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# **POLLUTED PROMISES**

**How Shell failed to clean up Ogoniland**

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# EXECUTIVE SUMMARY

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- Shell is responsible for a toxic legacy in the Niger Delta.
- People are dying, sick, can't feed themselves and have no clean water because Shell destroyed their environment by drilling for oil.
- UNEP researched the destruction, publishing a report in 2011. The report concluded that Shell had not taken sufficient action to clean up and set out initial steps to rectify the damage.
- Platform's research in Ogoniland shows that Shell has still not cleaned up, almost 3 years after the UNEP report was published.
- Platform witnessed polluted creeks and soil reeking of oil, in areas that Shell claims to have remediated. Communities report oil crusts on their land, rotten crops and poisoned fish. Emergency water supplies have not been delivered, forcing local residents to drink oil-polluted water.
- This remains the case, because the company is ignoring the UNEP recommendations, saving money at the expense of Nigerian lives.
- In the build-up to the 20th anniversary of the execution of Ken Saro-Wiwa and his 8 Ogoni colleagues, people in Ogoniland are demanding that Shell clean up and end this toxic legacy.



Contaminated shoreline and devastated livelihoods in Goi. Photo: Onyekachi Okoro Emmanuel



Photo: Sarah Shoraka

**Abuses and violations are primarily the result of the operations of the oil companies and the almost complete failure of the Nigerian government to regulate the oil industry and protect the rights of the people of the Niger Delta.**

— Amnesty International and Centre for Environment, Human Rights and Development

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# THE IMPACT OF OIL SPILLS IN THE NIGER DELTA

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The Niger Delta is “one of the world’s most severely petroleum-impacted ecosystems”,<sup>1</sup> despite being one of the 10 most important wetland and coastal marine ecosystems in the world and home to some 31 million people.<sup>2</sup>

Whilst Nigeria was under UK colonial rule in 1937, Shell, known at first as Shell D’Arcy, was granted exploration rights to the whole of the country. In 1956, oil was discovered in commercial quantities in Oloibiri, in present-day Bayelsa State, by the Shell-BP Petroleum Development Company (now Shell<sup>3</sup>).

Since then, repeated oil spills by Shell and other oil companies have made the Niger Delta one of the most polluted places on earth<sup>4</sup>.

More oil has been spilled from the Niger Delta’s network of terminals, pipes, pumping stations and oil platforms than in the 2010 Gulf of Mexico oil spill<sup>5</sup>. This has devastating impacts in the Niger Delta where around 65% of the population depend on the natural environment for their livelihoods<sup>6</sup> and the health and access to food and clean water of hundreds of thousands of people are closely linked to land and environmental quality.

In 2013, an Amnesty International and Centre for Environment, Human Rights and Development (CEHRD) report<sup>7</sup> documented the following rights violations in the Niger Delta as a result of oil spills by the oil industry:

- **the right** to an adequate standard of living, including the right to food – from oil-related pollution and environmental damage to agriculture and fisheries, which are the main sources of food for many people in the Niger Delta.

- **the right** to gain a living through work – due to widespread damage to agriculture and fisheries, because these are also the main sources of livelihood for many people in the Niger Delta.
- **the right** to water – when oil spills pollute water used for drinking and other domestic purposes.
- **the right** to health – from failure to secure the underlying determinants of health, including a healthy environment, and 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 violated.

Amnesty and CEHRD noted the different impacts on women, men, children, the elderly and people with particular vulnerabilities. Their research found that women are frequently excluded from all aspects of post-oil spill processes, and that this can leave women in particularly difficult situations with respect to damage done to their livelihoods. They also concluded that:

“abuses and violations are primarily the result of the operations of the oil companies and the almost complete failure of the Nigerian government to regulate the oil industry and protect the rights of the people of the Niger Delta.”

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# THE CASE OF Ogoniland

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With a population of over 830,000, Ogoniland covers some 1,000 km<sup>2</sup> in the south-east of the Niger Delta basin<sup>8</sup>.

After a fierce resistance to the imposition of colonial rule was crushed, Ogoniland was forcibly acquired by the British as a protectorate in 1914, the same year that Nigeria was created through the amalgamation of the Northern and Southern Protectorates<sup>9</sup>. According to Ken Saro-Wiwa, the Ogoni writer and activist, British colonialism “forced alien administrative structures on us and herded us into the domestic colonialism of Nigeria”<sup>10</sup>. This forced arrangement has led to a broad section of the population being dissatisfied by the country’s political structure, particularly those in the Niger Delta who see themselves as ethnic minorities dominated by the larger ethnic groups<sup>11</sup>. In 1978 a controversial Land Use Decree was passed, giving ownership and ultimate rights over land to the military government. This decree, incorporated into the Constitution in 1979, facilitated the acquisition of Ogoni and other indigenous peoples’ lands by the oil companies<sup>12</sup>.

In 1990, the Ogoni people organized themselves in the Movement for the Survival of the Ogoni People (MOSOP) and drew up the Ogoni Bill of Rights, outlining their demands for environmental, social and economic justice. The document describes the conditions in Ogoniland due to oil exploration:

“That neglectful environmental pollution laws and sub-standard inspection techniques of the Federal authorities have led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster”<sup>13</sup>.

The Bill of Rights became an organising document for the Ogoni people. It inspired other ethnic nationalities in the Niger Delta to produce similar

charters, such as the Kaiama Declaration of the Ijaws, Ikwerre Rescue Charter, Aklaka Declaration for the Egi, the Urhobo Economic Summit Resolution and the Oron Bill of Rights<sup>14</sup>.

Shell was forced to stop oil extraction in Ogoni in 1993<sup>15</sup>, when MOSOP mobilised 300,000 people to demand environmental and social justice<sup>16</sup>. According to reports in the Independent and Guardian, plus testimony by victims to the US Congress, Shell’s response was to assist the Nigerian military in human rights abuses leading to thousands of Ogoni people being displaced and killed<sup>17</sup>. In 1995, the Ogoni 9 – including Ken Saro-Wiwa – were executed by the military government in Nigeria on trumped-up charges after campaigning against Shell’s destruction of their homeland.

In 2001, in a landmark decision, the African Commission found Nigeria to be in violation of a number of rights guaranteed under the African Charter on Human and Peoples’ Rights over its treatment of Ogoniland, and stated that:

“[D]espite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil companies in particular, to devastatingly affect the well-being of the Ogonis”<sup>18</sup>.

Despite, oil extraction ceasing in 1993, oil pollution continues to devastate communities in Ogoniland. This is due to the inadequate remediation of historic oil spills, and also because of new, ongoing spills from oil infrastructure and pipelines and the failure of Shell to decommission wells<sup>19</sup>.



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# THE UNEP REPORT: SHELL'S FAILURE TO CLEAN UP

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In 2007, the Nigerian Government invited the United Nations Environment Programme (UNEP) to undertake a detailed assessment of oil pollution in Ogoniland. Over a 14-month period, the UNEP team examined more than 200 locations, surveyed 122 kms of pipeline rights of way and reviewed more than 5,000 medical records.

The report concluded that pollution of soil by petroleum hydrocarbons in Ogoniland is extensive. In 49 cases, UNEP observed hydrocarbons in soil at depths of at least 5 metres – greater than the height of a double-decker bus. At two-thirds of the contaminated land sites which were assessed in detail, the soil contamination exceeded Nigerian national standards, as set out in the Environmental Guidelines and Standards for the Petroleum Industries in Aquatic Nigeria (EGASPIN). At 41 sites, the hydrocarbon pollution in the groundwater also breached the Nigerian EGASPIN standards. The UNEP investigation found that the surface water throughout the creeks contains hydrocarbons. Floating layers of oil varied from thick black oil to thin sheens. Where a number of entrepreneurs had set up fish farms in or close to the creeks, an ever-present layer of floating oil had ruined their businesses.

Average life expectancy in Nigeria is less than 50 years, meaning that most Ogoni residents have lived with chronic oil pollution throughout their lives. The report found that the Ogoni community is exposed to petroleum hydrocarbons in outdoor air and drinking water as well as through contaminated soil, sediments and surface water.

It found that community members at Ogale are drinking water from wells that are contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization

(WHO) guidelines. Hydrocarbon contamination was found in water taken from 28 wells at 10 communities adjacent to contaminated sites. At seven wells the samples are at least 1,000 times more polluted than the Nigerian drinking water standard. Local communities are aware of the pollution and its dangers but have no alternative but to use the water for drinking, bathing, washing and cooking.

The UNEP report concludes that the current level of control, maintenance and decommissioning of oilfield infrastructure in Ogoniland is inadequate. Industry best practices and Shell's own procedures have not been applied, creating public safety issues. The only oil spill clean-up method observed by UNEP was Remediation by enhanced natural attenuation (RENA) – a process of turning over the land with fertiliser – and this had not proven to be effective. Currently, Shell only applies RENA to the surface of the land, assuming that the oil will be blocked by an underlying layer of clay and not move deeper. However, as stated above, UNEP's observations showed that contamination often penetrates deeper than 5m, reaching the groundwater.

Out of 15 investigated sites where Shell claims to have completed remediation, 10 still have pollution exceeding the Shell (and government) remediation closure values. UNEP found that at eight of these sites, the pollutants had migrated to the groundwater.

Although Shell adopted a new Remediation Management System in January 2010, UNEP found that it still does not meet the local regulatory requirements or international best practices.





Chief Eric Dooh's fish ponds are heavily contaminated with oil following a series of spills from Shell facilities, destroying his livelihood and the main food supply for Goi community. Photo: Sarah Shoraka

**Average life expectancy in Nigeria is less than 50 years, meaning that most Ogoni residents have lived with chronic oil pollution throughout their lives.**

— United Nations Environment Programme

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# UNEP'S RECOMMENDATIONS

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UNEP concluded that environmental restoration of Ogoniland is possible but may take 25 to 30 years. The report identifies emergency relief measures for communities impacted by polluted water, including the provision of emergency water supplies.

The report recommends that the Government of Nigeria establish an Ogoniland Environmental Restoration Authority financed by an Environmental Restoration Fund. This should be set up with an initial capital injection of USD 1 billion contributed by the oil industry and the Government.

A Centre of Excellence for Environmental Restoration should be established in Ogoniland to promote learning in other areas impacted by oil contamination. It also recommends building the capacity of government agencies to enable them to fulfil their mandates.

It recommended that Shell's procedures for oil spill clean up and remediation need to be fully reviewed and overhauled to achieve the desired level of environmental restoration. In addition to procedures and clean-up methods, contracting and supervision also need to be improved. It also recommends that Shell conduct a comprehensive review of its assets in Ogoniland and develop an 'Asset Integrity Management Plan for Ogoniland' and a decommissioning plan that should be communicated to the Ogoni people.

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# SHELL'S INFLUENCE ON THE UNEP REPORT

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Whilst the report is the most comprehensive study of the pollution in the region, it was not without controversy. In August 2010, a year before the study's publication, Mike Cowing, the head of the UN team announced that only 10% of oil pollution in Ogoniland had been caused by equipment failures and company negligence<sup>20</sup>. Communities accused the UNEP team of being biased towards Shell who funded the study<sup>21</sup> as they had taken the information from government figures supplied by oil company data. Following protests by communities and social movements about this claim, it was not included in the report.

The report also did not include the community of Goi in the report. Goi has been described as the most polluted place in Ogoniland. Communities and activists feel that it was left out of the report because of ongoing legal action against Shell by resident Chief Eric Dooch and Friends of the Earth<sup>22</sup>.

Oil companies are only liable for compensation if the cause of a spill is equipment failure. Companies themselves identify the cause of spills, providing an incentive and opportunity to overplay theft. According to a 2013 Amnesty report, Shell overstated the role of sabotage "in an effort to deflect attention away from the many oil spills that are due to corrosion and equipment failure". The Amnesty investigation, which included secretly filmed videos, revealed serious abuses within the spill investigation process, rendering Shell's data "wholly unreliable as a basis for making claims about the cause of oil spills, the volume of oil spilled or the area impacted"<sup>23</sup>. Amnesty found that Shell has made false claims about its environmental impact in the Niger Delta and that there are "serious discrepancies" between the evidence of pollution and what Shell claims.

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# SHELL'S FAILURE TO IMPLEMENT THE UNEP REPORT

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Platform's research shows that Shell has failed to implement the UNEP report's recommendations. Shell's primary response to the report was to shift the responsibility onto the Nigerian Government and to reframe the problem as one of oil theft. The company ignored the main clean-up recommendations, including the creation of an Ogoniland Environmental Restoration Authority and providing funds for an Environmental Restoration Fund for Ogoniland<sup>24</sup>. On 11 April 2014, in response to an email from Platform asking for further clarification about Shell's actions following the UNEP report, Barnaby Briggs, head of Corporate Social Responsibility and Sustainable Development stated:

"I cannot answer your questions in the detail you would like, partly because they cover a very wide range of topics and partly because most refer to work that involves multiple stakeholders and agencies. And some of the questions refer to operational issues that we do not discuss... The fundamental issue is that the Nigerian government will need to take the lead in addressing the UNEP report".

## A failure to clean up

Platform's field visits in November 2013 demonstrated that Shell has failed to clean up the toxic legacy that the UNEP report highlighted. We witnessed polluted creeks and soil that smelled of oil, in areas that Shell claims to have cleaned up. Communities reported oil crusts on their land, rotten crops and poisoned fishponds.

Shell claims to have "remediated over 700 impacted sites across the Niger Delta covering over 1500 hectares". In Ogoniland this includes B-dere, Yorla Well 10, Akpajo, Bomu well 27/52 and the

Ejama Ebu. However, it says the remediation has taken place "pre and post the UNEP report"<sup>25</sup>. No information is given to demonstrate which, if any, sites have been remediated since the UNEP report.

The UNEP report criticised Shell for relying entirely on 'Remediation by enhanced natural attenuation' (RENA) to clean up polluted soil and water. Despite its grand name, RENA basically involves turning over the soil with fertilizer. According to UNEP, Shell failed to achieve either environmental clean-up or legislative compliance using the RENA method. It also concluded that the company "is also failing to achieve compliance with [its] own procedures"<sup>26</sup>. Despite claiming to have reviewed and improved "its Remediation Management System (RMS) in line with international best practice,"<sup>27</sup> Shell is still relying solely on the RENA method for remediation<sup>28</sup>.

In November 2013, Platform and CEHRD visited sites in Bomu that Shell claims to have remediated. Our field investigations discovered visible oil only centimetres below the surface. Soil samples taken by Platform have a strong odour of crude oil. Adjoining creeks had a layer of oil on the surface of the water. In a community meeting with over 20 local residents, they stated that fishing, previously their primary source of livelihood, was no longer possible given the levels of pollution. In a meeting with the Paramount Chief, he described community members begging for the first time because the spills had taken away their livelihoods.

Platform and CEHRD also visited Kpor and Goi, two Ogoniland places that were not visited by UNEP. In Kpor, the community has suffered a series of ongoing oil spills. The RENA method was employed but the community reported oil residue and crust coming to the surface of the soil. Surrounding





**If I went to Shell's offices  
and damaged their property  
I would be arrested, so why  
is Shell trying to dodge  
responsibility for destroying  
Goi community?**

— Chief Eric Dooh

Chief Eric Dooh shows his meager harvest following a series of oil spills. Photo: Sarah Shoraka

farms have become polluted when rain spreads the surface oil residue onto their land. During a community meeting, Platform discovered that planting around the impacted area has become impossible with crops rotting before they are harvested. The community was having to import vegetables that they had once grown and many young people had left the community. There are also major worries about contaminated drinking water. Kpor does not receive emergency water since it was not listed in the UNEP report. Elder John B. Barika from the community said that the clean-up had been inadequate as Shell had just “turned over the soil” and that Shell used this method because “it was the cheapest.”

The village of Goi has been completely abandoned by its population due to the oil spills. In October 2012, Shell claimed that the area has been cleaned up<sup>29</sup> but during Platform’s visit to Goi, the smell of crude oil in the air was overwhelming. Chief Eric Dooh had lived in the community all his life until the oil spills made his home uninhabitable. He showed Platform and CEHRD his 4 fishponds that used to provide food for the entire community. Not only were they devoid of life, but a thick layer of oil could be seen floating on the surface of the water and deposited on the soil at the water’s edge. Chief Eric Dooh tells how Shell contractors came to sprinkle soap flakes on the surface of the ponds to clean it up. Platform and CEHRD also visited farmland in Goi to inspect the stunted crops. Staying in the area for more than an hour was difficult because of the stench of fumes.

“If I went to Shell’s offices and damaged their property I would be arrested, so why is Shell trying to dodge responsibility for destroying Goi community?” – Chief Eric Dooh

In January 2013, a Dutch court ruled that Shell was not liable for compensation for the Goi spills as they were caused by sabotage<sup>30</sup>. The court accepted Shell’s documentation, despite clear inconsistencies such as reports apparently signed by non-existent persons<sup>31</sup>. Goi does not have any oil pipelines crossing the community but is low lying and is affected by spills

elsewhere along the same coastline such as Bodo. 11,000 community members in Bodo are engaged in an ongoing court case in the High Court in London seeking compensation for an oil spill by Shell. In that case, Shell admitted liability for the spill but has offered only “derisory” amounts of compensation to the community<sup>32</sup>.

According to CEHRD, in March 2014, despite claiming that Goi had already been remediated, Shell began a pilot clean-up of the coastal areas of Goi. It remains to be seen how effective this will be and whether it will rely on the flawed RENA method.

Shell’s response to the pollution claims has been evasive. The company claims that it hired a contractor called Fugro “to conduct soil sampling at the 15 sites identified in the report. Sampling took place between November 2011 and February 2012. The results confirmed soil at all 15 sites is in compliance with regulatory limits.”<sup>33</sup> However, the UNEP report sampled not 15, but 69 sites<sup>34</sup>. It found that “at two-thirds of the contaminated land sites close to oil industry facilities which were assessed in detail, the soil contamination exceeds Nigerian national standards, as set out in EGASPIN.”<sup>35</sup> Shell has refused to make its Fugro report public, or to disclose which 15 sites were visited. Without this information, the most likely conclusion is that the Shell-Fugro report merely tested 15 of the 23 UNEP sites that were already within legal limits.

Shell also claims that it has contracted professional service providers to assess ground water impacts. No details have been provided about the contractors or results of the assessment.

### A lack of emergency water supplies

Despite the fact that the Niger Delta is the largest wetland in Africa<sup>36</sup>, the people in Ogoniland are reliant on emergency water delivery because their drinking water has been so dangerously polluted by Shell’s oil operations.

Shell is failing to deliver the emergency water supplies that it has committed to provide. As a





Warning sign at Goi. Photo: Sarah Shoraka



Remediated but still contaminated soil in Kpor.  
Photo: Onyekachi Okoro Emmanuel



Emergency water delivery tanks lying unused.  
Photo: Onyekachi Okoro Emmanuel

**The water suppliers don't bring the water at all. How do they expect us to survive without water?**

— Mr. George Osaro, Fish dealer, Ogale community

result, Ogoni communities – and especially the poorest in them – are being forced to rely on highly polluted water.

Shell is not providing emergency water supplies, despite company claims that it is working with the Rivers State Government to deliver 250,000 litres of potable water per day by truck to communities in Ogale (including Nsisioken), Ebuho and Okrika. Investigations by CEHRD for Platform in January 2014 show that the emergency water tankers rarely came to dispense water. The 500 litre water tanks situated around the community were completely empty and thus providing no emergency water access. When one of the community member at Aluebo Town hall in Ogale community was asked how many times a week the water supply tankers come to deliver water, he replied:

“The water suppliers don’t bring the water at all. How do they expect us to survive without water?”  
– Mr. George Osaro, Fish dealer, Ogale community

A similarly desperate situation exists in Obolo community. Obolo, part of Ebuho community in Eleme, was marked for emergency water supply delivery, due to the high contamination level of the community’s underground water. Water was supplied to Obolo from July 2012–January 2013. The emergency water supply, though not frequent, was dispensed at 10am and 4pm daily.

This supply ended in April 2013, according to focus group discussions with community representatives from Obolo in September 2013. With the 500 litre emergency water tanks standing empty, the community has been forced to rely on private water retailers, contaminated water wells and rainwater.

Those who are able to afford it now purchase water from privately owned water supply services. A family can easily spend 150-200 Naira daily – a considerable burden in a country where 61% of the population live on less than a \$1 (164.05 Naira) a day<sup>37</sup>. Those unable to purchase water from the retailers are forced to use water from the severely contaminated wells.

Investigations from September 2013 to January 2014 revealed that some of the water dispensation tankers that were expected to play a substantial role in delivering clean water to Ogale and Obolo communities, were permanently parked at Onne Refinery Road, Eleme.

Shell claims to have followed UNEP recommendations by helping produce signs and notices to warn people about polluted water. Nigerian NGOs have criticised these signs as useless, when no alternatives are provided. Godwin Ojo, head of Earth Rights Action said:

“Government have erected in some areas signposts that say ‘This is acid lake, stay clear;’ ‘This land is polluted, do not farm;’ ‘This river is polluted, do not swim’ They are doing all these without providing alternatives. If you say people should not swim in the acid lake, what is the alternative? If you say they should not farm on polluted land, what is the alternative? As I speak to you, the people are swimming in acid lake, they are farming and fishing in polluted water and contaminated soil. The relief measures that are supposed to go to them on a daily basis is not forthcoming<sup>38</sup>.”

### Shell’s “monitoring” cover-ups

Shell has involved third parties supposedly to review its practices – but their reports have instead been geared towards undermining Nigerian national standards and justifying Shell’s practices. In one case, this was described by scientist Rick Steiner – an expert on oil pollution issues for over 30 years – as portraying a “profound misunderstanding of what is actually occurring in the Delta... And providing an excuse for Shell to continue delaying responsible action.”<sup>39</sup>

In March 2012, Bureau Veritas – an independent international standards verification agency – began work reviewing Shell’s emergency spill response and initial clean up practices. Under a contract signed in early 2012, Bureau Veritas is due to visit Niger Delta spill sites once every quarter to verify the work underway. However, no details of this independent verification work or visits have been made available.



In 2012, Shell also invited the International Union for the Conservation of Nature (IUCN) to set up an advisory panel. The panel would provide recommendations to help restore the biodiversity and habitats at spill sites.

The first report by the IUCN Niger Delta Panel<sup>40</sup> was only released after NGOs and shareholders repeatedly questioned Shell as to why the report was not publicly available. Initially, only the executive summary was released. The report defends Shell's current practices and tries to unravel the standards set by Nigeria's regulatory framework. It claims that Shell has met the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) standards<sup>41</sup>. This claim is contradicted within the same report: "in a recently concluded remediation site in Soku, the hydrocarbon levels were higher than the EGASPIN standards of 2002, even though all the authorities has signed off on the certificate for a clean bill of health for that site<sup>42</sup>."

The IUCN Panel report makes a case that because the EGASPIN standards are general and not ecosystem specific, these standards are too high in some locations. The report then urges Shell to disregard Nigerian law and follow "suggested target levels indicated in Annex II as a guide for monitoring ecosystem recovery, until site specific standards are established for the Niger Delta ecosystem."<sup>43</sup> It also undermines Nigeria's legal requirement when it says that a response time of 48 hours for Tier III spills is not feasible for Shell.<sup>44</sup> The report states that part of the work of the Niger Delta panel will be to establish annual work plans but to date no work plans have been made available.

### **A failure to ensure permanent water provision**

Only a minority of water provision sites established by Shell and the Rivers State Government are functional, and some of the piped water could be polluted with benzene.

Shell claims that it has been working with the Rivers State Government to install permanent water facilities (waterworks with water wells, a water distribution pipeline network, a treatment plant and a booster station) in four communities in the Eleme Local Government Area.

The project is based on a borehole water drilling mechanism, where underground water is extracted and purified before distribution to public community water taps. However, data collated from the UNEP report shows that Eleme's underground water – the source for water provision – is heavily contaminated. Tests in Ogale community, for example, showed extremely high levels of benzene 900 times above the WHO standard. Shell has not responded to questions about how the water is purified and CEHRD has not yet been allowed access to the facility by the Rivers State Government. Given this, it is impossible to conclude that the water is safe to drink.

Research reveals that only 45% of the dispensation points are functional. Irregularity, inadequacy and bad quality of water mean that the local people do not trust the water scheme to meet their daily water. Supply monitoring shows that water is dispensed only 3–4 times a week. On days when there is water, it arrives twice a day from 6–8 am and 5–7pm, for less than two hours. Those who are not able to collect water in those slots are forced to rely on contaminated water.

### **Decommissioning programme**

Shell claims to have conducted a desktop inventory of its assets in Ogoniland and to have also applied to the Department of Petroleum Resources (DPR) for approval of the Terms of Reference of a planned Environmental Evaluation Report (EER) as required by Nigerian law. However, there has been no information about the progress of the decommissioning nor has the EER been made publicly available.

## ELEME WATER SCHEME SUPPLY DATA – OGALE (SEPT 2013 – DEC 2013)

COMMUNITY	DISPENSATION DATE	DISPENSE POINT	COMMENTS
Ogale Community	1st – 4th Sept 2013	Assembly of God Church (2), Ogale Nchia Eleme	Water was dispensed at 7am daily duration (1hr 30mins)
Ogale Community	12th – 17th Sept 2013	No 64 Hospital Road, Ogale Eleme.	No water was dispensed
Ogale Community	3rd – 8th Oct 2013	Aleka town hall, Ogale Street	Water was dispensed on 3rd (7am) 5th (8am) and 7th (7pm)
Ogale Community	18th Oct 2013	Aluebo Street	No water was dispensed
Ogale Community	4th – 7th Nov 2013	Water works Point (1)	Water was dispensed at 9am and 6pm
Ogale Community	16th Nov – 6th Dec 2013	Ogale Farm Road, Nsisioken	Water dispensed at 9 am



Eleme water supply system. Photo: Onyekachi Okoro Emmanuel



Eleme water supply system. Photo: Onyekachi Okoro Emmanuel



Communities are forced to buy water as the permanent water provision is unreliable. Photo: Onyekachi Okoro Emmanuel



Communities are forced to buy water as the permanent water provision is unreliable. Photo: Onyekachi Okoro Emmanuel

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# THE NIGERIAN GOVERNMENT'S RESPONSE TO THE UNEP REPORT

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Upon receipt of the report, the Nigerian President set up an inter-ministerial committee chaired by the Minister of Petroleum Resources, Diezani Alison-Madueke, to make recommendations to the Federal Government of Nigeria. Days before the first anniversary of the UNEP report, the government announced the establishment of the Hydrocarbon Pollution Restoration Project (HYPREP) under the Ministry of Petroleum Resources.

According to Nigerian NGOs and prominent scientists such as Hilary Inyang, distinguished Professor of Environmental Engineering & Science, and Vice-Chancellor of Botswana International University of Science and Technology: “HYPREP is a farce and should be discontinued, as it has neither the configuration nor the expertise to deal with the problem”<sup>45</sup>. In November 2013, the Senate launched a probe into HYPREP for their inaction in implementing the UNEP report<sup>46</sup>.

HYPREP was set up outside of the standard framework for tackling oil spills. The National Oil Spill Detection and Response Agency (NOSDRA) under the Ministry for Environment is already mandated to play the lead role in ensuring timely, effective and appropriate response to oil spills, as well as ensuring clean up and remediation of all impacted sites. It

is responsible for ensuring compliance of oil industry operators with existing environmental legislation. NOSDRA suffers from a lack of resources and frequently has to rely on equipment and data from oil companies making it difficult for it to operate as a watchdog.

In 2012, Senator Dr. Bukola Saraki, the Chair of the Senate Committee for the Environment tabled a bill aimed at strengthening the regulatory and institutional power of NOSDRA. It is likely that the bill will become law before the 2015 elections, despite vocal objections from oil companies such as Shell<sup>47</sup>. Similar lobbying has meant that the draft Petroleum Industry Bill – a piece of legislation designed to regulate the sector – has been in deadlock for years. In February 2014, 18 Nigerian and international organisations wrote an open letter in support of the NOSDRA Bill<sup>48</sup>.

Nigerian Minister of Petroleum Resources, Diezani Alison-Madueke is the former Director of Shell Nigeria where she worked for 15 years. According to leaked US Embassy cables, Shell claimed to have inserted staff into all the relevant ministries of the Nigerian government, so that they knew “everything that was being done in those ministries”<sup>49</sup>.

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# REPARATIONS BEYOND UNEP

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Whilst the UNEP report represents a huge leap forward in the understanding the role of oil pollution in one area of the Niger Delta and makes significant recommendations for restoring the environment to its past state, it is incomplete if considered in the context of human rights, according to the UN's Basic Principles and Guidelines on Reparation and Remedies.<sup>50</sup>

- Restitution – restoring the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence.
- Compensation – for any economically assessable damage as appropriate and proportional to the gravity of the violation.
- Rehabilitation – medical, psychological, legal and social services for victims.
- Satisfaction – including cessation of violations, public apology, judicial and administrative sanctions against perpetrators.
- Guarantees of non-repetition – including promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants; prosecution and sanctioning of perpetrators; human rights education; reforming laws contributing to or allowing gross violations of international human rights law.

Remedy and reparations are a part of international law<sup>51</sup>. However, the UNEP report only really substantively deals with the rehabilitation aspect.

It is also relevant to consider the Ogoni Bill of Rights<sup>52</sup> presented to the Nigerian Government in 1990<sup>53</sup>. The document makes the following demands:

- a. Political control of Ogoni affairs by Ogoni people.
- b. The right to the control and use of a fair proportion of Ogoni economic resources for Ogoni development.
- c. Adequate and direct representation as of right in all Nigerian national institutions.
- d. The use and development of Ogoni Languages in Ogoni territory.
- e. The full development of Ogoni Culture.
- f. The right to religious freedom.
- g. The right to protect the Ogoni environment and ecology from further degradation.

These demands are not dealt with within the UNEP recommendations but they are vital as an articulation of what many Ogoni believe to be necessary for social and environmental justice.

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# CONCLUSION: THE OGOŌ STRUGGLE IS RE-IGNITING

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Platform’s research in the Niger Delta shows that Shell has still not begun a clean up that will take 30 years, almost 3 years after the UNEP report was published. Platform witnessed polluted creeks and soil that smelled of oil, in areas that Shell claims to have cleaned up. Communities report oil crusts on their land, rotten crops and poisoned fish. Emergency water supplies have not been delivered, forcing local resident to drink oil-polluted water. This remains the case, because the company is ignoring the UNEP recommendations, saving money at the expense of Nigerian lives.

The anniversary of the publication of the UNEP report has become a unifying moment for protests in Ogoniland. In August 2013, there were demonstrations in Ogoniland. In December 2013, when the Nigerian Government ignored a deadline for action set by social movements, protests spread further. Celestine AkpoBari from the Ogoni Solidarity Forum stated in a media interview:

**There is no going back on the 90 day deadline ultimatum delivered to the Nigerian Government and oil companies to implement the UNEP report on oil pollution in Ogoniland. We are mobilizing for a series of non-violent direct actions that will cripple economic activity.”**

— Celestine AkpoBari from the Ogoni Solidarity Forum

“There is no going back on the 90 day deadline ultimatum delivered to the Nigerian Government and oil companies to implement the UNEP report on oil pollution in Ogoniland. We are mobilizing for a series of non-violent direct actions that will cripple economic activity.”

Later that week, hundreds of Ogoni protesters blocked access to major oil facilities in Ogoniland.

We are witnessing a build-up to 2015 – the 20th anniversary of Ken Saro-Wiwa and the other 8 Ogoni activists’ executions and the election in Nigeria. This has been described by social movements as a period of escalation, for a clean Ogoniland and to demand Shell ends its toxic legacy.



Ogoni people block an oil refinery in protest of the lack of action to implement the UNEP report, December 2013. Photo: Kabari Agara

## Initial recommendations

### For Shell

- Fully implement the UNEP report
- Publicly commit to pledging a share of \$1 billion start-up finance needed for an Environmental Restoration Fund
- Pay for a publicly available third-party audit of the implementation process, including up to date details of what activities have been undertaken in which areas

### For the Nigerian Government

- Fully implement the UNEP report
- Publicly commit to pledging a share of \$1 billion start-up finance needed for an Environmental Restoration Fund
- Disband HYPREP and establish an Ogoniland Environmental Restoration Authority to implement the UNEP report under the Ministry of Environment

### For the UK and Dutch Governments

- Publicly support the implementation of the UNEP report
- Put pressure on Shell to implement the UNEP report
- Provide resources and assistance for the implementation of the UNEP report including a governance structure for the Environmental Restoration Fund
- Stop lobbying on Shell's behalf for weaker regulation and lower taxes
- Support legislation to force oil companies to meet UK and EU standards in Nigeria



## Endnotes

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