



TAINTED SALE?

WHY SHELL'S DIVESTMENT FROM THE NIGER DELTA
MUST NOT HARM HUMAN RIGHTS

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Cover: The Bomu Manifold in Kegbara Dere, in Ogoniland, Nigeria. There have been several spills and in a huge fire at this location, which has left lasting contamination in the neighbouring area. September 2015

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INTRODUCTION

Since Shell first discovered oil near the village of Oloibiri in 1956, the Niger Delta has become Africa's most valuable oil-producing region and the Anglo-Dutch giant has earned billions of dollars.

Now the company is seeking to sell its onshore oil business in the Niger Delta.

Speaking at Shell's 2021 annual general meeting, its then CEO, Ben Van Beurden, explained the decision in the context of attacks on the company's infrastructure by oil thieves, which he described as "community problems".

"That's for the Nigerian government perhaps to solve. We can do our best, but at some point in time, we also have to conclude that this is an exposure that doesn't fit with our risk appetite anymore," he said.¹

According to media reports, several Nigerian companies have been preparing bids for Shell's onshore business in Nigeria, worth up to \$3 billion, although the sales process has been delayed due to a legal dispute.² When the sale does go ahead, Shell must make sure that its eventual withdrawal will not have negative human rights and environmental impacts.

This briefing outlines why Shell has a responsibility, under international human rights standards, to conduct responsible divestment. It draws on over 20 years of research by Amnesty International and partner organisations working to defend human rights in the Niger Delta.³

This research has demonstrated that Shell's Nigeria operations have come at the cost of the human rights of people living there. Hundreds of oil spills a year from poorly-maintained pipelines and wells, along with inadequate clean-up practices, have damaged the health and livelihoods of the Niger Delta's many inhabitants.⁴

Shell cannot now just wash its hands of these problems and leave.

1 Reuters, "Shell in talks with Nigeria to divest onshore oil stakes", 18 May 2021, <https://www.reuters.com/business/energy/shell-talks-with-nigeria-divest-onshore-oil-stakes-2021-05-18/>

2 Ron Bousso, "Shell's Nigerian oil assets attract interest from local firms, sources say", Reuters, 6 January 2022, <https://www.reuters.com/markets/europe/exclusive-shells-nigerian-oil-assets-attract-interest-local-firms-sources-say-2022-01-06/>

3 Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 1995 (Index: AFR 44/020/1995), *Claiming Rights and Resources. Injustice, Oil and Violence In Nigeria*, 2005 (Index: AFR 44/020/2005), *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, 2009 (Index: AFR 44/017/2009), <https://www.amnesty.org/en/documents/AFR44/017/2009/en/> (hereinafter, Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*); Amnesty International, *The True Tragedy: Delays and Failures in Tackling the Oil Spills in the Niger Delta*, 2011 (Index: AFR 44/018/2011), <https://www.amnesty.org/download/Documents/24000/afr440182011en.pdf>; Amnesty International and the Centre for the Environment, Human Rights and Development (CEHRD), *Bad Information: Oil Spill Investigations in the Niger Delta*, 2013 (Index: AFR 44/028/2013), www.amnesty.org/en/documents/AFR44/028/2013/en/ (hereinafter, Amnesty International and CEHRD, *Bad Information*); *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta*, 2015 (Index: AFR 44/2746/2015), <https://www.amnesty.org/en/documents/afr44/2746/2015/en/> (hereinafter, Amnesty International and CEHRD, *Clean it up*); Amnesty International, *A Criminal Enterprise?*, 2017, p20, (Index: AFR 44/7393/2017) <https://www.amnesty.org/en/documents/AFR44/7393/2017/en/>; Amnesty International and CEHRD, *Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills*, 2018 (Index: AFR 44/7970/2018), <https://www.amnesty.org/en/documents/afr44/7970/2018/en/> (hereinafter, Amnesty International, *Negligence in the Niger Delta*); Amnesty International, *Oil Trial: Shell in Nigeria*, 2020 (Index: AFR 44/1698/2020).

4 Ahead of publication, Amnesty International shared its concerns with Shell and received a detailed reply from the company. This is incorporated in the briefing as and where appropriate.



Map of the Niger Delta region in Nigeria. © Amnesty International

BACKGROUND

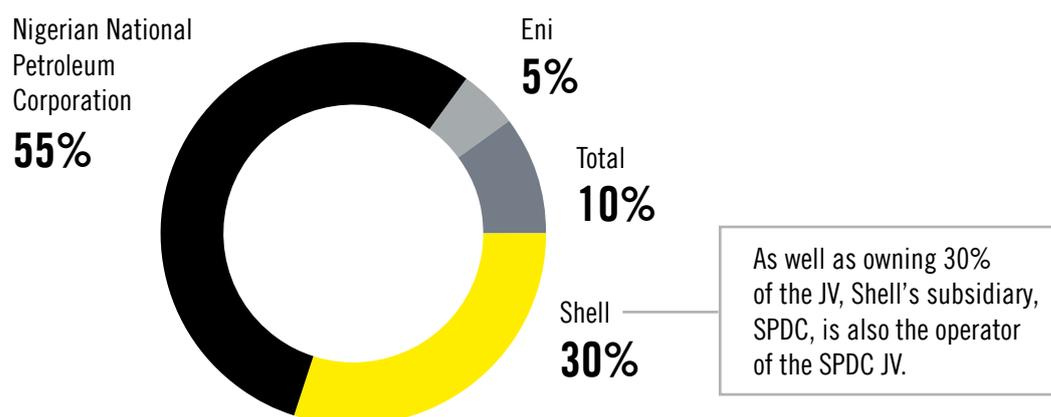
For years, the oil industry in the Niger Delta was run by joint ventures between the Nigerian government and international oil companies. Over the past decade a growing number of oilfields have been bought or operated by privately owned or listed domestic Nigerian companies.

Nigeria's largest oil producing joint venture is called the Shell Petroleum Development Company of Nigeria Limited- Joint Venture (SPDC JV).⁵ Its main shareholder is the state-owned Nigerian National Petroleum Corporation, which owns 55%. The rest is owned by subsidiaries of international companies: Shell owns 30% through its wholly-owned subsidiary which is also called the Shell Petroleum Development Company of Nigeria Limited (SPDC); the French company Total owns 10%, and the Italian company Eni owns 5%.

As well as owning 30% of the JV, Shell's subsidiary, SPDC, is also the operator of the SPDC JV. This means that it operates and maintains the wells, pipelines and other facilities that are needed to produce and transport the oil, with the other partners funding the operations and maintenance in proportion to their share in the JV.⁶

Over the past decade, the SPDC JV has sold much of its business, including oilfields, to several much smaller Nigerian-owned companies. Indeed, over the last 10 years, SPDC JV has reduced its footprint by half.⁷ Shell now intends to sell both its shares in the SPDC JV as well as its subsidiary that operates the JV (i.e., including staff, facilities and infrastructure). This infrastructure is massive, and includes: 263 producing oil wells, 56 producing gas wells, a network of 3,173 kilometres of operating flow lines and pipelines, as well as two major export terminals.⁸

Shell Petroleum Development Company of Nigeria Limited- Joint Venture (SPDC JV)



5 Shell Plc, *Shell in Nigeria Portfolio*, <https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes.html>

6 Shell Plc, *Nigeria Briefing Notes for 2022*, <https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes.html>

7 Shell Plc, *Nigeria Briefing Notes for 2021*, p20, <https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes.html>

8 Shell Plc, *Nigeria Briefing Notes for 2021*, p4, <https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes.html>

THE HUMAN RIGHTS IMPACT OF OIL POLLUTION IN THE NIGER DELTA

A vast network of pipes connecting numerous oil and gas fields crisscross the Delta. Many run close to people's homes, next to farmland and through swamps and waterways where people fish.

Hundreds of oil spills take place in the region every year.⁹ Spills have a variety of causes. Most have been caused by third-party tampering, but others are caused by operational faults and corrosion of facilities, according to data compiled by the oil companies and government regulator.¹⁰

The existence of widespread environmental pollution in the Niger Delta linked to the oil industry has long been recognised. In its landmark 2011 *Environmental Assessment of Ogoniland*, the United Nations Environment Programme (UNEP) documented widespread oil contamination, including of ground water and drinking water sources.¹¹ While this study only covered a relatively small section of the entire oil-producing region, it stands to reason that UNEP's findings match conditions elsewhere.

Livelihoods, health and access to food and clean water of communities across the Niger Delta are closely linked to the land and environmental quality, and hence are vulnerable to contamination from oil spills, which have occurred right across Shell's network of pipelines and wells.

The impact of the pollution can be devastating. In 2019, an academic study found that oil spills occurring within 10km of a mother's place of residence in the Niger Delta doubled neonatal mortality rates and impaired the health of her surviving children.¹² UNEP documented the contamination of agricultural land and fisheries, the poisoning of drinking water, and the exposure of hundreds of thousands of people to serious health risks.¹³ Recent research into the toxic footprint of oil contamination in the state of Bayelsa, concluded that "toxins from hydrocarbon pollution are present at often dangerous levels in the soil, water and air across Bayelsa. They have been absorbed into the human food chain. And they have ultimately found their way into the bloodstreams and tissue of people living in affected communities."¹⁴

9 For example, Data from Shell's own spill incident reports reveal that from 2011-18 the company reported 1,010 spills, along the network of pipelines and wells that it operates. Shell Nigeria, *Oil Spill Data*, <https://www.shell.com.ng/sustainability/environment/oil-spills.html>.

10 See The Nigerian Oil Spill Monitor for collated data, <https://oilspillmonitor.ng/>

11 United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, <https://wedocs.unep.org/20.500.11822/7947> (hereafter, UNEP, *Environmental Assessment*).

12 Bruederle, A. and Hodler, R., *The Effect of Oil Spills on Infant Mortality: Evidence from Nigeria*. CESifo Working Papers No. 6653, 2017, <https://www.pnas.org/doi/abs/10.1073/pnas.1818303116#:~:text=We%20find%20that%20nearby%20oil,100%25%20on%20the%20sample%20mean>

13 United Nations Environment Programme, *Environmental Assessment of Ogoniland*.

14 The Bayelsa State Oil and Environmental Commission, *An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa*, Nigeria, p80, <https://www.bayelsacommission.org/>



A contaminated fish pond in Kegbara-Dere (K-Dere) community in Rivers State, Niger Delta, Nigeria, 2015. © Amnesty International

The main adverse impacts of oil exploitation in the Niger Delta, as documented by Amnesty International and its partner, the Port Harcourt-based, Centre for the Environment, Human Rights and Development (CEHRD), include violations and abuses of the following human rights:¹⁵

- The right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agricultural lands and fisheries.
- The right to water – which occur when oil spills pollute water used for drinking and other domestic purposes.
- The right to health – which arise from the failure to secure the underlying determinants of health, including a healthy environment, and the failure to enforce laws to protect the environment and prevent pollution.
- The right to ensure access to effective remedy for people whose human rights have been impaired.

These violations and abuses affect people differently, with disparate impacts on women and girls, children, older people, and other vulnerable groups. For example, women and girls have been excluded from aspects of oil spill remediation, and this can leave them in particularly difficult situations with respect to damage done to their livelihoods because they do not get access to the limited compensation that may be offered.¹⁶

15 For a full discussion on the human rights impact of oil pollution in the Niger Delta, see Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*.

16 Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, p73.

LACK OF INFORMATION AND CONSULTATION

Oil-related pollution and environmental damage have undermined the human rights of the people of the Niger Delta. The problems have been exacerbated by a lack of information. The collection, analysis and publication of information are critical to ensuring that human rights are protected in many contexts. Access to adequate information regarding spills and the impact of pollution is vital to enable individuals and communities to claim, defend and protect their rights.

In the context of the Niger Delta, the failure of both the government and oil companies to ensure people have access to adequate information is a consequence of both a lack of data gathering by the government and the oil industry, and the failure to make the limited information that does exist accessible.



**THE GOVERNMENT AND OIL COMPANIES,
INCLUDING SHELL, DO NOT PROVIDE DATA ABOUT
LEVELS OF SOIL OR WATER CONTAMINATION**

Failure to capture and monitor data can contribute to serious human rights violations. For example, failure to monitor levels of water contamination or the health implications of pollution by the government, and oil companies, means they fail to deal with the risks posed to the population, leaving people exposed to significant harm. The government and oil companies, including Shell, do not provide data about levels of soil or water contamination, and it is not clear to what extent they even gather this data, despite the well-known risks and the likely scale of this devastating problem across the region.

FLAWED OIL SPILL INVESTIGATIONS

According to Nigerian government regulations, oil companies, accompanied by government and community representatives, are supposed to visit each oil spill in order to assess key information. This information is then put into a “Joint Investigation Visit” (JIV) report. Research by Amnesty and CEHRD has demonstrated flaws in the JIV process for identifying the volume, cause and impact of oil spills.¹⁷ The research also shows that this process often lacks both independence and oversight.

Shell has been reporting oil spill statistics annually since 1995 and was the first oil company operating in Nigeria to start publishing its JIV reports on a dedicated website in 2011. Shell has taken recent steps to improve its reporting by adding videos.¹⁸ However, Shell, like others, does not publish reports relating to oil spill remediation, making it difficult for communities to assess how effective that action is, or the extent to which their soil and water remains contaminated after clean up.

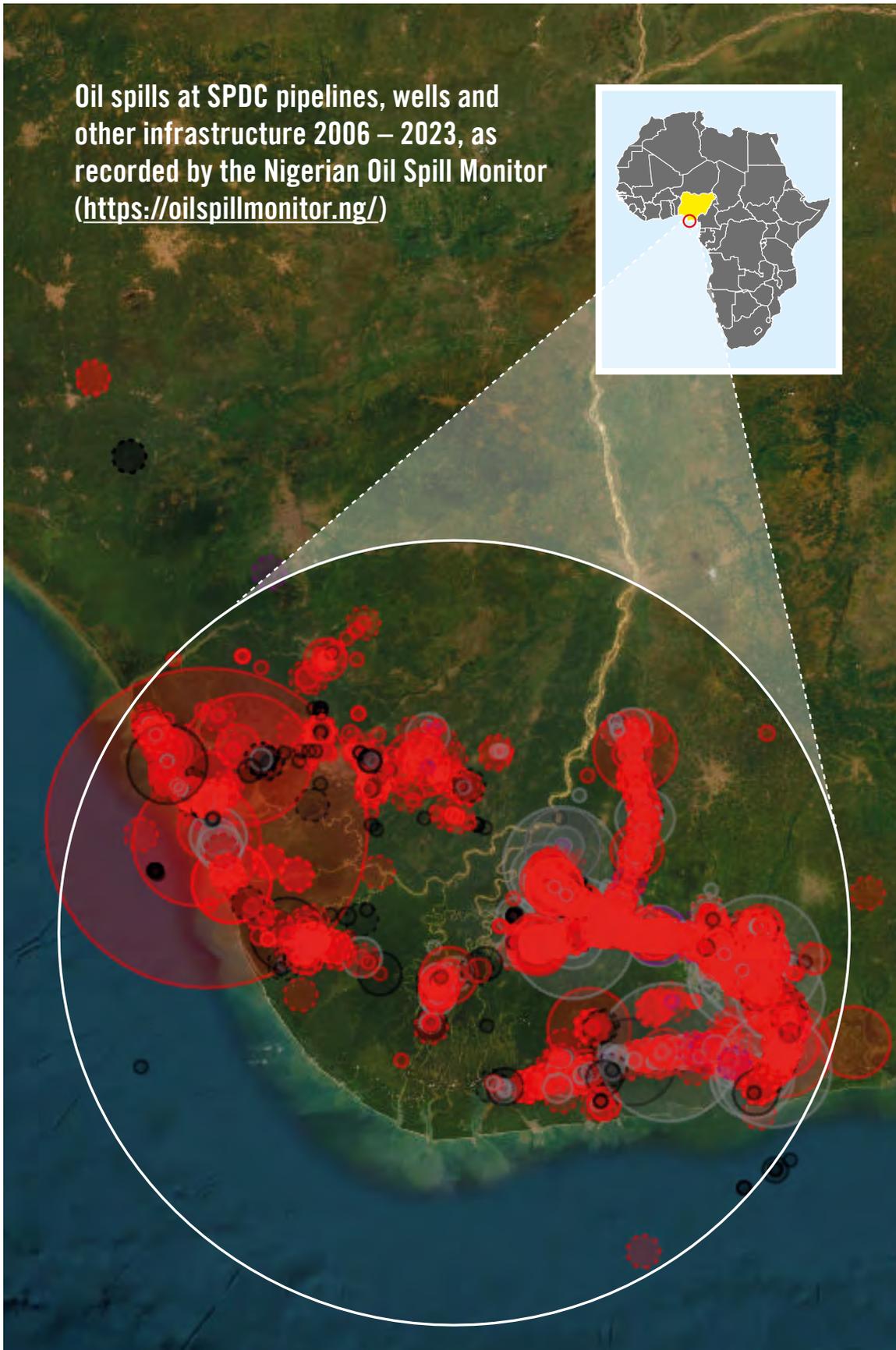


Unremediated oil spill at Kegbara-Dere (K-Dere) community in Rivers State, Niger Delta, Nigeria, 2015. © Michael Uwemedimo/cmapping.net

17 Amnesty International and CEHRD, *Bad Information*, p15-44; Amnesty International, *Negligence in the Niger Delta*, p15.

18 In 2014, another operator, Eni, followed suit.

Oil spills at SPDC pipelines, wells and other infrastructure 2006 – 2023, as recorded by the Nigerian Oil Spill Monitor (<https://oilspillmonitor.ng/>)



SHELL'S RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Like all companies, Shell must ensure that it does not cause or contribute to human rights abuses, regardless of where it operates.

This responsibility to respect human rights has been elaborated in globally endorsed standards, including the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises, and increasingly also in national legislation, such as the French Corporate Duty of Vigilance Law, the German supply chain due diligence law, an EU directive on battery supply chains, and the proposed text of the EU's corporate sustainability due diligence directive.¹⁹ Note that *the responsibility to respect human rights*, as articulated in international human rights standards, should not be confused with the concept of *corporate social responsibility*, by which firms articulate voluntary practices to purportedly address social concerns in their operations.

The responsibility to respect human rights exists independently of a state's ability or willingness to fulfil its own human rights obligations. So, if a state where Shell operates, such as Nigeria, is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights and to avoid potential harms in its operations.

Research by Amnesty International, UNEP and others has demonstrated that the regulatory system for the oil industry in the Niger Delta is deeply flawed. Nigerian law prohibits pollution of land and water, requires oil companies to ensure "good oil field practice" and to comply with internationally recognized standards. However, because the laws are so poorly enforced, in reality the oil industry remains largely self-regulated or, frequently, unregulated. This is due to the regulatory bodies' lack of capacity and resources.²⁰

In such a context, and in order to meet its corporate responsibility to respect human rights, Shell must take proactive and ongoing steps to identify and respond to its potential or actual human rights impacts with regards to ongoing operations or changes to operations, including the sale of assets. This includes putting appropriate policies and processes in place within its operations, including:

- a) A due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts;
- b) Processes to enable the remediation of any adverse human rights impacts that they cause or contribute to; and
- c) Communicating effectively on these processes through effective and meaningful stakeholder consultation and other communication processes.

¹⁹ Office of the High Commissioner for Human Rights, UN Guiding Principles on Business and Human Rights, 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHREN.pdf>

²⁰ There are also weaknesses in the regulation and guidance itself. See Amnesty International and CEHRD, *Bad Information, and Clean it up*.

Shell should take steps to ensure these policies are embedded throughout its operations and that they are applied consistently. The due diligence process, in particular, should involve assessing actual and potential human rights impacts and acting upon those findings.²¹ This requires seeking to understand the concerns of potentially affected stakeholders, and drawing on the expertise of civil society groups.

This due diligence process should cover the actual and potential human rights impacts that arise from key business decisions, including decisions to sell assets.

In 2020, the UN *Working Group report on the issue of human rights and transnational corporations and other business enterprises* provided additional guidance to companies regarding the practical measures that they should take to prevent and address business-related human rights abuse in conflict and post-conflict contexts, focusing on heightened human rights due diligence and access to remedy.²² This builds upon the UN Guiding Principles which state that the measures taken by companies to address risks must be proportional to that risk. In fragile contexts, such as the Niger Delta, where the military has been deployed to guard the oil industry from attacks by organised criminal gangs and armed militant groups, the risk is higher and so the measures taken must also be more extensive. Accordingly, the UN experts provide the following advice that is relevant to Shell's operations in the Niger Delta and intention to divest:

- Business should exercise *heightened due diligence* in conflict-affected contexts because of the increased risk of being involved in serious human rights abuses; this involves ensuring that businesses are aware of both human rights risks and conflict risks.
- Stakeholder engagement needs to be broad in conflict-affected contexts, in order to mitigate the lack of information, the polarization and the high level of mistrust which usually exist among groups and communities, and to get a sense not only of the facts but of the perception of the situation by different stakeholders.

The guidance also covers disengagement – i.e. when businesses leave a given locale.

“The first step is...to anticipate and plan a clear exit strategy in advance. This will allow the business to identify and assess the impacts of disengagement with affected people, including business partners and communities, and to develop mitigation strategies.”

The very act of selling to a particular party in a particular jurisdiction or operating context may give rise to human rights risks that would need to be properly identified, analysed and addressed if the company is to meet its corporate responsibility to respect human rights.²³

21 UN Guiding Principles, Principle 17.

22 UN Working Group on Business and Human Rights, *Report on business, human right and conflict-affected regions: towards heightened action*, 2020, <https://www.ohchr.org/en/calls-for-input/report-business-human-right-and-conflict-affected-regions-towards-heightened-action>

23 A useful case study is covered in: Amnesty International, *JCB Off Track: Evading responsibility for human rights violations committed with JCB machines in the Occupied Palestinian Territories* (AI Index Number: MDE 15/4985/2021)

SHELL'S POLICIES AND PUBLIC COMMITMENTS

In various documents and policies, Shell has acknowledged its responsibility to respect human rights in line with international standards, as well as conduct responsible divestment. For example:

Shell's General Business Principles, specify five "areas of responsibility", including:²⁴

"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."

Shell's "Approach to Human Rights",²⁵

"is informed by the UN Universal Declaration of Human Rights, the International Labour Organization Declaration on Fundamental Principles and Rights at Work, and the UN Guiding Principles on Business and Human Rights. Human rights due diligence is embedded into our existing processes and frameworks, such as the Health, Safety, Security, Environment and Social Performance Control Framework. It applies to all our employees and contractors."



24 Shell Plc, "Our Values", (accessed 5 May 2023) <https://www.shell.com/about-us/our-values.html>

25 Shell Plc, "Respecting Human Rights", (accessed 5 May 2023) <https://reports.shell.com/sustainability-report/2020/powering-lives/respecting-human-rights.html?q=human+rights&pageID=146164&tabc=1e1>

Shell's Sustainability Report (2021) ²⁶

“We respect human rights in all aspects of doing business and have embedded human rights in our Shell General Business Principles, Code of Conduct and Shell Supplier Principles. Our approach is informed by the UN Guiding Principles on Business and Human Rights.”

“Responsible divestments are a key part of transitioning our portfolio to deliver upon our Powering Progress strategy. We carry out due diligence on potential buyers when divesting parts of our business. We collaborate with both in-house and external experts, where appropriate, to conduct checks and examine key attributes of potential buyers.”

“Powering Progress” strategy

As part of Shell's new global strategy, there is a commitment to contributing to an inclusive society; and, respecting nature – by protecting the environment, reducing waste and making a positive contributing to biodiversity.²⁷

Shell's website includes a section on “Divesting responsibly”.²⁸

This outlines the following commitments:

- “We use well-established processes, applied in a systematic way, to guide our assessment of risk in divestments. We continually seek to strengthen our approach by building diverse perspectives into our decision-making process.”
- “We carry out due diligence on potential buyers when divesting parts of our business. We collaborate with both in-house and external experts, where appropriate, to conduct checks and examine key attributes of potential buyers.”
- “These attributes may include their financial strength; operating culture; health, safety, security and environment (HSSE) policies; and approach to ethics and compliance. We also consider risk and people management processes and standards; community liaison practices; and social investment programmes.”

²⁶ Shell Plc, Sustainability Report 2021, <https://reports.shell.com/sustainability-report/2021/>

²⁷ Shell Plc, “Powering Progress” (access 5 May 2023) <https://www.shell.com/powering-progress.html>

²⁸ Shell Plc, “Sustainability Report 2020”, <https://reports.shell.com/sustainability-report/2020/generating-shareholder-value/divesting-responsibly.html>

HUMAN RIGHTS RISKS LINKED TO DIVESTMENT

International standards are clear that Shell has a responsibility to conduct a human rights due diligence process on its decision to transfer assets. As noted above, this responsibility is independent of the steps that Nigeria's government will take. The Petroleum Industry Act (2021) provides the rules by which the government needs to follow to authorise such a transfer. The act outlines that this requires ministerial consent, and that the company acquiring the oil assets meets the following conditions:²⁹

- a) that "is a company incorporated in Nigeria;"
- b) "is of good reputation and standing;"
- c) "has sufficient technical knowledge, experience and financial resources to enable it effectively to carry out all responsibilities of a licensee"

These conditions provide a guide for how Shell should conduct its own assessment of the suitability of potential buyers. However, any human rights due diligence process needs to cover a broader set of issues.

Based on an analysis of research conducted over many years by Amnesty International, other civil society groups, and UNEP, any due diligence should consider the following questions. This is a non-exhaustive list.



In 2015, contaminated land surrounds the Bomu Manifold, a Shell facility at Kegbara Dere (K.Dere), Rivers State, Nigeria, years after spills occurred. © Amnesty International

²⁹ Federal Government of Nigeria, *Petroleum Industry Act, 2021*, art 95, p82-83, <http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf>

1. WILL THE COMMUNITIES MOST AFFECTED BY SHELL'S TRANSFER OF ASSETS AND RELATED HUMAN RIGHTS RISKS BE CONSULTED OR PROVIDED INFORMATION ABOUT SHELL'S DIVESTMENT PLANS?

Shell has a responsibility to consult affected communities about its plans, and provide up to date information, including measures to mitigate potential risks. Yet Shell has so far made little information public about its plans to divest.

It should consider how to ensure such a consultation is meaningful and inclusive, and not a simple one-off "tick box exercise."

Information that Shell provides should include the lessons that it has learnt from previous divestments. Shell has already transferred about half of its assets to other companies over the past decade. To Amnesty International's knowledge, Shell has never published an assessment of the environmental and human rights impacts of its previous Niger Delta divestments, such as impact on spills prevention and response and emissions, including flaring.

There is also a lack of information over which company will be held responsible for clean-up after Shell divests. A recently published report, sponsored by the Bayelsa state government, found that previous asset sales have "tended to take place in secrecy, with limited public oversight with respect to questions of liability for (past and future) pollution damage associated with sold assets, which has been determined contractually between buyer and seller, rather than by regulatory authorities. Changed ownership from international to national companies, has made it more difficult for communities and their representatives in Bayelsa to get their voices heard by Nigeria companies either through the courts or through protests."³⁰

2. IS SHELL ENDING OPERATIONS WITHOUT HAVING YET ADEQUATELY CLEANED UP POLLUTION OR PROVIDE ADEQUATE REMEDY TO AFFECTED COMMUNITIES?

Shell states that it remediates all oil spills linked to its infrastructure, regardless of the cause, in line with Nigerian regulations. This claim is impossible to assess independently because, while the company publishes some basic information about spill response and clean up on its website and says that it engages with communities impacted by any spill, it does not publish clean up certificates and detailed reports relating to spill site clean-up and remediation.

Research and analysis by Amnesty, CEHRD, UNEP and others has shown that Shell's clean-up performance has frequently been inadequate, leaving people to cope with the ongoing impacts of the pollution on their livelihoods and health.³¹ In many instances affected communities have had no other option but to take Shell to court over its failure to clean up spills or provide adequate compensation.³²

30 The Bayelsa State Oil and Environmental Commission, *An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa, Nigeria*, p70, <https://www.bayelsacommission.org>

31 The UNEP report revealed serious weaknesses in Shell's clean up and remediation processes; how the company had declared sites clean which were not; and how regulators had certified sites as cleaned up when they were still heavily polluted. UNEP stated that "it is evident from the UNEP field assessment that SPDC's post-oil spill clean-up of contamination does not achieve environmental standards according with Nigerian legislation, or indeed with SPDC's own standards." In 2015, Amnesty International visited sites of major oil spills from Shell's operations that UNEP found had not been properly cleaned up. Despite the recommendations made by UNEP in 2011, four years later these sites remained contaminated. The findings were published in Amnesty International's November 2015 report *Clean It Up: Shell's False Claims About Oil Spill Response in the Niger Delta*.

32 Shell Plc, *Annual Report, 2021*, p279, <https://reports.shell.com/annual-report/2021>

For example, pollution caused by the massive spills at Bodo in 2008 – caused by equipment failure – has still not been fully remediated. The remediation process only began in earnest in 2021 – 13 years after the initial spill.³³

Similarly, thousands of people living in the communities of Bille and Ogale have filed cases at the High Court in London, alleging that oil spills have caused widespread environmental damage, including serious water and ground contamination, and have not been adequately cleaned up or remediated.³⁴

In 2017, a witness statement provided by a former SPDC security manager in this case revealed that spill remediation had been undermined by Shell’s unwillingness to cover its costs. The former Shell employee stated that, “the [Royal Dutch Shell] Board would not sanction significant expenditure” on oil spill remediation unless the other joint venture partners first paid their share of the clean-up costs. As a result, the former employee stated that, “communities which have been dramatically polluted by SPDC oil have had to wait for clean-up for many years, sometimes decades, due to RDS’ unwillingness to pay for the clean-up costs”.³⁵

In this context, Shell should provide a full remediation plan, with details of all completed and ongoing clean ups across its area of operation before divestment and ensure that this is completed before the transfer. Shell should also allow independent testing to be conducted to assess whether its purported clean up of previous oil spills has been done properly.

3. WHAT IS THE CONDITION OF THE ASSETS SHELL INTENDS TO SELL?

The condition of Shell’s infrastructure is not publicly known. But internal company documents and other sources collated by Amnesty International show that Shell staff and contractors warned for years that underinvestment, poor maintenance, and equipment failure have been a major cause of the spills.

- In 1994, the head of environmental studies for Shell Nigeria, Bopp Van Dessel, resigned, complaining that he felt unable to defend the company’s environmental record, “without losing his personal integrity.”³⁶
- The same year an internal paper revealed that Shell had not properly funded its pipelines and other infrastructure in Nigeria: “One measure of this deterioration is the frequency and severity of oil pollution incidents caused by corrosion and other integrity failures in the production system.”³⁷
- In 1996, a Shell Nigeria “Country Business Plan” identified that its “infrastructure (was) poorly designed and maintained.”³⁸

33 Shell reported that by the end of 2022, remediation work was completed on more than 87% of around 1,000 hectares that had been designated for clean-up (vs. about 60% as at the end of 2021). Shell Nigeria Briefing Notes, 2021, p8.

34 UK Supreme Court, *Judgement: Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents)*, 2021, <https://www.supremecourt.uk/cases/docs/uksc-2018-0068-judgment.pdf>

35 Witness Statement of Rebecca Sedgwick dated 8 October 2017, on file with Amnesty International

36 Shell, “Exit Interview with JP Van Dessel”, 28 November 1994, on file with Amnesty International.

37 Shell, “Note for Information: Environmental and Community Relations Issues in Nigeria”, December 1994, on file with Amnesty International.

38 The Shell Companies in Nigeria, *Country Business Plan*, 1996, on file with Amnesty International.

- In 2002, an internal Shell presentation stated: “the remaining life of most of the [Shell] Oil Trunklines is more or less non-existent or short, while some sections contain major risk and hazard.”³⁹
- In 2008, a US diplomatic cable stated that a contractor with many years’ experience of laying pipelines in the Niger Delta reported that, “73 per cent of all pipelines there are more than a decade overdue for replacement. In many cases, pipelines with a technical life of 15 years are still in use thirty years after installation.”⁴⁰
- In 2009, a Shell employee warned in an email that: “[the company] is corporately exposed as the pipelines in Ogoniland [in the Niger Delta] have not been maintained properly or integrity assessed for over 15 years.”⁴¹

Before selling its assets, Shell should publish details of the condition of pipelines and other assets and disclose the age of infrastructure and all repairs and replacements.

4. IS SHELL SELLING INFRASTRUCTURE THAT IS VULNERABLE TO ATTACK BY OIL THIEVES, WITHOUT FIRST HAVING INSTALLED ALL NECESSARY PROTECTION MEASURES?

Poorly maintained infrastructure is not just more likely to have operational spills but is also more vulnerable to being tampered with by oil thieves. While Shell is not responsible for the actions of the groups attacking its pipelines and wells, it does have a responsibility, under Nigerian law and international standards, to ensure that they are protected.

For example, Nigerian law requires oil companies to ensure “good oil field practice” and to comply with internationally recognized standards, including those established by the American Petroleum Institute.⁴² This body has developed guidelines to protect operators from the risk of terror attacks and vandalism. These could include measures to protect the pipelines through more robust materials (such as thicker pipe walls and concrete casements), by burying the pipelines more deeply, or by improved leak detection systems and more rigorous and frequent inspections.⁴³ Shell has reported installing hundreds of “cages” and CCTV cameras to protect well heads in 2020-1.⁴⁴ Shell should provide details about how it plans (or does not plan) to increase the safety and security of its infrastructure ahead of sale.

39 Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

40 Wikileaks, “Nigeria: Pipeline Expert Says 73 Percent of Niger Delta Pipelines Need Replacement, Cause Spills, Consulate Lagos (Nigeria)”, 17 December 2008.

41 Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

42 Mineral Oils (Safety) Regulations 1962, Regulation 7.

43 R. Steiner, report on behalf of Friends of the Earth Netherlands “*Double standard, Shell practices in Nigeria compared with international standards to prevent and control pipeline oil spills and the Deepwater Horizon oil spill*”, November 2010, available at <http://milieudefensie.nl/publicaties/rapporten/doublestandard>

44 Shell, *Sustainability Report*, 2021 p18.

5. IS SHELL SELLING TO COMPANIES WITH WEAKER POLICIES ON COMMUNITY RELATIONS, ENVIRONMENTAL STANDARDS, CLIMATE COMMITMENTS AND INFORMATION SHARING?

Shell is publicly committed to meeting high standards on reducing its climate impacts, on community relations, the environment and information sharing. These commitments sometimes go beyond strict legal requirements. For example, since 2011 it has been the first oil company in Nigeria to publish its spill response information, in the form of JIV reports and photographs, and recently committed to adding video as well to its website. In addition, privately owned companies – such as those that may acquire Shell’s assets - will be subject to less stringent reporting requirements than publicly owned companies, such as Shell, making them even less transparent.

Shell should assess whether bidding companies have weaker policies and public commitments than its own. These companies must publish all relevant information on their operations, including on spills, including JIV reports, photographs, video and remediation reports.

6. IS SHELL SELLING TO COMPANIES THAT LACK THE CAPACITY AND CAPITAL TO MAINTAIN THE INFRASTRUCTURE, SUCH AS PIPELINES AND WELLS, TO INTERNATIONAL STANDARDS?

Shell is likely to be selling to much smaller companies that may lack resources and know-how to maintain and protect the infrastructure to international standards, thereby resulting in worse oil pollution.⁴⁵

Through a thorough due diligence process, Shell must assess the capacity of companies to maintain its infrastructure to international standards. If it has not already done so, Shell should assess the record of companies that have already taken on its assets and publish the findings. If necessary it should assess steps it can take to improve the capacity acquiring companies, and then carry these out.

7. IS SHELL ENSURING THAT THIS SALE WILL NOT RESULT IN AN INCREASE IN CARBON EMISSIONS?

Shell might be selling to a company that has not made a commitment to reduce emissions in its operations or that lacks the capacity to do so.

This is a reasonable assumption. According to an “environmental performance index” conducted by the Port Harcourt-based Stakeholder Democracy Network in 2018, domestic oil producers have relatively much higher emissions than international oil companies, including Shell.⁴⁶ Additional research has shown that gas flaring at the Umuechem field has increased after the sale to Trans-Niger Oil & GAS in January 2021.⁴⁷ Pollution caused by gas flaring can also lead to harmful health impacts on nearby communities.⁴⁸

As part of its due diligence process, Shell must therefore assess whether its transfer of assets risks increasing emissions related to this business and take steps to mitigate this risk if so.

45 Stakeholder Democracy Network, *Report: Divestment from the Delta Implications for the Niger Delta as international oil companies exit onshore production*, 2021, <https://www.stakeholderdemocracy.org/report-divestment/>

46 Stakeholder Democracy Network, 2018 Nigerian oil industry environmental performance index, p39 <https://www.stakeholderdemocracy.org/wp-content/uploads/2020/03/EPI-Report-01.07.20-DT-DIGITAL.pdf>

47 Environmental Defence Fund, *Transferred Emissions: How Risks in Oil and Gas M&A Could Hamper the Energy Transition*, 2022, <https://business.edf.org/files/Transferred-Emissions-How-Oil-Gas-MA-Hamper-Energy-Transition.pdf>

48 M.C. Nwosisi, O. Oguntoke, A.M. Taiwo, I.E. Agbozu, E.J. Noragbon, “Spatial patterns of gas flaring stations and the risk to the respiratory and dermal health of residents of the Niger Delta”, Nigeria, *Scientific African*, Volume 12, 2021, <https://doi.org/10.1016/j.sciaf.2021.e00762>

CONCLUSION

Shell disputes the allegations that it has acted irresponsibly in the Niger Delta and has previously pointed to improvements that it says it has made in recent years in its response to preventing and cleaning oil spills, investments in infrastructure, anti-theft measures, and increased transparency on reporting of oil spills. It says it acts in compliance with regulations.

It is indisputable that Shell is not uniquely responsible for the devastating oil pollution that blights the region. There are many other actors, including the federal and state authorities. These have an obligation to ensure that Shell's divestment does not worsen the already dire human rights situation in the Niger Deltas. In addition to the urgent measures it must take to address the devastating impacts of oil pollution on people's health and livelihoods, the government needs to ensure that its rules on oil infrastructure maintenance and oil spill response and clean up are consistently respected. It needs to ensure that Shell leaves its assets in good order, and that spills have been remediated. It must require the companies taking on these assets to have the capacity and capital to run them properly. Crucially, the government needs to ensure that communities are informed and consulted as part of the divestment process. It must clarify the law around post-divestment liability.

In response to this briefing Shell pointed to the role that the government needs to play. However, it is also the case that, as the UN Guiding Principles explain, Shell has an independent responsibility to take action to avoid causing or contributing to the human rights harms linked to pollution. Accordingly, Shell must take its own steps to ensure that its divestment plan does not worsen the plight of the inhabitants of the Niger Delta.

There are lessons here too for the global oil and gas industry. The climate crisis requires an urgent shift away from fossil fuels. The Intergovernmental Panel on Climate Change has stated that global greenhouse gases emissions need to be reduced by 43% by 2030 and by 60% by 2035 compared to 2019 levels to limit the increase of the global average temperature to 1.5°C. This means that there should be no expansion of fossil fuel exploration or extraction, and existing projects phased out. Wealthy industrialized countries must completely end their production and use of these fuels as soon as possible and no later than 2030; all others must phase them out by 2040 at the latest.

As multinational companies such as Shell divest themselves of assets and operations as part of this phase out, they must do so in a way that respects human rights and the environment.

RECOMMENDATIONS

FOR THE NIGERIAN GOVERNMENT:

In exercising its oversight of this divestment, the Nigerian government must:

- Protect and respect the human rights of its citizens, including their right to an adequate standard of living, water, health, and the right to access to effective remedy for people whose human rights have been infringed;
- Ensure that this divestment does not limit Shell's liabilities without a full investigation into and remediation of all existing pollution, the maintenance and repair of existing pipelines, and the protection of pipelines from sabotage;
- Require that any purchaser be adequately capitalized to meet these requirements and, given the uncertainty of the cost, consider requiring Shell to remain as guarantor should funding be insufficient;
- Ensure that all relevant stakeholders, most importantly the affected communities, be engaged in the process and that their concerns are solicited and incorporated into the final decision;
- Clarify rules on post-divestment liability.

FOR SHELL

- Before selling its onshore oil business in the Niger Delta, Shell should conduct a thorough human rights due diligence process in order to identify, prevent, mitigate and account for how it addresses potential human impacts linked to the sale;
- As part of this due diligence, Shell should conduct meaningful consultations with affected communities about its plans, and provide up to date information, including measures to mitigate potential risks, and lessons from previous divestments in the Niger Delta;
- Shell should provide a full remediation plan, with details of all completed and ongoing clean ups across its area of operation before divestment, and ensure that this is completed before the transfer. Shell should also allow independent testing to be conducted to assess whether its purported clean up of previous oil spills has been done properly;
- Before selling its assets, Shell should publish details of the condition of pipelines and other assets and disclose the age of infrastructure and all repairs and replacements;
- Shell should provide details about measures to increase the safety and security of its infrastructure;
- Shell should assess whether companies bidding for its assets have weaker policies and public commitments than its own, and use its influence to ensure they publish all relevant information on their operations, including on spills, including JIV reports, photographs, video and remediation reports;
- Shell must assess the capacity of companies to maintain its infrastructure to international standards. If it has not already done so, Shell should assess the record of companies that have previously taken on its assets and publish the findings. If necessary, it should assess steps it can take to improve the capacity acquiring companies, and then carry these out;
- Shell must assess whether its transfer of assets risks increasing emissions and take steps to mitigate this risk.



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TAINTED SALE?

WHY SHELL'S DIVESTMENT FROM THE NIGER DELTA MUST NOT HARM HUMAN RIGHTS

Nigeria's new government under President Bola Tinubu will be sworn in on 29 May 2023. In this new report, Amnesty International explains why the incoming administration must ensure that the oil multinational, Shell and the planned divestment of its onshore oil interests in the Niger Delta does not lead to a further deterioration in human rights, in a region blighted by decades of oil pollution.

During the past twenty years Amnesty International has conducted extensive research and documented the human rights and environmental impact of Shell's operations in the Niger Delta. This report is the latest in a series of Amnesty International publications on the Niger Delta and recommends a series of safeguards to protect the rights of people potentially affected by Shell's planned disposal of its oil interests in Nigeria.

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