



NO PROGRESS

AN EVALUATION OF THE IMPLEMENTATION
OF UNEP'S ENVIRONMENTAL ASSESSMENT OF
OGONILAND, THREE YEARS ON



SUMMARY

Three years after the publication of a groundbreaking report by the UN Environment Programme (UNEP) on oil pollution in Ogoniland, the people of Ogoniland continue to suffer the effects of fifty years of an oil industry which has polluted their land, air and water.

The oil company Shell and the Nigerian Government have both failed to implement recommendations made in the UNEP report and put an end to the abuse of the communities' rights to food, water and a life free of pollution.

This briefing details how both the government and Shell have failed to ensure adequate provision of emergency water supplies to people who UNEP found were drinking oil-conta-

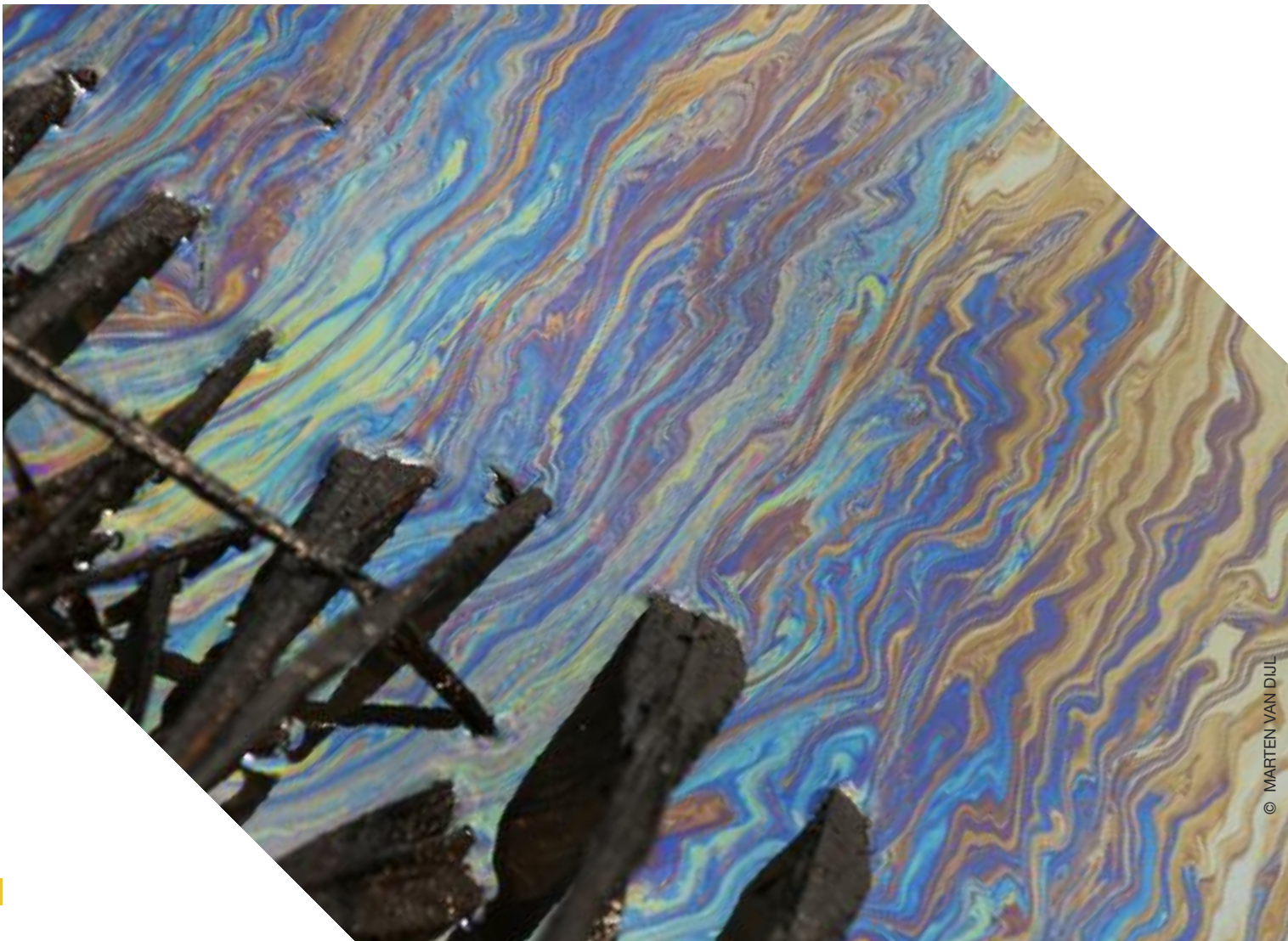
minated water. Shell has not addressed the pollution identified by UNEP and has continued to use deeply flawed clean-up practices. Beyond the implementation of some emergency measures the Government of Nigeria has also failed in its responsibility to ensure the recommendations of the report are implemented, offering the communities little more than empty rhetoric in the three years that have passed since the report was published.

After more than fifty years of suffering the ill-effects of the oil industry and three years of waiting for adequate clean-up, the need for urgent action is clearer than ever for the oil-affected communities of Ogoniland.

COVER: oil gushing from a submerged leak point.

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BELOW: oil floats on the surface of creeks in a town in Ogoniland, Niger Delta, Nigeria.



1. INTRODUCTION

In 2011 the United Nations Environment Programme (UNEP) published a ground-breaking scientific study on the impacts of oil pollution in the Ogoniland region of the Niger Delta. This study exposed an appalling level of pollution, including the contamination of agricultural land and fisheries upon which people depend for livelihoods and food; the contamination of drinking water; and the exposure of hundreds of thousands of people to serious health risks. Responsibility for the pollution, and the failure to properly clean up the area, was found to rest with the Government of Nigeria and the oil company, Shell. UNEP made a number of detailed findings

and recommendations to both.

This briefing, published by a coalition of human rights and environmental organisations, examines how UNEP's recommendations have been acted upon, three years after the report was published. Section 2 summarises UNEP's main findings and recommendations. Section 3 looks at how the emergency measures recommended by UNEP have been implemented. Section 4 considers the Government of Nigeria's response, while section 5 examines Shell's response. The appendix provides a detailed breakdown of action on each recommendation.

THE OGONI STRUGGLE FOR JUSTICE AND THE UNEP REPORT

Writer and human rights campaigner Ken Saro-Wiwa was executed, along with eight other members of the Ogoni people, by the Nigerian State in 1995. The executions alerted the world to the devastating impact of the oil industry in the Niger Delta, including how the environmental damage caused by the oil industry was harming the health and livelihoods of the Ogoni people.

The oil company operating in Ogoniland was the Shell Petroleum Development Company. In 1993 Shell withdrew from Ogoniland in the face of local protests. The company has never been able to resume operations in the area.

In February and March 1995, Ken Saro-Wiwa and 14 others were brought to trial on murder charges. On 30 and 31 October 1995, nine of the accused were convicted and sentenced to death following a politically motivated prosecution and unfair trial; six others were acquitted. On 10 November 1995, Ken Saro-Wiwa, Baribor Bera, Saturday Doobee, Nordu Eawo, Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix Nuate were hanged.

For many years Shell has pursued reconciliation with the people of Ogoniland, and had set up an Ogoni Re-entry Unit in its offices in Port Harcourt in the Niger Delta towards this end. The proposal for an environmental study emerged from reconciliation discussions. In 2006 the Federal Government of Nigeria commissioned UNEP to carry out the environmental assessment of Ogoniland. The work was funded by Shell, based on the "polluter pays" principle. UNEP commenced operations in Ogoniland in 2009 and carried out a 14-month study.

2. UNEP: MAIN FINDINGS AND RECOMMENDATIONS

Widespread pollution of Ogoniland

The UNEP study found that "oil contamination in Ogoniland is widespread and severely impacting many components of the environment. Even though the oil industry is no longer active in Ogoniland, oil spills continue to occur with alarming regularity." According to UNEP the people of Ogoniland have "been living with chronic pollution all their lives".ⁱ

The assessment found there is no continuous clay layer across Ogoniland, exposing the groundwater in Ogoniland (and beyond) to hydrocarbons spilled on the

surface. In 49 cases, UNEP observed hydrocarbons in soil at depths of at least 5 m. This finding has major implications for the type of remediation required.ⁱⁱ

The report found community members at Nisisioken Ogale were drinking water from wells contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline. The wells were close to a Nigerian National Petroleum Company product pipeline. The report stated that this contamination warranted emergency action ahead of all

other remediation efforts.ⁱⁱⁱ

Hydrocarbon contamination was found in water taken from 28 wells at 10 communities adjacent to contaminated sites. At seven wells hydrocarbon levels in the samples were at least 1,000 times higher than the Nigerian drinking water standard of 3 ug/l. Local communities

were aware of the pollution and its dangers but stated that they continue to use the water for drinking, bathing, washing and cooking as they had no alternative.^{iv}

UNEP concluded that the environmental restoration of Ogoniland was possible but could take 25 to 30 years. A special body was recommended to achieve this.

Serious regulatory failures

UNEP noted serious weaknesses in the ability of both the Department of Petroleum Resources (DPR) and the National Oil Spill Detection and Response Agency (NOSDRA) to respond to oil pollution. The two agencies were found to have differing interpretations of the regulatory framework, EGASPIN. This is enabling the oil industry to “close down the remediation process well before contamination has been eliminated and soil quality has been restored to achieve functionality for human,

animal and plant life.”^v

These Nigerian government agencies were found to lack qualified technical experts and resources. Since NOSDRA was established in 2006, so few resources had been allocated that the agency had no proactive capacity for oil-spill detection. In planning their inspection visits to some oil spill sites, the regulatory authority was wholly reliant on the oil industry for logistical support.^{vi}

Serious and systemic failures in Shell’s clean-up of oil spills

For years Shell has claimed that it cleans up oil spills promptly and properly. The UNEP report was very clear that this was not the case. On the contrary, the report exposed serious and systemic problems with Shell’s clean-up processes in Nigeria. According to the UNEP report:

- “It is evident from the UNEP field assessment that the Shell Petroleum Development Company’s (SPDC’s) post-oil spill clean-up of contamination does not achieve environmental standards according with Nigerian legislation, or indeed SPDC’s own standards.”^{vii}
- Remediation by enhanced natural attenuation (RENA), the primary method of remediation of oil impacted sites used by SPDC, has not proved effective and has “failed to achieve either clean-up or legislative compliance.”^{viii}
- “Ten out of the 15 investigated sites which SPDC records show as having completed remediation, still have pollution exceeding the SPDC (and government) remediation closure values.” In eight of these sites the contamination had migrated to ground water.^{ix}
- At 22 out of 33 sites along Shell’s pipeline, soil contamination exceeded limits set by Nigerian law. At five of the sites hydrocarbons were detected in the drinking water of nearby communities.^x
- There “was always a time-lag between the spillage being observed and dealt with...” The study further noted that the “time-lag between the spill event and the site being comprehensively cleaned up shows that issues of access are not the sole cause of delays.”^{xi}
- The approach to oil spill containment was substandard and “the unethical action of channelling oil into the creeks cannot be laid at the door of the community.”^{xii}

The clear conclusion of the UNEP report was that

Shell had, for years, not cleaned up oil pollution properly. As a consequence hundreds of thousands of children, men and women have been exposed to a sustained assault on their human rights to food, water, health and work, amongst others.

The report noted several due diligence failures in relation to Shell’s procedures. Two issues in particular are of concern:

- Firstly, the failure to ensure that the company’s clean-up approach took into account the prevailing environmental conditions, and failure to ensure that fieldwork was done to substantiate assumptions about rehabilitation of land and water.^{xiii} This failure of due diligence was responsible – at least partially – for the contamination of groundwater, as one assumption made by Shell was that the depth of soil contamination was limited - an assumption that UNEP’s field work has shown to be false, and which fieldwork by Shell could and should have exposed. This failure of due diligence resulted in greater and more prolonged exposure of the people of Ogoniland to contaminated drinking water.
- Secondly, when Shell left Ogoniland, many of its facilities were not properly decommissioned and made safe. Decommissioning is a standard practice for the oil industry. Although more than 17 years had passed, UNEP’s report noted that Shell had not properly decommissioned its Ogoniland facilities and made them safe.^{xiv} The company has repeatedly claimed it did not have access to the area. However, while access is sometimes delayed, Shell did have access to the area, and over 17 years could have done more to make the area safe.

The UNEP report made a number of recommendations to all stakeholders in the oil industry in Ogoniland. These recommendations included emergency measures to address situations where water used for drinking was contaminated, as well as recommendations to clean up



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Pollution in the Niger Delta affects water people depend on for fishing, drinking, cooking and bathing.

Ogoniland and prevent further pollution. It recommended that the Government of Nigeria establish an Ogoniland Environmental Restoration Authority to oversee implementation of the study's recommendations. The work of the authority should be funded by an Environmental Restoration Fund for Ogoniland, set up with an initial capital injection of US \$1 billion, to be contributed by the oil industry and the Government. Recommendations were also made with regard to improving

the capacity of regulators, monitoring public health and overhauling Shell's clean-up practices.

However, despite the seriousness of the findings of the UNEP report, including the serious human health implications of the findings, the vast majority of its recommendations have not been implemented. Three years after the publication of the report, there is little evidence that the Government of Nigeria has any intention of taking meaningful action to address these issues.

3. IMPLEMENTATION OF EMERGENCY MEASURES

UNEP recommended a number of emergency measures to address the fact that certain communities were exposed to grave health risks through contaminated drinking water. The emergency measures included:

1. Ensuring all drinking water wells where hydrocarbons were found are marked and people made aware of the danger
2. Providing adequate water to all households implicated
3. Following up on the health status of the people of Nisisioken Ogale, who were drinking water from wells contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline
4. Conduct a survey of all drinking water wells around

- those wells found to be contaminated
5. Post signs around all sites where contamination was found and inform communities not to walk through or engage in activities at these sites
 6. Post signs where hydrocarbon was observed in the surface water and inform people not to bathe in or fish in those waters
 7. Inform all families whose rainwater tested positive for hydrocarbons and advise them not to consume the water
 8. Mount an awareness-raising campaign to inform people of the dangers of artisanal refining

Local and international non-governmental organisations (NGOs) have monitored – and continue to monitor – the implementation of the emergency measures.^{xv} Only some of the emergency measures have been implemented – and then only partially. Signs have been posted in a number of areas warning people of the dangers of contact with contaminated water and land. Emergency water supplies were brought to affected communities. However, the communities reported that supplies of water were erratic and often the amount provided was insufficient. People also complained that the water in some cases smelled bad and was unpleasant to drink.^{xvi}

Monitoring carried out by Environmental Rights Action/Friends of the Earth Nigeria found that some communities where warning signs had been posted were still drinking water from sources believed to be contaminated because, people said, they had no alternative.^{xvii}

Investigations by Platform and the Centre for Environment, Human Rights and Development (CEHRD) in January 2014 found that the 500-litre water tanks situated around one community were completely empty and thus providing no emergency water access. In focus group discussions with community representatives from Obolo in September 2013, people reported that the emergency water supplies to that area ended in April 2013. Those who are able to afford it now purchase water from privately-owned water supply services.

It is not clear why some emergency water supplies were stopped in 2013. Shell has reported that it worked with the Rivers State government to construct permanent piped water distribution facilities. The Eleme Regional Water Supply Project, a 450,000 litre capacity facility with potential to serve an estimated 30,000 people a day, was completed and commissioned in August 2013.^{xviii} However, it is not clear how those living in contamination-affected communities can access water through this project.

The government has reported that all the other emergency measures are being implemented, but three years after the UNEP report no survey has been published on the status of drinking water wells around those wells found to be contaminated (emergency measure 4). Although the people of Nsisioken Ogale are reportedly being placed on a medical registry, there is no known health intervention occurring in the community that specifically looks at the health implications of hydrocarbons.^{xix}

4. THE GOVERNMENT OF NIGERIA'S RESPONSE

Detailed recommendations were made to the Federal Government of Nigeria. These included recommendations to establish an Ogoniland Environmental Restoration Authority to oversee implementation of the study's recommendations; to set up an Environmental Restoration Fund for Ogoniland with an initial capital injection of US \$1 billion contributed by the oil industry and the Government; to build the capacity of government agencies; and to mount a public awareness campaign to im-

prove the community's understanding of the environmental and health impacts arising from hydrocarbon contamination in Ogoniland.

The full set of recommendations is contained in the annex to this briefing. The government has not responded directly to any of the specific recommendations; instead it has established processes to take the UNEP report forward. These are discussed below.

The State Response: Presidential Committee

On receipt of the UNEP report the President of Nigeria, Goodluck Jonathan, initially called for UNEP to undertake the recommended clean-up of Ogoniland. The President stated that: "I believe that UNEP in addition to helping us to conduct this study, UNEP being an organ of the UN should also see how they can assist us to solve this major problem that we have."^{xx}

Following the publication of the UNEP report, the President of Nigeria established a Committee chaired

by the Minister of Petroleum Resources, Mrs Diezani Alison-Madueke.^{xxi} The vice-chair was the Minister of Environment, Mrs Hadiza Ibrahim Mailafiya. This Committee was tasked with reviewing UNEP's report and making recommendations to the Federal Government on immediate and long-term remedial actions. The Committee sent its report to the President in May 2012. This report has never been published and its content is unknown.

The State Response: Hydrocarbon Pollution Restoration Project (HYPREP)

When, almost one year after the UNEP report had been submitted to the Nigerian authorities, there was little tangible action on implementation, civil society groups pressed the government to act. In July 2012 the Minister of Petroleum Resources established the Hydrocarbon Pollution Restoration Project (HYPREP) with a pledge to fully implement the UNEP report. HYPREP describes its mandate as:

- To investigate and evaluate all hydrocarbon polluted communities and sites in Nigeria and make recommendations to the Federal Government;
- To restore all communities and sites established as impacted by hydrocarbon pollution in Nigeria, and any/all matters that the Federal Government may assign to it;

- To implement the actionable recommendations in the UNEP Assessment Report on Ogoniland.

To date the agency has been involved in implementation of some of the emergency measures described above. However, HYPREP has been criticised for its lack of meaningful activity to address the major issues raised by UNEP. Some NGOs and Ogoni community members have called for HYPREP's dissolution, believing that the agency was set up as an attempt to suggest that action was being taken to address UNEP, when in reality very little is being done.^{xxii}

In 2013 HYPREP re-stated its commitment to full implementation of the UNEP report, indicating this would be done in 2014. By end July 2014, none of the NGOs monitoring UNEP implementation was aware of any action by HYPREP to meet this commitment.

Oil spills in the Niger Delta are frequently not cleaned up properly.



5. SHELL'S RESPONSE

A number of the specific recommendations made in the UNEP report were directed at Shell. In addition, a number of recommendations that UNEP made about the overall situation require action by both the government and the oil company. Each recommendation made by UNEP is considered in detail in the appendix of this briefing. This section looks at the main recommendations directed at Shell and Shell's reported action.

The company's overall response to the UNEP report has been to note that: "The UNEP report was commissioned by and delivered to the Federal Government of Nigeria. Many of the most important UNEP recommendations – such as the creation of an Ogoniland En-

vironmental Restoration Authority and an Environmental Restoration Fund for Ogoniland – are directed at the government and require the government to take the lead to co-ordinate the activities of the many stakeholders involved. Other recommendations concern the Ogoniland community, the oil industry operators and SPDC."^{xxiii}

Shell's efforts to distance itself from the UNEP study – which it funded - after its publication have been criticised by NGOs. The company appears to have been taken by surprise by the scientific findings that expose its failure to make its operations safe and to properly clean up pollution.

UNEP Recommendations to Shell:

To fully review and overhaul procedures for oil spill clean-up and remediation as well as to improve on contracting and supervision

UNEP found that the RENA methodology used by Shell was not effective, and pollution-affected sites were not being cleaned up properly. The UNEP report demonstrates that the failures of RENA are one reason why people have been exposed to contaminated drinking water.

Rather than accept and act on this scientific finding, Shell has continued to defend and use RENA. Shell has noted that RENA remains a proven and internationally recognised method; and that "in a few specific cases in Ogoniland we did not go deep enough in our pre-clean up assessments and this may have impacted the overall effectiveness of remediation in those areas".^{xxiv} In a letter to Amnesty International in June 2014 Shell stated that "the principle concern in the UNEP report was that [RENA] was incorrectly applied in-situ". However UNEP had stated that there were "enough theoretical and practical reasons to recommend discontinuation of the RENA approach in Ogoniland for cleaning up contaminated land".

In its initial response to the UNEP report Shell stated it "will revisit the sites in Ogoniland investigated by UNEP to determine *whether* clean-up and remediation have been adequate, and take action as required." (emphasis added)^{xxv} This statement has been criticised by NGOs. UNEP, a respected UN agency, carried out an environmental assessment over 14 months and named the sites that have not been adequately cleaned up. Rather than accept this finding and act on it, Shell stated that it would determine, using another source, if action was required.

In reporting on progress in 2012 Shell stated that it had "contracted Fugro – an international service provider and the same one which UNEP used during the preparation of the Environmental Assessment of Ogoniland – 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."^{xxvi} As far as NGOs could discover, the evidence for this claim has not been made public. In a later statement, published in April 2014, Shell stated that: "All of the 15 sites identified in the report have been remediated and certified by regulators where further remediation was required, although there has been re-contamination from pipeline sabotage and oil theft in some cases."^{xxvii} In a letter to Amnesty International dated 10 June 2014 Shell stated that "the reassessment by Fugro revealed six of the sites required remedial actions which have since been executed despite re-impact by crude oil theft /illegal refining in some cases."

Shell's statements on the contaminated sites appear inconsistent. In a statement in 2012 the company appears to suggest the sites already meet regulatory parameters. However, in 2014 the company's statement claims the sites have been remediated. It is not clear how the sites can be both within regulatory parameters and then be remediated and certified. Moreover, the UNEP report clearly revealed serious problems with regulatory certification of clean up and remediation. In many of the sites UNEP found that the regulators had certified sites as cleaned up when they were still heavily polluted. There has been no known government action to address this problem, and it is therefore reasonable to conclude that regulatory certification continues to be unreliable. Indeed Shell should be aware that regulatory certification is unreliable. In January 2013 an International Union for Conservation of Nature (IUCN) Panel that had been asked by Shell to review environmental issues in the Niger Delta found that, once again, regulators had signed off on a site as cleaned up that was still polluted:

"in a recently concluded remediation site in Soku, the [Chemicals of Special Concern] levels were far higher than standards of EGASPIN (2002), even

though all the authorities had signed off on the certificate for a clean bill of health for that site.^{xxviii}

The Panel concluded:

“Based on the observations by the Panel, the current remediation practices in oil impacted areas in the Niger Delta are not satisfactory. Oil spill responses and remediation are not implemented fast enough and the methods and regulatory standards for biodiversity and habitat rehabilitation have not

been adequately established. Some of the issues that are not properly addressed in the current context need a different approach consistent with best practice in the industry.^{xxix}

Shell claims that it has completed a comprehensive review of and made changes to its Remediation Management System (RMS).^{xxx} However, there is no information about the specific changes made and the extent to which they address the problems identified by UNEP. On the contrary, the IUCN found an ongoing problem.

BUREAU VERITAS PROCESS

Shell announced in 2011 that it had hired a company called Bureau Veritas to verify the oil spill investigation system (known as the joint investigation visit or JIV). Despite repeated requests by Amnesty International and others for information on what exactly Bureau Veritas has verified or will verify, and whether Bureau Veritas will be allowed to consider evidence provided by communities and NGOs, Shell has not provided this information.

In a letter to Amnesty International dated 10 June 2014, Shell stated that Bureau Veritas’s “findings indicated that the classification of spills on SPDC’s spill website follows documented evidence and that the method for estimating spill volumes is consistent.” This carefully worded statement does not provide clarity on what Bureau Veritas has examined. Moreover, in-depth research published by Amnesty International and CEHRD in November 2013 revealed serious problems with how the cause of oil spills is determined and how spill volumes are measured.

During a research visit to the Niger Delta in May 2013, Amnesty International interviewed a man who had been party to a JIV where Bureau Veritas had also been present. The man [name withheld] was later invited to a debriefing session at Shell’s offices in Port Harcourt, during which, he reports, Bureau Veritas raised some concerns about Shell’s JIV process, and specifically the process for calculating the volume spilt.

To conduct a comprehensive review of SPDC assets in Ogoniland and develop a decommissioning programme and Integrity Management Plan for the assets.

In 2011 Shell stated that it was making plans to properly decommission its Ogoniland infrastructure.

Shell left Ogoniland in 1993. Decommissioning of its assets should have been done then, or as soon as possible thereafter. Shell has stated that it did not have access to Ogoniland, but this is not accurate. Shell had access to Ogoniland over the preceding 17 years, including to carry out the highly inadequate clean ups that UNEP documented. Shell’s access to Ogoniland has undoubtedly been restricted at times, but it is not credible to claim the company did not have access for 17 years.^{xxxi} Proper decommissioning of assets to protect people and the environment is a requirement of international standards for all oil companies; Shell’s failure to make the infrastructure safe further exposed the people of Ogoniland to serious harm.

In 2012 Shell reported that it had carried out a desk study of its assets in Ogoniland. In April 2014 the company stated that it had “completed an inventory and physical verification of assets in Ogoniland for decommissioning purposes.”^{xxxii} No specific action to decom-

mission any facilities appears to have been carried out three years after the UNEP report was published. There is also a serious question about why a desk study and inventory was needed and why Shell did not have such information available prior to or during the UNEP process. In a letter to Amnesty International dated 10 June 2014, Shell stated that: “The desk-based Ogoni asset inventory exercise was done because the information relating to [assets], although available, required collation into one document.”

Shell submitted relevant paperwork to the Department for Petroleum Resources in January 2013 and secured approval for decommissioning in February 2014.

The description of the “activity” carried out by Shell in the three years after a major study confirmed serious problems with its assets is deeply worrying. When scrutinized, Shell’s description of what has been achieved amounts to almost no action whatever: a desk study to collate information and submission of paperwork almost 18 months after UNEP to a government department that took more than one year to approve decommissioning.



Activists, community members, civil society and human rights organisations call on the Nigerian Government to implement the UNEP report at a protest march in Port Harcourt, Rivers State, April 2012

To work with Nigerian regulators to clarify the legislation governing remedial intervention and target values.

In its initial response to the UNEP report in 2011 Shell stated that it would engage with the relevant government regulators. In 2012 Shell stated: “SPDC has contacted NOSDRA and DPR on the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) to discuss the paradox of remedial intervention and target values being the same and

setting site-specific clean up values. These have been reviewed by the regulators in conjunction with oil companies (including SPDC) and SPDC understands that DPR plans to publish an updated version in the near future.”^{xxxiii} As far as the NGOs monitoring UNEP implementation could discover no further action has been taken.

Shell’s public statements on UNEP

Shell has made a number of public statements in response to UNEP. These statements seek to present a company taking action, working with government, and trying to address problems. But in reality Shell has taken very little action: its clean-up process is not overhauled; Shell is reviewing and examining issues rather than taking action. Shell has repeatedly sought to recast the problem of the Niger Delta in general, and Ogoniland in particular, as one of oil spills caused primarily by sabotage and theft of oil.

Shell’s responses are reminiscent of the company’s response in the mid-1990s to international concerns

about the environmental and human rights impacts of the company’s operations in the Niger Delta, following the execution of Ogoni leaders, including Ken Saro-Wiwa. At that time Shell claimed to be a company changing its practices – but many of the fundamental problems raised by Ken Saro-Wiwa and others remain. In 2001 the African Commission on Human and Peoples’ Rights stated that “pollution and environmental degradation to a level humanly unacceptable has made living in Ogoni land a nightmare.” And in 2011 – a decade later – UNEP stated that the people of Ogoniland had been “living with chronic pollution all their lives”.

DEBUNKING SHELL'S EXCUSES

Both prior to and since the UNEP report was published Shell has invested considerable energy pointing to issues of sabotage and theft of oil as the cause of oil pollution in Ogoniland and the Niger Delta. There are two issues to address here: first, the basis of Shell's claim that the majority of oil spilt is due to sabotage and theft is the outcome of oil spill investigations in the Niger Delta. However, the investigation process is deeply flawed, and the outcomes of investigations lack credibility. The proportion of oil spills caused by sabotage, as opposed to corrosion and equipment failure, cannot be determined because the causes of oil spills in the Niger Delta have not been subject to any independent assessment or verification. In many cases the oil company has significant influence on determining the cause of a spill - even when a regulatory representative is present. As the company is liable for compensation payments if the spill is found to be due to corrosion or equipment failure, the practice of allowing companies so much control over the investigation process creates a deeply troubling conflict of interest. Research by Amnesty International, CEHRD and Friends of the Earth provides examples of cases where Shell claimed the cause of a spill was sabotage, but this claim was subsequently called into question by other investigations or the courts. This evidence, which includes video footage of an oil spill investigation where the cause of the spill was changed – by Shell - from 'equipment failure' to 'sabotage', following the field investigation, has been shared with Shell.^{xxxiv}

Second, while Shell is quick to point to sabotage as a problem, the company has failed to take appropriate action to prevent it. For example, as noted above, when Shell left Ogoniland it did not properly decommission its facilities, leaving them vulnerable to illegal tapping and sabotage - and leaving communities exposed to the associated risks. This is completely contrary to international oil industry standards as well as international standards on business and human rights, both of which require that Shell exercise adequate due diligence in relation to prevention of sabotage and the associated human rights and environmental risks.

Moreover, one of the most serious findings of the UNEP report is in relation to Shell's failure to clean up properly. Under Nigerian law the operating company is responsible for cleaning up oil spills from its facilities, even if the spill is the result of third-party action. Therefore, the human and environmental impacts of Shell's failure to properly clean up pollution cannot be defended by reference to illegal activity that, allegedly, caused the oil spills.

The UNEP report did call for an end to all sources of pollution before a region-wide clean up of water systems was carried out, but this is a distinctly different issue. Shell must clean up individual spills, according to law. UNEP was speaking not of the individual spills but of the massive 25-year task of cleaning up the whole Ogoniland region. Any suggestion that UNEP's report provides a justification for flouting the law and leaving communities to simply live with the aftermath of oil spills is both incorrect and indefensible.

Sabotage and illegal activity are serious problems in the Niger Delta. But such activity can only be properly addressed when sabotage and illegal activity are dealt with honestly – and not when Shell uses the issues as a public relations shield. Failure by Shell to adequately maintain its infrastructure is also a serious problem in the Niger Delta and must be addressed. Yet, despite requests by communities and NGOs, Shell has refused to disclose the age of its pipes and infrastructure.

The issue of lack of access

When confronted with delays in stopping oil spills and cleaning up spill sites, Shell frequently claims that the company does not have access to the spill-affected area. While access can sometimes be delayed, this excuse does not account for many of the failures to stop and clean up spills. UNEP noted that there "was always a time-lag between the spillage being observed and dealt with..." and that the "time-lag between the spill event and the site being comprehensively cleaned up shows that issues of access are not the sole cause of delays."^{xxxv} Investigations by the organisations responsible for this briefing into several different oil spills have made the same finding.

CONCLUSION

In the three years since UNEP's study was published, the Government of Nigeria and Shell have taken almost no meaningful action to implement its recommendations. The action that has been taken has consisted largely of establishing processes that are ostensibly aimed at implementation. While some degree of process may have been necessary in the immediate aftermath of the publication of the UNEP report, the failure to fully implement any of the non-emergency measures after three years has resulted in a loss of confidence amongst many stakeholders. Even the emergency measures have only been partially implemented.

The UNEP report exposed extremely serious environmental damage. This damage has unquestionably led to violations of people's human rights, including the rights to water, food and health. The lack of ur-

gency and political will shown by the government in response to UNEP is deeply troubling. Shell – under no apparent pressure from the Government of Nigeria – has also failed to respond effectively. Shell's home states of the United Kingdom and the Netherlands have similarly failed to bring any pressure to bear on the oil company despite the evidence contained in the UNEP study, which should leave no-one in doubt that Shell's failures in Ogoniland have been substantially responsible for the region being one in which people have to live their whole lives in a polluted and dangerous environment.

The organisations responsible for this briefing will continue to monitor the implementation of UNEP, and to call for all actors – the Government of Nigeria, Shell and Shell's home states – to take urgent and decisive action.

Spilled oil deep inside the soil , Nigeria, May 2013



APPENDIX: REVIEW OF UNEP RECOMMENDATIONS

The table below includes each of the Recommendations listed in the Summary of the 2011 UNEP report. Each recommendation is reproduced as written in the report. Data on the action taken to date are drawn from the published material of HYPREP and Shell. The assessments of the action taken are made by the NGOs responsible for this briefing, who have been involved in monitoring the implementation of the UNEP recommendations.

UNEP RECOMMENDATION	ACTION	RECOMMENDATION IMPLEMENTED
OPERATIONAL RECOMMENDATIONS		
Immediate steps must be taken to prevent existing contaminated sites from being secondary sources of ongoing contamination while further risk assessments and investigations are undertaken for detailed planning of the clean-up of Ogoniland during a recommended Transition Phase	No known action taken	No
All sources of ongoing contamination, including the artisanal refining which is currently ongoing in the creeks, must be brought to a swift end before the clean-up of the creeks, sediments and mangroves can begin	All source of contamination continue. In 2012 there were approximately 200 spills from Shell's operations in the Niger Delta due to equipment failure, corrosion, sabotage of pipes and theft of oil. Up to September 2013 there were 138 spills. Some, although not all, occurred in Ogoniland. In addition artisanal refining continues to cause damage to the environment. (See: Amnesty International and CEHRD report, 'Bad Information: oil spill investigations in the Niger Delta') HYPREP and other actors, including some communities, have carried out awareness-raising activities to reduce illegal activity that causes pollution.	No
A campaign in Ogoniland to end illegal oil-related activities should be jointly conducted by the government, oil companies and local authorities. It should include an awareness component highlighting the disproportionate environmental footprint of artisanal refining (borne by all sections of the community) and spell out training, employment and livelihood incentives that will encourage people away from participating in this illegal activity.	Some awareness-raising activities have been carried out. (See HYPREP)	Partial
TECHNICAL RECOMMENDATIONS FOR ENVIRONMENTAL RESTORATION		
Surface water. Clean-up activities of the mangroves and soil should not be initiated before all possible measures are taken to stop ongoing pollution from reaching the creeks	As pollution is ongoing this recommendation has not been implemented	No
Restoration of swamplands. The most extensive area in terms of treatment of contamination will be the topsoil from the swamplands. The two main options are manual cleaning of contaminated topsoil and low pressure water jetting. A portable facility which can be fixed on a barge, move through the bigger creeks and act as a base for decontamination crews, should be considered	No known action taken.	No

Treatment of contaminated sediments. Decisions on intervention for sediment treatment are more complicated than simply basing them on an intervention value. Issues of erosion, vegetation damage and impact on local aquatic ecosystems as well as potential for natural recovery all need to be part of the decision-making process. In some cases, contaminated sediments will have to be dredged as part of the clean-up or they will act as reservoirs of pollution after the ongoing pollution has been eliminated.	No known action taken	No
Decontamination of groundwater. The issue of hydrocarbon contamination needs to be addressed in a comprehensive manner, but clean-up actions must be site-specific. In making decisions about the clean-up of groundwater, additional factors such as proximity to the community, absorption characteristics of the soil and all possible pathways must be considered, and this will require additional data to be gathered as part of the detailed clean-up planning process.	No known action taken	No
Mangrove restoration. Local nurseries should be established so that healthy, indigenous plants will be available to regenerate heavily impacted mangrove stands. Rehabilitation will focus on red mangroves along the waterfront and on white mangroves inland – which have been most severely impacted – and also on containing the spread of invasive species.	No known action taken	No

RECOMMENDATIONS FOR PUBLIC HEALTH

Everyone who has consumed water from contaminated sources should be requested to undertake a comprehensive medical examination by physicians knowledgeable about the possible adverse health effects of the hydrocarbons detected.	HYPREP has reported that it is registering people in the most contaminated site recorded by UNEP. However, no comprehensive medical exams on the health impacts of hydrocarbons are known to have been carried out.	No
A focussed medical study should be initiated to track the health of the Ogoni community over their lifetimes to ensure any possible health impacts are identified early enough and acted upon.	No known action taken	No

RECOMMENDATIONS FOR MONITORING

During and following clean-up operations in Ogoniland, a monitoring programme should be put in place in consultation with the national institutions mandated to deal with specific environmental issues. All monitoring activities should be communicated to the community and all results should be publicly available.	No known action taken	No
Comprehensive air quality monitoring across Ogoniland should be initiated to detect ongoing pollution, to help establish guidelines for protecting public health and to track improvements at sites where clean-up activities are under way.	No known action taken	No
A public health registry should be established for the entire Ogoniland population in order to determine health trends and take proactive action individually or collectively where impacts related to long-term exposure to hydrocarbon pollution are evident	Apart from the initiation of a registry for the people of Nisisioken Ogale, no other action is known to have been taken	No

RECOMMENDATIONS FOR CHANGES TO REGULATORY FRAMEWORK

Transfer oversight of the EGASPIN legislation from DPR to the Federal Ministry of Environment, with the concurrent transfer of staff or by recruiting and training new staff.	This has not been done	No
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Comprehensively review existing Nigerian legislation on contaminated site clean-up considering recent international developments in regulation and incorporating community consultation to determine remediation closure levels so that decisions on new legislation are seen as both transparent and inclusive.	This has not been done	No
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RECOMMENDATIONS FOR GOVERNMENT

The report recommends that the Government of Nigeria establishes an Ogoniland Environmental Restoration Authority to oversee implementation of this study's recommendations. With a fixed initial lifespan of 10 years, the Authority will have a separate budget which will accrue from an Ogoniland Environmental Restoration Fund and its staff will largely be seconded from relevant national and state institutions.	This has not been done	No
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The overall cost of the clean-up should not be an obstacle to its implementation. Therefore, an Environmental Restoration Fund for Ogoniland should be set up with an initial capital injection of USD 1 billion contributed by the oil industry and the Government. To be managed by the Authority, the Fund should be used only for activities concerning the environmental restoration of Ogoniland, including capacity building, skills transfer and conflict resolution.	This has not been done. Shell has reportedly put funding aside for the Environmental Restoration Fund but the government has not set up the Fund.	No
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A Centre of Excellence for Environmental Restoration should be established in Ogoniland to promote learning in other areas impacted by oil contamination, in the Niger Delta and elsewhere in the world. Offering a range of activities and services, the Centre could run training courses in environmental monitoring and restoration and ultimately become a model for environmental restoration, attracting international attention.	This has not been done	No
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Build the capacity of government agencies to enable them to fulfil their mandates, through such actions as increasing human resources and equipment, and improving the technical skills of staff.	This has not been done	No
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A public awareness campaign should be mounted to improve the community's understanding of the environmental and health impacts arising from hydrocarbon contamination in Ogoniland. This should include a formal education component in the academic curricula in the Niger Delta	Some work has been done in the context of HYPREP.	Partial
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RECOMMENDATIONS FOR OIL INDUSTRY OPERATORS

SPDC procedures for oil spill clean-up and remediation need to be fully reviewed and overhauled so as to achieve the desired level of environmental restoration. In addition to procedures and clean-up methods, contracting and supervision also need to be improved.

Shell has reported that it has review and made changes to its systems although no details are available. An IUCN assessment found weaknesses remained in 2013. No further updates are available. Shell stated in 2014 that it is working with several remediation options in a bid to apply the appropriate remediation technique to different impacted sites. There is no evidence that Shell's systems achieve the desired level of environmental restoration.

No

SPDC should conduct a comprehensive review of its assets in Ogoniland and develop an 'Asset Integrity Management Plan for Ogoniland' and a decommissioning plan. These plans should be communicated to the Ogoni people.

A desk study and inventory have been done but no Asset Integrity Management Plan for Ogoniland has yet been published. Shell has stated that an Environmental Evaluation Report final Terms of Reference was submitted to the Department of Petroleum Resources on 30 January 2013 and approval was secured in February 2014.

No

It is recommended that SPDC works with the Nigerian regulators to clarify the paradox of remedial intervention and target values being the same. The parties should also agree on a consultative approach to setting site-specific clean-up values.

Shell has met the government but no change to the regulations has been announced.

No

In the event that a decision is made to restart oil exploration and production activities in Ogoniland, the region should be treated as a green-field site of high environmental and social sensitivity. This would mean applying the latest technologies and environmental guidelines, such as re-evaluating pipeline routes to minimise environmental damage and allocating a percentage of all project costs for environmental and sustainable development initiatives in Ogoniland.

Shell has not re-entered Ogoniland

No

RECOMMENDATIONS FOR THE OGOILAND COMMUNITY

The Ogoni community should take full advantage of the employment, skills development and other opportunities that will be created by the clean-up operation which is aimed at improving their living conditions and livelihoods.

The clean-up operation has not yet started so no such opportunities exist.

No

Community members should avoid protracted negotiations over access by oil spill response teams as this means that responses to spills are delayed, resulting in a far greater environmental impact.

Delays continue to occur in some cases. Communities distrust of oil companies is a major underlying factor which has not been addressed.

Unknown

The community should take a proactive stand against individuals or groups who engage in illegal activities such as bunkering and artisanal refining.

Some communities have engaged with members of the community that engage in illegal activity. However, illegal activity continues in some areas.

Partially

TOTAL NUMBER OF RECOMMENDATIONS:

27

TOTAL NUMBER FULLY IMPLEMENTED BY AUGUST 2014

0

ENDNOTES

- i** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 9.
- ii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.
- iii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 13.
- iv** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 11.
- v** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.
- vi** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.
- vii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 150.
- viii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 145.
- ix** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.
- x** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p X.
- xi** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 151.
- xii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 151.
- xiii** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.
- xiv** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 25.
- xv** See for example: Friends of the Earth, "Shell, clean up your mess in the Niger Delta", 5 August 2013 and Platform and CEHRD, Polluted Promises, month May, 2014, ISBN 978-0-9567365-6-7.
- xvi** Monitoring and interviews conducted by Centre for Environment, Human Rights and Development, Rivers State, over 2013 and 2014. This monitoring included site visits to communities.
See also: Friends of the Earth, "Shell, clean up your mess in the Niger Delta", 5 August 2013 and Platform and CEHRD, Polluted Promises, May, 2014, ISBN 978-0-9567365-6-7.
- xvii** See for example: <http://africanheraldexpress.com/blog8/2013/08/05/ndelta-pollution-fg-scared-of-shell-says-era/>
- xviii** Shell in Nigeria, The UNEP Report, April 2014 at:
<http://s02.static-shell.com/content/dam/shellnew/local/country/nga/downloads/pdf/2014bnotes/unep.pdf>.
- xix** HYPREP Bulletin No1 of 2013. See: <http://hyprep.org/>
- xx** See: The Nation, 5 August 2011.
See: http://issuu.com/thenation/docs/august_05__2011/8.
- xxi** Information available on the website of Hydrocarbon Pollution Restoration Project (HYPREP) at: '<http://hyprep.org/>'
See: UNEP Newsletter, September 2011 at: http://www.unep.org/disastersandconflicts/Portals/155/countries/nigeria/ogoniland_newsletter/UNEP_Ogoniland_newsletter_Sep2011.pdf
- xxii** See for example: Sahara Reporters, "NNIMMO FAULTS "HYPREP", CALL FOR ITS SCRAPPING", NOVEMBER 2013, at: <http://saharareporters.com/2013/11/27/nnimmofaults-%E2%80%9Chyprep%E2%80%9D-call-its-scrapping>.
- xxiii** See: SPDC action on matters addressed in the UNEP report, July 2012, at:
<http://www.shell.com.ng/environment-society/our-response/unep-july-2012.html>
- xxiv** See: SPDC action on matters addressed in the UNEP report, 10 October 2011, at <http://s08.staticshell.com/content/dam/shell/static/nga/downloads/pdfs/briefing-notes/unep-report/unep-report-oct2011.pdf>
- xxv** See: SPDC action on matters addressed in the UNEP report, 10 October 2011, at <http://s08.staticshell.com/content/dam/shell/static/nga/downloads/pdfs/briefing-notes/unep-report/unep-report-oct2011.pdf>
- xxvi** See: SPDC action on matters addressed in the UNEP report, July 2012, at:
<http://www.shell.com.ng/environment-society/our-response/unep-july-2012.html>
- xxvii** Shell in Nigeria: The UNEP Report, April 2014, at:
<http://s02.static-shell.com/content/dam/shellnew/local/country/nga/downloads/pdf/2014bnotes/unep.pdf>
- xxviii** A report by the independent IUCN - Niger Delta Panel (IUCNNDP) to the Shell Petroleum Development Company of Nigeria Ltd (SPDC), January 2013, p 4.
- xxix** A report by the independent IUCN - Niger Delta Panel (IUCNNDP) to the Shell Petroleum Development Company of Nigeria Ltd (SPDC), January 2013, p4.
- xxx** See: SPDC action on matters addressed in the UNEP report, July 2012, at:
<http://www.shell.com.ng/environment-society/our-response/unep-july-2012.html>
- xxxi** See Amnesty International reports on the oil industry in the Niger Delta for details. Amnesty International, Petroleum, Pollution and Poverty in the Niger Delta, June 2009, AI Index: AFR/44/017/2009; Amnesty International and the Centre for Environment, Human Rights and Development, Bad Information, Oil Spill Investigations in the Niger Delta, November 2013, AI Index: AFR 44/028/2013
- xxxii** Shell in Nigeria, The UNEP Report, April 2014
- xxxiii** See: SPDC action on matters addressed in the UNEP report, July 2012, at:
<http://www.shell.com.ng/environment-society/our-response/unep-july-2012.html>
- xxxiv** See: Amnesty International and the Centre for Environment, Human Rights and Development, Bad Information, Oil Spill Investigations in the Niger Delta, November 2013, AI Index: AFR 44/028/2013
- xxxv** UNEP, Environmental Assessment of Ogoniland, August 2011, ISBN: 978-92-807-3130-9, p 12.