

## **Royal Dutch Shell in the Niger Delta**

### **Complaint to the UK and Dutch National Contact Points under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises 25 January 2011**

#### **Submitted by:**

##### **Amnesty International**

Contact details:

Amnesty International - International Secretariat  
Audrey Gaughran, Director for Global Thematic Issues  
Telephone: +44-2074135870 (direct line)  
E-mail: [audrey.gaughran@amnesty.org](mailto:audrey.gaughran@amnesty.org)  
Michael Bochenek, Director of Law and Policy  
Telephone: +44-2074135869 (direct line)  
E-mail: [michael.bochenek@amnesty.org](mailto:michael.bochenek@amnesty.org)  
Amnesty International - International Secretariat  
Seema Joshi, Head of Business and Human Rights  
Telephone: +44-2074135951 (direct line)  
E-mail: [seema.joshi@amnesty.org](mailto:seema.joshi@amnesty.org)

##### **Friends of the Earth International**

Contact details:

Paul de Clerck, Coordinator Corporate Work  
Telephone: +32-494380959  
E-mail: [paul@milieudefensie.nl](mailto:paul@milieudefensie.nl)

##### **Friends of the Earth Netherlands**

Contact details:

Geert Ritsema, International Affairs Coordinator  
Telephone: +31-20-550 7300  
E-mail: [geert.ritsema@milieudefensie.nl](mailto:geert.ritsema@milieudefensie.nl)

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## I. Summary

This complaint sets out breaches of the *OECD Guidelines for Multinational Enterprises* (“OECD Guidelines”) by Royal Dutch Shell (“Shell”) in relation to statements made relating to the incidents and implications of sabotage to its operations on pollution and the environment of the Niger Delta.

This complaint is submitted by Amnesty International - International Secretariat<sup>1</sup> located at Peter Benenson House, 1 Easton Street, London UK WC1X 0DW and Friends of the Earth International<sup>2</sup> located at Nieuwe Looiersstraat 31, 1017 VA Amsterdam, The Netherlands (“the Complainants”).

It is submitted to both the UK and Dutch National Contact Points (“NCPs”) as the Complainants believe that both have authority to investigate and make a determination under the Specific Instance Procedure of the OECD Guidelines.

Friends of the Earth International and Amnesty International are concerned by Shell’s repeated claims about the proportion of oil spills in the Niger Delta that are due to sabotage committed by criminal gangs. While the Complainants appreciate that sabotage does occur, there are concerns that the figures used are too high, arbitrary, incorrect, misleading, and confusing. In some instances, figures given by the company are contradicted by figures used in relation to oil spills in other public material or comment. Despite repeated requests being made in the past, Shell has failed to make clear the basis for the figures they have published and how the data were gathered. Specifically, the company has failed to address claims that the data are not based on impartial evidence gathering. This has led to a perception that the figures are unproblematic and undisputed, which is far from the truth.

The implications of Shell’s repeated claims that between 70 per cent and 85 per cent and, most recently, 98 per cent of oil spills are due to sabotage are both serious and negative for the communities of the Niger Delta. Firstly, when spills are classified as the result of sabotage Shell has no liability or responsibility with respect to compensation for damage done to people or their livelihoods. Secondly, these figures have tended to be used by Shell to deflect attention away from legitimate criticism of its own environmental and human rights impact in the Niger Delta and as such to mislead key stakeholders – including consumers of Shell’s products and investors in the company.

This submission describes how the statements made by Shell relating to sabotage in the Niger Delta constitute a breach of the OECD Guidelines, specifically

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<sup>1</sup> Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. It is independent of any government, political ideology, economic interest or religion – funded mainly by its membership and public donations.

<sup>2</sup> Friends of the Earth International (FOEI) is the world’s largest grassroots environmental network, uniting 76 national member groups and some 5,000 local activist groups on every continent. With over 2 million members and supporters around the world, FoEI campaigns on today’s most urgent environmental and social issues. It challenges the current model of economic and corporate globalization, and promotes solutions that will help to create environmentally sustainable and socially just societies.

Sections III (Disclosure) and VII (Consumer Interests) as well as Section V (Environment).

## II. Background

The Niger Delta is one of the 10 most important wetland and coastal marine ecosystems in the world and is home to some 31 million people. The Niger Delta is also the location of massive oil deposits that have been extracted for decades by the government of Nigeria and by multinational oil companies. Oil has generated an estimated \$600 billion since the 1960s.

The oil industry in the Niger Delta started commercial production in 1958 following the discovery of crude oil at Oloibiri by Shell British Petroleum (now Royal Dutch Shell), in 1956. Today, the oil industry is highly visible in the Niger Delta and has control over a large amount of land. The Shell Petroleum Development Company (“SPDC”) alone operates over 31,000 square kilometres.<sup>3</sup> The area is crisscrossed by thousands of kilometres of pipeline, punctuated by wells and flow stations. Much of the oil infrastructure is located close to the homes, farms and water sources of communities. At night, flares from burning unwanted gas are often the only light visible for miles. (Gas is separated from oil and in Nigeria it is usually burned as waste.)

Amnesty International and Friends of the Earth International have documented the impact of oil pollution on the environment and human rights on several occasions. In 2008, Amnesty International researchers visited the Niger Delta to conduct further investigations - they visited a number of oil pollution sites and met with communities who have suffered from the pollution. They also talked with the human rights defenders and environmental activists who have been working for years, sometimes decades, for an end to oil industry bad practice in the region, and who have been campaigning for justice for those affected by pollution.

Friends of the Earth is represented in Nigeria by Environmental Rights Action/Friends of the Earth Nigeria. Environmental Rights Action (ERA) is dedicated to the defence of human ecosystem in terms of human rights, and to the promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria through the empowerment of local people. It has the following aims:

- To act as a peaceful pressure group campaigning for change in the policies of governmental, non-governmental and commercial organization where those policies are likely to act against environmental human rights and
- To enable local people to defend their environmental human rights in law.

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<sup>3</sup> The Shell Petroleum Development Company (SPDC) is a wholly owned subsidiary of Shell. Shell and SPDC documents and officials frequently do not distinguish between the two legal entities.

The work of ERA is supported by Friends of the Earth International and Friends of the Earth Netherlands (Milieudefensie) through legal assistance, research and international advocacy work. Friends of the Earth has been active in the Niger Delta for over fifteen years.

Oil spills, waste dumping and gas flaring are endemic in the Niger Delta. This pollution, which has affected the area for decades, has damaged the soil, water and air quality. Much of the population in the oil producing areas of the Delta relies on fisheries, subsistence agriculture and associated processing industries for their livelihood, meaning that hundreds of thousands of people are affected by this pollution. The human rights implications are serious, under-reported and have received little attention from the government of Nigeria or the oil companies.

It is in view of the human rights and environmental concerns that currently plague the Niger Delta that the present submission is made and should be considered. There is an overriding need for accountability and transparency in the oil industry.

### **III. Specific unqualified statements made by Shell relating to sabotage**

Shell routinely attributes to sabotage 70 per cent or more of all oil spilled from its facilities in the Niger Delta.

Shell made one such statement in response to an Amnesty International report, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, published in 2009. Shell sent an e-mail to major media outlets stating, “85% of pollution was due to sabotage.”<sup>4</sup> This statement is particularly misleading because it purports to state the percentage of “pollution,” rather than the percentage of oil spills, that is the result of sabotage.<sup>5</sup> Shell’s statement was widely quoted in media reports.<sup>6</sup> Amnesty International challenged the basis for this figure, but Shell has to date neither identified the methodology used to arrive at this figure, nor issued a correction.

As this statement and the following examples show, Shell does not qualify its statements to note that they are disputed. Specifically, it does not acknowledge that its figures are largely based on a system of investigation over which the company has considerable control, that they have been called into question by expert analysts, and that it has both a financial and a public-relations interest in

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<sup>4</sup> The email was sent to media and a copy forwarded AI. It states: “They forget that about 85% of the pollution from our operations comes from attacks and sabotage...”

<sup>5</sup> As Amnesty International pointed out in response, “Sabotage is only an issue in relation to one form of oil industry pollution – oil spills. As Amnesty International’s report pointed out, there are many other ways that the oil industry has caused pollution and harmed the environment in the Niger Delta over the past half century. These include discharge of waste, dredging of creeks and rivers, disposal of drilling waste, seismic activities and road construction that has blocked water systems. Sabotage is not a factor in any of these forms of pollution or environmental damage.” Amnesty International, “Nigeria: Shell’s Response to Amnesty International’s Report *Petroleum, Pollution and Poverty in the Niger Delta* Is Disappointing,” 20 July 2009, <http://news.bbc.co.uk/1/hi/8126353.stm> (viewed 21 January 2011).

<sup>6</sup> See, for example, “Shell Should End Nigeria ‘Abuse,’” BBC News, 30 June 2009, <http://news.bbc.co.uk/1/hi/8126353.stm> (quoting Shell as saying, “About 85% of the pollution from our operation comes from attacks and sabotage that also puts our staff’s lives and human rights at risk.”)

higher numbers of oil spills recorded as sabotage as opposed to equipment failure or human error.

For example:

- “More than 70% of all oil spilled from Shell Petroleum Development Company facilities in the Niger Delta over the last five years (2005-2009) resulted from sabotage or leaks caused when thieves damage pipelines and wellheads. Oil spills harm the environment, impact livelihoods and waste valuable resources. They are costly to clean up and they can harm relations with communities. Most oil spill from SPDC facilities in the Niger Delta – 98% by volume in 2009 – are the direct result of militancy and other criminal activity.”<sup>7</sup>
- “Since 1993, 96% of all oil spills from SPDC facilities in Ogoni have been due to sabotage or theft, which remains the dominant cause for oil spills throughout the Niger Delta.”<sup>8</sup>
- “But you must be aware that in 2008, some 85% of the volumes of oil spilled was caused [by] action of criminal gangs involved in crude oil theft or wilful damage to pipelines by militants.”<sup>9</sup>
- “We work hard to reduce the number and volume of operational spills, which are under our control i.e. spills due to corrosion, human error and equipment failure. Over the past 5 years, less than 30% of spills from SPDC facilities have been in this category, whilst the majority have been caused by sabotage or theft.”<sup>10</sup>
- *“90 procent van de olievervuiling komt tegenwoordig door de illegale aftap en raffinage van olie.... Het zijn dit soort activiteiten, slordig uitgevoerd, die tegenwoordig ruim 90 procent van de vervuiling veroorzaken, zegt*

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<sup>7</sup> Shell, “Spills in Nigeria,” [http://www.shell.com/home/content/environment\\_society/society/nigeria/spills/](http://www.shell.com/home/content/environment_society/society/nigeria/spills/) (viewed 21 January 2011).

<sup>8</sup> Shell, “SPDC Operated Joint Venture Secures Wells in Ogoni Area,” News and Media Release, 28 September 2010, [http://www.shell.com.ng/home/content/nga/aboutshell/media\\_centre/news\\_and\\_media\\_releases/2010/ogoni\\_well\\_secure.html](http://www.shell.com.ng/home/content/nga/aboutshell/media_centre/news_and_media_releases/2010/ogoni_well_secure.html) (viewed 21 January 2011). See also Nelson Chukwudi, “SPDC Secures 98 Wells in Ogoniland . . . Targets 14 More in 7 Days,” *The Tide* (Port Harcourt), 25 October 2010 (“Industry sources told *The Tide* that since 1993, 96 per cent of all oil spills from SPDC facilities in Ogoni have been due to sabotage or outright attacks on facilities, crude theft or hot tapping, and the now thriving illegal refining activities.”), <http://www.thetidenewsonline.com/?p=17757> (viewed 21 January 2010); Martin Ayankola, “Shell Secures Oil Wells in Ogoni Area,” *The Punch* (Lagos) 29 September 2010 (“SPDC said since 1993, 96 per cent of all oil spills from its facilities in Ogoni had been due to sabotage or theft, which remained the dominant cause for oil spills throughout the Niger Delta.”), <http://www.punchng.com/Articl.aspx?theartic=Art20100929310715> (viewed 21 January 2011); Ejirofor Alike, “Spill: Shell Moves to Secure Ogoni Oil Wells,” *This Day Live* (Lagos), 5 October 2010 (“Statistics by the company showed that since 1993, about 96 per cent of all oil spills from its facilities in Ogoni have been due to sabotage or theft, which remains the dominant cause for oil spills throughout the Niger Delta. For instance, it stated that last year, some 98 per cent of oil spilled from SPDC operations across the Niger Delta was the result of theft, vandalism or other third party interference.”), <http://www.thisdaylive.com/articles/spill-shell-moves-to-secure-ogoni-oil-wells/77371/> (viewed 21 January 2011).

<sup>9</sup> Shell, “Doing Business in Nigeria: Challenges and Questions,” session transcript, 23 July 2009, p.10 (statement of Basil E. Omiyi, country chair, Shell Companies in Nigeria), [http://www.shelldialogues.com/sites/default/files/NigeriatranscriptV2\\_0.pdf](http://www.shelldialogues.com/sites/default/files/NigeriatranscriptV2_0.pdf) (viewed 21 January 2011). See also “The Position of Shell BP on Gas Flaring, Environmental Degradation and Other Issues in Niger Delta: A Web Chat with Shell BP,” 23 July 2009 (response of Basil E. Omiyi, using identical wording), <http://progressnigeria.blogspot.com/2009/07/position-of-shell-bp-on-gas-flaring.html> (viewed 21 January 2011); “The Amnesty International Report: Basil Omiyi’s Statement,” (“The majority of oil spills from SPDC operations (85% by volume in 2008) are the direct result of criminal activities perpetrated by militant groups who frequently break oil pipelines to steal crude oil or sabotage facilities.”), [www-static.shell.com/static/gbr/.../amnesty\\_international\\_report.doc](http://www-static.shell.com/static/gbr/.../amnesty_international_report.doc) (viewed 21 January 2011).

<sup>10</sup> Shell, “Oil Spills in the Niger Delta,” [http://www.shell.com.ng/home/content/nga/environment\\_society/respecting\\_the\\_environment/keeps/](http://www.shell.com.ng/home/content/nga/environment_society/respecting_the_environment/keeps/) (viewed 21 January 2011).

*Igbuku.*” [Ninety per cent of the oil pollution nowadays is due to illegal bunkering and refining of oil.... It is this kind of activities, carelessly implemented, that case more than 90% of the pollution nowadays, says Igbuku.]<sup>11</sup>

#### **IV. Complainants’ submission and recommendations**

As indicated above in Section III, Shell has often made claims that very high percentages of pollution and contamination are due to sabotage. These figures presented by Shell to consumers and other stakeholders in the above statements are misleading. Shell does not make clear in its statements how the data are gathered, that the data are not independent, and that in specific instances Shell ignored problems with the data after it was notified of these problems.

The reality is that Shell’s statements relating to sabotage are controversial, contested, unsubstantiated and incomplete. Furthermore, the basis upon which these statements have been made has never been publicly disclosed. Shell presents this information in a manner that suggests to the public that the data are reliable and undisputed. This is far from the case.

The Complainants submit the following four specific concerns which relate to the data and statements used by Shell:

##### **1. There is no accurate or credible source of information on oil spill causation in the Niger Delta**

Oil spill figures vary considerably depending on sources, and figures are contested. Local and international experts note that the system for reporting oil spills in the Niger Delta has been dysfunctional for decades, and that the figures provided by companies and reported by Nigeria’s Department of Petroleum Resources (“the Department”) do not reflect the full scale of oil spillage.<sup>12</sup>

The variations between company-reported data and independent estimates are illustrated by a comparison of the following sources: The Department—which bases its data principally on what companies report to it—recorded 4,835 oil spill incidents between 1976 and 1996, with a total loss of 1.8 million barrels of oil to

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<sup>11</sup> <http://www.volkscrant.nl/vk/nl/2844/Archief/archief/article/detail/1066028/2010/11/27/Dweilen-met-de-oliekraan-open.dhtml> (quoting Augustine Igbuku, head of remediation, SPDC East). See also George Onah, “Nigeria: We’ve Cleaned Up 2,000 Oil Spill Sites, Says SPDC,” *Vanguard* (Lagos), 30 July 2010 (“Igbuku said most of the spills were acts of sabotage on the pipes by some persons and that the saboteurs engage in a practice called “hot tapping”, while some construct illegal refineries around the pipelines, even as the company struggles to restore impacted environments to their natural state. . . . Recalling the many travails of the company, Igbuku said more than 70 percent of all oil spills from its facilities between 2005 and 2009 were traceable to the activities of oil bandits, who cut pipelines with hard saw or other objects and open well-heads to steal oil or gas.”), <http://www.vanguardngr.com/2010/07/weve-cleaned-up-2000-oil-spill-sites-says-spdc/> (viewed 21 January 2011).

<sup>12</sup> See, for example, Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, p. 15 & n. 51 (citing interviews with Professor Emmanuel Asuquo Obot, executive director, Nigerian Conservation Foundation; Richard Steiner, a marine biologist and former University of Alaska professor).

the environment, an average of 90,000 barrels per year for the 20-year period. UNDP reports an average loss of 120,000 barrels per year due to oil spills for the 25-year period beginning in 1976.<sup>13</sup> And a group of independent environmental and oil experts that visited the Niger Delta in 2006 put the figure for oil spilled onshore and offshore at 9 to 13 million barrels over the past 50 years, an average loss of 180,000 to 260,000 barrels per year.<sup>14</sup> The time span for each of these sources differs, and the highest of these figures includes oil in process water, discharges from tanker washing, oil in gas flares, spills from vehicles, as well as spills during the Biafran war. Nevertheless, these sources illustrate both the uncertainties that characterise the data on oil spills and the discrepancies between company-reported data and other estimates for oil spills (with companies regularly reporting lower figures for oil spills than other sources).

The exact proportion of oil spills in the Niger Delta that are caused by sabotage, as opposed to equipment failure or human error, cannot be determined because the data on the causes of oil spills in the Niger Delta have never been subject to any independent or effective monitoring or verification.

In fact, in most cases the oil company has substantial influence in determining the cause of a spill, even when a regulatory representative is present. When an oil spill is reported, a joint investigation team comprising the company, the regulators and the community, should investigate and document the cause. In reality, it is often the company that designates causality, and there is no means to challenge their assessment. In some cases investigated by Amnesty International, for example, SPDC conducted a joint investigation with the regulator and the community but would not specify the cause of the spill in the field, stating that they had to complete that part of the process at their offices. During the investigation of an August 2008 oil spill at Bodo Creek in Ogoniland, SPDC reportedly refused to sign the report in the field. And after a 2002 oil spill in Batan, in Delta State, a case discussed more fully below, SPDC rejected the findings of a joint investigation after its representatives had signed the report; the company claimed that its staff had been intimidated into signing, even though video footage of the investigation contradicted SPDC's account.<sup>15</sup>

Because the company is liable for compensation payments if the spill is found to be due to corrosion or equipment failure, the practice of allowing companies such a high degree of control over the identification of oil spill causes creates a deeply

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<sup>13</sup> United Nations Development Programme, *Niger Delta Human Development Report, 2006*, p. 74.

<sup>14</sup> See Niger Delta Resources Damage Assessment and Restoration Project, Phase I Scoping Report, May 2006, conducted by the Nigerian Conservation Association, WWF UK, International Union for Conservation of Nature, Commission on Environmental, Economic and Social Policy, with the Federal Ministry of Environment (Abuja).

<sup>15</sup> See Amnesty International, *Petroleum, Pollution and Poverty*, pp. 46, 7-8, 47-48.



troubling conflict of interest.<sup>16</sup> In practice, the system of oil spill investigation remains highly inadequate and subject to no meaningful oversight.<sup>17</sup>

## **2. The use of these figures obscures the fact that most oil spilled over the previous 40 years is due to operational errors and equipment failure**

It is generally acknowledged that the majority of oil spills prior to the 1990s were due to infrastructure problems and human error. For example, most of the oil spilled by SPDC, the major operator on land, between 1989 and 1994 was by the company's own admission due to corrosion or operational problems, with 28 per cent of total spills attributed to sabotage.<sup>18</sup>

## **3. The figures provided for sabotage have proven to be incorrect in some cases and are highly questionable in others**

Throughout most of 2009, Shell stated that 85 per cent of oil spills in 2008 had been due to sabotage. For example, Basil Omiyi, the country chair for Shell in Nigeria, attributed "some 85% of the volumes of oil spilled" in 2008 to "action of criminal gangs involved in crude oil theft or wilful damage to pipelines by militants."<sup>19</sup> Shell circulated the same figure to the media in response to Amnesty International's 2009 report.<sup>20</sup> But as Shell clarified in May 2010, approximately half, not 15 per cent, of the oil, spilled in 2008 was due to operational errors – the company found that a major spill at Iriama, in Delta State, was the result of mistakes during repairs.<sup>21</sup> Shell's repeated use of the 85 per cent figure throughout a time when the cause of a major spill had not yet been

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<sup>16</sup> While almost all Shell statements on oil spill causation do not cite sources or contain caveats about methodology, in a recent public statement, Shell's CEO Peter Voser appears to acknowledge that the calculations are made by the company itself, stating: "Dat verhaal moeten we eerlijk blijven vertellen. De Shell Petroleum Development Company of Nigeria Limited (SPDC) heeft berekend dat 98% van de olie lekkages het gevolg was van sabotage en diefstal (Peter Voser in Shell Venster, January 2011). (We have to continue telling that story honestly. The Shell Petroleum Development Company of Nigeria Limited (SPDC) has calculated that 98% of oil leakages was due to sabotage and theft). In this, as in several other public statements, Shell also does not specify a time period, which makes statements even more misleading.

<sup>17</sup> For example, a United Nations Development Program report in 2006 stated: "The oil companies, particularly Shell Petroleum, have operated for over 30 years without appreciable control or environmental regulation to guide their activities." UNDP, Niger Delta Human Development Report, 2006, and the Report of the Technical Committee on the Niger Delta, November 2008.

<sup>18</sup> See SPDC, Nigeria Brief, The Environment, 1995.

<sup>19</sup> Shell, "Doing Business in Nigeria: Challenges and Questions," session transcript, 23 July 2009, p.10 (statement of Basil E. Omiyi, country chair, Shell Companies in Nigeria), [http://www.shelldialogues.com/sites/default/files/NigeriatranscriptV2\\_0.pdf](http://www.shelldialogues.com/sites/default/files/NigeriatranscriptV2_0.pdf) (viewed 21 January 2011).

<sup>20</sup> See, for example, "Shell Should End Nigeria 'Abuse,'" BBC News, 30 June 2009, <http://news.bbc.co.uk/1/hi/8126353.stm>.

<sup>21</sup> "We update our published spill data each year to take into account incidents for which spill volumes cannot be certified by the independent joint inspection team in time for the annual reporting exercise. We have revised the 2008 oil spill data to include the results of investigations concluded in 2009. This includes only one significant incident in November 2008 at Iriama in Delta State in which about 44,000 barrels were spilled. This has its origins in 2006 when SPDC carried out repairs on a pipeline at Iriama that had been damaged by thieves attaching taps and valves. In November 2008, those repairs failed and triggered a small leak of 30 barrels. The team returned to repair the line again but, during this work, a mistake was made causing an explosion. Tragically seven workers died in the resulting fire and more oil was spilled. This single incident almost doubled the amount of oil spilled during the year. These updated figures are included in the graphs in this publication." Shell Petroleum Development Company of Nigeria Limited, Shell Nigeria Exploration and Production Company Limited and Shell Nigeria Gas Limited, "Shell in Nigeria: Environmental Performance – Oil Spills," May 2010, [http://www-static.shell.com/static/nga/downloads/pdfs/briefing\\_notes/oil\\_spills.pdf](http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/oil_spills.pdf) (viewed 21 January 2011).

determined raises serious questions. Moreover, Shell made no meaningful attempt to correct the erroneous impression created by its use of the 85 per cent figure.

Another Shell statistic states that “since 1993, 96 per cent of all oil spills from SPDC facilities in Ogoni have been due to sabotage or theft.”<sup>22</sup> Shell does not provide any evidence for this figure, and it is highly unlikely that it is correct. The proportion of spills Shell attributes to sabotage in Ogoni is much higher than Shell’s reported totals for oil spilled in the Niger Delta as a whole. Moreover, Shell staff have repeatedly stated that they often do not have access to Ogoniland, suggesting that they cannot reliably determine the causes of oil spills in the region. But SPDC does not include caveats or any mention of uncertainty surrounding causation, in sharp contrast to Shell’s regular practice of referring to lack of access to oil spills as an explanation for the company’s failure to clean up spills in a timely manner.

#### **4. There is evidence that Shell wrongly attributes the cause of some oil spills to sabotage**

Shell has claimed that sabotage now accounts for 70 per cent or more of all oil spills, as the examples of its statements given in Section III show. There is evidence to support the conclusion that vandalism or sabotage has caused an increasing number of oil spills in recent years. But there is also evidence that substantiates community claims that equipment or operational failures are sometimes wrongly designated as sabotage.

One such example is an oil spill from an underground pipe that occurred at Batan in Delta State in October 2002. SPDC wrote to the governor of Delta State three days after the spill began – and two days *before* the joint investigation – claiming that the oil spill was caused by sabotage and naming seven likely culprits. Five days after the beginning of the spill, the joint investigation team arrived at the site. The team included police and army officers, representatives of the Department and of SPDC, as well as members of the community. The team also included a professional diver, who examined the underwater pipe. A member of the community captured the investigation on video, which Amnesty International viewed. Although the diver found that loose bolts and nuts on the pipeline caused the spill, the SPDC representative is heard in the video trying to persuade the other members of the investigation team not to write the cause of the spill on the investigation form. The Department representative appeared to support the SPDC representative’s position. The team eventually recorded the spill as due to equipment failure, and the joint investigation team members signed the investigation report.<sup>23</sup> The following day, SPDC wrote to the Batan community repudiating the report, claiming that their representatives were subjected to a

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<sup>22</sup> Shell, “SPDC Operated Joint Venture Secures Wells in Ogoni Area,” News and Media Release, 28 September 2010, [http://www.shell.com.ng/home/content/nga/aboutshell/media\\_centre/news\\_and\\_media\\_releases/2010/ogoni\\_well\\_secure.html](http://www.shell.com.ng/home/content/nga/aboutshell/media_centre/news_and_media_releases/2010/ogoni_well_secure.html) (viewed 21 January 2011).

<sup>23</sup> Amnesty International, *Petroleum, Pollution, and Poverty in the Niger Delta*, p. 47.

“gruesome ordeal, duress and manhandling” by members of the community, with the result that “our representatives were coerced into taking the cause of the incident as being production equipment failure, instead of an act of third party interference, sabotage, which it clearly was.” The letter went on to say, “The inspection report of the diver who inspected the leak point leaves no reasonable person in doubt that the leakage occurred due to unauthorized tampering, by unknown persons, with two nuts and bolts on the flange of the manifold.”<sup>24</sup> In fact, an expert with the Centre for Social and Corporate Responsibility pointed out that a faulty gasket could cause the nuts and bolts to come loose and that a work order showed that the gasket was indeed faulty.

At a minimum, the evidence does not “clearly” indicate that the cause of the leak was sabotage, as Shell claimed. On the contrary, the diver’s statements that equipment problems were the likely cause of the leak is corroborated by the work order for the site and the CSCR expert’s review. Moreover, the credibility of Shell’s claim of sabotage is considerably damaged by its insistence that an investigatory team that included armed police and military officers was subjected to coercion, duress, and manhandling—particularly in the face of video footage that contradicts this account.

The Batan oil spill is not the only one in which Shell characterised the cause of a spill as sabotage even after investigations had concluded that equipment failure or human error was to blame, as the following examples illustrate:

- An appellate court rejected Shell’s claims of sabotage in a 1997 case, concluding that oil leaked onto farmland and into fish ponds during repairs to a pipe that had been dented by a falling tree. The judge concluded, “The issue of sabotage raised by the defendant is neither here nor there . . . . I am, having regard to the facts and circumstances of this case, convinced that the defence of sabotage was an afterthought. The three defence witnesses were agreed on one thing, that is that an old tree fell on and dented the shell pipe . . . . How could this have metamorphosed into an act of cutting the pipe by an unknown person? What is more, there is no evidence whatsoever in proof that the pipeline was ‘cut by a hacksaw.’”<sup>25</sup>
- A ruptured SPDC pipeline in Ogbodo, in Rivers State, in June 2001 released at least 26,500 barrels of oil into the water system,<sup>26</sup> affecting some 42 communities. According to the Rev. Kevin O’Hara of the Center for Social and Corporate Responsibility, an NGO based in Rivers State, SPDC accepted that the spill was caused by equipment failure.<sup>27</sup> SPDC’s annual report for 2001 also appears to acknowledge equipment failure.

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<sup>24</sup> Letter from SPDC to Batan Community, 26 October 2002.

<sup>25</sup> *Shell v. Isaiah*, (1997) 6 NWLR (pt. 508) 263.

<sup>26</sup> See SPDC, *People and the Environment Report*, 2001, p. 41. Several sources told Amnesty International that as many as 70,000 barrels were removed from the area, based on a figure reportedly given by the company contracted to clean up the spill.

<sup>27</sup> See Amnesty International, *Petroleum, Pollution, and Poverty in the Niger Delta*, pp. 21-23.

Nevertheless, the report also states, “An unknown person closed in a valve on a major delivery trunkline . . . .”<sup>28</sup>

- A joint investigation team report of a May 2007 oil spill in Ogoniland found that the spill was the result of corrosion in the Trans-Niger pipeline. The spill destroyed crops and killed fish in a local water pond. SPDC clamped the pipeline and sent a team that mechanically removed much of the spilled oil. But when Amnesty International visited the site in March 2008, Shell had taken no further action to clean up the site or compensate those affected. Indeed, when Amnesty International met with SPDC in Port Harcourt on 1 April 2008, SPDC claimed that the cause of the spill was the closure of a valve by unknown persons, causing a build-up of pressure, and was therefore sabotage, contrary to the findings of the joint investigation team report.<sup>29</sup>

### **Breaches of the OECD Guidelines by Shell**

As an accumulative result of the above, the Complainants submit that Shell has breached the OECD Guidelines in its communication on oil spills in the Niger Delta. The company provides misleading information and omits mention of relevant facts about causes of oil spills. Additionally, Shell bases its communications on biased and unverified information, thus failing to provide reliable and relevant information to external stakeholders. Incorrect and conflicting messages about causes of oil spills further contribute to low quality non-financial information.

In particular, Shell has breached the following:

The section on **Disclosure (III)**, which states that enterprises “should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance,” and that “[e]nterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.” In particular, Shell has breached points 1, 2 and 4 (e) of this section, which require that:

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the

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<sup>28</sup> SPDC, *People and the Environment Report*, 2001, p. 41.

<sup>29</sup> See Amnesty International, *Petroleum, Pollution, and Poverty in the Niger Delta*, pp. 31-32. Amnesty International obtained a copy of the joint investigation team report, which stated that the cause of the leak was corrosion and further stated that “readings taken at leak points and within de-coated pipeline sections shows appreciable loss in pipe thickness.” Five SPDC representatives, seven members of the community affected by the spill, and one representative from the National Oil Spill Detection and Response Agency signed the report.

SPDC also explained its failure to clean up the site by stating that the community had initially blocked access to the site, but it did not say how long it was unable to have access. It did not explain why so little follow-up action to clean up the site had been taken more than nine months after the spill. See *ibid*.

enterprise as a whole and, where appropriate, along business lines or geographic areas.

2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

4. (e) Enterprises should also disclose material foreseeable risk factors.

The section on **Environment (V)**, which states that enterprises should “take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.” Specifically, Shell has breached points 2 and 3, which require that:

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:  
*a)* provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and  
*b)* engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

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

The section on **Consumer Interests (VII)**, which states that enterprises should “act in accordance with fair business, marketing and advertising practices.” Specifically, point 4 requires that enterprises “[n]ot make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.”

## **Recommendations**

At a minimum, the Complainants call on Shell to do the following in an effort to effectively address the breaches under consideration:

- 1) Disclose the source information that it relies on in continuing to make its public allegations relating to sabotage.
- 2) Provide a list of all joint investigations participated in by Shell and the evidence which substantiates the claims relating to sabotage.
- 3) Publish the process by which each decision was made.
- 4) Publicly acknowledge where disagreements have existed between communities in the Niger Delta and Shell.
- 5) End the practice of disseminating unqualified and misleading data and statements on the percentage of oil spills that can be attributed to sabotage, and correct or withdraw existing public materials.

## **V. Conclusion**

The statements made by Shell on its web sites and to the media about the proportion of oil spills in the Niger Delta that are due to sabotage are unsubstantiated and controversial. In some cases, Shell's statements are incorrect. In others, including specific examples identified in this complaint, there is evidence that strongly suggests that Shell's conclusions of causality are inaccurate.

Shell's public statements do not acknowledge the unsubstantiated nature of its data, the fact that investigation processes in Nigeria are deeply flawed and in practice influenced to a great degree by the companies whose operations are investigated, the fact that local and international experts have called Shell's conclusions into question upon closer scrutiny, and the fact that Shell uses its statements as a defence against claims that its operational practices are contributing to pollution and environmental harm.

The effect of presenting these statements unequivocally and as truth is that the communities of the Niger Delta are negatively affected. They suggest that local communities and civil society organizations working in the Delta do not have a legitimate concern about Shell's impact on the environment and people of the Niger Delta. The figures – presented as undisputed facts – also undermine the human rights of people in the Niger Delta because they are denied access to proper remedy on the basis of data that is not impartial and in some cases incorrect.

Such statements are not “reliable and relevant information”; they are misleading and unfair. Through such statements, Shell has also failed to “apply high quality standards for non-financial information including environmental and social

reporting” and to disclose the “standards or policies under which . . . non-financial information are compiled and published.” In short, Shell has breached the OECD Guidelines.

Friends of the Earth and Amnesty International therefore recommend that Shell be asked to take appropriate steps, as detailed in section IV, above, to comply with the OECD Guidelines when it makes statements on oil spills in the Niger Delta.