



Evaluation of the Final Statement regarding the Specific Instance Obelle Concern Citizens vs The Shell Petroleum Development Company of Nigeria Limited (SPDC) and Royal Dutch Shell

Date: 16 December 2022

Evaluation of the Final Statement by the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises further to the Final Statement published on 27 February 2020.

Table of Contents

1. Introduction	1
2. Evaluation procedure	2
3. Outcomes of the Evaluation	3
4. Conclusion of the NCP	4

1. Introduction

On 27 February 2020 the Dutch National Contact Point (NCP) concluded the notification of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by The Shell Petroleum Development Company of Nigeria Limited (SPDC) and its parent company, Royal Dutch Shell (RDS) (collectively referred to as ‘the enterprise’). This notification was submitted by Obelle Concern Citizens (OCC), representing a community based in the village Obelle, Rivers State Niger Delta, Nigeria.

The notification concerned alleged adverse impacts related to environmental contamination resulting from gas fire eruptions in 1998. The notifying party alleges a non-observance of the chapters of the Guidelines on Concepts and Principles (Chapter I), General Policies (Chapter II), Disclosure (III), Human Rights (Chapter IV), Employment and Industrial Relations (Chapter V) and Environment (Chapter VI).

In the first phase of the NCP procedure the NCP recommended to the notifying party to first attempt to resolve the issues via the operational-level grievance mechanism (OLGM) of SPDC, the so-called Community Feedback Mechanism (CFM), taking into account that SPDC had communicated it had its own grievance mechanism since 2012, and that OCC had never addressed this CFM with its

complaints. The notifying party subsequently lodged its grievance to the CFM and the NCP suspended the NCP procedure. When after more than 6 months it became clear that the parties had not been able to reach a solution on the issues raised, the NCP continued its handling of the specific instance. The NCP concluded that the issues raised merited further consideration and offered its good offices to both parties. The good offices were not accepted by the enterprise. The NCP published the Final Statement on February 20, 2020 in which it included its recommendations. With this, the procedure on the specific instance was concluded.

For further details on the notification and the followed procedure please see the [Final Statement](#) on the NCP website.

For the sake of being complete and accurate, the NCP notes that Shell moved its headquarters to the UK per 31 December 2021, and that Royal Dutch Shell plc became Shell plc per that date.

2. Evaluation of the Final Statement procedure

Standard procedure for an Evaluation is that the NCP initiates an evaluation one year after the publication of a Final Statement. The purpose of such an evaluation is for the NCP to assess, based on information provided by the parties, what follow-up actions were taken in relation to the results of the dialogue and/or the recommendations made by the NCP. Usually, this process is done in writing, however if parties prefer, a meeting can be held.

In the case of the specific instance concerned, according to the final statement, it was recommended that an evaluation will be conducted one year after the publication of the Final Statement and that the NCP would invite both parties for a separate meeting for this purpose. Due to the effects of the Covid19 crisis on the NCP's work and its extensive work load, the NCP was only able to conduct the evaluation two years after the publication of the Final Statement.

It initiated the evaluation by contacting both parties with the request to give account of what follow-up actions were taken in relation to the NCP's recommendations and suggested the possibility of a meeting. Responses were received by March 9, 2022. As none of the parties expressed the wish to hold a meeting, the procedure was continued in writing.

After receiving written feedback from the parties, the NCP drafted the Evaluation and shared the draft with both parties. Parties provided comments after which the NCP finalized the Evaluation and posted it on its website on 16 December 2022.

Date	Action that occurred
18 February 2022	NCP sent mails to both parties requesting information on what follow-up was given to the NCP's recommendations
4 March 2022	NCP received response from the enterprise
9 March 2022	NCP received response from the notifying party
26 August 2022	NCP sent email to enterprise with request for supporting documents

Date	Action that occurred
4 October 2022	NCP received from enterprise supporting documents
25 October 2022	Draft text sent to both parties for comments
9 December 2022	Second draft text sent to both parties for factual corrections only
16 December 2022	Publication of the Evaluation of the Final Statement

3. Outcomes of the Evaluation

Concerning the recommendation of the NCP that SPDC provides more transparency regarding its CFM and further develops its grievance mechanism until it meets all the relevant requirements as outlined in the Guidelines and the UNGPs, only the enterprise reported activities in this regard.

The enterprise stated that following further reviews of the CFM the SPDC JV (SPDC has a 30% stake in the SPDC Joint Venture together with the Nigerian National Petroleum Corporation (55%) and two other oil companies) undertook the following actions:

- develop a Shell Nigeria CFM procedure to ensure consistency of implementation
- improve communications and access by establishing a dedicated website, email address, telephone line, twitter account and a correspondence management system.
- Improve public access/understanding of the SPDC JV CFM and its procedure by publishing the procedure on the dedicated website and carrying out an awareness campaign on the radio where listeners had the opportunity to ask questions, in December 2020.

The enterprise reported that, within the framework of another project, it had carried out an assessment and that this assessment was carried out in alignment with the effectiveness criteria for OLGs as outlined in the UN Guiding Principles on Business and Human Rights (UNGPs). According to the enterprise, the outcome of the assessment showed that, within that project, the CFM was well understood and supported.

Concerning the recommendation of the NCP that RDS, as the (100%) parent company of SPDC, uses its leverage within the SPDC JV to further develop the SPDC grievance mechanism and to ensure its full compliance with the Guidelines and UNGPs as a matter of urgency, the parties did not report any activities.

In the Final Statement, the NCP also expressed its hope that both parties would continue their dialogue through SPDC's CFM until a solution had been reached that would do justice to the interests of the parties concerned. The notifying party reported it had not heard from the enterprise since the publication of the Final Statement of the NCP. However, in their responses to the evaluation both parties shared their thoughts in retrospect about the handling of the grievances by the CFM. The notifying party reported that - during the time that its grievance was handled by the CFM - none of its requests, such as access to impact assessment reports related to the gas fire incidents, were responded to in a positive manner. This, according to the notifying party, led to the premature ending of the CFM procedure and therefore the notifying party is of the opinion that the CFM was unable to address its grievance adequately. The notifying party also reported to have asked the authorities to mediate in order to receive the impact assessment reports.

The enterprise states that there had been extensive engagement between both parties and that the process was fair, respectful and that all parties had had the opportunity to state their views.

The NCP refers to its Final Statement in the case, and notes that it has not received any further documents or materials supporting the enterprise's claims in this regard.

4. Conclusion of the NCP

Based on the information provided by the parties, the NCP concludes the following.

In relation to the recommendation to align the CFM with the UNGPs' effectiveness criteria the NCP notes that the enterprise has made some efforts to improve the 'accessibility', one of the effectiveness criteria, as well as taken some actions, such as a dedicated website and radio campaign, to raise the awareness and improve the understanding of the CFM.

Concerning the enterprise's claim that it used an assessment tool which was aligned with the UNGPs' criteria for grievance mechanisms and that the assessment showed support by stakeholder leaders for its CFM, the NCP is of the opinion that the enterprise did not succeed in substantiating these claims. Therefore the NCP was unable to establish whether the assessment tool was indeed aligned with the UNGPs, nor whether the CFM is supported by stakeholder leaders and therefore could be considered 'legitimate' (one of the effectiveness criteria).

Concerning the criterion 'equitability' the NCP is of the opinion that it needs improvement as, according to the notifying party, the enterprise to date did not provide the requested information, and as such is not ensuring that *"aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms"* (see UNGPs para 31.d).

On the criterion 'predictability' the enterprise still has improvements to make on its dedicated website, e.g. *"on providing an indicative time frame for each stage of the procedure and clarity on the types of process and outcome available and means of monitoring implementation"* (see UNGPs para 31.c)

Regarding 'transparency' the NCP finds the enterprise would need to implement improvements in order to be aligned with the UNGPs. It would be in line with this criterion - which expects enterprises to be *"providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake"* (see UNGPs para 31.e) - to give a more comprehensive account, e.g. to the NCP within this procedure and on the enterprise's dedicated website, on all the UNGPs' effectiveness criteria for grievance mechanisms (legitimacy, accessibility, predictability, equitability and transparency) .

Overall, concerning the recommendation to align its OLG with the UNGPs' effectiveness criteria, the NCP concludes the enterprise has failed to demonstrate that the CFM is aligned, and is of the opinion that it has important steps to make in this regard.

In relation to the recommendation that the parent company uses its leverage to ensure the CFM is in line with the UNGPs and OECD requirements, based on the non-response in this regard, the NCP concludes the parent company has failed to demonstrate that it has exercised its leverage to ensure its subsidiary SPDC has a grievance mechanism which performs in line with the requirements and expectations under the Guidelines and UNGPs.

The NCP stresses the importance of a well-functioning operational-level grievance mechanism. For those potentially impacted by enterprises' activities it can be an effective means of enabling a remediation process (Guidelines, Chapter IV, para 46). According to the UNGPs, it provides the enterprise with the possibility to identify adverse impacts (step 2 of the due diligence process) at an early stage, to analyze trends and patterns in complaints and to adapt the business practices accordingly. Once identified, such adverse impacts can then be addressed and remediated early and directly, thereby preventing harms from compounding and grievances from escalating (see commentary 29 of the UNGPs).

Finally, the NCP regrets that the parties have not been able to resolve the issues outside the NCP procedure and finds it problematic that the notifying party remains without the prospect of satisfactory handling of its issues.

Although the NCP finds it disappointing that it has not been able to identify any substantive progress made with regard to its recommendations on the issues raised in the specific instance, it would however like to thank both parties for their cooperation in this evaluation procedure.

Glossary:

CFM – Community Feedback Mechanism

OLGM – Operational-level Grievance Mechanism

RDS – Royal Dutch Shell

SPDC - The Shell Petroleum Development Company of Nigeria Limited

SPDC JV - SPDC Joint Venture

UNGPs - UN Guiding Principles on Business and Human Rights

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP Website](#)

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Ministry of Foreign Affairs
P.O. Box 20061
2500 EB The Hague
The Netherlands
[NCP Website](#)