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BACKGROUND

This policy brief looks at oil companies’ double standards in the management of environmental problems arising from their operations in Nigeria’s Niger Delta. Despite on-going petroleum sector reforms, the oil sector has lacked transparency and remains mainly characterized by massive environmental degradation and human rights violations. Shell, Chevron, Total, ENI/Agip, as well as several other multinational and local oil companies have been implicated. Together, they have contributed immensely to the destruction of the environment in the region and caused severe impact on livelihoods and conflict that have further impoverished community people.

This document focuses on Shell and the importance of pressure on the company to apply best practice in the management of oil-related environmental problems in the delta.
Oil facilities operated by Anglo-Dutch Shell Petroleum Development Company of Nigeria (SPDC) have remained highly vulnerable to leaks in Nigeria. The company is the largest international oil company in Nigeria and operator of the joint venture between Nigeria National Petroleum Corporation (NNPC), Agip and Total, worth more than daily production of 500,000 barrels. Oil Spill in the Niger Delta, whether as result of criminal illegal refining activities, oil theft or equipment failure, is a concern yet to be handled acceptably by the company and the government. In an age of increasing call and acknowledgement of value of sustainable extraction of natural resources, and rising prospects of renewable energy, such as solar energy, threats posed by consistent oil spills in this region, continue to suggest that more work is needed to address this problem.

As in the case of SPDC, international oil companies doing business in Nigeria face pressure from local and international civil society groups, to change their mode of operations and eliminate the risk of pollution and related abuse of human rights. SPDC has core values that speak persuasively to the need to do business in an environmentally friendly manner. Integrity, dignity and respect for people are its road-map, suggesting that its activities and corporate behaviour are well-guided by these values as a matter of duty. Many, however believe that these values have not been properly appropriated when it comes to protecting the environment in the communities where the company does business in the region. Knowledge of more responsible behaviour of the company in countries of Europe, North America and a few other parts of the world is different from the reality in the case of Nigeria. There have been differential outcomes when it comes to compliance to environmental standards and protection of the environment. Weak prevention mechanisms and response to cases of oil spills have rather characterized this case (Nigeria). The question of clean up and remediation, which the company has time and again acknowledged as duty, irrespective of cause, has not been fully settled in the interest of the environment, community people and the climate. The net result of all these shortcomings is the wide-spread notion and accusations of the company’s double standards.

ENVIRONMENTAL STANDARDS
Nigeria started very late with policy efforts at tackling oil-related environmental problems. Oil-related environmental laws were mainly absent in the earliest days of exploration during Colonialism. During the late 1930s and 40s, and even up to the 1950s oil laws lacked provisions for the protection of the environment. The main interest of Shell D’Archy (Shell BP) at the time was discovery of oil. At best provisions of protection against pollution in oil laws were for the purpose of public health.
Carry-over effects of the colonial era were noticed with the failure of government, in the immediate post-independence period, to reverse the trend and develop policies to respond to threats posed by a growing oil industry, as seen in the participation of several other international and local investors. With Nigeria turning to oil as the main source of national income and foreign exchange, the need for better management of the oil became even more critical. To be sure, decline in agriculture’s contribution to national income fell from 54.9 percent in 1965 to 18.2 in 1990, leaving the contribution of crude oil at 81.8 percent.  

**LAX ENVIRONMENTAL LAWS AND LACK OF COMPLIANCE**

At present, Nigeria has several environmental regulations and agencies of government capable of checking oil spills, gas flaring and dangerous waste disposal practices by oil companies in the Niger Delta. For example, the National Oil Spill Detection Response Agency was established by an Act of Parliament as an agency to respond to all oil spills cases in Nigeria. Its main objective is to coordinate the implementation of Nigeria’s oil spill 'contingency plan'. The whole responsibility of ensuring timely and effective response to oil spills, monitoring or surveillance and all activities vital to prevention by industry operators fall on this agency. Under this Act, industry operators who fail in their duty of reporting an oil spill case within a period of 24 hours would be guilty of an offence and liable to fines of N500,000 daily. The party is further guilty and liable to pay N1,000,000 if it fails to clean up the spills.

Furthermore, the Environmental Guidelines and Standards for the Petroleum Industry (Egaspin) spells out fines for different environmental offences, including failure to pay compensation and remediate polluted places. It must be noted that the Nigerian judiciary has on several occasions heard cases in Nigeria from communities against oil companies for polluting their environment and destroying their means of livelihood, with judgments against such oil companies, including SPDC, that have not been fully complied with.

At national and international levels, there is rising tide of court cases against Shell and the company seems defiant rather than change its operational behavior.
There is a subsisting High Court judgment in 2003 against Shell that gas flaring is a violation of the fundamental right of the Iwherekan community to a healthy environment to which the oil company is yet to comply.iii Finally, Nigeria’s National Environmental Policy; Nigeria’s 1999 Constitution and Environmental Impact Assessment (EIA) law, are among the rest of environmental laws that have bearing on protection of the environment from destructive activities of international oil companies if fully enforced and complied with by the companies.

Despite these laws, the challenge of oil spill remains. Recent reports released by the company showed that spills caused by sabotage has reduced by 27.3 percent. In any case, trends in statistics, volume of oil spilled remain mainly indeterminate. For example, the Department of Petroleum Resources (DPR) recently reported that from a total of 4835 cases, 1.89 barrels of oil were spilled between 1976 and 1996.iv It rose to 3 million barrels from a total of 6817 cases. This differs from NNPC’s estimate of 300 and a total volume of 2300. Figures are likely higher due to the risk of underestimation by both international oil companies and NNPC.

Gas flaring was outlawed in Nigeria decades ago (1984), but the Federal Government wields so much power through the office of Minister of Petroleum, such that putting a complete stop to it has continued to shift. Group Managing Director of NNPC, Mr Milkanti Baru announced recently that gas flaring will end in Nigeria in a year or two from now (2020). Many find it difficult to believe the government, given the history of regular shift to end gas flaring in 2008, 2010, 2012, etc, and the impression of reluctance to ensure this happens. As with past promises, punishment for flaring gas remains paltry fines. Powerful oil companies like SPDC and the rest of those belonging to Shell will continue to prefer flaring as a matter of cost-cutting. These oil companies are not even paying charges on gas flared. Existing loopholes in Nigeria’s legal framework provide escape for the companies. The point being made is, framing the framework as charges instead of penalty gives the companies, including SPDC, easy escape from paying penalties, under a present tax deduction and tax relief policy.v This means Nigeria loses from both sides of the impact on communities and revenues for planning development. Besides, incentives to realize the dream of putting an end to gas flaring is currently lacking. For example, gas utilization requires huge capital investment which under the joint venture relationship requires contributions by all parties, currently not available.vi

ENVIRONMENTAL RACISM: SHELL, DOUBLE STANDARDS AND VIOLATION OF OECD GUIDELINES

SPDC’s double standards are visible. They are noticed from its approach to business and differential outcomes in different settings. The integrity of its facilities—pipelines, wellheads, flow stations etc.—come easily under comparative scrutiny with the Nigeria case acknowledged to have been far below best practice. One aspect of this is the questionable process the company uses for generating oil spill data. The company fails to employ technologies it cannot avoid in many OECD countries, as a matter of best practice. The Joint Investigative Visit (JIV), which is the company’s key approach to detecting the cause and volume of oil spilled in oil spill occurrences is not reliable. This approach does not give full-length situation report. The procedure is not free of unnecessary influence by the company.
The company funds the visits and by so doing exercises much control of the entire process to minimize damages and costs. It means independence is lacking, and the integrity and transparency of the entire process are equally questionable. The misleading data from this process, on the basis of which causes of oil spill can be determined, have been challenged in many quarters and seen as a breach of OECD Guidelines for protecting the environment by multinational enterprises. Double standards equally relate to the absence of necessary technologies in compliance to environmental regulations in Nigeria. Meanwhile this cannot be avoided in many OECD countries.

There are several more proofs that standards used by Shell Europe are different from those in Nigeria. Persisting oil spill, gas flaring, human suffering and economic hardship, points to environmental racism. These outcomes, in the case of the Niger Delta, are in disparity with the experience of majority European countries where Shell operates.

In many instances, SPDC has responded slowly to oil spills. This raises a lot of concerns including questions about environmental racism. Although Nigeria is not an OECD country, it requires that standards in human rights, labour rights, environment and so on, are applied by multinational enterprises operating in developing countries such as Nigeria. Gas flaring and failing to clean up and remediate places polluted by oil in Nigeria violate standards set by OECD Guidelines for multinational enterprises, which cannot be condoned in these countries. SPDC would not only allow these to continue in Nigeria, on excuses of sabotage and insecurity as is often the case, the case of Philippine where Shell allows pollution at a depot in Manila is another case of environmental racism.
INTRODUCTION

Oil spill from SPDC facilities in Ogoniland was the main point in the reaction of community people to pollution on that land. The report was released in 2011 with recommendations, which include provision of emergency relief measures. The assessment focused on damaged land, groundwater, surface air pollution, extractive industry practices and institutional issues. Provision of drinking water, medical registry and access to information on the medical status of those who have been drinking water contaminated by benzene in Nsisioken, Ogale, survey of all wells affected by hydrocarbon, warning signs of all contaminated areas, and public awareness on the problem of artisanal refining, are some of those measures. Cleaning Ogoni of oil pollution is a key aspect of the report, with funding expected by parties in the joint venture operated by SPDC. At the time of writing, the company had contributed only USS10m towards the implementation of the report-Hydrocarbon Remediation Project (HYPREP). Meanwhile, USS1billion is estimated to be the cost of the clean-up and restoration of the Ogoni environment over a period spanning 28 years upwards. Exploration and production activities of SPDC ended in 1993 after the hanging of founding leader of the Movement for the Survival of Ogoni People (MOSOP), Kenule Saro-Wiwa by then Federal Military Government of Nigeria. The company was easily accused of complicity in the trial and death of Saro-Wiwa by his ethnic folks.

SPDC’s membership of the Governing Board of HYPREP has drawn a lot of criticisms from a section of the local environmental movement. The moral basis of the company being part of the key decision-making organ of HYPREP in the UNEP report implementation process has been questioned. Following from this, some have called on the company to voluntarily withdraw its membership of the Board.

OIL THEFT AND ARTISANAL REFINING

Amidst the global predicament of thriving artisanal and small-holder mining of various natural resources in the extractive industry, involving an overall 30 million people, the Niger Delta case increasingly has remained a source of concern. On a general note, the World Bank acknowledges the poverty alleviation interpretation of this problem, but the environmental and financial costs on Nigeria, especially the immediate host communities to the oil companies, have remained huge.

SPDC and government approach to this issue has focused mainly on criminalizing culprits without much efforts at identifying its staff and other collaborators in the business chain. The easier way, blaming majority oil spill cases on sabotage and oil theft must be reconciled with the need for the application of technologies able to reduce the risks.
Even more crucial is the need to investigate economic problems created by the company’s many years of oil pollution among locals who previously depended on other resources such as land, rivers and mangroves in communities.

**RESPECT FOR PEOPLE**

SPDC maintains a culture of little regards for local community people and their concerns. Between 1950, when the company started activities and 1993 is nearly 43 years. Disrespect for the people and the traditional/cultural values that the Ogoni people cherished were important factors in their frustration with the company. To articulate a value of respect for people, as key guiding principle of the company, means it ought to have been seen demonstrated through deliberate avoidance of the calamity that gradually befell the community through the years of pollution and hanging of Saro-Wiwa by the federal government. Direct oil exploration and production activities have been suspended for years, but facilities belonging to the company are still vulnerable to theft and ruptures due to equipment failure. This counts dangerously against oil sector management and cast a shadow of doubt as to whether the company cannot do things differently to tackle these threats.


vii The Political Ecology of Oil and Gas Activities in Nigerian Aquatic Ecosystem, USA: Elsevier Inc.

Ediri Ejob (Oil companies not paying gas flaring penalties-Adeosun, Vanguard News. Available at: www.vanguardngr.com


Albert Ten Kate (2011) Royal Dutch Shell and its Sustainability Troubles, Background report to the Erratum of Shell’s Annual Report.
Environmental Rights Action/ Friends of the Earth Nigeria is a Nigerian advocacy group dedicated to the non-violent defense of the human ecosystem in terms of human rights. It was founded in January 1993. ERA/FoEN is the Nigerian Chapter of Friends of the Earth International. ERA is the host of Oilwatch Nigeria and also a member of the Network of Accountability of Tobacco (NATT), the Framework Convention Alliance (FCA) and Africa Tobacco Control Regional Initiative (ATCRI).

The Organization’s committed struggles for environmental human rights has won it recognition through awards such as the SOPHIE PRIZE (1998) for excellence and courage in the struggle for environmental justice, the BLOOMBERG AWARD for Tobacco control activism (2009) and the Ford Foundation Jubilee Transparency Awards (2011).

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