie.nl/globalisering/doemee/earthalarm/ea109_engels_shell)

<sup>100</sup> Jonathan Brown, 'Niger Delta bears brunt after 50 years of oil spills', *Independent*, 26 October 2006; also WWF-UK and CEESP-IUCN Commission on Environmental, Economic and Social Policy, op. cit.

<sup>101</sup> See e.g. *People and the Environment Report 2006*, [www.shell.com/static/nigeria/downloads/pdfs/2006\\_shell\\_nigeria\\_report.pdf](http://www.shell.com/static/nigeria/downloads/pdfs/2006_shell_nigeria_report.pdf) [accessed June 2009].

<sup>102</sup> '[I]n SPDC operations ... [the] total volume of oil spilled [was] 18,500 barrels compared with 12,600 barrels the year before' – Shell Companies in Nigeria, 'Environmental performance', *Shell in Nigeria Briefing Notes*, 2008.

<sup>103</sup> CEHRD, *Persistent oil spillage at Bodo Creek*, October 2008, [www.cehrd.org](http://www.cehrd.org)

<sup>104</sup> See Amnesty International, *Nigeria Ten Years On: Injustice and violence haunt the oil Delta*, 2005.

### **Events along the Bomu-Bonny pipeline**

An example of how SPDC has handled production maintenance in relation to oil spills and surveillance contracts was played out along the Bomu-Bonny pipeline over six months in 2007. The pipeline, in Ogoni, runs from SPDC's Rivers State operations to feed the Bonny Island oil shipping terminal. In 2007 local youths, angered at an apparent disagreement with SPDC staff over clean-up contracts, used a wrench to close the pipeline, reducing the oil flow by about 200,000 barrels.

The pipeline was also vandalised at six points in Gokana, Ogoni, and set on fire in July 2007. It took SPDC three months to put out the fires, but the company continued to pump 180,000 barrels daily through the pipeline. A spokesperson commented to Reuters: 'Production has been continuing, but a little bit of oil has been pouring out from the six holes that have been drilled in the pipeline and burning off.'<sup>105</sup>

The vandals who damaged the pipeline were detained by the local community and handed over to the police. Despite vigorous follow-up by community leaders and MOSOP, neither SPDC nor any government body pressed charges, and they were released.

Two youths protesting at the activities of SPDC at the Ebulu flow station in Eleme, Ogoni, were shot by members of the military Joint Task Force (Warri Brigade) whose presence had been requested by SPDC to secure its work. And another oil well fire that burnt for over a month in the Yorla field in Ogoni before being extinguished was the third such in Ogoni in three years requiring the intervention of international well disaster experts Boots & Coots Inc.

### **Systemic problem**

Despite Shell's year-on-year claims that progress is being made, symptoms of a systemic problem remain evident:

- continuing use of oil pipelines approaching 40 years old;
- production so tightly stretched that unacceptable risks are taken to maintain output;
- spill rates that would be totally unacceptable in any other Shell operation anywhere else in the world;<sup>106</sup>
- spill responses dominated by subcontractor exploitation and mistrust.

The failure of SPDC – as of all international oil companies operating in Nigeria – to deal with such problems over the past decade constitutes a key area of tension with local communities and a focus for potential litigation by community and civil society groups. SPDC's share of responsibility is in direct proportion to its once unquestioned leadership in Nigeria's oil and gas sector.

### **Gas flaring**

Shell Nigeria's *People and the Environment Report 2006* stated: 'SPDC intends to shut in production from any fields where there is no prospect of a solution for gathering the associated gas by 2009.'<sup>107</sup>

<sup>105</sup> Reuters, 'Shell pipeline on fire in Nigeria after protests', 17 July 2007, [www.reuters.com](http://www.reuters.com)

<sup>106</sup> For SPDC's comments on the disputed causes of oil spills, see above, footnote 48.

<sup>107</sup> *Shell Nigeria Annual Report 2006: People and the Environment*, 2007, p. 13; associated gas is natural gas co-present with crude oil in the same reservoir.

The Nigerian government's Department of Petroleum Resources (DPR) stated in 2007 that about 80 per cent of gas associated with the extraction of crude oil was being flared, and that this had not changed significantly for two decades.<sup>108</sup> Flaring regained prominence as all the oil companies failed to meet a Federal Government deadline to end flaring by 1 January 2008. This date was itself an extension of the 2004 deadline and came when massive gas flaring by oil operators stood in stark contrast to the companies' claims to share concerns about climate change. In the Niger Delta, gas flares serve as a daily reminder to communities of Shell's apparent valuing of production above environmental and public health concerns.

### ***Impacts of flaring***

Nigeria is the world's second largest gas flarer after Russia. The practice is commonly described, including originally by the World Bank, as having released more greenhouse gases than all other emissions sources in sub-Saharan Africa combined. Human health is a major casualty. '[T]he flares contain a cocktail of toxins that affect the health and livelihood of local communities, exposing Niger Delta residents to an increased risk of premature deaths, child respiratory illnesses, asthma and cancer,' the Climate Justice Programme and Environmental Rights Action/FOE Nigeria commented in 2005.<sup>109</sup>

'According to the US government, the flares contribute to acid rain and villagers complain of the rain corroding their buildings. The particles from the flares fill the air, covering everything with a fine layer of soot. Local people also complain about the roaring noise and the intense heat from the flares. They live and work alongside the flares with no protection,' said Friends of the Earth in 2004.<sup>110</sup>

'For many years, we have been living with continuous flaring of gas ... Our farmlands have been polluted. We labour hard to plant but little comes out. Our roofs are corroded. Our air is polluted. Our children are sick. Even the rainwater we drink is contaminated with black soot from the gas flares. We cannot continue with this suffering,' a Rivers State resident was quoted in 2005 as saying.<sup>111</sup>

In November 2005 a federal High Court sitting in Benin, Edo State, ordered SPDC to stop gas flaring in Iwherekan community, Delta State, by April 2007, saying that flaring violated the fundamental right to life and dignity. The suit had been filed in July that year by Jonah Gbemre on behalf of himself and the Iwerekan community against Shell, the NNPC and the attorney-general of the federation, asking for gas flaring in the community to be stopped. The same legal action had been brought against Exxon, Chevron, Total and Agip by other Delta communities.

In 2005 the Igbewura community in Delta State won a federal court lawsuit against Shell declaring gas flaring illegal. The company appealed against enforcement, but civil society

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<sup>108</sup> 'Nigeria threatens stiff penalties for gas flaring', Reuters, 27 November 2007, [www.reuters.com](http://www.reuters.com)

<sup>109</sup> Friends of the Earth International, *Gas Flaring in Nigeria: a human rights, environmental and economic monstrosity*, June 2005, executive summary, [www.foei.org/en/publications/climate/gasnigeria.html](http://www.foei.org/en/publications/climate/gasnigeria.html)

<sup>110</sup> PLATFORM/Remember Saro-Wiwa, 'Gas flaring in Nigeria', media briefing, October 2004, [www.remembersarowiwa.com/pdfs/gasflaringinnigeria.pdf](http://www.remembersarowiwa.com/pdfs/gasflaringinnigeria.pdf)

<sup>111</sup> Friends of the Earth, 'Communities sue Shell to stop Nigerian gas flaring', press release, 20 June 2005, [www.foe.co.uk/resource/press\\_releases/communities\\_sue\\_shell\\_to\\_s\\_20062005.html](http://www.foe.co.uk/resource/press_releases/communities_sue_shell_to_s_20062005.html)

groups have resumed campaigning in earnest against flaring. Thirteen Niger Delta civil society leaders co-signed a 'Memo to the National Assembly' in January 2008:

'This is a call to national legislators, representatives of Nigerian citizens, to take concrete action to protect the health and livelihood of our people and to end the colossal wastage of our national energy resources. Gas flaring kills Nigerian citizens, destroys community livelihoods, sabotages our economy and puts our nation in the global hall of shame!

'In this New Year, the National Assembly should demonstrate patriotism and responsibility by enacting legislation that sets 2008 as the legally binding deadline for oil companies to end gas flaring.'<sup>112</sup>

### **SPDC's response**

How close to, or far from, putting an end to gas flaring is SPDC? Although flaring has dropped modestly over the last few years, a significant part of this decrease appears to be the result of 'shut-in' production rather than the company's 'plan to eliminate routine gas flaring in its operations'.<sup>113</sup>

SPDC has invested considerable sums of money in designing and partially building a broad network of gas-gathering plants in Nigeria. However, its investments have prioritised new 'non-associated' gas for export either through the West African Gas Pipeline or as liquefied natural gas. Although more gas is now being brought to market – allowing claims that 'only' 35 per cent of Nigeria's gas is flared – the problem of gas flaring associated with oil production will not necessarily reduce. Lack of vision and unwillingness to invest in the domestic market have contributed to Nigeria's internal energy crisis and created space for other foreign operators such as Gazprom to attempt to enter the market.<sup>114</sup>

Despite a 2007 pledge to end gas flaring<sup>115</sup> – and a stated investment of \$3 billion in flare reduction – Shell has in recent years cited the security situation in the Niger Delta and lack of Nigerian Federal Government funding as causes for its inability to meet the deadline.<sup>116</sup> However, effective action would have been needed at least five years earlier to adequately address the problem. While SPDC is failing to deal with the flaring of 'associated' gas, it has completed a massive increase in new gas production with very profitable results for the government and itself.

Nigeria's Department of Petroleum Resources (DPR) has been deeply critical of the oil companies' investment choices in the period since 2000, which are said to favour 'non-associated' gas above flared 'associated' gas because it is cheaper and easier to develop for export. The DPR proposed in December 2007 that the latest failure to meet flaring deadlines should result in a fine of \$3.50 per 1,000 standard cubic feet of gas flared.<sup>117</sup> If this were applied, SPDC's fine would appear to be in excess of \$1 bn per year.

<sup>112</sup> Memo to the National Assembly: 'The Case for a Legally Binding 2008 Deadline on Gas Flaring', Port Harcourt.

<sup>113</sup> Shell Nigeria, 'Gas flare out', [www.shell.com/home/content/nigeria/about\\_shell/issues/gas\\_flaring/gasflare.html](http://www.shell.com/home/content/nigeria/about_shell/issues/gas_flaring/gasflare.html) [accessed June 2009].

<sup>114</sup> 'Gazprom, Nigeria agree to form oil joint venture', Reuters, 24 June 2009, [www.reuters.com](http://www.reuters.com)

<sup>115</sup> Statement in Shell's *People and the Environment Report 2006*, op. cit., and at its 2007 AGM.

<sup>116</sup> Including a statement on the lack of payments forthcoming from the Nigerian Federal Government made by Malcolm Brinded, Executive Director Exploration and Production, in reply to a shareholder's question at Shell's AGM in The Hague, 22 May 2008.

<sup>117</sup> 'Nigeria says to fine firms that flare gas from Jan', Reuters, 3 December 2007, [www.reuters.com](http://www.reuters.com)



SPDC and the other oil companies have argued that production losses that would result prevent them ending gas flaring in the next few years. But the DPR has pointed out that the Nigerian government may be willing to take short-term production falls to stem the economic wastage and environmental and human health impacts.

The reputational risk that Shell faces through inaction on flaring could become more prominent as the debate on global warming is increasingly linked to geographically specific causes and responses. Nigeria's climatic areas and ecosystems are highly vulnerable to the major changes predicted by the Intergovernmental Panel on Climate Change (IPCC).<sup>118</sup> If the principle of the polluter pays were to be applied to Nigeria and to companies operating there, this would have a profound impact on SPDC's bottom line.<sup>119</sup>

## Conclusions

Consideration of the above three key challenges facing Shell's operating company SPDC in the Niger Delta – security-focused surveillance contracts, tolerance of corruption regarding oil spills, and gas flaring – leads to the conclusion that the operating company has failed to place sufficient emphasis on respecting the integrity of the local environment, the rights of local stakeholders or the need for a stable operating environment. Royal Dutch Shell itself appears to have lost much control over SPDC's operations and with it the capacity to act in accord with its own standards of best practice.

A comprehensive strategy is needed by which Shell and SPDC jointly accept responsibility for problems they have helped cause while at the same time enhancing the security of their Nigeria operations. The precise measures to be adopted need to be debated with the involvement of Delta civil society and the affected communities. A new approach must ensure that SPDC's operations adhere to robust standards and international social and environmental norms. Shell should be prepared to temporarily close areas unable to meet such benchmarks as a short-term response to ensure longer-term sustainability. It can use the opportunity to reorient its relationship with the Delta's people and their government representatives.

Shell and SPDC also need to act in the knowledge that oil is a short-term finite resource and in recognition of the looming reality of dangerous climate change. They should aim to contribute to Nigeria's longer-term sustainability and to Nigerians' need – and right – to participate in a form of development that frees them from poverty.

A key task will be to reincentivise SPDC's corporate culture. This will take time and require significant expertise as well as local input. Practices on the ground need to demonstrate that SPDC values the future of the society in which it works, the role of an independent civil society, and partners and suppliers in Nigeria, as much as it values the oil and gas it extracts. SPDC's reforms should also take into account the deep-rooted vested interests that surround company operations, including levels of corruption matched in few other countries.

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<sup>118</sup> The IPCC is publishing a growing volume of projections for environmental impacts across the globe; data on Africa are not as well developed as for other areas, but key risks and early onset are becoming clear.

<sup>119</sup> For more on gas flaring, see C. Cragg, 'Gas flaring in Nigeria: towards an alternative solution', SDN, 2009, [www.stakeholderdemocracy.org](http://www.stakeholderdemocracy.org)

Shell should apply its highest-calibre global staff to the problem. As an incentive, it could lay out specific development strategies for key Nigerian and expatriate individuals engaged on reforms, along with the likelihood of improved standing for Shell's Nigerian companies within the Royal Dutch Shell Group if reforms are successful. Root-and-branch reform of company practices, supported at every level of management by international experts from within and outside the company, will be necessary.

## Recommendations

Four main recommendations are made here for Shell and SPDC:

### **1. Adopt a reformed approach to security, ending surveillance contracts and other forms of 'grey area' contracting**

Key steps include: building new relationships with local communities based on trust and improved mutual understanding of joint rights and responsibilities;<sup>120</sup> fully applying the Voluntary Principles on Security and Human Rights to all aspects of operational security; and helping reduce oil bunkering (oil theft) and resultant cash flows for weapons by championing the carbon fingerprinting of oil produced in the Niger Delta.<sup>121</sup> Such measures should be carried out in partnership with the Nigerian federal and state governments.

### **2. Rigorous application to all Nigerian operations of Shell's General Business Principles, with particular attention to meeting the highest global environmental standards**

This should include Shell and SPDC setting up an independent public investigation into all their awarded Delta clean-up contracts in the last five years and publishing the results. This will be an important confidence-building measure and promote professionalism in responses to future spills. With this investigation under way, SPDC should publish a prioritised programme to complete its replacement of all pipelines over 15 years old. If NNPC refuses to pay its share of the cost, Shell should publicly cease production and thus be seen to operate to international standards.

Future clean-up contracts should be transparent, with milestones and solution techniques identified. Shell should work with the Nigerian state and other international oil companies to create an independent national oil spill complaints body to act as watchdog and regulator. This body would have power to order production to be shut in immediately when oil spills or leaks are identified, whatever the cause, which will end the current battle of competing claims between SPDC, citing vandalism, and communities, blaming equipment failure.

Any public review should involve the naming and shaming of subcontracting individuals who have personally benefited from the devastation of the Delta environment.

SPDC should investigate the possibility of working with vetted clean-up contractors, other international oil companies, the UN Environment Programme and the Nigerian state – for

<sup>120</sup> See SDN's special report on a 2007 joint project with IKV PaxChristi, 'Local perspectives on security and human rights in the Delta', 3 April 2008, [www.stakeholderdemocracy.org](http://www.stakeholderdemocracy.org)

<sup>121</sup> Nigeria's President Yar'Adua has compared oil bunkering to the trade in 'blood diamonds' and called for international efforts to halt it. Technology now reportedly exists to distinguish between different types of oil, and oil companies are said to do this routinely.

example through the DPR – to create an institute that promotes global best practice and lays foundations for the much bigger environmental clean-up that must be an essential part of any comprehensive government-led plan to reverse the root causes of the Delta crisis.

### **3. End gas flaring as part of a holistic energy generation strategy**

Shell and SPDC should honour the spirit of their 2007 commitment by closing in all fields that are major sources of gas flaring, prioritising for most urgent attention gas flares close to communities, and only reopen each field when this can be done without flaring. Vigorous support should be given to local community-level gas utilisation projects, using flow stations as an asset to support local energy delivery, alongside publication of a comprehensive plan to bring about a close-to-zero-flare programme.

The company could investigate, with the World Bank and local NGOs, the development of modular projects using associated gas in the provision of power to communities. Efforts should be made to develop local economic opportunities, including enabling start-up companies to provide bottled cooking gas to the local population.

Lack of energy production for the domestic market remains a central barrier to economic diversification and a key aspect of the Niger Delta's 'resource curse'. A focus on the socially important local energy market for gas would coincide with one of Nigerian President Yar'Adua's top priorities for his country and could run alongside more sustainable and renewable energy strategies using solar and tidal technologies, not just centrally generated gas provision. Any renewables should be as low-maintenance as possible, with maintenance provided by the industry or government, not required from local communities.

Nigeria's economic base needs a phased transition from overreliance on hydrocarbon production – which is infrastructure intensive but does not create many skilled jobs in Africa's most populous country – to a more diverse range of industries, in particular farming and fisheries. With the will and the vision, Shell and SPDC can help address barriers to economic development and diversification in the Delta.

### **4. Improve operational transparency**

A crosscutting requirement of any SPDC reform package is the breaking down of perceptions and operational norms. The company's lack of transparency reinforces negative local perceptions and will undermine future efforts if allowed to continue. Among the necessary steps, Shell should:

- set up effective internal mechanisms for monitoring SPDC's middle level managers, who are central to the current problems;
- commit to releasing comprehensive data on its profits, losses, expenditures and revenues in Nigeria, to provide sufficient information for communities and the public to assess whether such payments are being properly utilised;<sup>122</sup>

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<sup>122</sup> See the work of the Publish What You Pay coalition, [www.publishwhatyoupay.org](http://www.publishwhatyoupay.org), and the Extractive Industries Transparency Initiative, [www.eitransparency.org](http://www.eitransparency.org)

- ensure that all future company clean-up and security spending is publicly disclosed in sufficient detail to be freely assessed by communities and other stakeholders, including details of companies and individuals awarded contracts and the basis for such awards.

Rapid action on transparency will not be easy to implement, but these recommendations should be accepted in principle as key points of departure.

## 4. Shell in Nigeria: A Conflict Perspective

*Dr Emmanuel O. Emmanuel, Trans-Border Missionaries Interface Initiative*

*Introduction • Conflict dynamics • The oil industry and Niger Delta communities: problem summary and causality analysis • Examples of SPDC and communities in conflict • Conclusions • Recommendations*

### Introduction

When Shell struck commercial oil at Oloibiri in 1956, Niger Delta communities rejoiced. The celebration was crowned with a novelty football match between a Shell team and an Oloibiri team. The Oloibiri team won, but that was the last time any team defeated Shell in Nigeria once the game shifted from the football field to the business battlefield.

The Shell Petroleum Development Company of Nigeria (SPDC), originally known as Shell D'Arcy, commenced geological reconnaissance in 1937 and was granted an exploration licence in 1938. Shell later entered into a joint venture with British Petroleum, resulting in an operation known as Shell-BP. In 1979 BP's share of participation was nationalised, giving the Nigeria National Petroleum Development Company (NNPC)/Shell joint venture an 80% : 20% split.

Today SPDC operates on behalf of a joint venture between NNPC (55%), Shell (30%), Total (10%) and Agip (5%) in accordance with a joint operating agreement and within the legal and fiscal framework of a Memorandum of Understanding with the Nigerian Federal Government. In 2002 the joint venture accounted for over 40% of Nigeria's oil production and about 55% of the country's crude oil reserve base. The partners fund the operations in proportion to their shareholdings.

SPDC is the largest oil and gas company in Nigeria. Its operations are concentrated in the Niger Delta and the adjoining shallow offshore, where it operates in an oil mining lease area of about 31,000 square km. Shell has over 6,000 km of pipelines and flow lines, 87 flow stations, 8 gas plants and more than 1,000 producing wells in Nigeria. It employs about 4,000 people directly and another 15,000 staff through contract labour.

Major oil spills started in the Niger Delta in the 1970s and became uncontrollable in the early 1990s after about 30 years' service of unreplaced flow lines and delivery pipelines, including the Trans-Nigerian Trunk Line (TNTL) that delivers crude oil to the Bonny terminal.<sup>123</sup>

### ***About this study***

This case study discusses problems experienced by Niger Delta communities in relation to SPDC's operations. These problems include poverty and hunger, unemployment,

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<sup>123</sup> For SPDC's comments on the disputed causes of oil spills, see above, footnote 48.

underdevelopment, low life expectancy (high maternal and child mortality) and depletion of biodiversity, and they are in many ways a consequence of oil industry activities. The relationship between the oil industry and community problems has given rise to conflict, and therefore a consideration of the approach to conflict shown by SPDC is pertinent. The contention here is that the company has approached conflict in an aggressive spirit of competition (win-lose) against its opponents in the communities rather than seeking mutual accommodation in keeping with its corporate social responsibility principles.

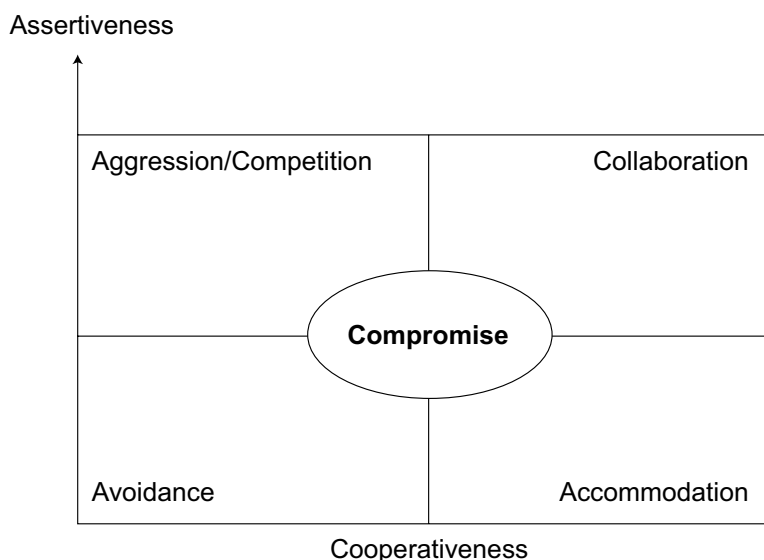
After an outline of conflict dynamics, the case study will consider key conflict-related problems and their causes, review specific examples of SPDC and communities in conflict, draw conclusions and offer recommendations for change.

## Conflict dynamics

### **Perception**

Perception plays a major role in the cause, prolonging and resolution of conflicts. The outcomes of conflict may be positive or negative, depending on how we react. Conflict may for example provide an opportunity to bring about positive social change. However, good intentions often turn sour due to mistaken perceptions. The misunderstanding and mismanagement of conflict can result in crisis, which may mean the loss of property, or life, or both.

People and groups respond to conflict in different ways. Two main elements make up an individual's or group's conflict style or approach: assertiveness – the extent to which an individual or group will attempt to satisfy their needs; and cooperativeness – the extent to which they will attempt to satisfy others' needs (Fig. 1).



**Fig. 1 Assertiveness and cooperativeness**

Different combinations of the variables of assertiveness and cooperativeness produce five conflict styles: aggression or competition – one's own will is imposed on others; collaboration – maximum co-operation between parties is harnessed to build strong

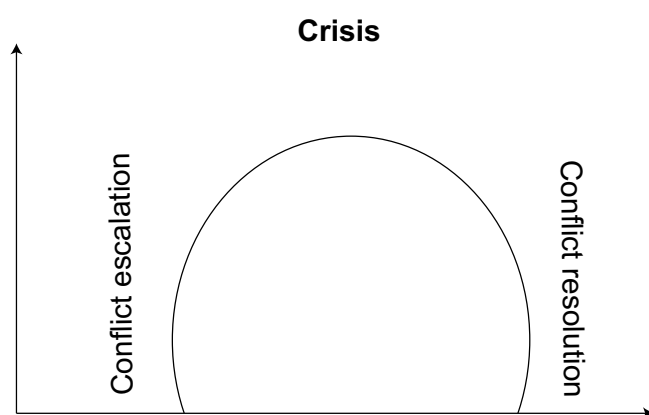
relationships for mutual future benefits; avoidance – unwillingness to engage the other party in resolving differences; accommodation – a yielding of one’s own position to the other party; and compromise – consent reached through both parties surrendering some of their requirements to benefit the other.

Conflict may be caused by perception or psychological need (how we see things, a reflection of who we are); by values (what we believe, cherish or revere); and by resources (our present or future expected returns on our investments or services, financial or non-financial). There are no clear-cut boundaries between the three types of cause; a single cause of conflict can embrace all three, such as politics, injustice or lack of information.

Factors that can influence our perception include religion, class background, education, environment, culture, profession, ethnic group and expectation. Most such factors can also influence our value system.

### **Conflict escalation and resolution**

A typical conflict cycle shows a rising trend of escalation and a falling trend of resolution. Its apex marks a crisis point (Fig. 2). Uncontrolled, a rising conflict passes through various stages and levels before attaining crisis. A resolving conflict moves away from crisis through diffusion, conflict fatigue, de-escalation, mutual understanding, improvement through reflection, and ultimate transformation.



*Fig. 2 The conflict curve*

The importance of moving a conflict from escalation to resolution without attaining crisis point cannot be over-emphasised. The effective and efficient process for this conversion is peace-building. The most effective peace-building process, in the author’s opinion, is the alternative dispute resolution (ADR) spectrum, which includes dialogue, negotiation, mediation, conciliation and arbitration.<sup>124</sup> Other peace-building approaches include reconciliation, rehabilitation, restorative justice and trauma healing.

## **The oil industry and Niger Delta communities: problem summary and causality analysis**

The Trans-Nigerian Trunk Line (TNL) is Nigeria’s major crude oil delivery pipeline

<sup>124</sup> There is a wide literature on alternative dispute resolution; see e.g. Y. Shamir, *Alternative Dispute Resolution Approaches and their Application*, UNESCO, no date.

receiving crude oil from the flow stations for delivery to the terminals. SPDC's Gbarain-Ubie Integrated Oil and Gas Project (IOGP), the largest gas gathering and separation system in the Niger Delta, is intended to help bring about a halt to gas flaring.<sup>125</sup> Between January 2007 and January 2009 Trans-Border Missionaries Interface Initiative (TMII) undertook assessments of communities' living conditions at localities along the TNL and along transects of the IOGP. The transects are the plan views of the delivery pipeline layout which cut across various Niger Delta communities and through which oil and gas are conveyed from the flow stations to the terminals.

We conducted impact assessments of oil spills and assessed socio-economic conditions along the TNL at Biara (Ogoni), Ogbodo (Isiokpo), Rukpokwu (Obio/Akpor) and Rumekepe (Emuohua), and along IOGP transects at Ogboloma-Gbarain and Biseni (Bayelsa State), Obagi-Oboburu and Umuechem-Igwuruta (Rivers State), and Asaa-Obile and Egbema (Imo State).

Common problems requiring immediate attention were similar in all the localities: poverty and hunger, unemployment, underdevelopment, low life expectancy (especially high maternal and child mortality) and environmental degradation. The negative impact of oil exploration and exploitation on the environment, livelihoods and the socio-economic setting was evident in most cases, and according to our analysis the major causes of the problems lie with the oil industry and its senior partner, the Nigerian Federal Government. In most cases our assessment indicates that a conflict exists between the oil industry and the rights and aspirations of local communities. See Table 1.

*Table 1. Problems and causes*

<b><i>Problem requiring immediate attention</i></b>	<b><i>Immediate causes</i></b>	<b><i>Underlying causes</i></b>	<b><i>Root causes</i></b>
Poverty and hunger	Environmental degradation (gas flaring, oil spillage, soil degradation, water pollution)	Poor environmental performance and lack of enforcement of standards and regulations	Oil industry activities
Unemployment	Loss of livelihood	Major arable land acquisition and lack of adequate compensation	Oil industry activities
Underdevelopment	Lack of social infrastructure, corruption and lack of rule of law	Ethnicity-based politics and lack of patriotism	Poor governance
Low life expectancy (high maternal and child mortality)	Widespread transfer of bacteria, viruses and parasites, contaminating water resources, soil and food Air pollution from gas flaring Water contamination from oil spills	Water and sanitation crisis Local air pollution Poor diet and poor health	Oil industry activities Poor governance

<sup>125</sup> Shell in Nigeria, 'Putting Nigeria's gas to good use: The Gbarain-Ubie integrated oil and gas project', January 2009, [www.shell.com/static/nigeria/downloads/pdfs/briefing\\_notes/gbaran.pdf](http://www.shell.com/static/nigeria/downloads/pdfs/briefing_notes/gbaran.pdf) [accessed June 2009]; the IOGP is discussed in more detail below.



Environmental degradation	Depletion of flora and fauna Air pollution Water contamination	Destruction of habitats Gas flaring oil spillage	Oil industry activities
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By way of context, the following facts are relevant:

- Oil industry activities cannot be stopped. Nigeria is close to being a mono-product economy and depends on oil, which accounts for the vast majority of the country's foreign exchange earnings.
- The negative impacts of the oil industry can be mitigated in accordance with the Nigerian State's Environmental Impact Assessment (EIA) Decree No. 86 of 1992 and other statutory laws governing the oil industry. In accordance with the EIA Decree, all oil and gas projects must pass through the EIA process, paramount in which is community consultation from project conceptualisation to decommissioning.<sup>126</sup> Weaknesses in EIA processes have been an evolving area of civil society engagement, and community consultation is today generally accepted as a fundamental requirement by governments, oil companies, communities and civil society. SPDC itself developed an EIA manual emphasising the need to engage with local communities.<sup>127</sup>
- Whatever the failings of the Nigerian authorities in protecting the rights and property of their citizens, Shell and SPDC are also duty bearers with a responsibility to respect the rights and property of claim holders – individuals and communities – living in the Niger Delta.<sup>128</sup>

In most cases of conflict assessed by TMII, SPDC's approach has been one of aggression and competition (in our typology above) rather than accommodation. SPDC has tended to insist on win-lose conditions. With the company's financial might, communities have reported finding themselves intimidated, marginalised and subdued. And as the historical record shows, police cells and prison yards have become an arena for the custody of claims holders.

### **Court cases**

Shell and SPDC have regularly pursued court cases against claimants, sometimes to higher level appeal courts and even to Nigeria's Supreme Court. For example, in *SPDC (Nig) Ltd vs Tiebo (2005)*,<sup>129</sup> the plaintiff representing Peremabiri community sued SPDC, claiming the sum of 64,146,000 Naira (equivalent to about US\$535,000) in damages for negligence, alleging that SPDC had allowed over 600 barrels of crude oil to spill from its flow station and pipeline into the community's lands, swamps, creeks, ponds, lakes and shrines, extensively polluting the Nun River and lands. The court found SPDC liable in negligence. SPDC, dissatisfied with the judgment, appealed. The Court of Appeal dismissed the appeal and affirmed the full award of damages by the lower court. Still dissatisfied, SPDC appealed to the Supreme Court, which allowed the appeal in part.

<sup>126</sup> [www.nigeria-law.org/Environmental%20Impact%20Assessment%20Degree%20No.%2086%201992.html](http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Degree%20No.%2086%201992.html)

<sup>127</sup> SPDC, *Environmental Impact Assessment (EIA) Process: A Manual for EIA Execution in SPDC*, December 2000.

<sup>128</sup> On the corporate duty to respect human rights, see *Protect, Respect and Remedy: A Framework for Business and Human Rights*, op. cit.

<sup>129</sup> 9 Nigerian Weekly Law Report (Part 931) 439 SC.

In another case, SPDC (Nig) Ltd vs Allaputa (2005),<sup>130</sup> under the Bonny Terminal Integrated Project Community Initiative, SPDC had agreed to donate 505,000,000 Naira (US\$4,208,000) into a community trust fund. SPDC failed to fulfil the terms of the agreement, and the plaintiff sued. Judgment was awarded in favour of the plaintiff. SPDC appealed, but the Court of Appeal upheld the judgment of the lower court and dismissed the appeal.

Communities perceive Shell and SPDC as applying a deterrence strategy against themselves while enjoying the patronage of the government and having government law enforcement agents at their disposal. SPDC has built police barracks in some places, such as Port Harcourt and Kula, Rivers State. It maintains a police force, referred to by communities as 'Shell Police', as part of its work force. It appears to operate in secrecy while continuing to impact negatively on communities and the environment.

## **Examples of SPDC and communities in conflict**

### ***Umuechem protest, 1990***

Umuechem in Rivers State was the first community that embarked on a public peaceful demonstration against SPDC, in November 1990. The community protested against what they saw as their exclusion from dialogue and benefits, SPDC's environmental devastation of their farmlands and drinking water sources, and the lack of employment and underdevelopment resulting from Shell's presence.

The company responded to the peaceful demonstration by requesting help from the Nigerian government, which sent in its mobile police force. This force entered the community and allegedly killed over 80 people, including Umuechem's traditional ruler and members of his family. Most houses were set ablaze, and the community was almost destroyed.<sup>131</sup>

In 1991 the Rivers State government set up a panel of inquiry led by Hon. Justice Opubo Inko-Tariah to look into the case. The panel indicted SPDC and the Federal Government and recommended compensation in favour of the community. An agreement was reportedly reached between SPDC and the government whereby the company would provide compensation funds and the state government would disburse them. It has been alleged that Shell failed to provide the money. Cheques issued by the state government bounced at the bank. Up to the time of writing TMII is unaware of anybody receiving compensation.

### ***Ogoni protest, 1993-4***

In April 1993 in Rivers State, Ogoni citizens demonstrated peacefully against the construction of SPDC's Rumuekpe-Bomu pipeline (part of the TNTL), which had destroyed freshly planted farmland without adequate compensation. SPDC asked the Federal Government for help, and the latter sent in soldiers, who fired live ammunition against the

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<sup>130</sup> 9 Nigerian Weekly Law Report (Part 931) 475 CA.

<sup>131</sup> See e.g. L. Ganago, 'Niger Delta: memo to the international community', 3 August 2008, <http://nigeriaworld.com/feature/publication/ganago/080308.html>

demonstrators. A month later, in May 1993, a demonstrator (Mr Agbarator) died after being shot in the back by soldiers while protesting against another pipeline.

In 1994 further conflict resulted in the killing of four Ogoni leaders, and in 1995 a military tribunal was set up to try nine Ogoni leaders for the murders. Despite international protest, the Ogoni Nine, including the writer Ken Saro-Wiwa, were convicted on the evidence of allegedly bribed witnesses, and hanged on 10 November 1995. During this period, and from then till an out-of-court settlement was reached in June 2009, a court case had been filed by the Ogoni people against Shell, and Shell had filed court cases against the Ogoni.<sup>132</sup>

In June 2008 Nigeria's President Yar'Adua announced the removal of SPDC from Ogoniland. SPDC appeared to accept the decision, but Royal Dutch Shell in The Hague has reportedly contested it.

### ***Biseni oil spill, 2001***

In February 2001 a major oil spill occurred in Biseni, Bayelsa State, along the bulk pipeline delivering crude oil to the Adebawa flow station. About 1,000 barrels of oil were lost. As has often occurred, SPDC contested that the cause of the spill was sabotage or third-party interference. It had ignored early warning signals of the poor condition of its pipeline in the form of earlier spills in 1996 and 1998.

While SPDC disputed the cause, five more weak points yielded under pressure and burst open to register a six-point chain-burst oil spill. The joint investigation team empowered to determine the cause of oil spills – comprising representatives of SPDC, impacted communities, federal and state ministries of environment, and law enforcement agents – had no choice but to register the cause of the spill as poor asset integrity of the pipeline. The six spill points were clamped, but the total length of weak pipeline has remained unchanged up to the time of writing.

### ***Ogbodo oil spill, 2001-4***

In June 2001 a major oil spill occurred at Ogbodo-Isiokpo, Rivers State, along the TNTL. SPDC estimated that about 16,000 barrels of crude were lost and in the immediate aftermath engaged a contractor to recover the free-phase crude.

The spill impacted a significant length of the New Calabar River and its tributaries from Ogbodo River to Rumuolumeni, a distance of approximately 14 km. Some 42 communities were affected along the river course, of which 26 communities took SPDC to court for negligence and damages in separate cases. SPDC's claim of sabotage aroused controversy and international attention, and Ecumenical Council for Corporate Responsibility (ECCR) delegates visited Ogbodo in November 2001 to see for themselves.<sup>133</sup> A joint investigation team report showed that the cause was again poor asset integrity – pipeline corrosion.

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<sup>132</sup> 'Nigeria: Shell settles Saro-Wiwa case', 9 June 2009, [allafrica.com/stories/200906090087.html](http://allafrica.com/stories/200906090087.html)

<sup>133</sup> See ECCR, *Telling Shell: When the Pressure Drops and Measuring Up to the Bench Marks*, 2002, [www.eccr.org.uk](http://www.eccr.org.uk)

In Ogbodo community, the spill badly affected the source of drinking water, farmland and livelihoods. Yet SPDC provided no emergency response in the form of potable water supply or disaster relief.

The clean-up in Ogbodo started in May 2002, almost a year after the spill. SPDC awarded and re-awarded the remediation contract to Titan Projects Ltd, but the latter claimed that it had no clearance to operate from the community. Delays continued until November 2004, when SPDC stated – unbelievably – that remediation had been completed by the medical director of Nobsam Clinic, a hospital in Port Harcourt.

SPDC applied for a clearance certificate from the Federal Ministry of Environment, but the application was turned down on grounds that the company had not conducted a remediation exercise or provided a soil sample chemical analysis demonstrating an acceptably low level of petroleum hydrocarbon content. SPDC refused to show the remediation contract documents for third-party assessment, and the area where remediation was claimed to have taken place remained secret. The local community denied knowledge of the location and alleged that no contractor had worked on soil remediation. One can only conclude that little or no remediation did in fact take place, except for natural biodegradation of the petroleum hydrocarbon.

### ***Batan oil spill, 2002***

In October 2002 a major oil spill occurred at Batan, Delta State. It was a manifold spill submerged at a depth of about 12 metres in a turbulent river. The same manifold bolts and nuts had leaked and caused major spills in 2000 and 2001, when SPDC had claimed the causes were sabotage.

This time SPDC's general manager in Warri wrote a letter to the Delta State Governor alleging sabotage as the cause of the spill and naming seven Isekiri youths as the saboteurs. This was unfortunate in a context of ethnic conflict between the Isekiris and another ethnic group, the Urhobos.

Two days after the date of the letter, a joint investigation team was convened to determine the cause of the spill. The team used contract divers, whose expatriate supervisor stated that the causes of earlier manifold spills in 2000 and 2001 had been loose bolts and nuts. As anticipated, loose bolts and nuts also turned out to be the cause of the 2002 spill. Accordingly, the investigation team report indicated production equipment failure as the cause of the spill.

SPDC rejected the report and organised another joint investigation team report without the participation of community representatives. It also offered US \$150,000 for an income generation project for the Batan community, although in the event it made only \$100,000 available (no reason was given for the reduced sum). SPDC avoided accepting legal responsibility by claiming that the money was a community development initiative rather than compensation.

### ***Gbarain-Ubie Integrated Oil and Gas Project and Global Memorandum of Understanding, 2003–4***

SPDC, as the technical operator and on behalf of its partners in its joint venture with NNPC, Total and Agip, planned to eliminate routine gas flaring by 2008 through the

development of gas gathering facilities and capturing domestic and export gas markets in accordance with the Nigerian government's initiative for economic development, Vision 2010. SPDC chose the Gbarain-Ubie node (cluster) in Bayelsa State for its largest gas investment: the Gbarain-Ubie Integrated Oil and Gas Project (IOGP). The project involves the separation of associated gas from crude oil at the flow stations (where the gas would otherwise be flared off) and its delivery through pipelines to a central processing facility.

In accordance with Nigeria's Environment Impact Assessment (EIA) Decree No. 86 of 1992, all oil and gas projects must pass through the EIA process, central to which is community consultation. SPDC undertook an EIA of the IOGP to meet statutory requirements. The process was much criticised by communities for its lack of consultation. More than 70 communities affected by the IOGP stated that they had not been consulted. In response, SPDC sent a letter to the OGP Landlords Youth Leaders' Forum stating various dates on which EIA scoping workshops had been held. In fact those workshops had been held on 'sustainable development' without people knowing that the workshops were intended as part of an EIA process.<sup>134</sup>

The term Global Memorandum of Understanding (GMOU) applies in the Niger Delta to comprehensive agreements between oil companies and geographical clusters of communities. The Gbarain-Ubie GMOU was supposed to cushion the communities from negative impacts of some of the IOGP activities such as dredging, appraisal well drilling, and construction of access roads, pipelines and the central processing facility.

The GMOU is part of SPDC's 'sustainable community development' effort that it states governs how it interacts with communities to achieve a safe, healthy and self-reliant Niger Delta.<sup>135</sup> In reality, SPDC generally applies this development programme only in communities where it extracts oil. Communities expected GMOU projects to run concurrently with the IOGP. Yet many projects have been abandoned or rejected, while the IOGP components have received maximum attention with military protection and supervision.

For example, dredging activities have been completed without the provision of an alternative potable water supply, and pipeline construction is ongoing across a sensitive environment of arable lands, fishing grounds and water sources without mitigation measures. Table 2 shows that many of the projects have so far failed to deliver promised benefits.<sup>136</sup>

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<sup>134</sup> SPDC has stated in its comments on the draft text of this report: 'Environmental Impact Assessments (EIAs) have been – and are being – completed in compliance with regulations and in accordance with SPDC's own standards. This includes participation by, and consultation with, affected communities' – Mutiu Sunmonu, email communication with ECCR, op. cit.

<sup>135</sup> See e.g. 'Shell: rethinking development in the Niger Delta', [www.africa-investor.com](http://www.africa-investor.com), 1 March 2004.

<sup>136</sup> SPDC has stated in its comments on the draft text of this report: 'A comprehensive community development programme managed through a Community Interface Model is providing social infrastructure, promoting public health and connecting communities to electricity for the first time' – Mutiu Sunmonu, email communication with ECCR, op. cit.

Table 2. Status of Gbarain-Ubie GMoU project commitments<sup>137</sup>

<b>Item</b>	<b>SPDC commitments<sup>138</sup></b>	<b>Project status</b>
<b>Infrastructure</b>		
Water supply	<ul style="list-style-type: none"> <li>To provide all communities in Gbarain and Ekpetiama kingdoms with access to adequate and reliable source of potable water through the construction and/or installation of appropriate water supply facilities/equipment</li> <li>To build local capacity within the communities to efficiently operate and manage the water facilities</li> </ul>	<p>No functional or successful water supply project. Saipem is trucking water in the area to cushion the effect<sup>139</sup></p> <p>A few youths trained but not gainfully employed</p>
Electricity supply	<ul style="list-style-type: none"> <li>To connect communities to the Bayelsa State Electricity Board (BSEB) power supply system</li> <li>To work with the BSEB to enhance the capacity and reliability of its power supply system</li> <li>To provide electricity back-up for Gbarantoru and Obunagha communities from the central processing facility when built and after energy demand analysis has been done</li> </ul>	<p>No positive action</p> <p>No action</p> <p>No electricity yet</p>
Community roads	<ul style="list-style-type: none"> <li>To rehabilitate/construct a total of 14 km of roads (including 2 km of internal road networks), 7 km in each of Gbarain and Ekpetiama kingdoms</li> </ul>	<p>No internal road construction begun in any of the communities</p>
Gbarain kingdom civic centre hall	<ul style="list-style-type: none"> <li>To construct a civic centre hall including basic sporting equipment and facilities for Gbarain kingdom; design and scope to be jointly determined by Gbarain kingdom and SPDC</li> </ul>	<p>Civic centre hall completed but no equipment or agreed facilities</p>
Upgrade of town halls for Ekpetiama	<ul style="list-style-type: none"> <li>To upgrade existing town halls for Ekpetiama kingdom; design and scope to be jointly determined by Ekpetiama kingdom and SPDC</li> </ul>	<p>Not yet upgraded</p>
Construction of school blocks	<ul style="list-style-type: none"> <li>To construct a block of six classrooms in Obunagha and in Gbarantoru, in recognition of their position as landlord communities</li> </ul>	<p>Not yet implemented</p>

<sup>137</sup> This review is based on situation reports as at April 2009.

<sup>138</sup> Commitments recorded in the GMoU, a copy of which is in the possession of TMII.

<sup>139</sup> Saipem Nigeria: subsidiary of Saipem SpA, an Italian oil servicing company and contractor to SPDC.

<b>Health projects</b>		
Construction of health centres	<ul style="list-style-type: none"> <li>To construct and equip two health centres at Gbaraintoru and Ogboloma</li> </ul>	Health centres constructed but not equipped or commissioned
Construction of health posts	<ul style="list-style-type: none"> <li>To construct and equip two health posts at Obunagha and Bumoundi-Gbene</li> </ul>	Health posts constructed but not equipped or commissioned
Provision of hospital equipment	<ul style="list-style-type: none"> <li>To complement the efforts of Bayelsa State government to equip the two hospitals at Okoloibiri and Agudama</li> </ul>	No action taken
<b>Human capital development</b>		
Support for the kingdoms' oil and gas local employment bureau	<ul style="list-style-type: none"> <li>To provide support to the kingdoms and the communities towards the establishment of a dedicated oil and gas employment bureau</li> </ul>	Employment bureau established but provides only minimal employment opportunities
Youth training	<ul style="list-style-type: none"> <li>To continue with the planned youth training schemes agreed with Bayelsa State government and Saipem at Port Harcourt, Petroleum Training Institute at Warri and Technical College at Ekowe</li> </ul>	No evidence of progress
Scholarship awards	<ul style="list-style-type: none"> <li>To award a total of 80 post-secondary scholarships to indigenes of Gbarain and Ekpetiama kingdoms who pass a qualifying test jointly administered by the community and SPDC</li> </ul>	No evidence of progress
Provision of craft, technical and laboratory equipment	<ul style="list-style-type: none"> <li>To equip craft centres at Polaku and Agudama to provide basic craft training; scope of the work to be jointly determined in line with the sustainable community development budget for Gbarain and Ekpetiama kingdoms</li> <li>To provide science laboratory equipment in three schools</li> <li>To provide laboratory equipment in five schools</li> </ul>	Implemented  Laboratory equipment supplied instead of intro-tech  Implemented
<b>Economic empowerment</b>		
Economic empowerment projects	<ul style="list-style-type: none"> <li>To provide the sum of N200 million for economic empowerment projects in the kingdoms</li> <li>To provide four 14-seater buses for Gbarain and Ekpetiama kingdoms including driver training</li> </ul>	Not fulfilled  Implemented

<b>Public relations</b>		
Sand stockpile	<ul style="list-style-type: none"> <li>At the end of the dredging and sand filling exercise, to provide two 5,000 cu m stockpiles of sand for the Gbarain and Ekpetiama kingdoms</li> </ul>	Stockpiles provided but wasting away; because no sharing formula was agreed, landowners where the piles were deposited seized the piles, resulting in social conflict

## Conclusions

Shell and its operating company SPDC have contributed to conflict in the Niger Delta through their oil and gas operations, poor fulfilment of regulations and standards, and neglect of the human rights of claim holders. Key contributing factors are the following.

### ***Pollution of air, land and water***

SPDC has shifted from one target date to another with regard to ending noxious emissions from gas flaring. Because it is cheaper to flare associated gas than to reinject it, SPDC appears to have regarded gas reinjection as a secondary alternative.

Oil spills have continued to cause widespread pollution of land and water bodies, including groundwater aquifers. SPDC contests most spills as sabotage, except those occurring in its flow stations and terminals; the latter are hardly reported or investigated.<sup>140</sup> Seemingly reluctant to pay compensation to impacted communities or individuals, in TMII's opinion SPDC has used the courts and the power of the Nigerian state to suppress and subdue claim holders and has neglected its responsibility to peacefully clean up and remediate impacted sites.

### ***Environmental Impact Assessments (EIAs)***

SPDC's EIAs have been undertaken without due consultations with the primary stakeholder communities impacted by its projects. Gas separation systems and independent power projects are gigantic undertakings with heavy potential impacts, yet community consultation relating to them has been minimal.<sup>141</sup>

### ***Global Memorandum of Understanding (GMoU)***

SPDC has largely failed in the implementation of the Gbarain-Ubie GMoU. The GMoU is supposed to run concurrently with the implementation of EIAs.

### ***Underdevelopment – lack of social infrastructure***

SPDC spends considerable sums of money on 'sustainable community development' without corresponding impact.<sup>142</sup> Review team recommendations have been ignored or rejected. When the author of this case study served as a member of an external stakeholder team that reviewed SPDC's completed community development projects

<sup>140</sup> See above, footnote 48.

<sup>141</sup> For an SPDC statement regarding its implementation of EIAs, see footnote 77.

<sup>142</sup> For an SPDC statement regarding community development, see above, pages 37-8..



for 2001 (conducted in 2002), 2003 (in 2004) and 2005 (in 2006), virtually the same recommendations were made each time due to a lack of positive action.

### ***Unemployment***

Unemployment is a critical factor. Out of Shell Nigeria's workforce of approximately 19,000 in the Niger Delta, only about 4,000 workers are employed on a permanent basis. The remaining 15,000 work on a contract or casual basis. The company's contract and casual workers have been periodically returned to an already saturated labour market as a result of company retrenchment.

### ***Approach to conflict***

SPDC's actions have lacked the basic elements of peace building, and at times the company has appeared to act vindictively. Measures seemingly intended to reduce conflict have escalated it, in some cases to crisis point. An apparent lack of willingness to compromise or to sustain mutually respectful relationships with communities has blocked possibilities for agreement and increased polarisation. Through SPDC's relationship with the Nigerian authorities, the company has been seen as using the army and police to impose its will, resulting in human rights violations and loss of life and property.

Many communities in the Niger Delta are traumatised, and SPDC has contributed to intra- and inter-group tension by allowing its presence to divide communities, at times supporting politicians and power brokers who have suppressed public or popular opinions or votes. Instances of this pattern include Ogoni (1994–5), Rumuekpe (2003), Ogbodo (2004), Odioma/Obioku (2005) and Biara (2006).

A comparison between SPDC's handling of community relations and the approach of Italian oil company Agip, for example, shows a striking contrast. After SPDC had handed over its oil fields in Biseni, Bayelsa State, in 2003 and Oguta, Imo State, in 2007 to Agip, the latter company engaged in dialogue and negotiations with host communities far more carefully and effectively than SPDC had done.

### ***Association with the use of force by the Nigerian state***

SPDC has periodically requested help from the Nigerian authorities to protect its economic interests, resulting in heavy-handed action by the security forces. In 2002 Amnesty International highlighted numerous human rights violations carried out by the Nigerian police and armed forces, ranging from extra-judicial executions to deaths in custody, torture and other ill treatment of suspects.<sup>143</sup> In May 2008 Amnesty published another report indicating that the human rights situation in Nigeria remained largely the same.<sup>144</sup> SPDC's association with the Nigerian security apparatus has undermined its credibility in the Delta and made the outlook for conflict resolution considerably harder.

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<sup>143</sup> Amnesty International, *Security Forces in Nigeria: Serving to Protect and Respect Human Rights?*, December 2002, AFR 44/023/2002

<sup>144</sup> Amnesty International, *Nigerian Police and Security Forces: Failure to Protect and Respect Human Rights*, May 2008, AFR 44/006/2008.

## Recommendations

At the time of writing Nigeria occupies the chair of the UN Human Rights Council (HRC), and in February 2009 it underwent the HRC's Universal Periodic Review (UPR). The UPR occurs in a four year cycle and will be due again in 2013. As the largest contributor to oil and gas production and government revenues in Nigeria, SPDC has a duty to respect human rights and an opportunity to contribute to a more credible image of Nigeria in human rights terms by the time of its next UPR.

In this light, we offer the following recommendations to the company.

1. Put an immediate end to gas flaring in the Niger Delta.
2. Support a major programme of environmental rehabilitation linked to the establishment and training of community-based organisations in techniques of soil restoration and agricultural recuperation, enabling communities to become environmental responders. Such knowledge and skills development will enhance company–community relationships.
3. Embrace a culture of undertaking oil containment, clean-up and remediation promptly without disputing the causes of spills.
4. Be more inclusive in implementing EIAs, involving communities in the identification of potential impacts and their mitigation measures and building communities' capacities as part of the EIA process.
5. Revisit the recommendations of past external stakeholder reviews and improve the delivery of sustainable community development.
6. Use the GMoU approach to transfer economic empowerment and human capital development to community trusts.
7. Change employment policy to help redirect the energy of Niger Delta youths, which is currently channelled into conflict.
8. Retrain field staff in applied conflict management, alternative dispute resolution, peace building, human-rights-based approaches to development and the UPR process.
9. Facilitate the establishment of peace centres in the communities. Embark on a trauma healing (reconciliation and restorative justice) programme with credible and experienced civil society organisations.
10. Inform affected communities whenever it plans to hand over an oil field to another company.

## 5. SPDC's Global Memorandum of Understanding

*Tracey Draper, Pro-Natura International (Nigeria)*

*Background: causes of community resentment and conflict • The Akassa model • SPDC adopts the Akassa model • The challenge of translating principles into practice • Limited successes • Conclusions • Recommendations*

### **Background: causes of community resentment and conflict**

Shell Petroleum Development Company's (SPDC) community engagement programme has been beleaguered by many challenges over the past 30 years. From the 1980s the programme focused on high-impact, visible and generally large infrastructure projects. This was achieved through the negotiation of Memoranda of Understanding (MoUs) with over 1,000 communities across the Niger Delta.

These projects were mostly controlled from within SPDC, with project contracts generally awarded to individuals or companies as part of a patronage network. In the view of Pro-Natura International (Nigeria) (PNI), in certain cases the emphasis was on the payment of funds to the contractor rather than on project implementation and service delivery. As a result, many projects were abandoned or not initiated, and many of those projects that were undertaken were not necessarily the priorities of the community. SPDC was not alone in this practice, which is still common with government projects in Nigeria.

Not only was this a disempowering process for communities, it created many logistical problems for SPDC. MoUs based on these projects were difficult to administer, and project management was time and resource intensive. Commitments exceeded SPDC's capacity for execution, and it was difficult to hold contractors to account for poor delivery. The result was a proliferation of abandoned and uncompleted projects and widespread discontent. There were also cases where SPDC signed MoUs with communities before completing its industrial investment in the area. If this investment was stalled or not completed, associated promises to communities were also abandoned, giving rise to further discontent.

Poor project implementation relating to MoUs exacerbated communities' feelings of marginalisation, exploitation and resentment. Already, many communities had experienced environmental degradation as a result of SPDC's oil exploration and extraction activities. Such degradation and the consequent anger – for example, in Ogoniland – have been extensively documented.

SPDC had effectively created dependency, with over 1,000 host communities looking towards the company rather than their own government institutions for services. This resulted in SPDC MoUs being focused on service delivery and the provision of larger-scale projects such as roads and health centres. Service delivery expectancy also triggered the contract-driven approach in the Niger Delta, with community empowerment and sustainable development rarely mainstreamed throughout the company. SPDC

has been forced to jump from one community engagement project to the next, in an environment of weak local governance, with little success.

### **Community breakdown**

The contract-driven approach has seen the emergence of another problem: the rise of the elite benefit captor. In our view, contracts were often awarded to local elites, or through their agents, who find ways to enrich themselves and disempower their fellow community members. People become local elites through several avenues: wealth, education or political power. In some cases, individuals gain power through the threat of violence and aggression and become part of the elite group by force. The award of contracts to powerful elites has in our view contributed to the breakdown of community trust and confidence in leaders. Contracts are awarded with minimal supervision, and SPDC has no way of ensuring that local contractors fulfil obligations.

Community members now either avoid these elites or look for opportunities to benefit from the same process. The result is that people become more focused on individual gains than on the general wellbeing and progress. Community institutions become weak and ineffective as the individual takes precedence over the collective.

As a result of this community breakdown, companies such as SPDC received mixed messages. The most vocal in the community who argued for improved development and compensation were often seeking more contracts and more money. The elites have formed strong patronage networks, 'mini-Mafia' associations that stretch from within the community possibly into the company itself. The overall aim of these networks is to ensure that poor and marginalised people have no say in the discourse between company and community, or government and community. The disempowered majority are left to focus on increasingly precarious farming and fishing livelihoods.

Identifying host communities – also referred to as 'operational communities' – has exacerbated inter-communal conflict over land and water tenure. Much of the agitation in the Niger Delta today is elite led, with communities fighting for what they believe will be the great dividends associated with being a host community, i.e. the recognised landowner where oil or gas operations take place. Funds that enter these communities rarely result in public-benefit development but instead further enrich elites. Leaders in neighbouring communities, who want a share of the dividends, have brought communities into conflict, and there are many law suits over the rightful ownership of land. Conflict has resulted in many casualties and displaced people.

Contract management style and access to potential compensation payments have also led to *intra*-communal conflict. Families in communities have clashed over land disputes. In Amorekeni, Bayelsa State, for instance, community members report that some families have had their lands surveyed but others are still disputing which parts of the family own the land. The potential dividends are so high that people within the same family will dispute landownership.

Steps need to be taken by oil companies such as SPDC to ensure they can engage with the wider community residents and not just self-selected spokespeople who mainly represent their own interests. An approach to disaggregating communities is required

to ensure that internal strains and competition are identified. SPDC is a large and bureaucratic company with limited capacity to research and comprehend community dynamics, although it is demonstrating a willingness to change its approach. The challenge is to address the legacy issues from past ineffective community engagement, abandoned projects and conflict, while managing the resistance that any new approach will meet with, both within and outside the community.

### **The Akassa model**

The Global Memorandum of Understanding (GMoU) model is borrowed from the success of the Akassa programme in Bayelsa State, facilitated by PNI and primarily funded by the Norwegian oil company StatoilHydro. Statoil has supported community development in the Akassa area since 1997, having identified communities there as most likely to be affected by any spills from the company's deep-water offshore oil exploration.

The process developed an innovative inclusive approach embracing the whole Akassa Development Area, including 19 communities and 124 fishing ports.<sup>145</sup> The process started by supporting smaller development projects, such as microcredit, a women's and children's nursery project, forest user groups and fishers (through improved resource management). The programme grew to involve youth, the council of chiefs, education and health advocacy groups, and small infrastructure development.

The Akassa Development Foundation (ADF) emerged as an umbrella body to facilitate and co-ordinate the process. It has demonstrated that community institutions in the Niger Delta can develop capacities and accountability; that participatory processes can ensure that even the most marginalised have the chance to contribute to a programme not dominated by elites; and that community projects can be completed. Project implementation by the ADF was backed by a significant investment in capacity development, helping communities to effectively prioritise their needs and to plan, budget, implement and monitor.

Factors contributing to the success of the model include: gender balance and women's representation in decision-making; residence of all key actors and decision-makers in the local community, removing the danger of capture by non-resident elites and patronage networks; wide consultation within and outside the communities; a focus on the geographical area rather than Akassa Kingdom, ensuring that all who reside in Akassa were included, not just Akassa clan members; and provision of external facilitation, technical and management support.

The Akassa programme is a success. The people of Akassa have their own development plan, updated annually, and a corresponding budget. The plan forms the basis of wider-scale planning whereby local or state government and oil companies can determine what they will (or could) support. The ADF is registered with Nigeria's Corporate Affairs Commission and has bank accounts, a seal and a constitution; and it can sue or be sued – factors that make it an accountable partner for development. The ADF publishes monthly

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<sup>145</sup> The Akassa Development Area is recognised by Bayelsa State Government and has a chairman and local authority headquarters in Ogbokiri, Akassa.

expenditure reports, posts them on local notice boards and reports expenditure monthly to Statoil.

This success has captured the attention of the oil and gas industry in the Niger Delta. It is a process and cannot be a blueprint. PNI has successfully replicated this process with funding from Total<sup>146</sup> in Akwa Ibom State and Rivers State, and the participatory foundations for this success could be adapted to suit other programmes.

### **SPDC adopts the Akassa model**

In 2005 SPDC announced that it wanted to develop a similar model to Akassa to fit its own objectives in its areas of operation. At the end of 2006 it invited PNI, along with Enterprise for Development International,<sup>147</sup> to participate in the design of guidelines for its GMoUs, which would be signed with clusters of communities. The process commenced with five clusters in Bayelsa State and eight in Rivers State.

The GMoU has two purposes: to give communities more involvement and more responsibility in determining how community development funds should be invested; and to 'roll' all existing MoUs into one for easier administration. The basis of the GMoUs was to be the Operational Policy and Procedure Guidelines (OPPG), developed to ensure a mutually beneficial relationship whereby community members beyond the strong patronage networks have a direct say and stake in SPDC-supported community development, while ensuring that SPDC's business could continue.

The new GMoU framework is organised according to clusters of host communities and has two key institutional components: the Community Trust and the Cluster Development Board.

#### ***Community Trusts and Cluster Development Boards***

Community Trusts are to be established in all participating communities and have the primary responsibility of ensuring that benefits from the GMoU reach community members. Trusts should also represent the needs and wishes of their community on the umbrella institution, the Cluster Development Board. Each Trust should serve the interests of its community with respect to development projects and ensure wider participation in planning and implementation. Trusts are to be made up of 10 respected and trusted members of, and residents in, the community, at least three of them women.

Each Cluster Development Board is to be responsible for co-ordinating GMoU development activities across all the participating communities within a given cluster, ensuring equity in planning and implementation. Boards should consist of the chairman/ woman (in practice all are men) and secretary of each Community Trust, an SPDC representative, a local government representative, a state government representative, a Niger Delta Development Commission representative, a National Petroleum Investment Management Service representative, and a representative from the donor community.<sup>148</sup>

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<sup>146</sup> Total Exploration and Production Nigeria Ltd.

<sup>147</sup> A Christian micro-enterprise organisation, now called endpoverty.org

<sup>148</sup> In the event, the donor community has not been represented.

Members of each Board are required to swear an oath of office and adhere to a code of governance that removes conflict of interest and supports due process, equity, participation and commitment to community development. In many cases, Boards will oversee clusters of more than 10 communities, making them very large. In such cases, a smaller management subcommittee is to be established to perform most functions.

Each Board also has four standing committees for finance and resource management; partnering, communication and capacity building; peace; and technical matters. Boards are responsible for engaging with SPDC and for managing the relationship between SPDC and the cluster, to eliminate opportunities for elites to approach SPDC and claim to speak for communities.

### ***Implementation process***

To implement the GMoUs, SPDC entered into negotiations over development funds that the host communities and clusters would be entitled to. Amounts varied between clusters on the basis of SPDC's local levels of oil production, assets and access. Funds were agreed to be paid on an annual basis in three instalments. Other terms and conditions were also agreed and signed by cluster representatives and SPDC.

SPDC then formally involved the relevant state governments to engage with the communities under each cluster to identify the 10 Community Trust members, supposedly nominated by community members. SPDC believed that government recognition of the GMoU institutions and stronger linkages could be achieved if government was given specific roles to perform. There was also confidence that the involvement of government would restrict the excesses of those selected.

Once Trust members were identified, local NGOs were contracted to conduct a sensitisation and verification exercise in all the host communities supposedly visited by the government representatives. Upon confirmation by community members of the individuals selected, Trust members under each cluster swore the oath of office. Trust chairmen and secretaries also swore oaths of office to join the Cluster Development Board.

The Boards were entitled to 5% of the annual negotiated sum under the GMoU agreement to manage their administrative functions, including running a secretariat and hiring staff. Another 5% would be used by to monitor project implementation at community level.

The NGOs conducted a baseline survey of clusters' assets and priorities. Emphasis was placed on existing livelihoods and interdependence. Baseline data would be used for longer-term monitoring and evaluation.

A more detailed Sustainable Livelihoods Assessment was made to identify livelihoods and available capital within communities. Through this analysis, communities could begin to identify strategies that support their livelihoods and to adopt new strategies and programmes to improve opportunities for economic, social and environmental development. The strategy should incorporate what is available to the community and what inputs are required for successful implementation.

With the support of an NGO, the Sustainable Livelihoods Assessment was translated into a five-year Community Development Plan and Cluster Development Plan. This is where

the wider community comes together to agree key priorities and identify projects that can be supported by SPDC development funds and also by other stakeholders such as the local and state government. The Community Development Plan should also have a budget identifying the roles and contributions of key stakeholders, including community inputs and contributions to specific projects.

The Community Development Plan is then fed up to the Cluster Development Board, which collates the information submitted by communities into a Cluster Development Plan. The Board must then identify 'regional' projects that are larger and may cut across more than one community. The Board manages these larger projects, while the Trusts oversee all community-specific projects. Most clusters are currently at the point of project implementation. Some are further ahead than others depending on the capacity of the facilitating NGO and the socio-political environment of the cluster.

### ***Operating principles***

Key principles in the design of the GMoU process are participation and equity. Bottom-up planning will only be meaningful if a wide section of community members – beyond Community Trust members – can participate. Facilitation of the Sustainable Livelihoods Assessment is key. A wide range of community constituents should have the opportunity, separately, to identify issues affecting their livelihoods and access to capital – natural, financial, physical, human and social. Community constituents include the larger groupings of women, youth, men, elders, and councils of chiefs, as well as other groups such as farmers, fishers, hunters, okada riders (commercial motorcyclists), widows, young mothers, single-headed households, teachers, parent/teacher associations, students, community health workers, market associations and traditional birth attendants.

The facilitating NGO plays an important role in disaggregating the community to ensure a wide section of groups and interests have been heard. This will ensure ownership of the Community Development Plan and reduce the level of marginalisation experienced by so many community members as a result of capture by elites. This is supposed to be a *pro-poor* initiative that gives voice to the many.

Ultimately, Community and Cluster Development Plans should be used to advocate for funding from local government to feed into local economic empowerment and development strategies, which fall under the umbrella of the Nigerian Economic Empowerment and Development Strategy (NEEDS). NEEDS has been developed to assist Nigeria in its attainment of the Millennium Development Goals.

### **The challenge of translating principles into practice**

From the beginning, SPDC has faced an enormous challenge in translating principles into practice in a climate of conflict, uncertainty and widespread discontent with the oil and gas industry. SPDC as the largest operator in the Niger Delta has the greatest expectation placed upon it. Several issues emerged to challenge implementation of the GMoUs from the very beginning, while others have surfaced later.



### ***Poor timing and clan vs political boundaries***

GMoUs were drafted and signed with clusters of communities before the Operational Policy and Procedure Guidelines (OPPG) were conceived. At this stage, only a brochure existed explaining the general GMoU concept; the details had not been drafted. GMoU awareness commenced in July 2006, negotiations around September/October 2006 and the OPPG production only in December 2006. Before drafting the OPPG, therefore, expectations had already been raised.

One consequence of commencing ahead of the OPPG was minimal public discourse on the composition of the clusters and how, or whether, they should link with local government boundaries for longer-term sustainability. Before negotiations commenced, clusters were chosen along clan rather than political boundaries. In the multi-ethnic Niger Delta, clans tend to be exclusive. SPDC's arrangements therefore complicated opportunities for synergy with local governments, where clan clusters cut across local government boundaries; they raised the danger of exclusiveness and fed into traditional clan leadership, which had already failed in many places.

While the oil industry can be a catalyst for institutional development in communities, ultimately community institutions must be linked with their governments to ensure sustainability as well as adequate service delivery to all. The oil industry can provide seed funds to help start the process, but the government is ultimately responsible for provision of health care, education, water and key infrastructure. Institutions should therefore fall within political boundaries not across them, to ensure synergy with government planning. As community institutions grow in confidence and capacity they can begin to effectively engage their local governments and advocate for their rights.

A focus on political boundaries would ensure that all members of participating communities, regardless of ethnicity, can benefit from the GMoU programme and be included in planning. However, signing GMoUs with clan-based clusters implies that only members of the clans involved should benefit; this may not be SPDC's intention but is highly likely to be the understanding of some clans. Clan boundaries are also often disputed, creating instability in the system.

### ***NGO under-capacity and SPDC's contracting culture***

The GMoUs place high expectations on the civil society sector, particularly NGOs. For SPDC, NGOs and Cluster Development Boards were to become the fulcrum of the GMoU, with the NGOs mentoring the Boards for one to two years and then exiting. But the technical capacity and skills base required to accomplish this were not assessed at the entry level, nor was a structured long-term programme put in place to build and sustain skills and capacity.

PNI partnered with IMA International, a UK-based training institute, to provide training for 62 staff from the 16 identified facilitating NGOs, with 25 SPDC GMoU implementation staff also in attendance. The OPPG is a complex document with complicated inter-linkages between institutions, principles and subtle details aimed at involving the poorest and most marginalised people. One training course cannot fully strengthen the capacity of NGOs and staff or provide them with all the tools to reach beyond the usual community protagonists and elites.

Weak local NGO capacity has led to NGO staff invariably following instructions from SPDC implementation staff. The NGOs are often unable to achieve an equal dialogue with SPDC and as a result essentially become contractor agents, doing what they are told. The oil industry in general, SPDC included, lacks mechanisms to partner with NGOs effectively. It categorises NGOs as contractors, hired for services delivered in the same way that contractors may be hired to lay a pipe or construct a bridge.

The essence of the OPPG – the GMoU guidelines – is to encourage SPDC to take a hands-off approach and allow NGOs to incubate participatory and sustainable development in the field. NGOs must be accountable for their work but they must also be allowed to fulfil their role without interference, since the latter begins to replicate failures of the past and entrenches the contracting culture. Any perceived opposition to SPDC's interests is dismissed, and NGOs fear 'losing their contract' if they fail to follow SPDC instructions.

The GMoU should first and foremost be about a development process that cannot be measured with specific dimensions and figures but is organic and sometimes unpredictable, mirroring the nature of society. Currently the balance of power is with SPDC, whose dilemma is whether it can afford to let go if NGOs lack capacity. Implementation of development programmes in the Niger Delta is difficult enough, but SPDC's visible involvement makes it more so. At best, it creates confusion among community members as to who is in control. At worst, it undermines the NGOs and encourages business-as-usual whereby elites vie for the attention of the assumed 'real authority'.

Following the NGO/SPDC staff training course, three issues were highlighted. First, the need for further NGO capacity development was clear, and PNI (supported by IMA) prepared a long-term training programme. This was dropped due to SPDC's lack of funds. Second, it was strongly urged that a pilot be implemented, but given the expectations raised through the GMoU negotiations, it was difficult to convince SPDC to undertake a pilot scheme to test the OPPG and identify strategies for issues and problems that have since come to plague the larger implementation process. Third, participants in the training identified that the workplan for the roll-out of the GMoUs was far too rapid. Once again, SPDC's wish to be seen to be doing something meant that concerns were ignored.

As a result, and under pressure for quick results, it appears that certain NGOs and SPDC GMoU implementation staff have not followed the rigorous procedures required for Sustainable Livelihoods Assessments and opted instead for discredited methods of cutting corners and dealing with community elites. From PNI's viewpoint, SPDC staff evaluated NGOs by the speed with which the Sustainable Livelihoods Assessments were conducted, irrespective of the number or size of communities in each cluster. This led to some assessments being more like the initial baseline survey, lacking critical analysis and disaggregation of communities. Assessments have therefore not been informative or detailed enough to promote true participation.

Project implementation has also ignored participatory processes. SPDC continues to emphasise the finished project with very little regard to engaging with communities and

building their capacity. PNI's view is that SPDC evaluates NGO performance on how quickly project implementation is completed and exploits NGO fears of losing contracts; and in response NGOs ignore participatory principles and bypass most of the steps to complete projects.

### ***Community capacity***

The capacity of community members is another limiting factor. For a GMoU to succeed, the community is expected to build up responsive, effective and responsible institutions able to conceive and deliver well-thought-out plans and projects.

The usual way of doing business in the Niger Delta has been to award contracts to the elite to buy their favour, ensure they make some money and allow oil production to go on. GMoUs impact on opportunities for big contracts to key individuals and should put more power in the hands of the 'silent majority' of community members. This in itself is a challenge, with SPDC trying to introduce more transparent decision making and to open up space for more people to participate. Technically, under the GMoU, contracts can still be awarded, but the client is the community and not SPDC. Therefore the institutions developed need to understand that they have the authority to enforce accountable practices by contractors. Unfortunately, communities are not familiar with these practices, which require active citizenship, which is weak in the Delta. Low levels of trust result in the more powerful community members holding on to the old way of doing business.

Cluster Development Boards have also undergone training on the OPPG, but this needs constant reinforcement. Where both NGOs and participating communities lack capacity, there is a greater chance that the OPPG will not be adhered to, and impact on the ground will be minimal. The consequent danger is that patronage networks may be reinforced, and stronger patronage institutions through Community Trusts and Cluster Development Boards may strengthen community demands for contract-led appeasement. In some clusters, up to 20 new institutions have been created, and if the facilitating NGO lacks capacity these institutions could become disruptive.

Complicating the role of communities is SPDC itself. In PNI's opinion, to get projects completed in a short space of time to demonstrate results, some SPDC staff have continued to push the agenda for the Cluster Development Boards to award contracts for projects, rather than following the more participatory, empowering and time-intensive process of facilitating a community project management committee and allowing the community to manage the project themselves.

### ***Failure to manage levels of expectation***

Following on from capacity concerns is the high level of expectation generated right from the negotiation stage. GMoU figures had already been agreed with communities before the OPPG guidelines had been written. This raised expectations of communities to receive large sums of money, and in particular the elites expected to get a personal slice of funds. Money *per se* is not the solution to the Niger Delta, and large sums can be debilitating to new institutions without the capacity to manage them and vulnerable to attack from patronage networks.

### ***Elite and gender dominance***

The initial negotiations alerted community elites to the large sums of money available to clusters and gave them the opportunity to sideline the poor and women. Most members of the Cluster Development Boards are council of chiefs members – political, influential and rich elite men – mostly based in urban metropolitan Warri, Yenagoa and Port Harcourt. The exclusion of women and the inclusion of elites residing outside their communities are direct contraventions of the OPPG and of principles of inclusiveness and fairness.

SPDC contributed to this problem by assuming that the government could facilitate the nomination of Community Trust members. PNI experienced this problem when asked to facilitate the GMoU in Andoni, Rivers State. Members of the Trusts and Board had already been selected by the state government without the involvement of civil society. All were men. Dealing with gender issues can be very difficult when patronage networks dominate the agenda and exclude women. This situation requires the skills of experienced facilitators to ensure that women can participate.

### ***SPDC identity***

The oil industry's need for recognition is often its own downfall. Companies want their names and logos on signboards outside their projects, or to have projects painted in 'their' colours. This reinforces the belief that these projects belong to the company rather than the community.

With respect to the GMoUs, in PNI's opinion SPDC (like other leading oil multinationals) wants all the credit for success and appears only lukewarm to the idea of entering into a true multi-stakeholder partnership with other companies and the government. If companies want to take a more hands-off approach to service delivery, they must be willing to actively partner. Ideally companies operating in the same area should be talking about synergy. Technically, the GMoU model allows for this, but companies will not buy into it because of fear of losing their identity in the process. Companies fear that a loss of credit will result in a loss of goodwill. Ironically, the companies with the most goodwill from communities, such as StatoilHydro and Total, are those that have found a better balance between support and minimal interference.

Statoil has been funding the Akassa programme of 12 years. There are no signboards in Akassa recognising Statoil funding, and the Akassa community see the Akassa Development Foundation as responsible for implementation. However, the community know the funds are provided by Statoil, and the ADF reports to Statoil. Company visits are always welcomed, especially by the youth, in acknowledgement of Statoil's support and empowerment. This trend is replicated in Eastern Obolo and Opobo Nkoro community development foundations, where Total signboards are absent but communities understand where the funding comes from and have a good and open relationship with the company. Frontier Oil is following this example in Eket and Esit Eket community development foundations.

## Limited successes

There have been some limited successes associated with SPDC's GMoU programme. For example, SPDC has been punctual in its release of funds, and this has enabled a number of clusters to plan and implement projects.

In Etche, Rivers State, the GMoU process has enabled communities to build a town hall (functional and in use), run a scholarship scheme, and complete and commission two cluster projects: a school and a road project. Etche cluster is also the first to have solar-powered water borehole systems, installed in four communities. The Ikwerre cluster, also in Rivers State, has carried out construction of an access road between Omueke and Igwurrita, Omuigwe town hall and rehabilitation of the Omuike-Aluu rural electrification project.

Improved linkages between SPDC, NGOs and some communities are another relative success, where effective facilitation has brought about strategies that were not possible in the past. Although further capacity building is required, this has exposed Community Trust members to new and improved ways of promoting sustainable development in their communities.

However, while there have been successes in project delivery, the fundamental principles have been ignored. Success should be measured based on the inclusion of people in decision making and the development of strong, accountable institutions that can support and advocate for service delivery beyond SPDC funding. SPDC still places greater emphasis on project implementation than on participatory processes. It is not investing enough time to get the process right, so an elite group on the Boards is emerging to control the process rather than involving a wide range of stakeholders.

## Conclusions

The GMoU model is a substantial improvement on previous SPDC community engagement strategies and has enjoyed a limited degree of success. It has potential to promote effective community development in synergy with local and state government and indirectly to force government to take responsibility for service delivery. It should be a participatory, inclusive and empowering process – but on the whole it has not turned out that way. There is therefore a need to highlight concerns in implementation and lessons learned in the hope that they will be addressed to the benefit of the communities for as long as SPDC operates in the Niger Delta.

In the absence of strategies for linking community development plans and budgets with government planning, state and local government roles are still just ceremonial. The problem is caused by limited capacity within communities and NGOs to advocate for more support for community development plans. Further capacity building is required if advocacy is to be meaningful. Without this, government will not take responsibility, and communities will expect SPDC to implement the whole plan.

SPDC is also still focused on having contractors identified for implementing most community and cluster projects, even where communities are able to mobilise skilled members to implement the projects themselves. SPDC must remember that the community – not SPDC – is the client, and communities must be allowed to take their own action with NGO facilitation. By rushing projects through contractors SPDC is clinging on to doing business – and development – the old way.

There is an overbearing and negative influence from some SPDC GMoU implementation staff on Cluster Development Board members to select and implement projects that have not been prioritised by communities. This dangerous precedent continues to support elite patronage networks and undermines the authority of the wider community. It also makes a statement that community input is not valued. If further conflict is to be avoided, SPDC must stop this trend immediately.

A majority of Community Trusts and Cluster Development Boards are dominated by men, elites and traditional rulers. The process has further marginalised other groups, including women and youth, contravening the original intentions.

Community institutions have not yet mastered the skills for thinking laterally or creative problem-solving. They still need strong facilitation to build their confidence and capacity to do this for themselves.

The GMoU programme would have benefited immensely from a pilot project focused on getting the processes right rather than rushing a roll-out ignoring basic participatory principles.

## **Recommendations**

Addressing the following recommendations can bring the GMoU programme back on track to success.

1. If SPDC is serious about supporting the development principles and processes contained in the GMoUs' Operational Policy and Procedure Guidelines (OPPG), a detailed ongoing training plan – with refresher courses – for SPDC implementation staff, NGOs, Cluster Development Boards and other community institutions should be put in place.
2. SPDC should reflect on the skills of its staff engaged in community development and remove staff with limited or no competency and/or experience in sustainable development.
3. SPDC needs a strategy for linking GMoU communities with state and local government. In the long term, this will shift host community expectations from SPDC towards government institutions.
4. SPDC should emphasise and actively support adherence to the OPPG guidelines while encouraging differences in implementation from cluster to cluster and allowing NGOs flexibility to determine the best approach to ensure processes are followed. The OPPG document should be the automatic reference point for all stakeholders.
5. Processes should be followed to ensure gender equity. Affirmative action is required to address women's marginalisation from the decision-making bodies and ensure their greater inclusion.

## Conclusions and recommendations

*Key concerns • A framework for change • Recommendations*

The preceding case studies highlight a spectrum of problems experienced by Niger Delta communities, very largely dating from the development of the region's oil and gas industry. Royal Dutch Shell itself recognises that 'The challenges inherent in conducting operations in the Niger Delta are extreme.'<sup>149</sup> However, our studies also identify opportunities for doing things better.

As argued in this report's introduction, there can be little doubt that Shell and SPDC, the Delta's largest oil and gas operators, carry a major responsibility to address impacts to which they have contributed. The duty of companies to 'do no harm' in respecting human rights requires no less.

Despite differences of emphasis in our studies, a consistent thread of concerns emerges regarding Shell's and SPDC's operations, as summarised below.

### Key concerns

#### ***A continuing failure operate fully according to robust international social and environmental standards***

In respect of gas flaring, oil spills, pollution control and response, environmental rehabilitation, the conduct of social and environmental impact assessments, and the delivery of developmental benefits to local communities, company operations fall far short of both the letter and the spirit of best practice.

#### ***Severe pollution of air, land and water, with disastrous impacts on health, livelihoods and poverty***

The deterioration of living conditions as demonstrated by a range of socio-economic and health indicators and reports during the decades when Shell and SPDC have operated in the Delta show how badly their environmental management practices have impacted on human wellbeing.

#### ***Inadequate inclusion of the region's communities in decisions affecting their lives and a failure to dialogue respectfully, address critical needs and maintain trust***

Shell's and SPDC's approach to consultation and engagement with local people has lacked transparency and due care, leading to bitter disillusionment and, arguably, heightened conflict. Their recognition of the need for improved approaches to community relations has been undermined by a lack of commitment to the painstaking processes essential to genuine human-centred development.

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<sup>149</sup> Shaun Wiggins, Global Spokesperson at Royal Dutch Shell, quoted in 'Shell disputes Amnesty report on Nigeria', *New York Times*, 2 July 2009.

### ***Short-termism and lack of vision***

Besides being a critical factor in the above problem areas, Shell's and SPDC's lack of a broad inclusive long-term vision for the Niger Delta has led them to be associated with heavy-handed and at times extremely violent operations by state security forces in the face of community protests, as well as with corrupt elites and divisive outcomes within and between communities.

### **A framework for change**

The picture appears bleak but not hopeless. Shell's own General Business Principles offer a framework that if rigorously implemented would go a long way to addressing the challenges that it and SPDC face:

- 'core values [of] honesty, integrity and respect for people ... trust, openness ... fairness in all aspects of our business';
- integrating 'economic, environmental and social considerations into business decision-making';
- 'support fundamental human rights in line with the legitimate role of business ... give proper regard to health, safety, security and the environment';
- 'continually look for ways to reduce the environmental impact of our operations';
- 'continuously improving the ways in which we contribute directly or indirectly to the general wellbeing of the communities within which we work';
- 'manage the social impacts of our business activities carefully and work with others to enhance the benefits to local communities, and to mitigate any negative impacts';
- 'regular dialogue and engagement with our stakeholders';
- 'the behaviour expected of every employee in every Shell company in the conduct of its business at all times';
- 'a comprehensive set of assurance procedures ... designed to make sure that our employees understand the principles and confirm that they act in accordance with them'.

For further guidance, Shell and SPDC could look to the report to the Nigerian Federal Government by its own Technical Committee on the Niger Delta, chaired by MOSOP President Ledum Mitee.<sup>150</sup> The committee's short-, medium- and long-term recommendations – including a multi-stakeholder compact to deliver 'visible, measurable outputs which should produce material gains within an 18 month period' – are addressed to all main actors in the region, including international oil companies.

These recommendations include: the setting up of a Niger Delta Special Infrastructural Intervention Fund and Community Trust Funds with contributions from the oil companies; expanding energy and water facilities to connect communities; a clean-up of oil-polluted environments; paying adequate compensation at current rates for lands affected by oil exploitation; ending the casualisation of labour; an immediate end to gas flaring; and close co-operation between companies, government and civil society to expose and end the theft and illegal sale of crude oil.

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<sup>150</sup> *Report of the Technical Committee*, op. cit.



Shell and SPDC have more to learn from others. As two of our case studies indicate, other international oil companies have managed to secure a significant degree of community consent in the Niger Delta.<sup>151</sup> It would benefit Shell and SPDC to undertake more considered analysis of how this has been achieved in order to effectively replicate such good practices.

The present situation in the Niger Delta is morally unsustainable. Urgent solutions must be embarked on. Justice must be done and be seen to be done. Burdens should be shared in proportion to wealth, power, capacity and degree of involvement. Given the will, confidence building measures can be undertaken and 'quick wins' identified while the longer-term issues are tackled.

## Recommendations

ECCR and the contributors to this report propose these recommendations to Royal Dutch Shell and SPDC as ways to address the problems previously identified.<sup>152</sup> Shell should take a principled stand on these matters and renegotiate its joint venture agreement with the Nigerian Federal Government to ensure that adequate funds are prioritised to address the most urgent problems facing communities. With time, this is likely to result in major cost savings as well as generating very significant social and environmental benefits and rebuilding trust. Lack of resources is not a valid reason for delay in one of the world's most profitable business sectors.

### ***1. Stop gas flaring as a matter of urgency, prioritising flares closest to communities, if necessary halting production while flares are eliminated***

Gas flaring remains an overriding issue affecting the health and wellbeing of the region's people, as well as being a major contributor to climate change.<sup>153</sup>

### ***2. Mobilise resources without delay to address communities' need for sustainable sources of clean drinking water***

The human right to clean water is inalienable. Any industry whose operations impair that right has an immediate duty to remedy the situation fully.

### ***3. Embark on a Delta-wide environmental audit and rehabilitation programme, cleaning up the legacy of oil spills, polluted land and waterways, and rapidly replacing old pipelines to international standards***

Fully and transparently document environmental damage in every location where SPDC operates, with independent verification (quality assurance). Undertake oil containment, clean-up and remediation promptly without disputing the cause of spills. Report openly to communities and support and empower community-based organisations in developing environmental restoration and rehabilitation techniques.

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<sup>151</sup> See case study 4, page 63, and case study 5, pages 67-8 and 74.

<sup>152</sup> SPDC informed ECCR that 'In some areas of the report [we] do see a convergence of ideas and themes with SPDC and [we are] pleased to see that a number of recommendations made in the report are already part of SPDC's work practices and plans' (and giving examples of such practices and plans) – Mutiu Sunmonu, email communication, op.cit.

<sup>153</sup> Shell's contribution to Nigeria's gas flaring problem can be estimated from published figures on the payment of gas flare penalties to the Central Bank of Nigeria. Shell's gas flare penalty payments totalled US\$34 million from 1999 to 2004, just under 24% of the total US\$142 million penalties paid by all oil and gas companies operating in Nigeria during the period: [www.neiti.org.ng](http://www.neiti.org.ng)

#### **4. Transform SPDC's operating culture through a continuous programme of staff training in human rights, conflict management and community relations**

A rigorous training and retraining programme should run in parallel with the removal or relocation of staff unable or unwilling to change. Revisit and implement recommendations of past external stakeholder reviews to improve the training and retraining process.

#### **5. Apply effective social and environmental impact assessment methodologies; respect principles of open dialogue and community consent; establish independent monitoring and effective grievance mechanisms**

Community consent means treating local communities as genuine partners and avoiding conflict by not operating where there is genuine opposition.<sup>154</sup> Independent monitoring is a logical extension of the assurance that companies already undertake in their business reporting. Effective grievance mechanisms are highlighted by UN Special Representative John Ruggie as part of the corporate duty to respect human rights.<sup>155</sup>

#### **6. Scale back operations in localities where significant unfulfilled commitments remain and community tensions exist until problems have been remedied**

In recognition of the principles of 'do no harm', accept short- and even medium-term production losses as a price worth paying for resolving conflict and building long-term trust. End surveillance contracts and non-transparent forms of contracting that favour some community members over others and foster community divisions.

#### **7. Transform community development programmes through participatory, inclusive and empowering strategies**

Apply a fully consultative, 'whole community' approach to community development in place of using community projects as channels of appeasement and patronage towards elites and violent groups. Address the exclusion of women and other marginalised groups through affirmative action to enable community bodies to become fully representative. Identify, advocate and support initiatives offering prospects for economic diversification and sustainable livelihoods, including the local energy market for gas and renewable energy using low-maintenance solar and tidal technologies. Use the GMoU approach more widely to transfer economic empowerment and human capital development to community trusts.

#### **8. Implement a policy of fully disaggregated revenue and expenditure transparency**

To break down misperceptions and help Nigerian civil society assess whether payments are properly utilised, Shell should publish prompt and comprehensive company data on profits, losses, expenditures and revenues in Nigeria, state by state, at the same time as it provides country-level information to the Federal Government under the Extractive Industries

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<sup>154</sup> On community consent, see K. Slack, 'Corporate social license and community consent', November 2008, [www.policyinnovations.org](http://www.policyinnovations.org)

<sup>155</sup> 'Mechanisms at the operational level, to which affected individuals and communities can bring grievances' – *Business and human rights ...* report of the Special Representative of the Secretary-General, April 2009, op. cit.

Transparency Initiative (EITI).<sup>156</sup> Ensure also that all future company clean-up and security spending is publicly disclosed in sufficient detail to be accessible to civil society.

**9. Affirm the findings of the Report of the Technical Committee on the Niger Delta and publicly commit to work with others in implementing its recommendations**

The Technical Committee delivered its report in November 2008.<sup>157</sup> Since then it appears that few if any of its recommendations have been taken up. Shell and SPDC have an opportunity to become advocates for the committee's carefully considered programme for change.

**10. Link the remuneration of senior company executives responsible for Niger Delta operations to satisfactory progress on human rights and environmental issues**

Pay and bonuses of senior Shell and SPDC executives should incentivise approaches that contribute to the long-term resolution of problems associated with operational impacts on the environment, livelihoods, human rights and social conflict in the Niger Delta.

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<sup>156</sup> Shell supports the EITI and provides disaggregated country financial data to the Nigerian government for Nigeria EITI ([www.neiti.org.ng](http://www.neiti.org.ng)). SPDC Chair Basil Omiye is NEITI's Vice-Chair. But Nigeria is not yet fully 'EITI compliant', and NEITI's reporting currently covers only 1999-2005, not later years, and lacks disaggregated state-by-state data.

<sup>157</sup> *Report of the Technical Committee*, op.cit.

## Appendix I. Key dates

- 1938 Shell D'Arcy obtains licence to explore for oil throughout Nigeria.
- 1956 Shell drills first successful well at Oloibiri, Bayelsa State; company renamed Shell-BP Petroleum Development Company of Nigeria.
- 1958 First shipment of crude oil from Nigeria.
- 1970 Controversy over oil spill at Ebubu-Elеме, Rivers State.
- 1973-4 Nigerian Federal Government acquires 35% then 55% equity in company.
- 1979 State-owned Nigeria National Petroleum Corporation (NNPC) increases equity in company to 60%, then to 80%; company renamed Shell Petroleum Development Company of Nigeria (SPDC).
- 1989 Fifth participation agreement adjusts SPDC equity to NNPC 60%, Shell 30%, Elf 5%, Agip 5%.
- 1990 Crisis in Umuechem, Rivers State, results in massacre of innocent citizens.
- 1991 Memorandum of Understanding revised with government.
- 1992 Mismanaged oil spills result in widespread protests.
- 1993 Sixth participation agreement: NNPC 55%, Shell 30%, Elf 10%, Agip 5%. Shell establishes Shell Nigeria Exploration and Production Company (SNEPCO).
- 1993-4 Peaceful Ogoni protests against Shell and lack of economic development. Nigerian military government occupies Ogoni region. Shell launches new corporate social responsibility programme focused on community assistance.
- 1995 More than 3,000 Ogoni reportedly die under occupation by military. International protests. Shell publishes newspaper advertisements asking for protests to end. Writer Ken Saro-Wiwa and eight other Ogoni leaders executed on trumped-up charges by Nigerian authorities. UK Prime Minister John Major condemns killings as 'judicial murder'. Nigeria suspended from the Commonwealth.
- 1995 SNEPCO drills Nigeria's first well in 1,200 m deep waters. Liquefied natural gas (LNG) financial investment decision signed.
- 1996 Construction of LNG facilities commences. Body Shop founder Anita Roddick leads international coalition demanding release of the Ogoni Twenty, political prisoners held in the same prison facility as Saro-Wiwa. Royal Dutch/Shell sued in US federal court by Ken Wiwa (son of Ken Saro-Wiwa) and other members of Movement for the Survival of the Ogoni People.
- 1997 Pensions Investment Research Consultants, ECCR and others, supported by WWF and Amnesty International UK, submit shareholders' resolution to the AGM of Shell Transport & Trading regarding environmental and human rights impacts of Shell operations in Nigeria. 10.5% of votes cast in support, 6.5% abstain.
- 1998 Nigeria's military ruler General Abacha dies. The Ogoni Twenty are freed by the transitional government led by General Abubakar. Nigeria readmitted to the Commonwealth. Shell incorporates Shell Nigeria Gas to distribute gas to the local industrial market in co-operation with Nigerian Gas Company.

- 1999 Shell launches \$8.5 bn LNG Train 3 integrated oil and gas project. Crisis in Odi, Bayelsa State, with massacre of almost a whole community.
- 2001 Ogbodo oil spill results in loss of over 16,000 barrels of crude oil and impacts over 40 communities. ECCR delegation visits the Niger Delta. Biseni six-point chain burst oil spill results in pollution of Taylor River and impacts over 20 communities.
- 2002 ECCR publishes report on delegation visit, *Telling Shell*.
- 2003 Nigerian general election universally condemned as rigged, with politicians in the Niger Delta arming youths. Shell faces investor revolt after revelations that it has 'lost' much of its oil reserves. Shell security advisers WAC publish internal report warning the company it may have to retreat offshore in Nigeria because of the deteriorating security environment.
- 2004 Shell issues revised reserves data, heavily reliant on offshore assets in the Gulf of Guinea.
- 2005 Shell merges its two arms – Netherlands-based Royal Dutch and UK-based Shell Transport & Trading – into a single entity headquartered in the Netherlands.
- 2006 ECCR and others submit shareholders' resolution to the AGM of Royal Dutch Shell regarding social and environmental performance in the Niger Delta, Ireland (Corrib) and Russia (Sakhalin). 6% of shareholder votes cast in support, 11% abstain.
- 2007 Nigerian general election widely condemned as flawed and unfair. SPDC announces further delay to 2011 for an end to gas flaring, citing \$1.3 bn owed by the state.
- 2008 Oil price rises to \$100 per barrel on international markets, peaks above \$147, then falls to \$34. Shell reports record profits. Four Nigerian citizens and Friends of the Earth Netherlands/Nigeria file lawsuit against Shell in The Hague alleging the company caused environmental damage abroad.
- 2009 Shell settles out of court in US cases *Wiwa v. Royal Dutch/Shell*, *Wiwa v. Anderson*, and *Wiwa v. SPDC*. \$15.5 million settlement to compensate plaintiffs, establish a trust for the Ogoni and cover plaintiffs' legal costs.

## Appendix II. Royal Dutch Shell General Business Principles<sup>158</sup>

### ***Introduction***

The Shell General Business Principles govern how each of the Shell companies which make up the Shell Group conducts its affairs.

The objectives of the Shell Group are to engage efficiently, responsibly and profitably in oil, gas, chemicals and other selected businesses and to participate in the search for and development of other sources of energy to meet evolving customer needs and the world's growing demand for energy.

We believe that oil and gas will be integral to the global energy needs for economic development for many decades to come. Our role is to ensure that we extract and deliver them profitably and in environmentally and socially responsible ways.

We seek a high standard of performance, maintaining a strong long-term and growing position in the competitive environments in which we choose to operate.

We aim to work closely with our customers, partners and policy-makers to advance more efficient and sustainable use of energy and natural resources.

### ***Our values***

Shell employees share a set of core values – honesty, integrity and respect for people. We also firmly believe in the fundamental importance of trust, openness, teamwork and professionalism, and pride in what we do.

### ***Sustainable development***

As part of the Business Principles, we commit to contribute to sustainable development. This requires balancing short and long term interests, integrating economic, environmental and social considerations into business decision-making.

### ***Responsibilities***

Shell companies recognise five areas of responsibility. It is the duty of management continuously to assess the priorities and discharge these inseparable responsibilities on the basis of that assessment.

#### ***a. To shareholders***

To protect shareholders' investment, and provide a long-term return competitive with those of other leading companies in the industry.

#### ***b. To customers***

To win and maintain customers by developing and providing products and services which offer value in terms of price, quality, safety and environmental impact, which are supported by the requisite technological, environmental and commercial expertise.

#### ***c. To employees***

To respect the human rights of our employees and to provide them with good and safe working conditions, and competitive terms and conditions of employment.

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<sup>158</sup> Royal Dutch Shell Plc, Shell General Business Principles, Shell International Limited, 2005, first published in 1976, [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/sgbp/sgbp\\_30032008.html](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/sgbp/sgbp_30032008.html) [accessed June 2009]. Reproduced with permission.

To promote the development and best use of the talents of our employees; to create an inclusive work environment where every employee has an equal opportunity to develop his or her skills and talents.

To encourage the involvement of employees in the planning and direction of their work; to provide them with channels to report concerns.

We recognise that commercial success depends on the full commitment of all employees.

*d. To those with whom we do business*

To seek mutually beneficial relationships with contractors, suppliers and in joint ventures and to promote the application of these Shell General Business Principles or equivalent principles in such relationships. The ability to promote these principles effectively will be an important factor in the decision to enter into or remain in such relationships.

*e. To society*

To conduct business as responsible corporate members of society, to comply with applicable laws and regulations, to support fundamental human rights in line with the legitimate role of business, and to give proper regard to health, safety, security and the environment.

***Principle 1 – Economic***

Long-term profitability is essential to achieving our business goals and to our continued growth. It is a measure both of efficiency and of the value that customers place on Shell products and services. It supplies the necessary corporate resources for the continuing investment that is required to develop and produce future energy supplies to meet customer needs. Without profits and a strong financial foundation, it would not be possible to fulfil our responsibilities.

Criteria for investment and divestment decisions include sustainable development considerations (economic, social and environmental) and an appraisal of the risks of the investment.

***Principle 2 – Competition***

Shell companies support free enterprise. We seek to compete fairly and ethically and within the framework of applicable competition laws; we will not prevent others from competing freely with us.

***Principle 3 – Business integrity***

Shell companies insist on honesty, integrity and fairness in all aspects of our business and expect the same in our relationships with all those with whom we do business. The direct or indirect offer, payment, soliciting or acceptance of bribes in any form is unacceptable.

Facilitation payments are also bribes and should not be made. Employees must avoid conflicts of interest between their private activities and their part in the conduct of company business. Employees must also declare to their employing company potential conflicts of interest. All business transactions on behalf of a Shell company must be reflected accurately and fairly in the accounts of the company in accordance with established procedures and are subject to audit and disclosure.

***Principle 4 – Political activities***

*a. Of companies*

Shell companies act in a socially responsible manner within the laws of the countries in which we operate in pursuit of our legitimate commercial objectives.

Shell companies do not make payments to political parties, organizations or their representatives. Shell companies do not take part in party politics. However, when dealing with governments, Shell companies have the right and the responsibility to make our position known on any matters which affect us, our employees, our customers, our shareholders or local communities in a manner which is in accordance with our values and the Business Principles.

*b. Of employees*

Where individuals wish to engage in activities in the community, including standing for election to public office, they will be given the opportunity to do so where this is appropriate in the light of local circumstances.

***Principle 5 – Health, safety, security and the environment***

Shell companies have a systematic approach to health, safety, security and environmental management in order to achieve continuous performance improvement.

To this end, Shell companies manage these matters as critical business activities, set standards and targets for improvement, and measure, appraise and report performance externally.

We continually look for ways to reduce the environmental impact of our operations, products and services.

***Principle 6 – Local communities***

Shell companies aim to be good neighbours by continuously improving the ways in which we contribute directly or indirectly to the general wellbeing of the communities within which we work.

We manage the social impacts of our business activities carefully and work with others to enhance the benefits to local communities, and to mitigate any negative impacts from our activities.

In addition, Shell companies take a constructive interest in societal matters, directly or indirectly related to our business.

***Principle 7 – Communication and engagement***

Shell companies recognise that regular dialogue and engagement with our stakeholders is essential. We are committed to reporting of our performance by providing full relevant information to legitimately interested parties, subject to any overriding considerations of business confidentiality.

In our interactions with employees, business partners and local communities, we seek to listen and respond to them honestly and responsibly.

***Principle 8 – Compliance***

We comply with all applicable laws and regulations of the countries in which we operate.

***Living by our principles***

Our shared core values of honesty, integrity and respect for people, underpin all the work we do and are the foundation of our Business Principles.



The Business Principles apply to all transactions, large or small, and drive the behaviour expected of every employee in every Shell company in the conduct of its business at all times.

We are judged by how we act. Our reputation will be upheld if we act in accordance with the law and the Business Principles. We encourage our business partners to live by them or by equivalent principles.

We encourage our employees to demonstrate leadership, accountability and teamwork, and through these behaviours, to contribute to the overall success of Shell.

It is the responsibility of management to lead by example, to ensure that all employees are aware of these principles, and behave in accordance with the spirit as well as with the letter of this statement.

The application of these principles is underpinned by a comprehensive set of assurance procedures which are designed to make sure that our employees understand the principles and confirm that they act in accordance with them.

As part of the assurance system, it is also the responsibility of management to provide employees with safe and confidential channels to raise concerns and report instances of non-compliance. In turn, it is the responsibility of Shell employees to report suspected breaches of the Business Principles to Shell.

The Business Principles have for many years been fundamental to how we conduct our business and living by them is crucial to our continued success.

Jeroen van der Veer

Chief Executive

August 2005

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## **ECCR corporate members**

### **Full members**

Apostolic Pastoral Association, Central Finance Board of the Methodist Church, Christian Aid, Diocese of Oxford, Industrial Mission Association, Missionary Society of St Columban, Oikocredit, Religious of the Assumption, Religious Society of Friends, Sisters of the Cross and Passion, Sisters of La Retraite, Society of Catholic Medical Missionaries, Society of the Daughters of the Holy Ghost, Society of the Holy Child Jesus, Traidcraft Exchange, United Reformed Church, USPG: Anglicans in World Mission.

### **Corporate associate members**

Baptist Union of Great Britain, Brentwood Quaker Meeting, Carlisle One World Centre, Cazenove Capital Management, CCLA Investment Management Ltd, Christian Council for Monetary Justice, The Church of Scotland, The Church in Wales, Churches' Council for Industry and Social Responsibility (ISR), Congregation of Jesus Charitable Trust, Co-operative Financial Services, Daughters of the Heart of Mary, Diocese of Brentwood Commission for Justice and Social Responsibility, Diocese of Hallam, Diocese of Shrewsbury Justice and Peace Commission, Diocese of Southwark, ECCR Ireland Working Group, ECCR Oxford Group, ECCR South West Group, ECCR West Midlands Group, ECPI s.r.l. (Italy), Ethical Investors (UK) Ltd, Ethical Screening, FairPensions, Faith at Work in Worcestershire, Franciscan Missionaries of the Divine Motherhood, IBEX (Churches Working with the Economy – Central South Coast), Interfaith Center on Corporate Responsibility (USA), Kent Area Justice and Peace Group, L & P Financial Trustees (Ireland), La Sainte Union, Lancaster Diocesan Faith and Justice Commission, Lincolnshire Chaplaincy Services, The Methodist Church, Mission in London's Economy (MILE), National Justice and Peace Network (NJPN), Pax Christi, Rathbone Greenbank Investments, St Patrick's Missionary Society (Ireland), School Sisters of Notre Dame, School Sisters of Notre Dame (Italy), Shared Interest, Sisters of Charity of Jesus and Mary, Sisters of Christian Instruction (St Gildas), Sisters of the Holy Family of Bordeaux, Sisters of Marie Auxiliatrice, Sisters of Our Lady of Apostles (Ireland), Sisters of St Joseph of Annecy, Sisters of St Joseph of Peace, Sisters of St Marie Madeleine Postel, Social Responsibility Forum of Churches Together in Cumbria, Society of Jesus, South Yorkshire Workplace Chaplaincy, Student Christian Movement, Telford Christian Council, Triodos Bank, United Reformed Church Northern Synod, United Reformed Church Wessex Synod, United Reformed Church West Midlands Synod, Uniting Church in Australia, Worcester Diocesan Board of Finance.

ECCR also has 100 individual associate members.

**‘An excellent report - particularly in its focus on the social licence to operate.’ - John Capel, Executive Director, The Bench Marks Foundation**

Global companies are increasingly recognised as having a duty in practice to respect human rights. Yet in the Niger Delta the oil industry’s association with adverse human rights impacts and environmental injustice is still widely agreed to outweigh any local benefits.

Shell is the largest international oil company operating in the Niger Delta, and this report builds on ECCR’s long-standing dialogue with the company, investors and civil society concerning its operations there.

The report brings together case studies from five civil society organisations that work with Delta communities. It provides an update on the situation and explores how Royal Dutch Shell and its Nigerian subsidiary the Shell Petroleum Development Company can do better.

The recommendations highlight the need for:

- an urgent end to gas flaring and provision of sustainable drinking water
- a major environmental audit and rehabilitation programme
- rapid replacement of ageing pipelines
- continuous staff human rights training
- effective social and environmental impact assessment methodologies
- greater respect for principles of open dialogue and community consent
- independent monitoring and effective grievance mechanisms
- a participatory approach to community development
- disaggregated revenue and expenditure transparency
- linking senior staff remuneration to progress on human rights and environmental issues

The report aims to provide a vehicle for dialogue and a framework by which Shell and its shareholders can address the moral and ecological debt our society owes the people of the Niger Delta and to help them improve their lives.

**‘ECCR’s report presents the complexity of the situation clearly.’ – Roisin Gallagher, former Trócaire West Africa Regional Programme Manager**

