



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT THE NETHERLANDS

Final Statement

Odoh Family

vs

The Shell Petroleum Development Company of Nigeria Ltd.

Date: 11 July 2024

Notification to the Netherlands National Contact Point by the Odoh family, Nigeria concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by The Shell Petroleum Development Company of Nigeria Ltd.

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also includes recommendations and conclusions based on the further examination made by the NCP to the enterprise on the implementation of the Guidelines, and outlines the reasons why there has been no dialogue facilitated by the NCP with the objective of reaching an agreement between the parties.

As specific instances are not judicial proceedings and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

Note: During the procedure of this notification the Guidelines have been updated in June 2023. The NCP applied the updated Guidelines in its forward-looking recommendations.

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1. Executive Summary

On May 6, 2021 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from the Odoh family, Nigeria with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by The Shell Petroleum Development Company of Nigeria Ltd. (hereinafter: SPDC).

The issues raised concern: 1) not acting in line with the local laws and regulations; 2) the acquisition of land and water without appropriate prior engagement with the owners, i.e. the Odoh family; 3) the denial of the right to own and use properties; and 4) oil spillage on land and water which is used for livelihood purposes. The issues raised in this submission relate to the OECD Guidelines Chapters I Concept and Principles para 1 and 2, II General Policies para A.2, IV Human Rights para 1, 2, 3 and 6, and VI Environment para 2B and 5.

Initial Assessment

The Dutch NCP concluded that the notification concerning SPDC merited further consideration based on the following criteria:

- the Dutch NCP is the right entity to assess the alleged violation.
- the notifying parties are concerned parties with a legitimate interest in the issues raised in the notification.
- the issues raised are material and prima facie substantiated.
- there is a link between the enterprise's activities and the issues raised in the specific instance.
- the consideration of this specific instance may contribute to the Guidelines' objectives and enhance their effectiveness.

The decision was based on an initial assessment of the information submitted and did not represent a conclusion as to whether the enterprise observed the Guidelines, nor as to whether the statements made by the parties are accurate. The NCP published the initial assessment on 10 February 2022.

Following the conclusion that this notification merited further consideration, the NCP offered its good offices to the parties on 26 November 2021 to address the concerns raised by the notifying parties and seek a solution through dialogue, in accordance with the Dutch NCP Specific Instance Procedure for handling notifications. The good offices were accepted by the notifying parties on 13 December 2021. The enterprise informed the NCP on 20 December 2022 that it would not accept the Dutch NCP's good offices.

Coordination with other NCPs

Since the parent company of SPDC moved on 31 December 2021 from the Netherlands to the UK, the Dutch NCP discussed with the UK NCP which NCP should continue handling the notification. Both NCPs agreed that the Dutch NCP would continue handling the notification as the initial assessment

took place at the time the parent company was still based in the Netherlands. Furthermore, transferring the notification from the Dutch to the UK NCP would not benefit the effectiveness of the procedure.

Further examination

Subsequently, the Dutch NCP conducted a further examination, to assess whether the enterprise concerned observed the Guidelines on the grounds put forward in the notification. The further examination resulted in this final statement.

Based on the information made available, the NCP makes the following assessment regarding the issues raised in the specific instance and other issues encountered during the procedure:

Concerning the issues raised about Concepts and Principles (Chapter I):

The NCP assesses that the issues raised are not covered under any version of the Guidelines, as the incident that led to the adverse impacts took place at a time when the Guidelines had not yet been adopted by the OECD and adhering countries. The NCP therefore did not assess the issues raised.

Concerning the issues raised about General Policies (Chapter II) and Human Rights (Chapter IV):

The NCP could not establish whether the notifier had and still has access to the lake and what role the enterprise played and still plays in this regard. Concerning the provision of remedy of both the siltation and oil spill, i.e. bringing the land and lake back to the original state and making the lake suitable for fishing again, the enterprise has not provided substantial information to demonstrate it has done so. Therefore, the NCP considers it reasonable to assume the adverse impact on the notifier's source of livelihood is ongoing until this day and no appropriate remedy has been provided. The NCP assesses that the enterprise has failed to demonstrate it complied with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraphs 1, 2, 3 and 6 of the Human Rights chapter.

Concerning the issues raised about Environment (Chapter VI):

The NCP has been able to establish there has been some communication between the parties at the time, however it has not been able to qualify the nature of the cooperation. The NCP has not been able to establish whether the measures taken by the enterprise have been appropriate.

Concerning the due diligence expectation to provide for a legitimate remediation mechanism, General Policies (Chapter II):

The NCP is of the opinion that the enterprise's conduct shows a lack of any commitment to meaningful stakeholder engagement. The NCP concludes that the enterprise's OLG is not functioning in line with the expectations mentioned in step 6 of the due diligence process and does not meet the core criteria for OLGs. Based on the above, the NCP assesses that the enterprise has not observed paragraph A.10, chapter General Policies of the Guidelines (2011).

Concerning the due diligence expectation to cooperate with legitimate remediation mechanisms and related responsibilities, General Policies (Chapter II):

While the enterprise showed a certain level of cooperation throughout the procedure in terms of providing the requested (on many occasions historic) information in a timely manner, it is the NCP's assessment, given the lack of information related to the possibilities of exercising leverage towards the SPDC JV, the non-acceptance of the good offices and the lack of substantial effort to

demonstrate the adverse impacts were remedied, that the enterprise has not acted as could have been expected from it under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to *“provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise”*, based on Chapter II General Policies, para A.10 and A.12 of the Guidelines. The lack of full cooperation in the NCP procedures by the enterprise therefore means it also has not acted as could have been expected from it under paragraph 21 of the Commentary on the Procedural Guidance.

Assessment of the enterprise’s progress regarding its observance of the Guidelines:

Enterprises are expected to observe the Guidelines in a progressive manner, and the due diligence cycle is by its nature an ongoing process. In the years 2018-2021, the Dutch NCP has received three specific instances in a series that have been directed at the same enterprise, concerning partly similar issues in the same country and all submitted by local communities allegedly directly affected by the business activities. Therefore, the NCP has made use of the opportunity of this third final statement in that series to provide a broader assessment beyond this particular specific instance and assess progress made by the enterprise regarding the NCP’s previous recommendations on observance of the Guidelines. The NCP concludes that the enterprise has not made significant progress with regard to the previous recommendations on the following topics: 1) The functioning of the enterprise’s operational-level grievance mechanism (OLGM), the CFM; 2) The cooperation with the NCP and acceptance of the good offices, including exercising leverage within the SPDC JV in this regard; and 3) Meaningful stakeholder engagement.

Recommendations

The NCP recommends to the enterprise to:

Concerning the issues raised in the specific instance:

- To engage meaningfully with the Odoh family in order to adequately address the issues concerning the use of and access to the land and lake as well as the financial compensation related to the alleged and seemingly still ongoing adverse impact on livelihoods. Such engagement should be meaningful and should demonstrate that the enterprise carried out human rights due diligence in an appropriate manner and is acting in line with the chapter Human Rights, par. 1, 2, 5 and 6, Commentary 50.
- To ensure and, subsequently, communicate to the Odoh family and other relevant stakeholders that the contaminated land and siltation of lake is remediated, i.e. brought back to its original state, in order to demonstrate the enterprise remediated adverse impacts and is acting in line with chapter General Policies, par. 12, 15 and chapter Human Rights, par 5 and 6, Commentary 50.

Concerning the expectation to provide a legitimate remediation mechanism:

- To ensure and demonstrate that its OLGM is in line with the core criteria (i.e. legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines, transparency, rights-compatibility, being a source of continuous learning, and based on dialogue and engagement with a view to seeking agreed solutions) and functions accordingly, in order to provide a legitimate process where actual and potential adverse impacts can be addressed.

(Chapter General Policies par. 12, Commentary 15, 16, Chapter Human Rights par. 6, Commentary 46, 51)

Concerning the expectation to cooperate with legitimate remediation mechanisms and exercise leverage in this regard:

- To cooperate in good faith and meaningfully with legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rightsholders. (Chapter Human Rights, Commentary 51; Due Diligence Guidance, section 6.2);
- To exercise to the fullest extent possible its leverage on the SPDC JV partners in order to cooperate with remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed by the enterprise. (Chapter General Policies, Commentary 22, 23; Human Rights, Commentary 47; Due Diligence Guidance, section 6.2)
- In the event that the enterprises' leverage has been exercised to the fullest extent possible without the expected behavioral change of the JV, the NCP recommends the enterprise to consider ways to build additional leverage with the SPDC JV partners, including for example through outreach from senior management and through commercial incentives. To the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in the industry (Chapter General Policies, Commentary 22, 23; Due Diligence Guidance, section 3.2.d)
- In the event of failed attempts of exercising leverage on its business partners, the NCP recommends disengagement from the SPDC JV so as to cease and prevent the enterprise's own contribution to the real or potential adverse impacts, thereby taking into account the recommendations of the Guidelines on responsible disengagement. Should the enterprise decide to remain in the relationship it should be prepared to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection. (Chapter General Policies, Commentary 23, 25; Due Diligence Guidance, section 3.2.h, 3.2.i)

Concerning the recent development with regard to the enterprise's sale of SPDC, the NCP recommends:

- That the enterprise disengages responsibly in order to prevent, mitigate and remedy social and economic adverse impacts (chapter General Policies, par. 23, 25; Due Diligence Guidance 3.2.h and Annex Q39). This includes ensuring that past adverse human and environmental impacts that have occurred during the time of the enterprise's activities are fully remedied.

With the publication of the final statement the NCP procedure is concluded. One year after the publication of this final statement, the NCP will follow up with an evaluation of the agreement and implementation of the recommendations.

2. Substance of the submission, relevant provisions and the enterprise's response

The parties

The party submitting this specific instance is the Odoh family of Peretorugbene community, based in Bayelsa State, Nigeria.

The submission concerns SPDC, an oil company based in Nigeria and 100% subsidiary of the holding Shell plc, formerly known as Royal Dutch Shell, which had its headquarters in the Netherlands at the time of the submission.

The submission

According to the notifying party, SPDC has not been acting in line with local laws and regulations, as it acquired land without engaging in consultation, negotiation and payment of compensation to the persons concerned, and it acquired a lake belonging to the Odoh family without due consultation, negotiation and payment of compensation.

In 1971 SPDC acquired an oil field which included a fishing lake that was owned by the Odoh family and was used for livelihood purposes. According to the notifying party, the lake was silted due to the canalization works of SPDC and eventually became unfit for livelihood purposes. The Odoh family notified SPDC of the situation, however, they claim it was not remediated.

In 1996, according to the notifying party, SPDC constructed a pipeline across the aforementioned lake, without regard for the local legislation or regulations, which led to distortion of the natural flow and purposes of the lake.

Furthermore, the notifying party states that in 1997 an oil spill occurred which adversely affected the lake. While SPDC did make attempts to provide compensation to the Odoh family, its offers were rejected as the family found they were inadequate and not made in accordance with the due process requirements, such as the conduct of an impact assessment. In 2001, a joint impact assessment was carried out, resulting in a joint investigation report (JIV), where, according to the notifying party, SPDC accepted responsibility for the siltation and the oil spill, however, nothing was done to remediate the situation.

The Odoh family claims that to date it has not accepted any compensation, because the company failed to comply with due process, offer the commensurate compensation or meet with the appropriately appointed representatives of the family. Furthermore, the family believes the company tried to instigate a crisis by negotiating with individuals that were not appointed by the family as their representatives. The family states that it raised the issues several times over the years with SPDC, yet no substantial action followed.

The notifying party expects the following from the company:

- A thorough clean-up of the affected oil spillage sites, to be confirmed by the Odoh family
- Remediation of the affected areas of the community and its environments, and to restore the fishing rights of members of the Odoh family
- A caution to the SPDC to effectively work on its equipment to avoid future oil spills
- Monetary compensation for the damages suffered specifically to the Odoh family

- Specifically and directly relate with the Odoh family on all subsequent transactions on the said area
- Renegotiate the acquisition and occupation of the lake and land, or pay damages for decades of continuous trespass.

Provisions of the Guidelines referred to in the specific instance

Chapter I. Concepts and Principles, paragraphs 1 and 2.

“1. The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognized standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the Guidelines may also be regulated by national law or international commitments.

2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.”

Chapter II. General Policies, paragraph A.2

“A.2. Enterprises should: Respect the internationally recognized human rights of those affected by their activities.”

Chapter IV. Human Rights, paragraphs 1, 2, 3 and 6

“1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”

Chapter VI. Environment, paragraphs 2b and 5.

“2b. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”

The enterprise’s initial response

Concerning the alleged acquisition of land belonging to the Odoh family without due consultation, negotiation, and compensation payment the enterprise states: *“SPDC (then known as Shell-BP Petroleum Development Company of Nigeria Limited) pursuant to applicable legal provisions and due*

negotiation acquired the parcel of land used as its Akarino 1 location (Akarino location) from Odoh family of Peretorugbene Community sometime in 1971. SPDC made a payment to the Odoh family of the sum of 1.000 English pounds for the Akarino location land on the 14th of September 1971. The receipt of payment clearly states they had no further claim whatsoever to make against Shell in view of this payment."

Regarding the alleged canalization of the lake resulting in siltation of the lake and loss of livelihood, the enterprise claims: *"SPDC carried out dredging activities on its Right of Way (ROW) within the Akarino location sometime in 1976. Following the said dredging activity on 19 Nov 1976 negotiation was carried out with the Odoh family for compensation payable to them by SPDC for damages resulting from the Silting of Akologbein lake. Similarly, another family of another community subsequently put up a claim for the same payment and in respect of the same lake. They were also invited for negotiation with SPDC after which they agreed to be paid the same amount of compensation as the Odoh family. Both families disputed who was entitled to the payment. As a result of this, SPDC was forced to deposit the compensation money with the Accountant General of the then Bendel State for the benefit of the family who will be ultimately adjudged to be entitled to same."*

Concerning the non-compensation for the 1997 oil spill and attempt to compensate without proper assessment, the enterprise responds: *" No spill is acceptable to us and we work hard to prevent spills from our operations. SPDC follows due process in managing spills when they occur. Following an oil spill incident occurred on 17 January 1997, the community executives were authorized to negotiate and receive payment of Compensation from SPDC on behalf of the affected individuals, groups, and families. A creek with dimension 6,111sqm was lightly impacted. The executive committee of communities represented 255 claimants impacted. Based on the outcome of the negotiation, compensation of the value of 12.222 Nigerian naira was paid to all claimants. 254 claimants accepted and only 1 rejected compensation as inadequate."*

Regarding the construction leading to disturbance of the natural flow of the lake and which was allegedly done without any regard for local legislation or regulations, the enterprise claims that there is no delivery line which causes the alleged disturbance and the line which is in said area is in accordance with local regulation.

With regard to the alleged joint investigation report (JIV) and alleged lack of remediation, the enterprise denies the validity of the report and underlines that irrespective of the cause of the spill, after every spill clean-up and remediation is commenced.

2. Initial assessment by the NCP

The NCP concluded the notification merited further consideration. The full text of the initial assessment including the reasons why the NCP decided it merited further consideration can be found [here](#) on the NCP's website.

Subsequently, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, with the aim of agreeing how the issues raised can be successfully addressed.

3. The proceedings of the NCP

The purpose of this section is to provide a concise overview of what the NCP has done since receiving the submission.

Below is a chronological overview of what the NCP has done since receiving the submission.

Date	Action that occurred
	Initial Assessment phase
6 May 2021	Receipt of the specific instance
20 May 2021	Confirmation of receipt sent to notifying party
20 May 2021	Submission sent to enterprise
10 September 2021	Online meeting between NCP and notifying party
24 September 2021	Receipt of additional documents from notifying parties upon NCP's request
16 November 2021	Online meeting between NCP and enterprise
26 November 2021	First draft IA sent to both parties for comments and good offices offered
13 December 2021	Receipt of response to first draft IA and good offices accepted by the notifying party
15 December 2021	Receipt of additional documents from enterprise upon NCP's request
20 December 2021	Receipt of response to first draft IA and good offices accepted rejected by the enterprise
23 December 2021	Second draft IA sent to parties for factual corrections only
23 December 2022	Receipt of response to second draft IA from notifying party
14 January 2022	Receipt of response to second draft IA from the enterprise
25 January 2022	NL NCP and UK NCP agreed notification remains with the NL NCP after move of Shell's HQ from Netherlands to United Kingdom
7 February 2022	Final IA and publication date shared with both parties
10 February 2022	Publication of the initial assessment on the NCP's website
	Further examination phase
18 May 2022	Receipt of request from notifying party to put the procedure on hold as it decided to file a complaint with SPDC's operational-level grievance mechanism (OLGM)

13 June 2022	Notifying party filed complaint with SPDC's OLGGM
29 June 2022	Informed notifying party that the procedure is put on hold in line with its request
26 August 2022	Informed enterprise that the procedure is put on hold due to the notifier's compliant with the OLGGM
27 August 2022	Notifying party requested to continue with the procedure as it had not received response from SPDC's OLGGM
20 December 2022	Informed enterprise that upon request of the notifying party the procedure is continued
17 November 2023	Questions on issues raised sent to enterprise
17 November 2023	Questions on issues raised sent to notifying party
7 December 2023	Response received from enterprise
16 January 2024	Response received from notifying party
	Final statement phase
24 May 2024	Draft FS shared with parties for comments
9 June 2024	Receipt of response to draft FS by notifying party
14 June 2024	Receipt of response to draft FS by enterprise
8 July 2024	Final FS shared with UK NCP
11 July 2024	Publication of the final statement on the NCP's website and closure of the specific instance

Besides the account given above the NCP has also corresponded with both parties in order to give updates on the procedure and explanations for delays.

The NCP has not met the indicative timelines in part due to the high workload created by an increasing number of new notifications and the complexity of specific instances.

4. Parties' responses to the offer of good offices

Following the conclusion that the notification merited further consideration, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, facilitated by the NCP, with the aim of agreeing how the issues raised can be successfully addressed. In response to the NCP's offer of good offices, the notifying party accepted the offer, the enterprise did not.

The enterprise rejected the offer because *“SPDC as operator of the SPDC JV does not have the consent of NNPC [Nigerian National Petroleum Corporation] and other JV partners, in line with the Joint Operating Agreement, to participate in the proposed mediation.”*

As the NCP’s good offices were only accepted by the notifying parties, the NCP, in accordance with its procedure, initiated the examination of the issues raised and the drafting of a final statement.

5. Examination and conclusions

For the purpose of the examination the NCP has studied the information provided by the parties and gathered additional information. The NCP examined the issues raised by the notifier as well as other issues it encountered during the procedure.

Some of the issues raised are allegedly caused by events that occurred in 1971, a time when the Guidelines were not established yet. Other events occurred in periods where different versions of the Guidelines were applicable. The findings of the NCP on the issues raised are based on the applicable Guidelines regarding each issue. If the NCP finds that the alleged impact is continuing until the present, the Guidelines 2011 are applicable, as that was the applicable version at the time the notification was submitted.

Findings on the issues raised about Concepts and Principles (Chapter I)

The notifying party is of the opinion that the enterprise did not act in line with local laws and regulations concerning the alleged acquisition of land and a lake in 1971 and did not engage in consultation and negotiation with and payment to the persons concerned, i.e. the Odoh family. The notifying party refers to paragraphs 1 and 2 of the chapter Concepts and Principles (2011), which read that an MNE is expected to obey domestic laws and where domestic laws and regulations conflict with the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent in such a manner that it does not place them in violation of domestic law.

Based on the information provided, the NCP assesses that the issues raised are not covered under any version of the Guidelines, as the incident that led to the adverse impacts took place at a time when the Guidelines had not yet been adopted by the OECD and adhering countries. The NCP therefore did not assess the issues raised.

It must be noted however, that the Odoh family claims to have rejected the financial compensation offered by the enterprise because the compensation was considered too small in comparison to the adverse impacts. Whether justified or not at the time, this would mean that the Odoh family did not receive any compensation for the land use until today.

Findings on the issues raised about General Policies (Chapter II) and Human Rights (Chapter IV)

The notifying party is of the opinion that the enterprise: 1) denied the notifier the right to own and use properties, i.e. access to and fishing in the lake owned by the Odoh family 2) adversely impacted on the notifier’s source of livelihood by silting the fishing lake and creating an oil spill, and 3) did not

provide remedy for this adverse impact. The notifying party refers to paragraph A.2 of the chapter on General Policies (2011), which read that an MNE is expected to respect internationally recognized human rights of those affected by their activities. The notifying party also refers to paragraphs 1, 2, 3 and 6 of the chapter Human Rights (2011), which read that an MNE is expected to respect human rights and address adverse human rights impacts that they have caused or contributed to. If it is not causing or contributing to the adverse impact but nonetheless is directly linked via its business operations, products or services, the MNE is expected to seek ways to prevent or mitigate them. Finally, MNEs are expected to provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

The NCP is of the opinion that the Guidelines 2011 are applicable to the issues raised, as the alleged adverse impact on livelihood is claimed to be ongoing until the present day. Based on the information received from both parties, the NCP finds the following.

The NCP could not establish whether the notifier had and still has access to the lake and what role the enterprise played and still plays in this regard.

Both parties agreed with the fact that the lake was silted at one point and that an oil spill had occurred. Regarding the siltation, the provided information substantiated that the enterprise paid a one-off financial compensation, which, due to an alleged ongoing dispute between two families, was deposited with the local authorities. However, this payment has not reached the rightful recipient for unknown reasons until this day, i.e. neither of the two families has been compensated. Regarding the oil spill, the enterprise financially compensated 254 claimants for the oil spill. However, the Odoh family rejected the compensation for reasons mentioned above.

Concerning the provision of remedy of both the siltation and oil spill, i.e. bringing the land and lake back to the original state and making the lake suitable for fishing again, the enterprise has not provided substantial information to demonstrate it has done so. Therefore, the NCP considers it reasonable to assume the adverse impact on the notifier's source of livelihood is ongoing until this day and no appropriate remedy has been provided.

Based on the above, the NCP assesses that the enterprise has failed to demonstrate it complied with the Guidelines and therefore the NCP is unable to establish that the enterprise has observed paragraphs 1, 2, 3 and 6 of the Human Rights chapter.

The NCP notes that, although the siltation and oil spill occurred long ago and therefore any documentation that might be showing the enterprise had remedied the site may be lost, it can still be expected from the enterprise, also taking into account its considerable size, to make resources available to produce substantial information to show the site has been remedied for the purpose of the NCP procedure.

Findings on the issues raised about Environment (Chapter VI)

The notifying party is of the opinion that the enterprise, at the time of an oil spillage in 1997, did not adequately engage with them in order to remedy the situation. The notifying party refers to paragraphs 2b and 5 of the chapter Environment (2011), which read that an MNE is expected to engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise by their implementation,

and is expected to maintain contingency plans for preventing, mitigation and controlling serious environmental and health damage from their operations.

The NCP is of the opinion that at the time of the oil spill the Guidelines 1991 were applicable. Both parties confirmed there has been an oil spill.

Concerning engagement with communities, the Guidelines 1991 contained a provision recommending enterprises to favour close cooperation with communities but did not further specify how to interact with communities affected by the enterprise's environmental activities.

Based on the information provided, the NCP has been able to establish there has been some communication between the parties at the time, however it has not been able to qualify the nature of the cooperation.

Concerning the issue raised related to having contingency plans in place, the Environmental Protection chapter, point c (1991), reads: "*[Enterprises should] take appropriate measures in their operations to minimize the risk of accidents and damage to health and the environment, and to cooperate in mitigating effects [...].*"

Based on the available information, the NCP has not been able to establish whether the measures taken by the enterprise have been appropriate.

Findings related to the due diligence expectation to provide for a legitimate remediation mechanism, Chapter II General Policies

Enterprises are expected to carry out risk-based due diligence according to Chapter II General Policies, para A.10 "*Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*" In the OECD Due Diligence for Responsible Business Conduct Guidance it is explained that due diligence consists of six steps. Step six reads: "*[Enterprises should] provide for or cooperate in remediation when appropriate*". Further elaboration on this in section 6.2 reads: "*When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise.*" The OECD Due Diligence Guidance clarifies that the expectation to provide for or cooperate in remediation entails, amongst others, the establishment of an operational-level grievance mechanism (OLGM). This OLGM should, concerning human rights impacts, meet the core criteria of legitimacy, accessibility, predictability, equitability, transparency, Guidelines compatibility and should be based on engagement and dialogue. SPDC has an OLGM in place, the SPDC Community Feedback Mechanism (CFM).

Upon the enterprise's suggestion to the notifiers, mentioned in the Initial Assessment, to submit their complaint to the CFM, the notifiers did so in June 2022. However they never received a response. As part of the further examination, the NCP requested the enterprise their response on this matter. The enterprise claimed it had not received the complaint.

The NCP finds the claim of the enterprise that it had not received the notifier's complaint not credible, as the NCP was copied in the notifier's mail to the CFM. Moreover, the enterprise knew about the notifiers' intention to submit the complaint, as the NCP had mentioned this in a message

to the enterprise, which could have led the enterprise to take further action, e.g. informing the NCP or the notifier that it had not received the complaint. Instead, it did not further engage.

The NCP is of the opinion that the enterprise's conduct shows a lack of any commitment to meaningful stakeholder engagement. The NCP concludes that the enterprise's OLGGM is not functioning in line with the expectations mentioned in step 6 of the due diligence process and does not meet the core criteria for OLGGMs. Based on the above, the NCP assesses that the enterprise has not observed paragraph A.10, chapter General Policies of the Guidelines (2011).

Findings related to the due diligence expectation to cooperate with legitimate remediation mechanisms and related responsibilities, Chapter II General Policies

The NCP makes the following observations concerning the cooperation of the enterprise in the NCP procedure.

As mentioned in section 5 'Parties' responses to the good offices', the enterprise has declined the offer of the NCP's good offices to facilitate a dialogue to assist the parties in resolving the issues through non-adversarial means such as conciliation or mediation. The reason the enterprise provided for not accepting the good offices, was that it does not have the consent of the SPDC joint venture (in which it holds 30%) to participate in a mediation procedure with the NCP.

The NCP draws the attention to the following expectations under the Guidelines.

First, enterprises are expected to carry out risk-based due diligence according to Chapter II General Policies, para A.10 *"Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation."* In the [OECD Due Diligence for Responsible Business Conduct Guidance](#) it is explained that due diligence consists of six steps. Step six reads: *"[Enterprises should] provide for or cooperate in remediation when appropriate"*. Further elaboration on this in section 6.2 reads: *"When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise. Referral of an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided."* This para is followed by an explicit reference to cooperation with the NCP: *"[Enterprises should] cooperate in good faith with judicial or non-judicial mechanisms. For example if a specific instance is submitted to an NCP or through initiatives that provide other types of grievance mechanisms involving the conduct of the enterprise."*

Irrespective of whether the alleged adverse impacts have actually occurred, the enterprise was expected under the Guidelines to exercise due diligence as the due diligence process relates to both actual and potential impacts. Therefore, in this specific instance the expectation to cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise (which is part of step 6 of the due diligence process) is applicable.

Second, the scope of the responsibility to provide for or co-operate in remediation is determined by whether the enterprise may have caused or contributed to, or may be directly linked to the potential

adverse impact. If the enterprise may have caused an adverse impact or may have contributed to it, it should “*address the impacts by providing for or cooperating in their remediation*” (OECD Due Diligence Guidance p. 34). Concerning the expected cooperation with a remediation mechanism if an enterprise is directly linked to the impact “*it may still take a role in remediation, despite not having an expectation to provide for remedy itself. For example, the enterprise may use its leverage, to the extent practicable, with its business relationship to compel the business relationship to participate in processes to provide for remedy. Where relevant, the enterprise may provide information which can facilitate investigations or dialogue.*” (OECD Due Diligence Guidance, p. 90).

In this specific instance, two entities of the enterprise were involved: SPDC and Shell HQ. SPDC was part of the joint venture (JV) allegedly causing the impacts; as the JV’s operator it was actually carrying out the activities in the field. Shell HQ was involved via its wholly owned subsidiary SPDC, with a stake of 30% in the JV. Shell HQ was also the entity that housed the entity Shell International BV, which laid out the global policies for the corporate group entities and to which they reported on policy implementation. In addition, Shell International BV oversaw the activities of SPDC. As such, both Shell HQ and SPDC can be considered to have been causing or contributing to the alleged adverse impacts. The Guidelines are addressed to all entities within an MNE, parent and local entities; they are expected to co-operate and assist one another to facilitate observance of the Guidelines (Chapter I, para 4). This implies that each entity within a corporate group carries responsibility to take action to observe the Guidelines. In addition, each enterprise in a business relationship has its own responsibility with respect to exercising due diligence, it is not intended to shift responsibilities. (OECD Due Diligence Guidance, p. 17).

Therefore, the same scope of responsibility to co-operate with a remediation mechanism applies to, in this case, SPDC and Shell HQ. Accordingly, it could have been expected of these two entities that they, at the minimum, cooperate with the NCP process with a view to resolve the issues, i.e. accepting the good offices and displaying good faith behaviour.

Third, the Due Diligence Guidance further explains that “*The degree of leverage an enterprise has over the business relationship causing the adverse impact is useful in considering what it can do to persuade that entity to take action, however enterprises have a responsibility to carry out due diligence and effectively exercise any leverage they may have*” (Q.37, p. 79).

Concerning the reason given by the enterprise that it did not have the consent of the SPDC JV, it should have, following the paragraphs above, exercised its leverage on the other partners of the JV to ensure they participate in the NCP procedure. This was also explained to Shell International BV during the general introductory meeting on March 11, 2020.

While the enterprise showed a certain level of cooperation throughout the procedure in terms of providing the requested (on many occasions historic) information in a timely manner, it is the NCP’s assessment, given the lack of information related to the possibilities of exercising leverage towards the SPDC JV, the non-acceptance of the good offices and the lack of substantial effort to demonstrate the adverse impacts were remedied, that the enterprise has not acted as could have been expected from it under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to “*provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise*”, based on Chapter II General Policies, para A.10 and A.12 of the Guidelines.

Furthermore, as outlined in the Guidelines' Commentary on the Procedural Guidance for NCPs, paragraph 21, the effectiveness of the specific instance procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines. The lack of full cooperation in the NCP procedures by the enterprise therefore means it also has not acted as could have been expected from it under paragraph 21 of the Commentary on the Procedural Guidance.

Assessment of the enterprise's progress regarding its observance of the Guidelines

Enterprises are expected to observe the Guidelines in a progressive manner, and the due diligence cycle is by its nature an ongoing process. In the years 2018-2021, the Dutch NCP has received three specific instances in a series that have been directed at the same enterprise, concerning partly similar issues in the same country and all submitted by local communities allegedly directly affected by the business activities. Therefore, the NCP wishes to make use of the opportunity of this third final statement in that series to provide a broader assessment beyond this particular specific instance and assess progress made by the enterprise regarding the NCP's previous recommendations on observance of the Guidelines.

The NCP has made previous recommendations on the following topics :

1. The functioning of the enterprise's operational-level grievance mechanism (OLGM), the CFM.
2. The cooperation with the NCP and acceptance of the good offices, including exercising leverage within the SPDC JV in this regard.
3. Meaningful stakeholder engagement.

Concerning the functioning of the OLGM, the NCP concludes that, despite the repeated conclusions of the NCP, not only in the Final Statements but also in the Follow-Up of the first specific instance (notifying party was Obelle Concern Citizens, [published December 16, 2022](#)) to align it with the core criteria for OLGMs, the enterprise has not made significant progress with regard to alignment with the core effectiveness criteria for OLGMs.

Concerning cooperation with the NCP, although the enterprise showed a certain level of cooperation, the enterprise has consistently declined the offer of good offices in all three cases and has not demonstrated any willingness to exercise its leverage with the SPDC JV in order to ensure the JV's acceptance of the good offices. The NCP concludes therefore that the enterprise has not made significant progress in this regard.

Concerning stakeholder engagement, the NCP has seen repeated signs of a lack of meaningful engagement with respect to the various issues in the various communities that were involved in the three cases, such as non-response to requests and submissions to the CFM made by the notifiers. The NCP therefore concludes that the enterprise has not made significant progress in this regard.

Finally, the NCP would like to underline the importance of observance of the Guidelines by enterprises, especially those that are operating in a high-risk sector in countries that may lack a strong rule of law and good governance, as these enterprises have a heightened risk of causing, contributing to or being directly-linked to adverse impacts through their own operations or business relationships. Also, the persistent refusal of the enterprise to accept the good offices of the NCP,

taking into account its relevance in the sector and in the country concerned, is detrimental to the credibility of the NCP procedure and may undermine the effectiveness of the Guidelines.

6. Recommendations

During the Specific Instance Procedure the Guidelines have been updated. In accordance with the OECD Adherents' decision, all recommendations made in final statements published after the adoption of the updated Guidelines are based on the updated Guidelines (2023).

To advance observance of the Guidelines, the NCP makes the following recommendations to the enterprise:

Concerning the issues raised in the specific instance, the NCP recommends:

- To engage meaningfully with the Odoh family in order to adequately address the issues concerning the use of and access to the land and lake as well as the financial compensation related to the alleged and seemingly still ongoing adverse impact on livelihoods. Such engagement should be meaningful and should demonstrate that the enterprise carried out human rights due diligence in an appropriate manner and is acting in line with the chapter Human Rights, par. 1, 2, 5 and 6, Commentary 50.
- To ensure and, subsequently, communicate to the Odoh family and other relevant stakeholders that the contaminated land and siltation of lake is remediated, i.e. brought back to its original state, in order to demonstrate the enterprise remediated adverse impacts and is acting in line with chapter General Policies, par. 12, 15 and chapter Human Rights, par 5 and 6, Commentary 50.

Concerning the expectation to provide a legitimate remediation mechanism, the NCP recommends:

- To ensure and demonstrate that its OLG is in line with the core criteria (i.e. legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines, transparency, rights-compatibility, being a source of continuous learning, and based on dialogue and engagement with a view to seeking agreed solutions) and functions accordingly, in order to provide a legitimate process where actual and potential adverse impacts can be addressed. (Chapter General Policies par. 12, Commentary 15, 16, Chapter Human Rights par. 6, Commentary 46, 51)

Concerning the expectation to cooperate with legitimate remediation mechanisms and exercise leverage in this regard, the NCP recommends:

- to cooperate in good faith and meaningfully with legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rightsholders. (Chapter Human Rights, Commentary 51; Due Diligence Guidance, section 6.2);
- to exercise to the fullest extent possible its leverage on the SPDC JV partners in order to cooperate with remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed by the enterprise. (Chapter General Policies, Commentary 22, 23; Human Rights, Commentary 47; Due Diligence Guidance, section 6.2)
- In the event that the enterprises' leverage has been exercised to the fullest extent possible without the expected behavioral change of the JV, the NCP recommends the enterprise to

consider ways to build additional leverage with the SPDC JV partners, including for example through outreach from senior management and through commercial incentives. To the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in the industry (Chapter General Policies, Commentary 22, 23; Due Diligence Guidance, section 3.2.d)

- In the event of failed attempts of exercising leverage on its business partners, the NCP recommends disengagement from the SPDC JV so as to cease and prevent the enterprise's own contribution to the real or potential adverse impacts, thereby taking into account the recommendations of the Guidelines on responsible disengagement. Should the enterprise decide to remain in the relationship it should be prepared to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection. (Chapter General Policies, Commentary 23, 25; Due Diligence Guidance, section 3.2.h, 3.2.i)

Concerning the recent development with regard to the enterprise's sale of SPDC, the NCP recommends:

- that the enterprise disengages responsibly in order to prevent, mitigate and remedy social and economic adverse impacts (chapter General Policies, par. 23, 25; Due Diligence Guidance 3.2.h and Annex Q39). This includes ensuring that past adverse human and environmental impacts that have occurred during the time of the enterprise's activities are fully remedied.

Concluding, the NCP underlines the responsibilities of each entity within the enterprise group. The SPDC is responsible for its own actions irrespective of corporate structures, e.g. with joint venture partners. Shell HQ is responsible for its own actions as well as those of each subsidiary in its group, and has the responsibility to exercise its leverage both on its subsidiaries and, where relevant, on the business partners of those subsidiaries.

The NCP regrets it has not been able to play a role in resolving the issues raised by the notifying party, It regrets that the enterprise did not accept its good offices and did not cooperate as meaningfully as can be expected in the NCP procedure.

7. Follow Up

As an important part of the NCP's non-judicial role, follow up on agreements and recommendations supports the effectiveness of the specific instance process. In particular, follow up can further the Guidelines' effectiveness by encouraging parties to remain engaged with the issues and companies to implement the recommendations and agreements adopted in accordance with the Guidelines.

The NCP will follow up the specific instance one year after the date of publication of the underlying final statement. The NCP will follow up with the parties in writing in order to evaluate the recommendations made. The outcomes of the follow-up proceedings will be shared via a publication on the NCP's website.

With this Final Statement, the NCP closes the Specific Instance Procedure.

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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