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THE TRUE 'TRAGEDY'

DELAYS AND FAILURES IN TACKLING OIL SPILLS IN THE NIGER DELTA

CEHRD

AMNESTY INTERNATIONAL

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Cover photo: May 2011. Pastor Christian Lekoya Kpandei contemplates the damage done to his fish farm in Bodo, which flourished before the August 2008 oil spill. The pollution destroyed his fish farm, leaving him and his workers without a regular income.
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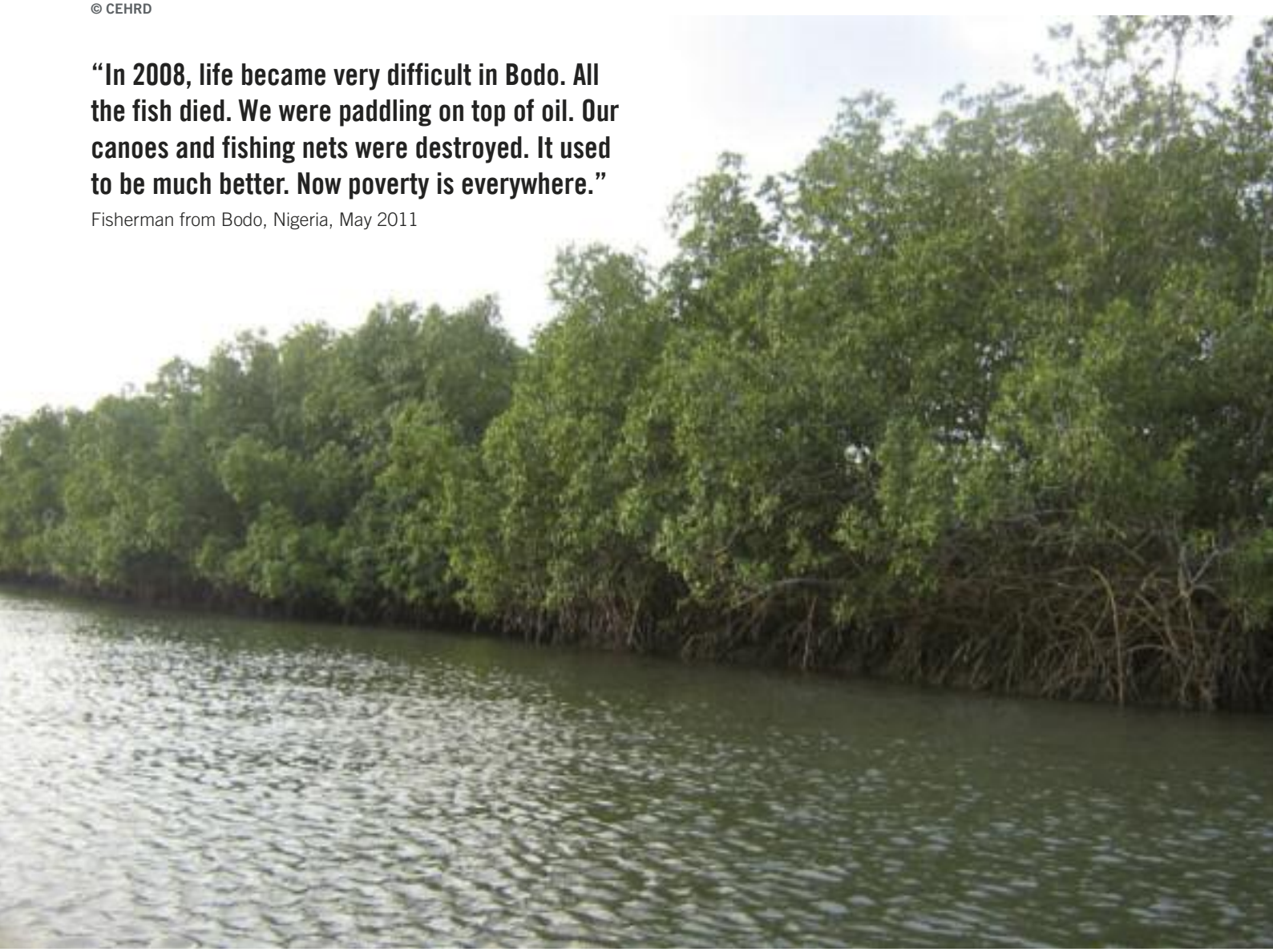
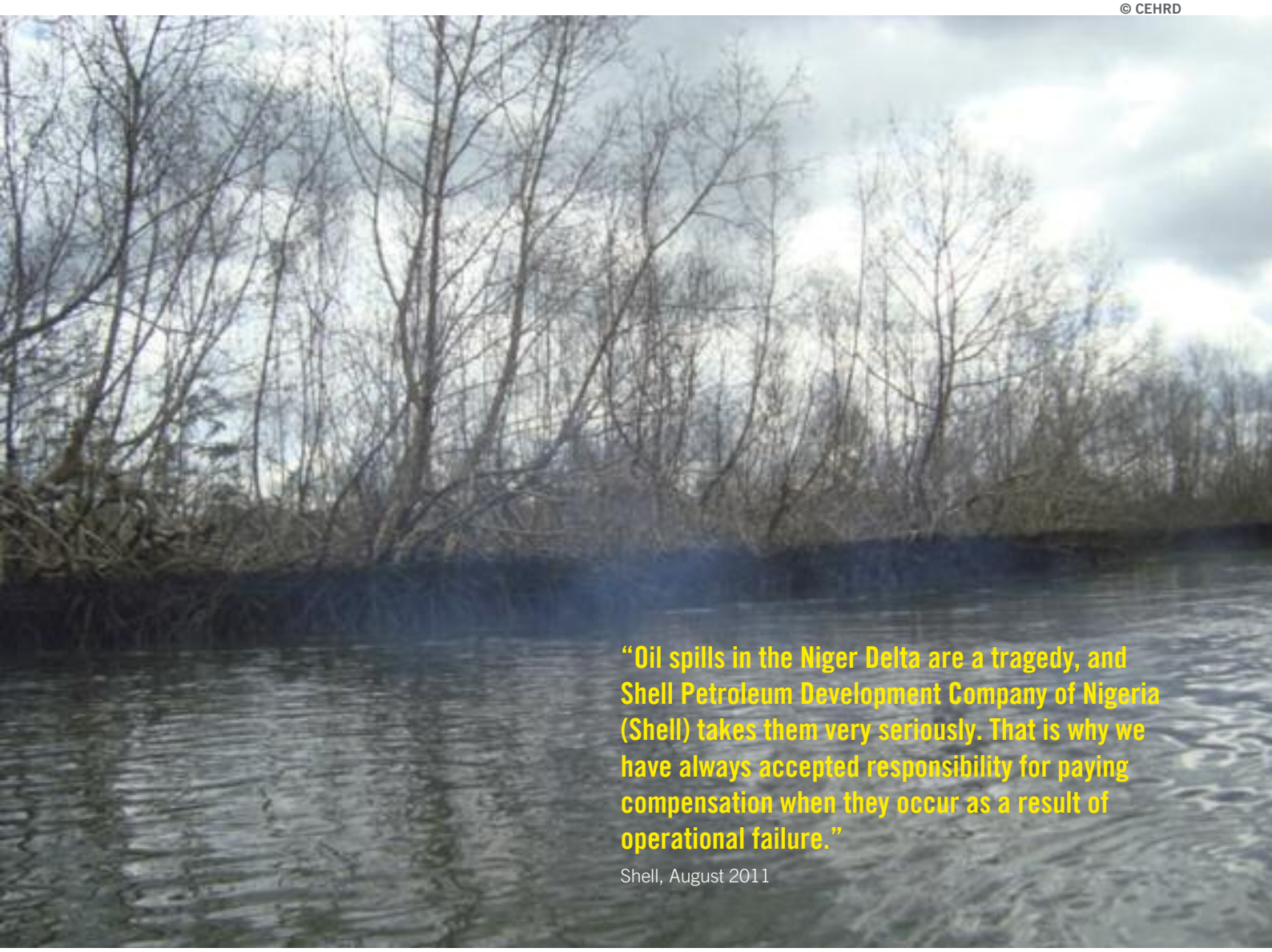
"In 2008, life became very difficult in Bodo. All the fish died. We were paddling on top of oil. Our canoes and fishing nets were destroyed. It used to be much better. Now poverty is everywhere."

Fisherman from Bodo, Nigeria, May 2011

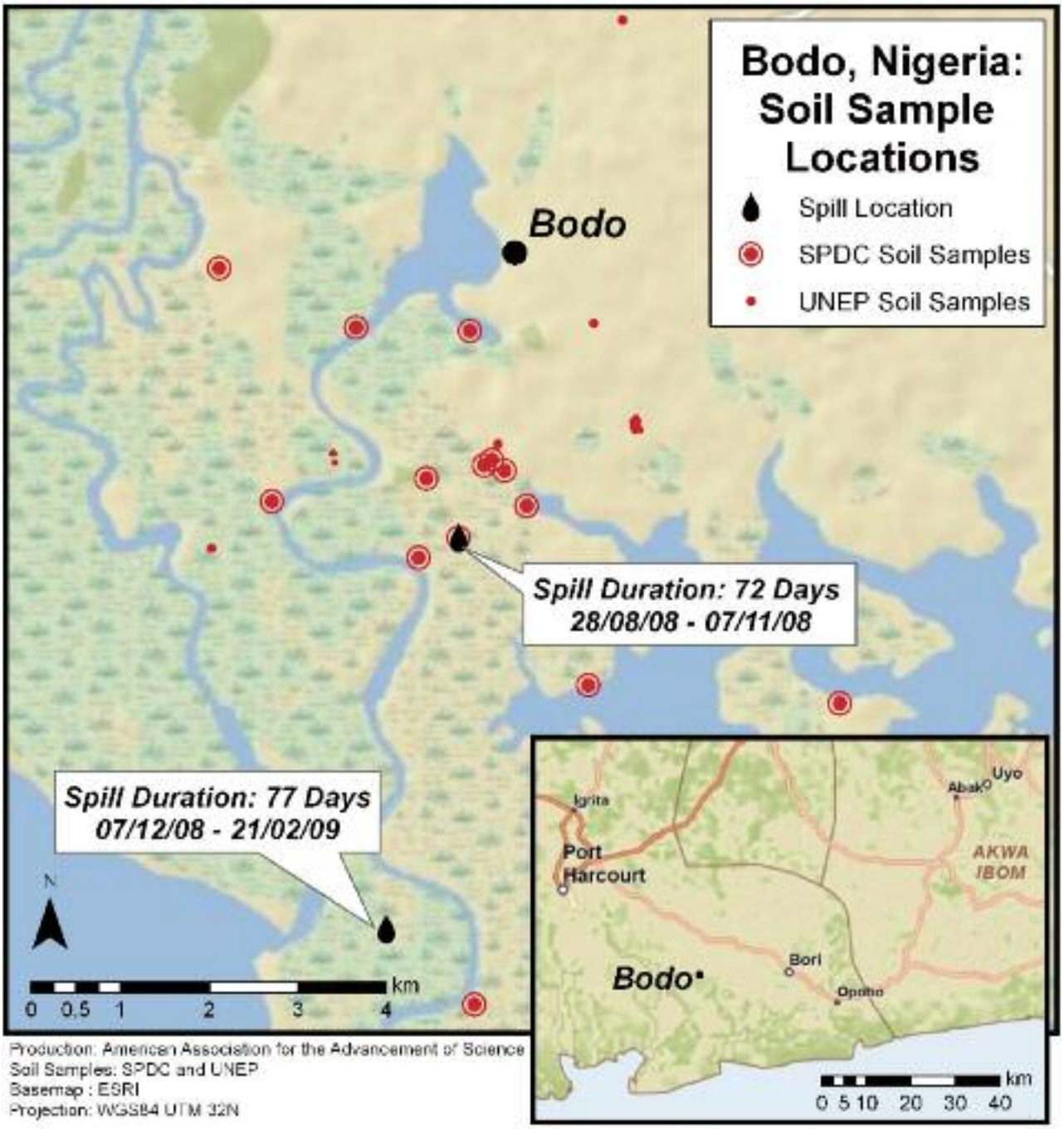


Bodo's Sivibilagbara swamp as it looked on 1 February 2008, before two oil spills devastated the local environment.

© CEHRD



Sivibilagbara swamp in September 2009. One year on, the failure to clean up after the 2008 oil spills has had a stark impact on the area.



Map showing the locations of the two 2008 oil spills. It also shows where subsequent soil samples were collected by Shell (SPDC) and the United Nations Environmental Programme (UNEP).

INTRODUCTION

In August and December 2008, two major oil spills disrupted the lives of the 69,000 or so people living in Bodo, a town in Ogoniland in the Niger Delta. Both spills continued for weeks before they were stopped. Estimates suggest that the volume of oil spilled was as large as the Exxon Valdez spill in Alaska in 1989.[1]

Three years on, the prolonged failure of the Shell Petroleum Development Company of Nigeria (Shell), a subsidiary of Royal Dutch Shell, to clean up the oil that was spilled, continues to have catastrophic consequences for the Bodo community. As the photographs in this report illustrate, oil pollution remains highly visible. It is everywhere – in the water, along the mangroves, and in the soil.

The scale of the pollution is confirmed by satellite images obtained by Amnesty International and analyzed by the Geospatial Technologies and Human Rights Project of the American Association for the Advancement of Science – see pages 8-9 and the last chapter of this report.

The human cost is also starkly apparent. The lives of tens of thousands of people have been directly affected by the spills and the ongoing pollution. Many are worried about their health and are afraid to eat locally caught fish or drink water from streams or rain water, as they did before the oil spills.

Those who used to rely on fishing for a living have lost their incomes and livelihoods. Farmers say their harvests are smaller than before. Overall, people in Bodo are now much less able to grow their own food or catch fish. With their livelihoods destroyed and food prices rising, many can't afford to buy nutritious food.

THE TWO 2008 BODO OIL SPILLS: A BRIEF TIMELINE

On 28 August 2008, a fault in the Trans-Niger pipeline caused a major spill in Bodo, Ogoniland. The oil poured into the surrounding swamp and creek for at least four weeks – probably for as long as 10 weeks (the date of the first spill is disputed – see page 31 for more information).

According to Shell, 1,640 barrels of oil were spilled in total. However, experts consulted by a UK legal firm have estimated that as much as 4,000 barrels of oil *a day* were leaking from the pipe. The spill was eventually stopped on 7 November 2008.[2]

Shell admitted responsibility for the spill. According to the company-led Joint Investigation Visit (JIV) report, it was caused by a "weld defect".

On 7 December 2008, a second spill occurred in Bodo. This spill was reported to Shell two days later, on 9 December. Both the local community and the JIV report attested that the second spill was larger than the first.

Ten weeks later, between 19 and 21 February 2009, Shell, Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) and the Bodo community carried out a joint investigation. Again, Shell stated afterwards that the spill was caused by equipment failure as a result of natural corrosion.

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Bodo Creek in May 2011. *Top:* The oil pollution is highly visible in the water, along the mangroves, and in the soil.
***Below:* According to Nigerian regulations, a clean-up should start within 24 hours of an oil spill occurring. Three years on, the people of Bodo are still waiting.**

A SYMPTOMATIC PROBLEM

For three years, the Bodo community has asked Shell to clean up the oil. One fisherman expressed the view of many when he said: "My greatest priority is the clean-up of oil so I can continue to fish again." But the pollution still remains.

This clearly contradicts Nigeria's existing regulations, which require oil companies to act promptly to clean up oil spills, regardless of what caused them. But these regulations are not enforced, and can therefore be freely flouted by companies like Shell.

The Bodo disaster is symptomatic of the wider situation surrounding the Niger Delta oil industry. For decades, the area and its people have been affected by thousands of oil spills. Poorly maintained equipment has contributed to the companies' failure to prevent pollution.

For example, it is not clear what, if any, maintenance has been done on the pipeline in Bodo since it was laid. Amnesty International has asked Shell to provide information regarding any maintenance of pipelines and infrastructure in Bodo, but Shell did not respond on this point.

Criminal activity by local people, including sabotage, theft and illegal refining of oil, have become increasingly serious problems in the Niger Delta, and contribute to spills. The scale of this problem, however, remains unclear as there is no independent investigation into the causes of oil spills. In any case, even if a spill is alleged to be caused by sabotage, this does not justify a failure to clean up after an oil spill – all oil companies are required to do so, regardless of cause.

The Nigerian authorities and oil companies clearly need to take action to prevent sabotage and tampering, in line with international oil industry standards and practices. But those operating in the Niger Delta have not, in most cases, done so to date.

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People selling fish in Bodo, May 2011. The price of fish escalated after the 2008 oil spills.

"This is one of the most devastating oil spills the world has ever seen and yet it had gone almost unnoticed until we received instructions to bring about a claim against Shell in this country."

The Bodo community's UK lawyer, Martyn Day, August 2011

TIME FOR JUSTICE

The Bodo oil spills were due to equipment failure. In theory, the fact that the company accepted that the spills were caused by operational problems should have resulted in swift and comprehensive action to address them. Local people should have been paid compensation for their losses and the affected area rehabilitated. But this has not happened.

After years of pushing for justice in Nigeria, the Bodo community finally took their claims for damages to a UK court in April 2011. Shortly afterwards, Shell (SPDC) agreed to formally accept liability for the spills and conceded to the UK's jurisdiction.

The Bodo community's UK lawyer noted Shell's swift response once the case was brought to the UK: "This is one of the most devastating oil spills the world has ever seen and yet it had gone almost unnoticed until we received instructions to bring about a claim against Shell in this country.[3]

THE TRUE TRAGEDY

The disaster at Bodo should not have happened. If Shell had immediately stopped the spills and cleaned up the oil, the impact on people's lives and the environment would not have escalated to the level of complete devastation that prevails today.

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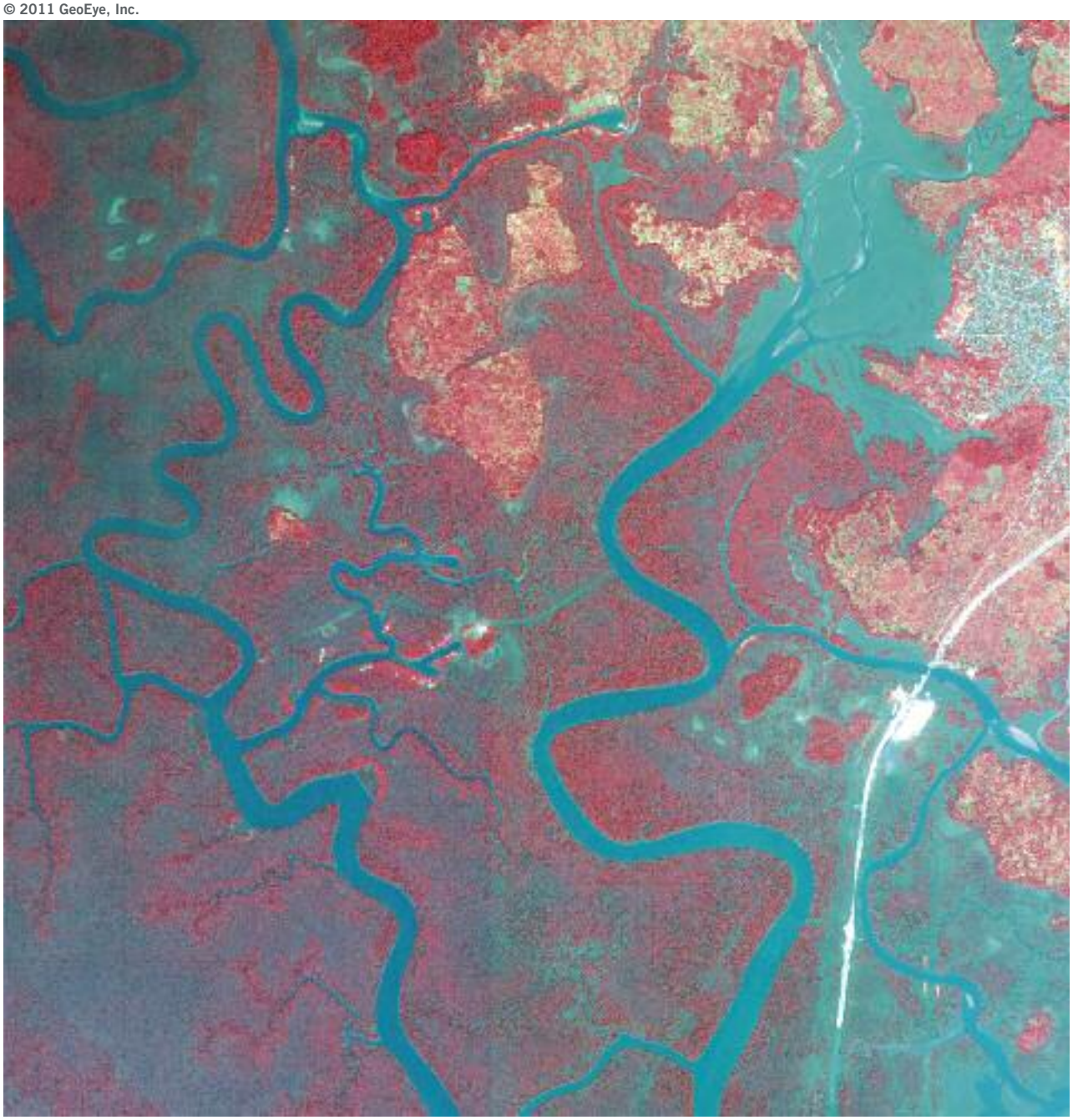
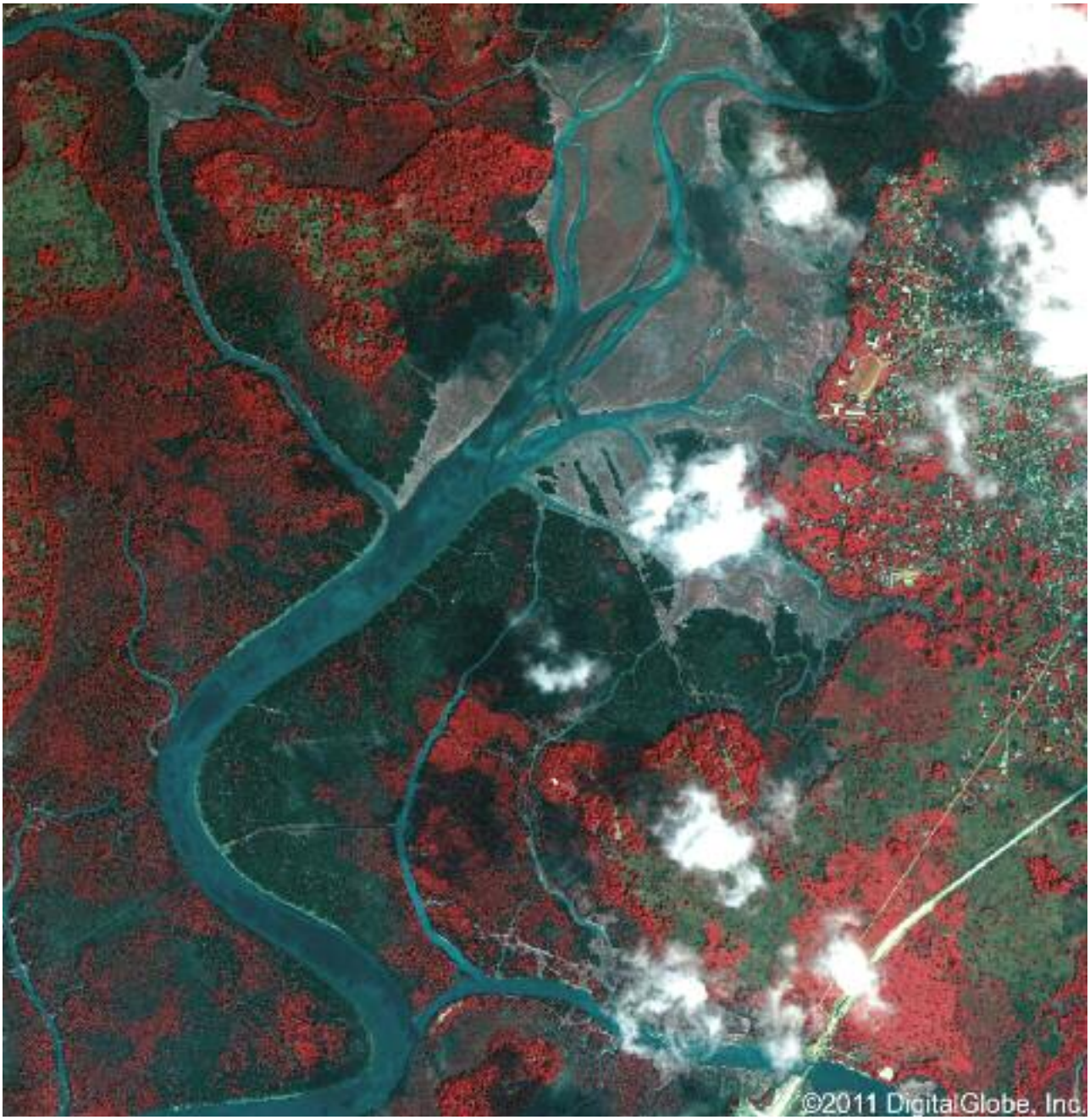


This satellite image was taken on 4 December 2006, before the two 2008 oil spills. It shows Bodo town and the intertidal zone (top right) and adjacent waterways. In this false-colour image, healthy vegetation appears bright red. These images and the other satellite images in this report were obtained by Amnesty International and analyzed by the Geospatial Technologies and Human Rights Project of the American Association for the Advancement of Science (AAAS).



This false-colour satellite image was taken on 26 January 2009 and contrasts with the 2006 image on the opposite page. It shows how large swathes of vegetation near Bodo's riverbanks have turned from bright red to black, the latter colour indicating plant death.

The Nigerian regulators appear to have taken no meaningful independent action at all, leaving the Bodo community at the mercy of a private company with a poor track record in addressing oil spills.

The combined fall-out is devastating. All oil spills cause damage, but failing to stop a spill, and to clean it up swiftly and properly, substantially increases the damage inflicted on the environment and on local people's human rights.

This report is based on ongoing research – including a visit to Bodo in May 2011 – by Amnesty International and the Centre for Environment, Human Rights and Development (CEHRD). CEHRD is an NGO and local partner of Amnesty International in the Niger Delta.

The True "Tragedy" details the human cost of the oil spills in Bodo three years on. It outlines Nigeria's obligations to address this under human rights law and the company's internationally recognised responsibility to respect human rights. It examines how the protracted delays in reacting to the spills – and subsequent failure to clean up the pollution – have exacerbated human suffering and environmental damage. It also highlights the successive corporate and regulatory failures in the aftermath of the disaster.

In this report, Amnesty International and CEHRD are calling on Shell to finally address the "tragedy" it acknowledged responsibility for in 2008. The company must now undertake a comprehensive clean-up of the affected area, and properly compensate the people whose lives have been devastated by the oil spill.

This report argues that Shell's failure to comply with Nigerian regulations for a timely and proper clean-up represents the true tragedy of the Bodo disaster. The company's inaction and non-compliance, and the Nigerian government's lack of regulatory enforcement, amount to a sustained assault on the economic, social and cultural rights of the people of Bodo.

Amnesty International and CEHRD are urging the Nigerian government to establish and enforce effective regulations that will hold the oil industry to account when spills occur. (For this report's full conclusion and recommendations, see page 42.)

In July, September and October 2011, Amnesty International asked Shell for a response to the issues raised in this report.[4] The organization also shared its findings with the Department of Petroleum Resources (DPR), NOSDRA and the Nigerian National Petroleum Corporation, and requested a response under Nigeria's Freedom of Information Act.

Both NOSDRA and Shell responded. NOSDRA addressed some of the issues; however, Shell stated that as the Bodo spills were the subject of legal proceedings, the company was unable to respond to the allegations and questions raised by this report as directly as it would like to.

ONE/ THREE YEARS ON: THE RISING HUMAN COST OF THE OIL SPILLS

"Before the spill, life was easy. The people could live from the catch of fish. You could go to the river, catch a fish and make some soup. After the spill, everything was destroyed."

Fisherman, Bodo, May 2011

Sunday Agava is a fisherman with a compound on the shores of Bodo creek. In August 2008, he witnessed the first effects of the oil spills. "I saw the oil coming," he said. "That day, the land crabs came out of the ground. They died. The mangrove died."

Because crude oil is highly flammable, some areas caught fire, burning the mangroves and people's canoes. "Everybody was confused. We had not seen such a spill before," Kpoobari Patta, President of the Bodo Youth Council, told Amnesty International and CEHRD in May 2011.

LESS FOOD AND CONTAMINATED WATER

In the first weeks and months after the oil spills, people in Bodo were seriously concerned about food shortages. Their fisheries had been very badly damaged, as had their crops. They received little help from the outside world.

Eight months later, Shell finally appeared to recognize that people's food sources had been affected. On 2 May 2009, Shell staff brought food relief to the community. It included 50 bags of rice, 50 bags of beans, 50 bags of *garri* (a cassava product), 50 cartons of sugar, 50 cartons of milk powder, 50 cartons of tea, 50 cartons of tomatoes and 50 tins of groundnut oil.

"EVERYBODY IS STRUGGLING."

Regina Porobari, Bodo, May 2011

Regina Porobari, 40, used to trade in fish. Her husband used to be a fisherman. They have six children. After the August 2008 oil spill, all the fish in the creek died, moved away or were too polluted to eat. Regina became a petty trader and her husband now tries to find work in the building sector. Neither of them is able to make as much money as they used to. They used to grow vegetables and cassava on their plot of land. After the spill, their harvest is much smaller than before. Meanwhile, local food prices have increased substantially.

"The price of fish has increased a lot in Bodo," Regina said. "Before the spill you could buy a fish for 50 naira (US$0.35). Now you have to pay 300 to 500 naira (US$1.95 to US$3.25) for a fish."[5] Many families can't afford to buy food with enough nutrients, she explained. "Everybody is struggling."

Regina and her husband have not complained to anyone about the impact of the spill. "I think that for someone with a low voice as myself it is difficult to make a claim," she said. Her main wish for changing the current situation was for the pollution to be cleaned up so she could sell fish once again.

© Amnesty International

Sunday Agava used to make a living as a fisherman in Bodo creek. Since the fish died or moved away as a result of the oil spills, he has struggled to support his family.

Bodo has a population of approximately 69,000 people.

The community was outraged by what they considered to be a wholly inadequate relief package and rejected it. In June 2009, the relief offered was increased to 100 units of each item – still well below what the community needed. Community members reported that the supplies were delivered at night by a local contractor, possibly in an attempt to avoid any complaints.

Amnesty International has asked Shell to comment on how it had assessed local people's needs and why the food was delivered in this way, but received no response.

During the organizations' visit in May 2011, community members raised the continued negative impact of the oil spills on their access to food. The ongoing damage to fisheries and farm land means there are now fewer fish and vegetables produced locally.

This has in turn resulted in food shortages and higher prices because of food being brought in from other areas. As the Chairman of the Maritime Workers Union, Chief James Tela, explained: "Because of the scarcity of fish, the price here has escalated."

"Because of the scarcity of fish, the price here has escalated."

Chief James Tela, Bodo, May 2011

All the farmers Amnesty International and CEHRD interviewed told the same story: the harvest is not as it used to be. One man said: "My wife still farms, but the harvest is declining compared to before. Before, the yams were as long as 70cm. Now, they are 20cm to 30cm. It is the same with cassava."

Farmers in Bodo believe that the lack of a clean-up has contributed to their decreasing harvests. Despite decades of frequent oil spills in the Niger Delta, the impact on local agricultural productivity has never been properly studied. However, communities repeatedly highlight smaller harvests, and reductions in the size of individual trees, fruits or vegetables.

In August 2011, the UN Environment Programme (UNEP) published a report entitled *Environmental Assessment of Ogoniland*. It represents the first ever independent scientific study of the impacts of oil pollution in the Niger Delta.

The report revealed the devastating human and environmental effects of decades of oil spills in the area. It found the contamination to be widespread and severe, and stated that people in the Niger Delta have been exposed to it for decades.

The UNEP study also noted that yields are reportedly lower in areas affected by oil pollution.

The pollution has also affected the community's drinking water. Before the spill, many people got their water from the creek and other waterways, from dug-out wells or by collecting rain water. A local fisherman described how this has now changed: "When the rain falls down, people used to collect it for drinking water. But today even the rain water is contaminated. It looks black. You cannot drink the rain."

Few people have a borehole or water tanks, so most people buy their water from those who do. Those who can't afford to buy it continue to drink rain water or water from the streams.

People use boreholes on the assumption that the water from these wells is safe. The recent UNEP report has called this into question. One of the most serious facts brought to light in the report is the scale of contamination of the drinking water, which has exposed local people to serious health risks.

According to UNEP, oil has seeped below the surface layers of soil and contaminated the groundwater in Ogoniland. One of the main reasons for this is the method chosen to return a site to its original state before an oil spill. This is called "remediation". Shell has used the remediation method by enhanced natural attenuation (RENA),[6] throughout Ogoniland. The company worked on the unchecked assumption that the oil did not penetrate the soil deeply.[7] Amnesty International asked Shell if the company had checked the groundwater at Bodo; no answer was received.

HEALTH FEARS

"At first, they were still bathing in the crude. People had to protect children. There could be no bathing in the water."

Kpoobari Patta, President of the Bodo Youth Council, May 2011

Despite the widespread pollution following the 2008 spills, no health monitoring was done and the Bodo community has been left with fears about the health implications of living in close contact with crude oil.

The first solid data on the health impacts of oil pollution in Ogoniland came from the recent UNEP study, which noted: "Petroleum hydrocarbons can enter people's bodies when they breathe air, bathe, eat fish, drink water or accidentally eat or touch soil or sediment that is contaminated with oil."

© Amnesty International

Cecilia Teela searching the oil-covered shore of Bodo creek, where she used to collect periwrinkles. Today, she has to travel to a neighbouring state to make a living.

> **"Petroleum hydrocarbons can enter people's bodies when they breathe air, bathe, eat fish, drink water or accidentally eat or touch soil or sediment that is contaminated with oil".**
>
> UNEP, August 2011

The report also referred to raised concentrations of petroleum hydrocarbons in the air and drinking water. The long-term effects are not yet well understood, but could include cancer and neurotoxicity.[8]

The short-term effects are described as follows: "Dermal exposure can lead to skin redness, oedema, dermatitis, rashes and blisters; inhalation exposure can lead to red, watery and itchy eyes, coughing, throat irritation, shortness of breath, headache and confusion; and ingestion of hydrocarbons can lead to nausea and diarrhoea."

The environment which the people of Bodo are living in is clearly not healthy nor favourable to development.

During the visit by Amnesty International and CEHRD to Bodo in May 2011, several women said that their children became ill after drinking rain water. The UNEP study found that the contamination of rain water does not appear to be serious in Ogoniland; however, no samples of rain water were taken in Bodo.

A fisherman described another problem: "As the sun heats the oil on the water up, it brings the smell of the oil all over the community. The air quality is poor." Several

© Amnesty International

Emmanuel Kuru, a fisherman and farmer whose land by the waterside was covered with oil. "We are stranded," he says.

people described breathing the air as being difficult at times. Many also said they had no access to good medical care. One farmer explained: "Many people complain about eyesight and headache. We go to hospital but there is no money, no free medical care."

LOSS OF INCOME AND LIVELIHOODS

Bodo used to be a serene rural community, locally known as the fish basket of Gokana (the local government area). Traditionally making a living from fishing and farming for several hundred years, local people were proud of their creek.

In August 2008, all of this changed. Most of the fish in Bodo creek died or moved away from the pollution. People who depended on fishing faced immediate problems: "Initially, we were still going out fishing, but the catch was less and less," one man explained. "So we finally stopped."

The few fish that could be caught smelled and tasted of crude oil. People began to worry about the health implications of eating locally caught fish.

Three years on, Bodo's water system remains polluted and many people have tried to make a living elsewhere. Some have found work in construction or as guards. But alternative jobs are not easy to find, and some people continue to fish. They now have to travel far to areas that the pollution has not reached.

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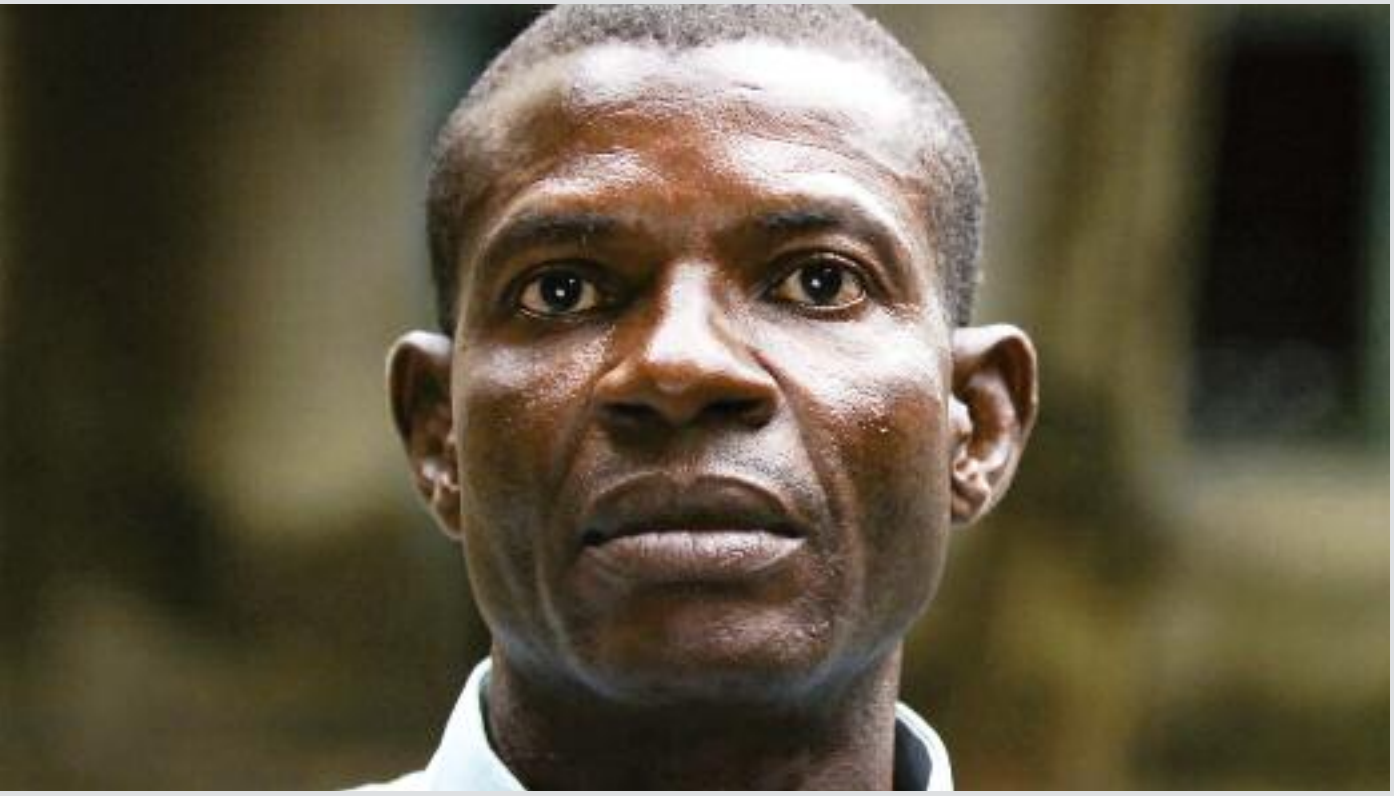

The August 2008 oil spill destroyed Pastor Christian Lekoya Kpandei's fish farm.

"I USED TO HELP PEOPLE. NOW I AM DEPENDENT ON OTHER PEOPLE'S HELP."

Pastor Christian Lekoya Kpandei, Bodo, May 2011

Christian Lekoya Kpandei, 50, is a pastor from Bodo. Before the 2008 oil spills, he had a flourishing fish farm and employed around 10 staff.

"On 28 August, I was called that there was an oil spill. And when I came there, I saw that it was beyond my imagination. As the tide came with the crude oil, it entered and covered all the fish ponds. I saw all of my fish dying, in one day. Everything we put in, all the labour for quite a long time, all just in a moment disappeared."

Christian Lekoya Kpandei lost his business. He says that he asked Shell for compensation, but was met with silence. "Shell did not talk with us. Yes, we made a claim. Since then – nothing. I have never got a reply from Shell."

He is now struggling to make ends meet. "My youngest daughter is supposed to be at school. Where she was before we were paying, but because we are not able to, she is now here with us. Most of our children are not at school because their fathers were perpetual fishermen. There are no other jobs here, because there is no industry in Ogoniland where people can get a job. All the fish, all the sea is polluted so you can't go fishing."

"I used to help people, for instance widows. When they had financial needs, they could go to my administrator and get 100 naira or collect a fish from the farm. Now I am dependent on other people's help."

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Dead periwinkles covered in oily mud from Bodo creek, May 2011.

"The spills have caused severe poverty amongst the community."

Martyn Day, the Bodo community's UK lawyer, August 2011

Cecilia Teela, 51, used to collect periwinkles on the shores of the creek. When the oil spill made this impossible, she started paddling in a canoe with three other women to the neighbouring Bayelsa State. It takes them about eight hours to get there. They usually stay for four or five days before they paddle back home again.

Cecilia Teela can now afford to pay for public transport to get to Bayelsa, which cuts down on her travel time. But she still struggles to make ends meet. She could collect and sell more periwinkles before the oil spill. "The spill has made life more difficult," she said.

People who can afford a motorboat or deep sea fishing equipment have more chance of earning a decent living. But most lack the right boats and equipment. According to the local fishermen's association, Gbalo Gbo Dor Pa Bodo, the catch has significantly decreased.

Farmers have also been seriously affected. "We are stranded. There is no work for us now," said Emmanuel Kuru, a farmer and fisherman whose land on the Kozo waterside was covered by oil. He told Amnesty International and CEHRD that he has not had a harvest since August 2008. "I don't think anything will grow there in the next 20 years," he said. "Nothing planted will grow. The land is wasted. Oil kills everything."

"I don't think anything will grow there in the next 20 years. Nothing planted will grow. The land is wasted. Oil kills everything."

Emmanuel Kuru, Bodo, May 2011

Many are now seriously worried about the future of Bodo's young people. With few local job opportunities, many have been forced to look for work in Port Harcourt, the state capital, some 50km away from Bodo.

This puts the very fabric of traditional Bodo society at risk of destruction. Parents worry that the next generation are missing out on the training they need to one day become fishermen and women: "The youths are losing the fishing techniques," one man said.

Bodo is generally a peaceful community. In 2009, Shell presented the community with an "Ogoni Peace Award" for "providing a peaceful environment for the maintenance of active and non-active facilities of Shell Petroleum Development Company of Nigeria Limited".

But three years after the oil spills, "youth restiveness" has become a common concern. The need for new jobs is pressing. The Councillor of one of Bodo's wards, Honorable Baridi-Kana Barinem, put it like this: "Give youths training and skills to create alternative livelihoods that will make them independent."

Local people report that more young people are starting to take part in illegal activities to earn a living, such as stealing crude oil (known as bunkering) and illegally refining oil. Such activities may have exacerbated pollution in the area. However, the evidence presented in this report demonstrates that the two 2008 spills, and the failure to clean them up, are responsible for Bodo's ongoing misery.

People in Bodo say oil bunkering and illegal refining were not common before the oil spills, and the community's leaders have strongly condemned this kind of activity. Local people have also attempted to address these issues by organizing an anti-bunkering event.

"We have invited and educated the few operators of illegal refineries on the dangers of the operation to the environment and health," said the Chairman of the Bodo Council of Chiefs and Elders, Mene Hyacinth Vibia Lema in August 2011. "We have also engaged every parent in Bodo to regulate the activities of their children and wards in this regard. The trend of this menace has declined drastically."

The 2008 oil spills forced Bodo's people into a life of misery. Their creek is polluted by thick, black oil, and their fish either dead or poisoned. The lush scenery that surrounded their town has been transformed into an ugly devastation of dead mangroves, the waterfront coated with oil slicks.

With their fisheries and farms badly damaged, many people in Bodo now have less access to fish and vegetables. These dietary changes may affect their health; but again, such impacts are currently not being monitored.

Unsurprisingly, with no clean-up or return to normal life in sight, social tensions are rising. The people of Bodo are ready for change – now.

TWO/ STILL WAITING FOR JUSTICE

"Pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare."

African Commission on Human and Peoples' Rights, 2001

ADDRESSING THE HUMAN RIGHTS IMPACT OF OIL POLLUTION

Oil spills are endemic in the Niger Delta. The resulting pollution has affected the area for decades, damaging the soil, water and air quality. Hundreds of thousands of people in the region are affected, particularly the poorest and those who rely on traditional livelihoods such as fishing and agriculture.

The human rights implications are serious, under-reported and have received little attention from Nigeria's government or the oil companies. This is despite the fact that the communities themselves and local NGOs – as well as the African Commission on Human and Peoples' Rights (African Commission), the UN Human Rights Committee and UNEP – have all expressed serious concerns about oil pollution. They have also called on the government of Nigeria to take urgent action to deal with the human rights impact of oil industry pollution and environmental degradation.

HUMAN RIGHTS AND THE OIL INDUSTRY IN OGONILAND

One area of the Niger Delta has become synonymous with the human rights abuses and environmental damage caused by the oil industry: Ogoniland. The devastating impact of the oil industry on Ogoniland's people gained worldwide attention through the work – and subsequent execution in 1995 – of the writer and activist Ken Saro Wiwa.

Several efforts have been made to secure clean-ups and rehabilitation in Ogoniland over the decades. In a landmark decision in 2001, following an investigation, the African Commission stated that: "Pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare."

The African Commission found Nigeria to be in violation of a number of rights guaranteed under the African Charter on Human and Peoples' Rights. It stated that: "Despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland."

"Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis."[9]

The Commission called on the government to protect the environment, health and livelihood of the people of Ogoniland. It urged the authorities to ensure adequate compensation to victims of human rights violations, to undertake a comprehensive clean-up of land and rivers damaged by oil operations, and to provide information on related health and environmental risks. It also called

for communities likely to be affected by oil operations to be given meaningful access to regulatory and decision-making bodies.

The African Commission's decision has never been implemented in Nigeria.

THE RIGHT TO EFFECTIVE REMEDY

Under international human rights law, people whose rights are violated have a right to an effective remedy. This includes the right to reparation, which in turn encompasses these measures:

- restoring the victim to their original situation (before the violation occurred)
- compensating people for economically assessable damage
- rehabilitation
- satisfaction – which should include effective measures aimed at verifying the facts, and full and public disclosure of the truth
- judicial and administrative sanctions against those liable for the violations, and
- a guarantee that the violation will not be repeated.

Three years after the first spill, the Bodo community is still waiting for a remedy, including a proper clean-up and remediation. Several other important aspects of effective remedy in this case have also been flouted – both by the Nigerian authorities and by Shell. These additional aspects will be outlined below.

NO ACCESS TO INFORMATION

Access to information and disclosure of the facts is central to the right to remedy. The entire process surrounding oil spills in Nigeria lacks transparency. The little official information that the people of Bodo have been able to access has only become available after sustained efforts on their part to secure it.

An oil spill investigation process should include representatives from the Nigerian regulators, as well as from the company and the affected community. This is known as a Joint Investigation Visit (JIV). It is supposed to collect details about the cause of the spill and the area covered by the spill, and to record this information in an investigation report.[10]

The Bodo community signed both JIV reports. The community repeatedly requested a copy of the JIV report for the first spill, without success. After the second spill occurred, the community demanded a copy of the first JIV report before they would sign the second one. Shell met this demand in February 2009.

Following the two investigations, Shell and the Bodo community carried out a scoping of the oil-affected area in April 2009. Although the exercise was not completed, this process raised hopes that a clean-up was imminent. But the scoping did not lead to any kind of action. Despite repeated requests, Shell has yet to send the scoping map – a document showing the areas affected by oil pollution – to the community.

The overall impact of the oil spill has never been properly assessed. Nor do people know if or when the oil will be cleaned up. One fisherman said: "They keep telling, Shell is coming soon, but Shell has not come. I have not seen anyone from Shell."

People in Bodo have the right to information about the impact of the oil industry on their lives.[11] Under Nigeria's recently enacted Freedom of Information Act, which provides for the right of access to public information,[12] governmental bodies like NOSDRA and the DPR are obliged to disclose information.[13]

Amnesty International wrote to NOSDRA and the DPR in July 2011 to ask for full disclosure of the relevant information relating to the Bodo oil spill under the Freedom of Information Act. NOSDRA replied after two reminders had been sent. The DPR did not respond, despite its statutory obligations.[14]

NIGERIA'S FREEDOM OF INFORMATION ACT

Nigeria's recently enacted Freedom of Information Act should in theory make it easier to obtain information about the social and environmental impacts of the oil industry on local communities.

However, the new Act includes a restriction on disclosing records containing "the results or products of environmental testing carried out by or on behalf of a public institution". The reasons for this restriction are not clear. However, it would appear to limit public access to information about the environmental impact of the oil industry. Tests carried out on water quality, soil contamination and other environmental parameters, would, for example, appear to fall under this exemption.

In Amnesty International's and CEHRD's view, such a broad and unexplained restriction is problematic. It should therefore be re-examined to ensure that it doesn't unduly restrict the public's right to information.

In 2009, Amnesty International expressed concern about the restrictions and exemptions contained in the Nigerian law that established the National Environmental Standards and Regulations Enforcement Agency (NESREA). This agency is supposed to ensure that all policies, laws, standards and regulations relating to the environment are enforced, including international agreements.

However, the Act that established NESREA repeatedly bars it from enforcing such compliance in the oil and gas sector. NESREA is in fact barred by law from carrying out almost all its major functions in relation to the oil and gas sector. Meanwhile, its Governing Council is obliged by law to include a representative of the Oil Exploratory and Production Companies of Nigeria.

NO COMPENSATION

To date, the people of Bodo have been paid no official compensation for their losses resulting from the oil spills. The Bodo community has tried to secure compensation and sought legal advice in 2009. The community's Nigerian lawyer wrote to Shell in April 2009 demanding immediate remediation and 20 billion naira (US$129 million)[15] in compensation for the losses incurred. In response, Shell did not refer to the claim, but wrote that the August 2008 spill was caused by "unknown third parties".

The community had to wait another two years and had approached lawyers in the UK before Shell agreed to negotiate regarding compensation for the losses.

Between 20 and 29 April 2011, Shell sent a team to Bodo to produce a pre-clean-up and field assessment report. The resulting assessment of the damages to the local environment was very vague. For example, its general observations included that "numerous" mangroves were "withered/burnt, oil stained". It concluded that a clean-up was required.

Under Nigerian law and regulations, oil companies must pay compensation to communities affected by oil spills, unless the spills are caused by sabotage. However, these regulations also place specific limitations on the scope of compensation.

Damage to moving water bodies, for example – such as rivers and streams – is not covered by standard compensation calculations. Compensation is therefore not required for damage to important communal natural resources. This is despite the fact that many communities depend on wild forest products and shellfish for their food and livelihoods.

Compensation is not currently paid for damage to health. Long-term damage to people's livelihoods does not appear to be included in the country's compensation formulas.

This frequently results in no compensation being paid for long-term losses, such as the loss of land use or water systems over many years due to contamination.

Additionally, in the Niger Delta compensation is usually agreed based on direct negotiation between a company and the affected community, without any formal court

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May 2011: For three years, the people of Bodo have repeatedly asked Shell to clean up the oil.

action being involved. The process lacks transparency, but appears to be based largely on the provisions of the Petroleum Act, the Oil Pipelines Act and on Part VIII of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN).

While seemingly rooted in national law and regulations, the lack of independent monitoring of this process has resulted in numerous problems.

Specifically, the affected community is often at a disadvantage because it has less access to information, less influence and fewer financial resources than the oil company. The compensation negotiation often also disadvantages many people. Women are rarely involved in the negotiation process and may not receive any of the agreed compensation money. The process also lacks transparency. It is often not clear how much compensation money is paid, for what or to whom.

Some communities attempt to bypass the non-judicial process that prevails in the Niger Delta, and take cases to court. However, even when communities can afford legal representation and get a case to court, they face significant delays. The parameters for compensation often remain narrow, and even the Nigerian courts seem to have difficulties in securing information from oil companies.

Many communities, like Bodo, are unable to secure adequate compensation through the Nigerian system. In April 2011, the Bodo community decided to make a bid for justice before the High Court in the UK. In August 2011 it was announced that Shell (SPDC) had formally accepted liability in the UK's jurisdiction.

The fact that the Bodo case was brought to the UK has

several important implications. Firstly, the company can be compelled by the UK courts to disclose key information. Secondly, the scope of compensation the communities receive is more likely to cover the real losses suffered.

Finally, a UK court action should ensure that the Bodo community's claim is dealt with more efficiently.

NIGERIA'S REGULATIONS ON COMPENSATION RELATING TO OIL SPILLS

Under Nigeria's laws and regulations, compensation is only paid if a company is liable. EGASPIN states: "A spiller shall be liable for the damage from a spill for which he is responsible. Settlement for damages and compensation shall be determined by direct negotiation between the operator(s) and the landlord(s)."

The Petroleum Act (Section 37) requires "fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands". The Oil Pipelines Act (Section 6.3) states that a company must "make compensation to the owners or occupiers for any damage done under such authority and not made good".

The Petroleum (Drilling and Production) Regulations (Section 21.2) requires "fair and adequate compensation to the owner thereof…", and Section 23 states that: "If the licensee or lessee exercises the rights conferred by his licence or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first-mentioned rights."

NIGERIA'S HUMAN RIGHTS OBLIGATIONS

Under international law, the government of Nigeria has an obligation to respect, protect and fulfil human rights.

Its obligation to respect people's rights means it should refrain from any measures that would result in preventing or undermining their enjoyment of their rights. Its obligation to protect requires the state to ensure that other actors – such as companies – do not undermine or abuse human rights. Its obligation to fulfil means it must take positive action to facilitate enjoyment of human rights.

Nigeria also has a responsibility under its own laws to protect its people against, and address abuses caused by, events such as the Bodo oil spill. For example, the Nigerian Constitution states that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria".

Under the Constitution, the Nigerian authorities should have directed their policy towards protecting the environment, food and work.[16] In Bodo, however, the authorities have made very few – if any – attempts to ensure that local people's livelihoods are protected. They have also failed to protect the community's right to food.

The Constitution is also clear that the oil industry should benefit the host communities, stating that "exploitation of… natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented".[17]

The Nigerian Constitution requires the government to direct its policy towards ensuring that all Nigerians can earn a living. This is also guaranteed by article 15 of the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory.[18] Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a state party, also recognizes "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts".

The human rights to water and food are part of the right to an adequate standard of living, recognized under Article 11 of the ICESCR.

These rights and obligations are clearly relevant to the situation in Bodo, where many people have lost their

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Bodo used to be locally known as the "fish basket of Gokana". Today, people believe that the few fish still living in the creek have become too polluted to eat.

"WE WANTED TO TAKE ACTION AND TAKE LEGAL STEPS. WE ABANDONED THE IDEA BECAUSE OF THE COSTS INVOLVED. WE DO NOT HAVE THE FINANCIAL MEANS TO DO IT."

Chief James Tela, Bodo, May 2011

Chief James Tela is the Chairman of the Maritime Workers Union in Bodo. He hired a valuator to assess the losses of the Seamen/Niwa Water Transport Workers' Branch following the Bodo disaster. Based on the replacement of three boats, the clean-up of 42 boats, replacing damaged spare parts and loss of income, the valuator estimated a total loss of 66,200,000 naira (US$430,300).[19]

"The valuator brought the report to Shell and met with them," Chief Tela told Amnesty International and CEHRD. "Shell's reply was that the report did not come in time. They could not do anything."

"We wanted to take action and legal steps," Chief Tela added. "We abandoned the idea because of the costs involved. We do not have the financial means to do it."

The union did not take any further steps.

livelihoods or struggle to survive on substantially reduced yields from fishing and farming as a result of oil pollution.

Article 12 guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

The UN Committee on Economic, Social and Cultural Rights is the expert body monitoring the implementation of the ICESCR. It has clarified that "the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as… a healthy environment".

The Committee has also clarified that a state's obligation under Article 12 extends to "the prevention and reduction of the population's exposure to harmful substances, such as... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health".[20]

The African Charter on Human and Peoples' Rights also obliges states to take measures to protect the right to health. And it recognizes the right to a "general satisfactory environment favourable to their development". This right is more widely known as the right to a healthy environment, and requires states to prevent pollution and ecological degradation.

The state's duty to protect people against human rights abuses or harm caused by business requires it

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Bodo creek, May 2011: Today's catch is meagre and polluted. Many fishermen have lost their livelihoods, and now compete for the few construction jobs available.

to take all necessary measures to prevent such abuses. In the context of the oil industry, effective prevention involves establishing an appropriate regulatory system based on international best practice and enforcing those regulations effectively. This issue will be explored in depth in the next chapter.

BUSINESS AND HUMAN RIGHTS

Government failure to protect human rights against harm done by companies is a violation of international law. However, companies are also responsible for their impact on human rights. The UN Human Rights Council has confirmed that this "is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and "over and above compliance with national laws and regulations".

THREE/
A FAILED ENTERPRISE

"No matter what the cause, Shell is committed to stopping and containing all spills, recovering and cleaning up as much oil as possible and restoring sites in compliance with regulations as quickly as possible."

Shell, April 2011

Three years after the first Bodo spill, the oil in and around Bodo has yet to be cleaned up. Following international media reports in August 2011 about its ongoing failure to clean up after the two Bodo spills, Shell issued a statement acknowledging liability and reiterating their commitment to cleaning up the affected area. However, this statement did not explain why, almost three years after both spills, this has not already happened.[21]

Responding to Amnesty International, in a letter dated 24 October 2011, Shell stated that resolution of the 2008 Bodo spills had been hampered by sabotage and bunkering activity in the area. This statement does not stand up to scrutiny – for more information, see page 39.

It is also unclear why the Nigerian government's regulatory agencies have not taken action to compel Shell to comply with national regulations.

THE NIGERIAN OIL INDUSTRY – AN OVERVIEW

Commercial oil production began in the Niger Delta in 1956, following the discovery of crude oil at Oloibiri by Shell British Petroleum (now Royal Dutch Shell). Today, the oil industry is highly visible and controls a large amount of land. Shell alone operates over 31,000 km^2.

The oil industry in the Niger Delta comprises both the government of Nigeria and subsidiaries of multinational companies, as well as some national companies. The Shell Petroleum Development Company of Nigeria (Shell), a subsidiary of Royal Dutch Shell, is the main operator on land.

Shell is part of a Joint Venture partnership that includes the state-owned Nigerian National Petroleum Corporation, which holds 55 per cent. Elf Petroleum Nigeria Ltd – a subsidiary of the French company Total – holds 10 per cent. Agip, a subsidiary of Italian oil company ENI, holds 5 per cent. Shell owns 30 per cent of the Joint Venture, and as the operator it is responsible for the day-to-day activities on the ground.

The oil and gas sector represents 97 per cent of Nigeria's foreign exchange revenues and contributes 79.5 per cent of government revenues. Oil production has generated an estimated US$600 billion since the 1960s.[22]

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Thousands of barrels of oil spouted out of Bodo's broken pipeline for 10 weeks before Shell finally clamped it on 7 November 2008.

NIGERIA'S REGULATORY SYSTEM

Under existing Nigerian regulations, an operating company is obliged to immediately contain and limit the spread of oil after a spill. It should also clean up, remediate and return the area to its prior state. According to EGASPIN, a clean-up should start within 24 hours, and specific remediation milestones must be met within 30 to 60 days after the spill,[23] depending on the nature of the affected area.

"Most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives."

UNEP, 2011

UNDER THE INFLUENCE: INTERNATIONAL OIL COMPANIES' RELATIONSHIP WITH THE NIGERIAN GOVERNMENT

Many NGOs and communities in the Niger Delta have long been concerned about international oil companies' influence over Nigeria's government. The government's protection of oil company interests has been very visible over many years. It contrasts starkly with the general failure to protect local communities from oil pollution and other damage linked to the oil industry.

Wikileaks' recent disclosure of US diplomatic cables gave an insight into Shell's relationship with the government of Nigeria. A cable dated 20 October 2009 states that Shell reportedly told US diplomats that the company had "seconded people to all the relevant ministries", and that this gave them "access to everything that was being done in those ministries".[24]

Another cable, dated 2 February 2009, refers to the close ties between Shell and the governments of the Netherlands and the UK. It referred to "an ongoing program in which a Dutch diplomat works at Shell's headquarters in The Hague and a UK diplomat works at Shell's London offices".[25]

Amnesty International has investigated several cases of corporate human rights abuses where multinational companies' influence in developing countries has been a matter of serious concern. This is particularly worrying when such companies appear to have influenced the regulatory regime that governs their operations, or national laws intended to protect the environment and human rights.

Amnesty International has asked Shell to comment on the issues raised by the Wikileaks disclosure. The organization also asked Shell for information about how the company engages in lobbying on legislation in Nigeria, and which legislation Shell has sought to influence. Shell did not answer these questions. However, Shell has previously denied that it had "seconded people to all the relevant ministries" or had "access to everything that was being done in those ministries".

These government guidelines also stipulate that for all waters "there shall be no visible oil sheen after the first 30 days of the occurrence of the spill no matter the extent of the spill".

DELAYS IN STOPPING THE BODO SPILLS

"We expected an excuse, remediation and compensation. Shell answered to the spill by sending far insufficient relief material."

Fisherman, Bodo, May 2011

The oil spills at Bodo caused immediate and substantial damage to the water and land. However, the scale of the environmental damage and related human rights abuses was significantly exacerbated by the delay in stopping the spill and the continuous failure since then to clean up the resulting pollution.

According to the Bodo community, the first oil spill began on 28 August 2008 and was investigated on 7 November. Shell claims that the spill began on 5 October. The fact that the spill was not stopped until 7 November 2008 is not disputed.

The community says that Shell was first notified in September 2008 about the August 2008 spill in the Trans-Niger pipeline. It is not clear when Shell informed the authorities about the oil spill; however they are required to do so within 24 hours.[26]

Following Shell's failure to deal with the spill, CEHRD notified the Rivers State Ministry of Environment about the disaster on 12 October 2008. An investigation into the oil spill was eventually carried out on 7 November 2008.

If Shell's disputed date of 5 October were accepted, the oil was still allowed to spill out of the broken

NIGERIA'S REGULATIONS REGARDING OIL SPILLS

The oil industry is subject to a number of specific federal laws in Nigeria, including the Oil Pipelines Act (1956), the Petroleum (Drilling and Production) Regulations (1969), and the Petroleum Act (1969). There are several additional regulations, such as EGASPIN (revised 2002), issued by the DPR.

While the DPR supervises all petroleum industry operations, NOSDRA is responsible for compliance with environmental legislation in the petroleum sector.[29] NOSDRA should "undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages".[30] The agency is supposed to ensure that Nigeria's National Oil Spill Contingency Plan is implemented in line with the International Convention on Oil Pollution Preparedness, Response and Co-Operation.

When a major oil spill occurs,[31] NOSDRA should assess the damage to the environment and undertake a post-spill impact assessment. It should also advise the authorities on possible health impacts, ensure remediation and help to mediate between the affected community and the company.[32]

EGASPIN is very specific about oil companies' obligations. It requires them to inspect pipelines monthly to prevent equipment failure.[33] They must take practical precautions to prevent pollution[34] and prepare an oil spill contingency plan. This should include the operator's policy on pollution, prevention and management. The aims of the contingency plan include protecting the environment, ensuring all measures are in place for containing and cleaning up spills, and that accurate information is made available to the public and the authorities.[35]

Oil companies are responsible for containing and recovering all oil spills in their operational area. If the operator is not responsible for the spill, compensation for the costs will be paid.[36] It is "the responsibility of the spiller to restore to as much as possible the original state of any impacted environment".[37]

After a spill occurs, oil companies must:

- Submit an Environmental Evaluation Report on the oil spill to a panel of experts from the DPR and the operator.[38]
- If the spill occurs on water, contain it immediately to prevent further spreading. On land, containment ditches could be used to prevent groundwater contamination.[39]
- If water is affected underground, inform the DPR within 24 hours. An Initial Remediation Action Plan should be activated to prevent contamination, assess the contamination on site and then start "recovery, treatment, monitoring and rehabilitation programmes".[40]
- Commence clean-up within 24 hours of a spill occurring and ensure no additional damage is caused.[41]
- Keep a daily log of events until the clean-up is concluded.[42]
- Submit the costs of the clean-up to DPR.[43]
- After the spill, the operator responsible must conduct an Environmental Evaluation (Post Impact) Study.[44]

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Above and right: **Bodo, 2008. An independent assessment estimates that during the first spill some 4,000 barrels of oil were spilled every day. The oil killed much of the fish and shellfish in the creek.**

pipeline for four weeks[27] before the company went to the site and clamped it. Shell is reported to have claimed that the delay in responding was because it "did not get permission to pass through K-Dere community to access the site until 7 November".[28]

Amnesty International and CEHRD could not find any connection between Shell's delayed response and permission to pass through K-Dere. The direct route to Bodo from the Saakpenwa-Bori road is the trans-Gokana road from Kpopie junction, not through K-Dere.

Amnesty International asked Shell to comment on this issue, but the company has offered no explanation. The organization also asked NOSDRA to clarify if Shell had reported to them the delay in getting to Bodo, or had sought their assistance to access the spill site. NOSDRA did not give clarification as it maintains that there was no delay in reporting the 28 August 2008 oil spill.

It is not clear why the authorities did not intervene in this case, or require the company to take action before 7 November. It was only after the Bodo community instructed solicitors to handle their case, and after a letter was sent to NOSDRA on 20 October 2008 urging them to inspect the site, that Shell came to stop the leak.

The second spill was reported to Shell on 9 December 2008, two days after it began. It is not clear if and when Shell reported this spill to NOSDRA and the DPR, as it is required to do. However, the leak was not stopped until 10 weeks later, on 21 February 2009.[45]

In this case, Shell's own records would appear to confirm that oil was left to flow for 10 weeks. Amnesty International has asked Shell and NOSDRA to explain this significant delay. No answers were given.

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DISPUTED DATES: THE AUGUST 2008 SPILL

The Bodo community reports that the first oil spill began on 28 August. The JIV report states that the spill began on 5 October. The Bodo community disputes this, and the origin of the date in the JIV report is not clear.

In a letter to Shell, NOSDRA only refers to oil spills in August and December 2008.[46]

Moreover, NOSDRA confirmed to Amnesty International in writing that an oil spill, caused by equipment failure, occurred in the Trans Niger Pipeline "on August 28, 2008 and was investigated on 7 November". NOSDRA also confirmed that Shell met the required reporting of the spill "within 24 hours of any oil spill incident", which implies that Shell informed NOSDRA on 29 August.

Shell wrote to the Bodo community's lawyer in May 2009, accepting that a spill took place in August 2008, but claiming that it was caused by "activities of unknown third parties". Shell also stated that another spill took place in October 2008, which was caused by equipment failure.

The inconsistencies in the information provided by Shell and NOSDRA on the same spill reflect the significant problems in Nigeria's regulatory system. Amnesty International has written to Shell and NOSDRA asking them to provide clarification on this issue.

Amnesty International and CEHRD have also asked Shell to provide the official investigation reports for each of the 2008 spills and also to explain where the 5 October date came from. Shell has not responded to either request.

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The Bodo community say they were not informed that a joint investigation would take place into the oil spill on 7 November 2008.

SERIOUSLY FLAWED: THE OIL SPILL INVESTIGATION PROCESS

When an oil company and regulators come to stop an oil spill, an investigation usually occurs simultaneously – both to ascertain the cause of the spill and to document its impact in a JIV report. This process is important for the communities affected, because compensation is only paid if the cause of the spill is judged to be the company's fault (for example, due to operational or equipment failure).

However, oil companies are obliged to clean up all oil spills. If the spill is judged to be the result of sabotage, the authorities will pay for the clean-up. No compensation is paid, no matter what the losses are.

Amnesty International and CEHRD have previously reported on serious concerns with the overall joint investigation process. In many – if not most – cases, the oil company exerts significant influence over determining what caused an oil spill, and over much of the data recorded on the investigation report.

There are a number of concerns around the joint investigation process into the Bodo oil spills and its implications for local people's human rights.

In the Niger Delta, the oil company frequently takes the lead in the process, rather than the regulators. The Nigerian environmental regulatory agency, NOSDRA, has no independent means to initiate oil spill investigations. It is usually dependent on the company both to take NOSDRA staff to the site and to supply much of the data about spills.

The company's dominant role in the investigation process creates a worrying conflict of interest. Effectively, the company as the potentially liable party has substantial control over a process that sets many of the parameters for liability. These include the cause of the spill, the volume spilled, the area affected and the scale and extent of the resulting impact.

Communities are supposed to be involved in the investigation. However, people in Bodo claim that despite their repeated calls for Shell to come and stop the first spill, when Shell eventually arrived on 7 November the company did not engage with them.

The community claim they only participated in the joint investigation because they saw that it was taking place.[47] "When they came, they did not inform the king, the chiefs or the youth," Kpoobari Patta, the President of the Bodo Youth Council, said. "That first day, the spill was so serious that they could not stop it. The next day they came again, with NOSDRA."

After the investigation, the community say that Shell claimed the JIV report was company property and that the community was not entitled to a copy. Shell declined to comment on this allegation.

The JIV also records details of the volume of oil spilled, and the spread of the spill. These estimates are often a source of concern to affected communities. This is

largely because of the fact that the liable company does the calculation on site during its JIV visit.

The assessments in the JIV reports for the Bodo spills have been called into question by an independent assessment. The JIV report for the first spill records that a total of 1,640 barrels of oil was spilled, covering an area of 61,350m^2.

However, the independent estimate suggests that more than 4,000 barrels per day may have been leaking during the first spill, based on a review of video footage of the leak and other evidence.[48] The source of the JIV report figure has not been made clear.

In the second spill, Shell estimated that 2,503 barrels of oil were spilled, covering an area of 10,000m^2. Again, the method of calculation is not clear. And according to the JIV report and the Bodo community, the second spill was larger than the first.

While the second spill was greater in volume and left to flow for 10 weeks, the area recorded as affected was smaller than that recorded for the first spill. The Bodo community has expressed concern about this data and has questioned how the larger spill could have affected a smaller overall area than the first spill.

While various factors can influence how far a spill flows, the people of Bodo have received no explanation of the data recorded in the JIV. Amnesty International asked Shell to provide an explanation, but the company did not respond.

Amnesty International wrote to NOSDRA to request an independent assessment of the oil spills. In September 2011, NOSRA replied that it was awaiting Shell's damage assessment report.[49]

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When they saw Shell arriving on 7 November 2008, youth representatives from Bodo decided to participate in the "joint investigation" into the oil spill, even though they had not been invited.

SYSTEMIC REGULATORY FAILURES IN THE NIGER DELTA

"Consequently, in planning their inspection visits, the regulatory authority is wholly reliant on the oil company. Such an arrangement is inherently inappropriate."

UNEP, 2011

The Bodo spills illustrate a much wider problem in relation to Nigeria's oil industry regulation system. The country already has laws and regulations in place that prohibit the pollution of land and water. These also require oil companies to ensure "good oil field practice", and to comply with internationally recognized standards.

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According to Shell, a total of 1,640 barrels of oil were spilled during the first spill. An independent assessment suggests that some 4,000 barrels poured out every day.

In the Bodo case, none of these regulatory requirements were met. While some of Nigeria's laws and regulations need to be amended, the more serious problem is the regulatory agencies' lack of capacity and the oil companies' repeated failure to comply with national laws and regulations.

Two governmental bodies have a theoretical role in overseeing the oil industry, and addressing oil spills and clean-ups. They are the DPR and NOSDRA.

The DPR is part of the Federal Ministry of Petroleum Resources. The Ministry is responsible for developing Nigeria's energy resources and as such ensuring maximum revenues. However, the DPR also oversees the oil industry to ensure its compliance with the applicable laws and regulations, including the environmental regulation, EGASPIN. In addition, the DPR keeps records on oil industry operations, advises the government, ensures that royalties and rents are paid and processes all applications for licences.

In practice, the agency exercises almost no meaningful regulatory controls in relation to the environment and pollution, despite its statutory responsibilities. For years, independent commentators have noted that the DPR has serious conflicts of interest, as it is also responsible for promoting the oil industry.

This stark fact was confirmed in the recently released UNEP study on the impacts of oil pollution in Ogoniland: "There is clearly a conflict of interest in a ministry which, on one hand, has to maximize revenue by increasing production and, on the other, ensure environmental compliance."[50]

The oil spill agency NOSDRA, which falls under the Federal Ministry of Environment, has no independent capacity to identify oil spills. It is usually dependent on either being notified by the oil company responsible or by the affected community.

NOSDRA should have taken action immediately after the Bodo spill was reported. It should have ensured that a joint investigation was held as soon as possible, that a clean-up was carried out and that an inspection was done afterwards to make sure the clean-up was satisfactory.

In reality, NOSDRA's actions did not succeed in any of this. It repeatedly asked Shell to recover spilled oil, clean up the affected areas and carry out a damage assessment to precede the clean-up and remediation of Bodo creek.

NOSDRA wrote to Shell on 12 May and 9 June 2009, after meeting Shell on 23 April 2009. The letters asked the company to "accelerate your plans for further consultation on the interpretation of section 19(1) of the NOSDRA Act and inform it soonest so that the above damage assessment could commence". This section refers to NOSDRA's task to "assess any damage caused by an oil spillage".

POORLY MAINTAINED PIPELINES: A CAUSE OF OIL SPILLS

A US diplomatic cable from 2008, recently published by Wikileaks, stated that a contractor with many years' experience of laying pipelines in the Niger Delta told the US consulate that "73 per cent of all pipelines there are more than a decade overdue for replacement. In many cases, pipelines with a technical life of 15 years are still in use thirty years after installation".

The cable continued: "Because the equipment is corroded and relatively close to the surface, making it more vulnerable to intentional and unintentional damage from natural and human causes, spills occur daily, and it often takes many hours to find the location of the spill and deploy the necessary clean-up equipment."

The contractor reportedly suggested that pipelines be replaced with "new, concrete-encased pipes that are placed three to four meters underground" which would reduce spills caused by both bunkering and equipment failure. The cable concludes that this "assessment of the current state of pipelines has been confirmed by other of our interlocutors".[51]

Concerns about poorly maintained infrastructure are not new. Shell's former Head of Environmental Studies in Nigeria, Bopp van Dessel, claimed on the TV programme *World In Action* in 1996 that Shell ignored repeated warnings that its oil production operations in Nigeria were causing widespread environmental damage: "They were not meeting their own standards; they were not meeting international standards. Any Shell site that I saw was polluted. Any terminal that I saw was polluted. It was clear to me that Shell was devastating the area," he told reporters.

In the mid-1990s, Shell established a programme to replace and upgrade ageing facilities and pipelines, and improve the way the company operated and maintained facilities, and how it responded to spills.

However, only a limited amount of work was done to fulfil this objective. Many pipelines were not in fact replaced. Instead, between 2003 and 2005, SPDC switched to a Pipeline Integrity Management System. This involves checking the condition of pipes and replacing them on the basis of their condition, rather than age. The results of the full Asset Integrity Review (which examined the condition of Shell's pipelines) have never been made public. Shell subsequently confirmed that there are delays in carrying out its asset integrity work.[52]

Amnesty International has written to the governments of the UK, the Netherlands and the USA asking for a response to the information contained in the 2008 diplomatic cable. The cable suggests that the home governments of oil companies operating in the Niger Delta may have specific knowledge about issues related to poor maintenance of oil industry infrastructure in the region. This would corroborate the concerns that NGOs and communities have expressed over many years.

The letters further stated: "It is however regrettable that SPDC has not deemed it fit to respond to the various efforts of the Agency in ensuring that the damage assessment exercise is carried out promptly."

There is often no clarity about what the exact role of the regulator and company should be. This letter gives an insight into how NOSDRA relies on Shell to carry out the damage assessment, which under the NOSDRA Act is one of NOSDRA's tasks.

NOSDRA further wrote to Shell that "the Agency considers as unacceptable the continuous delay in the conduct of the damage assessment". It also asked Shell to draw up a programme for the damage assessment and make the logistic arrangement for this. NOSDRA noted that this situation had resulted in "the continuous devastation of the environment".[53]

Amnesty International asked Shell to explain why the company failed to act when contacted by the Nigerian regulators, but the company did not respond on this point.

© CEHRD

Shell workers arriving to clamp the broken pipeline, Bodo, 7 November 2008.

The recent UNEP report also confirmed serious weaknesses in the Nigerian regulatory system, in particular a lack of resources in the case of NOSDRA.

UNEP exposed NOSDRA's shortcomings: "The agency has no proactive capacity for oil-spill detection and has to rely on reports from oil companies or civil society concerning the incidence of a spill. It also has very little reactive capacity – even to send staff to a spill location once an incident is reported."

"Consequently, in planning their inspection visits, the regulatory authority is wholly reliant on the oil company. Such an arrangement is inherently inappropriate."[54]

There is a general lack of transparency about the condition of oil infrastructure in Nigeria, including pipes.[55] Both the Nigerian Oil Pipelines Act and EGASPIN require companies to check and maintain oil infrastructure. EGASPIN requires monthly inspection of pipelines, including corrosion-monitoring indications and measurements.[56]

But these requirements are not being enforced. Moreover, there is no independent process whereby the regulators can assess and verify the condition of the oil industry infrastructure.

THE RESPONSIBILITY TO CLEAN UP OIL SPILLS REGARDLESS OF CAUSE

The cause of oil spills in the Niger Delta is often the subject of dispute between Shell and affected communities. Shell has repeatedly claimed that most oil spills are due to sabotage and other illegal activity. Communities and many NGOs disagree with the oil industry over the proportion of oil spills that are attributed to sabotage. Communities where spills have occurred claim that oil companies will say they are due to sabotage in order to avoid paying compensation.

Shell publishes information about oil spills on its website. The outcome of oil spill investigations forms the basis of Shell's claim that the majority of spills are caused by sabotage and theft. However, the oil spill investigation process is deeply flawed. The outcomes of investigations also lack credibility and have not been independently verified. Spills agreed in the field as "equipment failure" have later been changed to "sabotage" by Shell, unilaterally and without explanation or evidence.[57]

Amnesty International has presented Shell and the government of Nigeria with clear evidence of this practice, including video footage of an oil investigation where this occurred. Despite this evidence, Shell has continued to use discredited data. Amnesty International and Friends of the Earth have now taken forward an official complaint against Shell on this issue under the Organisation for Economic Co-operation and Development Guidelines on Multinational Enterprises.[58]

While determining the cause of an oil spill is very important in relation to compensation claims, under Nigerian regulations oil companies still have to clean up all oil spills, regardless of the cause. If the spill is caused by sabotage, the authorities have to pay for the clean-up but not compensation. If the spill is caused by equipment failure, the company has to pay for the clean-up and compensation.

Leaving aside the contested issue of cause, Shell's repeated failure to comply with Nigerian regulations for a timely and proper clean-up and remediation therefore continues to expose the people of the Niger Delta to a sustained assault on their economic, social and cultural rights.

In 2004, Shell conducted an Asset Integrity Review, which showed the condition of their oil pipelines and infrastructure and identified pipelines that needed maintenance. Environmental and human rights groups have repeatedly asked for this to be made public, but it has never been published.

Nigerian law and regulations allow the authorities to apply specific measures to ensure that oil companies comply with regulations, including by imposing penalties. The fine for failing to report an oil spill to NOSDRA is 500,000 naira (US$3,250[59]) "for each day of failure to report the Occurrence". The fine for failing to clean up an affected site "to all practical extent, including remediation", incurs a fine of 1 million naira (US$6,500[60]).[61]

These financial penalties are generally considered to be too low to represent a meaningful sanction or deterrent.

Amnesty International has asked NOSDRA if any penalty was imposed on Shell in relation to the Bodo oil spills, but did not receive any response. NOSDRA replied that Shell complied with the regulations and reported within 24 hours after both spills. No explanation was given of why it took 10 weeks before the spills were stopped. NOSDRA did not make reference to any penalty imposed on Shell for either spill.

EGASPIN also stipulates that "any person, body corporate or operator of a vessel or facility, who persistently violates the provisions of these guidelines and standards shall have his lease, license and/or permit revoked."[62] This provision has not been enforced in relation to Shell's activities.

The fact that Nigeria's regulatory bodies cannot, or do not, function properly has left the people of the Niger Delta with nowhere to turn. The regulators' failure to intervene also gives oil companies the freedom to act – or fail to act – without fear of sanction.

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Sivibilagbara swamp, Bodo, May 2011.

A SYSTEMIC CORPORATE FAILURE TO CLEAN UP

Shell has consistently claimed that it addresses oil spills in the Niger Delta promptly and well.[63] This claim does not stand up to scrutiny.

In the case of the two Bodo oil spills, Shell failed to comply with Nigerian regulations, and appears to have disregarded repeated requests by NOSDRA to take action.

UNEP's report also demonstrates that delays in addressing oil spills in Ogoniland are the rule rather than the exception. The report exposes serious and systemic problems with Shell's clean-up processes in Nigeria: "It is evident from the UNEP field assessment that SPDC's post-oil spill clean-up of contamination does not achieve environmental standards according with Nigerian legislation, or indeed SPDC's own standards."

The report also found that RENA, the primary method of oil remediation used by Shell on affected sites, has not proved effective. It has "failed to achieve either clean-up or legislative compliance". The report also noted that this method of clean-up was endorsed by Shell Global Solutions following a review of the issues in Nigeria.

UNEP's investigation found that: "Ten out of 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.

"THE POLLUTION IS STILL TODAY VERY VISIBLE."

Mene Hyacinth Vibia Lema, Bodo, May 2011

Mene Hyacinth Vibia Lema, 55, is the Chairman of the Bodo Council of Chiefs and Elders. In the past three years he has tried to find a solution to the impact of the oil spills and to persuade Shell to clean it up.

"I am affected by the oil pollution – as a father, as a Chief, as a fisherman," he said. "As a Chief, I feel a burden as people come to me to relieve them."

"The whole area of the waterfront was flooded with oil from the spills. Farming dried up, because of crude. It also affected our drinking water. The population is dependent on farming, fishing or petty trading of those products. The lives of these people have been tampered."

"When the spill became too much we wanted to talk. In the initial stage, Shell accepted it, said that they will try to do things and they will communicate to the management. The first thing that Shell did was to send relief materials, which we rejected because it was fully inadequate. The second consignment we accepted. It was a bit more, but still too little. We accepted to show that the company acknowledged that it is responsible for the spill."

Chief Lema was initially positive about the joint investigation into the spill, which confirmed that it was caused by equipment failure. Community representatives had several meetings with Shell. But the company did not follow up: "After the joint investigation we witnessed further devastation of nature. The company did not respond. Nothing, nothing effective has been done. Especially in the area of clean-up."

Chief Lema hopes a solution will be found: "We approached it from a dialogue point of view. Dialogue must lead to a result."

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".[64]

The clear conclusion of the UNEP report in relation to Shell's practices and performance is that Shell has, for years, not cleaned up oil pollution properly.

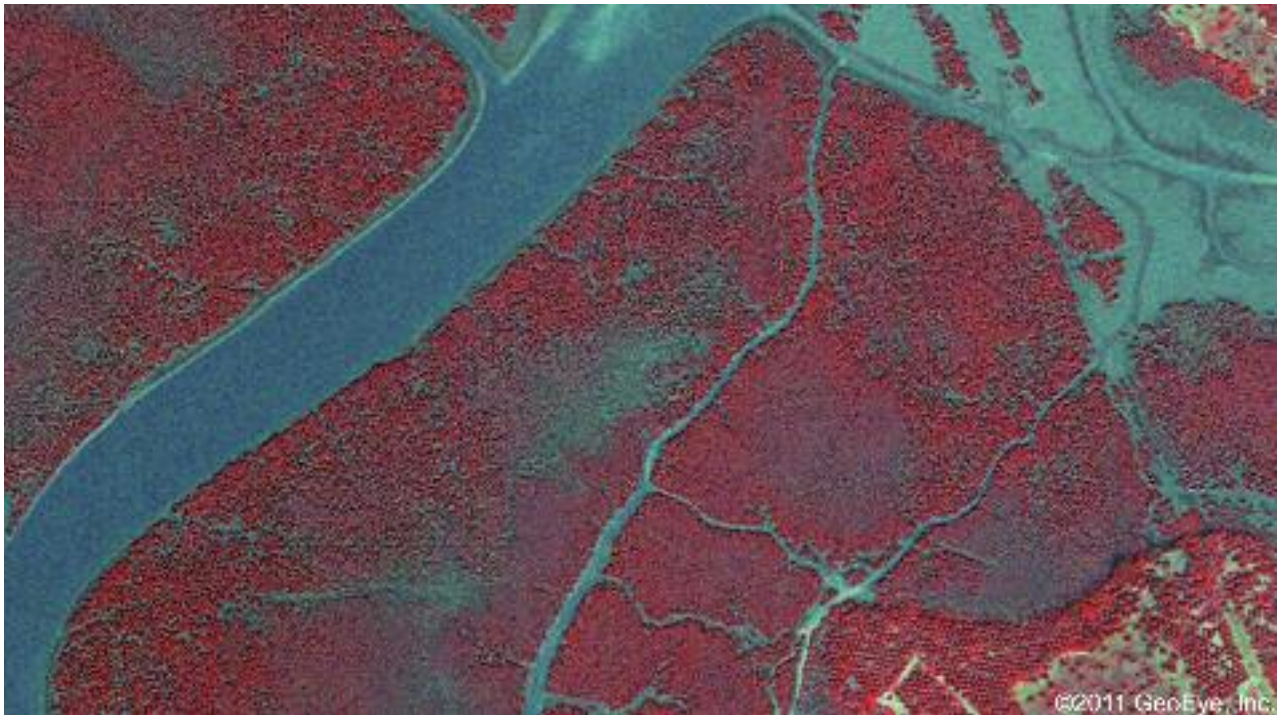
As already noted, Shell recently stated that resolving the 2008 Bodo spills had been hampered by sabotage and bunkering activity in the area. Amnesty International and CEHRD would raise three important points in response to this statement:

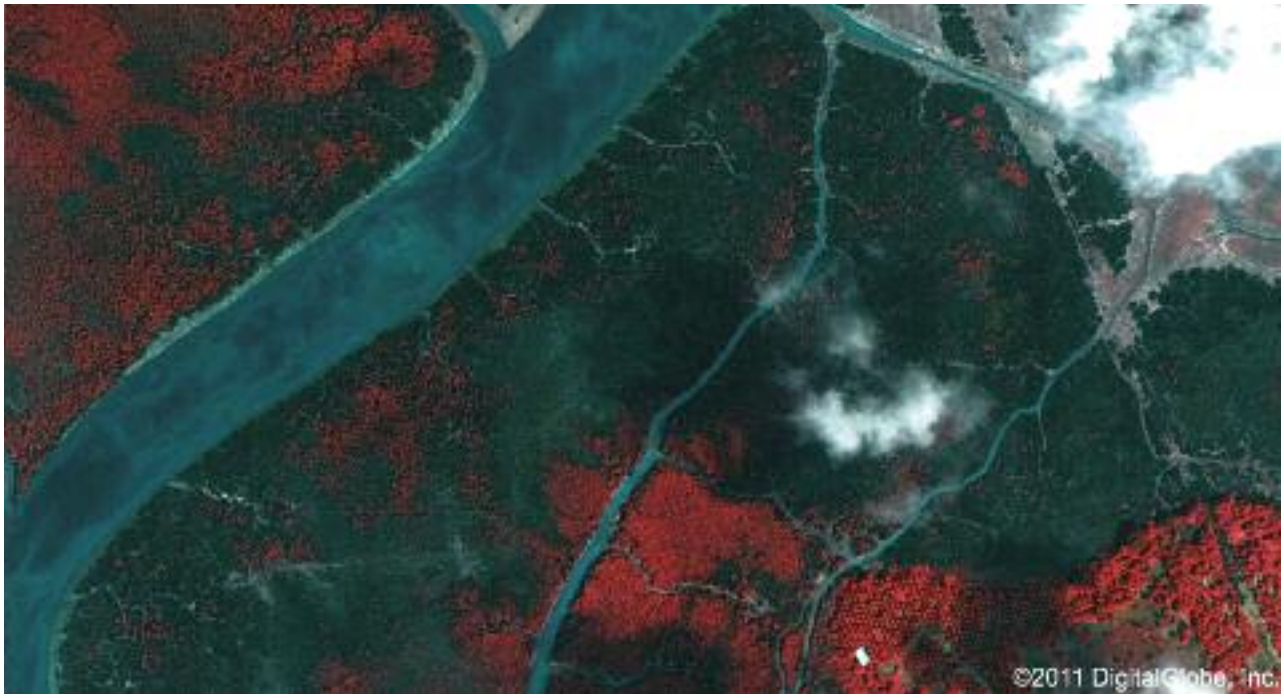
Firstly, Shell has an obligation to clean up all oil spills, regardless of cause. Other oil spills occurring in the area cannot excuse Shell's failure to comply with Nigerian laws and regulations and clean up the two 2008 spills.

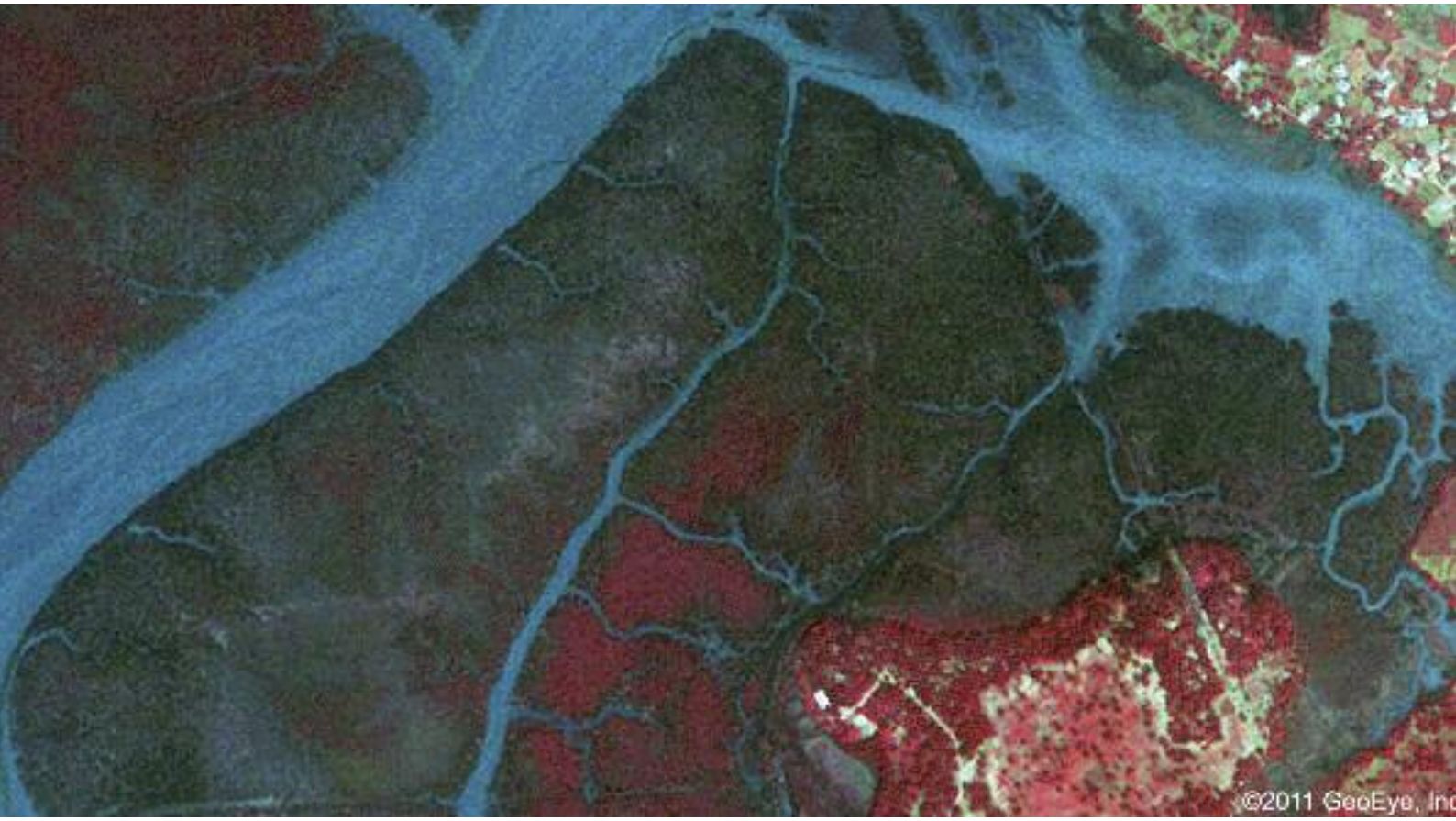
Secondly, Shell's failure to promptly and properly clean up the 2008 Bodo spills means that any subsequent pollution cannot now be clearly identified, as it would have merged with the existing pollution from the 2008 spills. However, all evidence gathered by Amnesty International and CEHRD – including satellite images and witness testimony – points to the 2008 spills as the main cause of the ongoing environmental devastation.[65]

Finally, Shell's statement – that resolving the 2008 Bodo spills has been hampered by issues related to sabotage – appears to be new. In a letter to the Bodo community's lawyers in 2009, far from claiming that there were obstacles to cleaning up and compensation, Shell – incorrectly – stated that a clean-up was ongoing. Letters from NOSDRA to Shell, which Amnesty International has seen, and communication from NOSDRA to Amnesty International about the two Bodo spills also make no mention of Shell citing sabotage or any other factor as an issue hampering clean-up.[66]

CLOSE-UP SATELLITE IMAGES OF VEGETATION DEATH SOUTH-WEST OF BODO TOWN







Top left: 4 December 2006: A false-colour image of the waterways around Bodo. Healthy vegetation appears bright red. (Produced by AAAS).
Bottom left: 26 January 2009: This image, taken during the second oil spill in Bodo, shows vegetation death concentrated mainly near the river and its tributaries. (Produced by AAAS).
Above: 8 January 2011: Two years later, the areas with dead vegetation still appear black, with little visible recovery. (Produced by AAAS).

FOUR/
CONCLUSION AND RECOMMENDATIONS

"When Shell came in 1958, we thought they would bring change and change the status of the people. We expected them to bring infrastructure and water and jobs."

Fisherman, Bodo, May 2011

After oil was discovered, the people in Bodo had high expectations: "When Shell came in 1958, we thought they would bring change and change the status of the people. We expected them to bring infrastructure and water and jobs," a fisherman said.

In reality, 50 years of commercial oil extraction in the Niger Delta have brought impoverishment, conflict, human rights abuses and despair to many. The area's massive oil deposits have generated billions of dollars in revenues for the country. And yet the vast majority of people in Nigeria's oil producing areas are still living in poverty. This poverty has been exacerbated by long-term oil pollution.

Bodo is a disaster that should not have happened. The current situation there is one bleak example of Shell's general failure to comply with Nigerian regulations. There is currently no information publicly available regarding the condition of all of Shell's infrastructure in the Niger Delta. However, it is clear that the company has failed to adequately maintain oil pipelines and infrastructure over many years.

Much of the damage caused by the first oil spill was entirely preventable – had the company followed Nigeria's national law and international oil industry standards. Shell should have stopped the oil flowing as soon as the first spill was reported. Instead, the company waited weeks. When the spill was eventually stopped, Shell failed to clean up the resulting pollution.

Three years on, the oil continues to permeate every aspect of people's lives in Bodo. It has destroyed their land and their livelihoods. The lack of a prompt clean-up has caused infinitely more damage than a case of equipment failure should have done, had it been dealt with as required by law.

Shell recently referred to the oil spills in the Niger Delta as a "tragedy". In Amnesty International and CEHRD's view, it is Shell's failure to comply with Nigerian regulations regarding oil spills that represents the true tragedy of the Bodo disaster.

The Nigerian authorities could also have prevented tragedy from unfolding three years ago if they had intervened according to their own regulations.

Until these delays and failures are addressed, more "tragedies" like the Bodo oil spill will continue to happen again and again. In order to prevent this, Amnesty International and CEHRD are urging the Federal Government, National Assembly, Shell, the company's investors, and the governments of the UK and the Netherlands to take the following steps:

The 4 December 2006 image (top) shows the streams and tidal flats directly adjacent to Bodo town unaltered by oil. In contrast, the 26 January 2009 image (bottom) shows a rainbow slick in the channels and discoloration of the intertidal zone, and is consistent with ground-based information obtained by Amnesty International. (Produced by AAAS.)

TO NIGERIA'S FEDERAL GOVERNMENT

- Immediately provide relief and assistance to those affected by the two Bodo spills.

- Ensure that the oil pollution in Bodo is cleaned up as a matter of urgency and subject to independent verification. The clean-up should be in line with international good practice.

- Set up a Commission of Inquiry to investigate Shell's compliance with environmental legislation and regulations in the Niger Delta; to assess the actual losses; and to make recommendations on how to improve Shell's compliance with Nigerian regulations. The report of the Commission must be made public.

- Ensure robust, independent and co-ordinated monitoring of the oil industry.

- Ensure that NOSDRA enforces the regulatory system, including by making sure all spills are cleaned up immediately, and by imposing effective penalties when the regulations are not followed.

- Implement the UNEP report recommendations in full.

- Implement in full the recommendations of the African Commission on Human and Peoples' Rights.

- Amend regulation of the petroleum industry to ensure that it addresses the social and human rights impacts of the oil industry. This should include a mandatory assessment of the potential impacts on human health; access to clean water and livelihoods; meaningful consultation with communities; and greater transparency and access to information for affected communities.

- Take all necessary steps to prevent further oil spills by equipment failure, sabotage, oil bunkering or illegal refining. This should include developing an effective and comprehensive plan to prevent any further oil spills. This plan should be fully consistent with Nigeria's human rights obligations; be developed in consultation with affected communities; take into account the need to provide alternative livelihoods for those affected by oil pollution, and be implemented transparently with local communities' full and active participation. Such a plan should be consistent with UNEP's recommendations, as outlined in its August 2011 study, and could be developed as part of implementing those same recommendations.

- Ratify the Optional Protocol to the ICESCR.

TO NIGERIA'S NATIONAL ASSEMBLY

- Visit the areas affected by oil spills, including Bodo, in the Niger Delta.

- Set up a committee to monitor the environmental and social impact of the oil industry; to hold regular sessions on the activities of multinational companies in the Niger Delta; to discuss any impact of their practices; and to make recommendations on how to address them.

- Incorporate the ICESCR into domestic law.

- Amend laws on compensation, including the Petroleum Act, the Oil Pipelines Act and EGASPIN to ensure that any sums awarded are fair and adequate, and cover long-term impacts, health issues and all other reasonable damages.

- Encourage the amendment of the regulation of the petroleum industry to ensure that it addresses the social and human rights impacts of the oil industry. This should include a mandatory assessment of the potential impacts on human health, access to clean water and livelihoods, official consultation with communities, and greater transparency and access to information for affected communities.

- Ensure that NOSDRA has adequate staff, financial resources and equipment to carry out its functions properly and independently of all oil companies.

TO SHELL

- Carry out a comprehensive clean-up of all oil pollution and environmental damage in Bodo, in consultation with the community.

- Ensure that all people affected by the 2008 Bodo spills are provided with a remedy. This should include rehabilitation, satisfaction and guarantees of non-repetition, as well as adequate compensation that takes into account long-term impacts, health issues and all other reasonable damages.

- Make public information about the impact of oil operations on the environment and human rights. This should include publishing Shell's oil spill contingency plan, the Niger Delta Environmental Survey, the Asset Integrity Review, and all information regarding the two 2008 Bodo spills; the JIV reports, any environmental impact assessments related to Shell oil infrastructure and operations in Bodo, the Environmental Evaluation Report and any post impact assessments. If the authorities or any Joint Venture partners are unwilling to make these documents public, Shell should make this fact public in itself.

- Conduct a full inspection of all Shell infrastructure and make the findings public.

- Make a clear and public commitment to contribute US$1 billion as an initial payment to an independent clean-up fund for pollution in Ogoniland.

- Support the implementation of UNEP's recommendations and prepare an emergency clean-up plan for all Shell's oil spills in the Niger Delta, in consultation with local communities and in line with UNEP's recommendations, and report on this publicly and regularly.

- Make a clear public commitment to addressing pollution and its human rights impacts – promptly, transparently and in consultation with key stakeholders, particularly affected communities.

- Undertake, as a matter of corporate due diligence, a transparent review of all its operating practices in the Niger Delta, including in relation to oil spill investigations and compensation payments, and bring these processes into line with Shell's stated General Business Principles and Code of Conduct.

TO THE GOVERNMENTS OF THE UK AND THE NETHERLANDS

- Increase engagement with and support of the government of Nigeria to ensure independent oversight of the oil industry and to increase access to effective remedy for people whose rights are affected by oil operations in the Niger Delta.

- Increase engagement with, and support of, the government of Nigeria in improving access to effective remedy for people whose rights are affected by oil operations in the Niger Delta.

- Offer to assist the government of Nigeria to implement the UNEP report recommendations.

- Require by law that extractive companies that have their headquarters or are domiciled in the country undertake human rights due diligence measures in respect of their global operations, with particular attention to high-risk areas such as the Niger Delta.

TO SHELL'S INVESTORS

- Raise, and challenge Shell on, the multiple failures documented in this report and also those raised in the August 2011 UNEP report.

BACKGROUND

This report is based on joint field research by Amnesty International and CEHRD in May 2011, as well as independent research carried out by both organizations over a number of years.

CEHRD has carried out research on the Niger Delta environment since 1999. The organization was founded by conservationists, environmentalists, activists and health workers, in response to the region's lack of development and its environmental, human rights and health problems.

CEHRD began investigating both of the Bodo oil spills shortly after they occurred. It investigated the first oil spill in late September 2008 and published its report on 10 October. On 12 October 2008, CEHRD informed the Rivers State Ministry of Environment about the spill. The Ministry visited the site on 15 October. CEHRD issued a press statement on the spill on 13 October.

In September 2009, CEHRD commissioned a scientific post-impact assessment of Bodo Creek, and campaigned for an adequate clean-up and compensation. More than two years after the first spill, CEHRD presented the case to a UK legal firm. Four months after the case against Shell was filed in the UK High Court, the company admitted responsibility for both spills.

In June 2009, Amnesty International published a major report on how oil industry pollution and environmental damage has affected the human rights of people in the Niger Delta.[67] The report revealed how decades of pollution and environmental damage have resulted in violations of local people's right to an adequate standard of living – including to food and water – as well as violations of their right to earn a living through work, and of their right to health.

It documented how the people of the Niger Delta have had their human rights consistently undermined by oil companies which their government cannot – or will not – hold to account. The people of Ogoniland have been systematically denied access to information about how oil exploration and production is, and will be, affecting them, and are repeatedly denied access to justice. The report highlighted the lack of accountability of both the Nigerian government and multinational companies.

The 2009 report included a number of recommendations to improve the situation. Two years later, little has changed.

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Bodo Creek, May 2011. The failure to promptly stop the 2008 oil spills and clean up afterwards represents the true tragedy of what happened in Bodo.

ENDNOTES

1 Shell Accepts Responsibility For Oil Spill In Nigeria, Press Statement By Leigh Day & Co. Solicitors, 3 August 2011, available at www.leighday.co.uk/news/2011/august-2011/shell-accepts-responsibility-for-oil-spill-in-nige (accessed 26 October 2011).

2 Expert advice provided to the Bodo community's UK lawyers.

3 Martyn Day, Leigh Day & Co Solicitors, 3 August 2011.

4 Amnesty International asked Shell to comment on the case in 2009, but the company did not do so.

5 Based on an exchange rate of 1,000 Nigerian naira to US$6.49984, as of 15 August 2011 (15 August 2011 exchange rate). While a number of factors can affect the price of a commodity, it is the view of the Bodo community and environmental experts working with them that the damage caused by the oil spills has been the main cause of the local price increases currently affecting them.

6 According to UNEP, RENA involves the following: "Hydrocarbons, once released to land, can be transferred and degraded through a number of natural processes, including: evaporation to the atmosphere; combustion infiltration, alone or along with rainwater, to soil and eventually to groundwater; overflow into swamps and water bodies; runoff with rainwater to swamps and water bodies; microbial degradation on the ground surface, or in soil, swamps, water or groundwater. The principle of enhanced natural attenuation for clean up of contaminated land is to augment one or more of the above processes so that the concentration of contaminants can be reduced."

7 UNEP, Environmental Assessment of Ogoniland, 2011, p. 144-145 (UNEP report).

8 UNEP report, p. 40.

9 African Commission on Human and Peoples' Rights, Decision on communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), made at the 30th ordinary session of the African Commission on Human and Peoples' Rights, Banjul, 13-27 October 2001, para 70, available at www1.umn.edu/humanrts/africa/comcases/155- 96b.html (accessed 9 September 2011).

10 The area of impact is determined in another process called scoping. Damage assessment is determined via post-impact Assessment by a third party of experts.

11 The right to information is enshrined in the Universal Declaration of Human Rights. Article 19 of the International Covenant on Civil and Political Rights also states that: "Everyone shall have the right… to seek, receive and impart information and ideas of all kinds, regardless of frontiers". Article 9 of the African Charter on Human and Peoples' Rights provides that: "Every individual shall have the right to receive information".

12 The Freedom of Information Act requires public institutions to record, keep, maintain and publish detailed information on all its activities, operations and businesses.

13 The Freedom of Information Act specifies a range of legitimate exemptions and limitations to the sort of information that can be released to the public, but insists that the public interest shall override any such exemptions. Section 15 exempts third party materials, and subsection 2 provides that no records which contain "the result or product of environmental testing carried out by or on behalf of a public institution" should be disclosed, unless it "would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in the disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to, the competitive position of or interference with contractual or other negotiation of a third party." (15(4))

14 Amnesty International wrote to DPR and NOSDRA on 14 July 2011, requesting a reaction by 30 July 2011. Two reminders were sent on 10 August and 12 September 2011. NOSDRA replied on 16 September 2011; the DPR did not reply. Under the Freedom of Information Act, a reaction should be given within seven days; if the DPR refused to give access to information or needed more time, it should have given notice.

15 15 August 2011 exchange rate.

16 The Nigerian Constitution states that: "The State shall direct its policy towards ensuring… that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens".

17 Economic, social and cultural rights are reflected in chapter two of Nigeria's Constitution – Fundamental Objectives and Directive Principles of State Policy – and are as such not legally enforceable.

18 The African Charter on Human and Peoples' Rights was incorporated into Nigeria's domestic law in 1983.

19 15 August 2011 exchange rate.

20 ESCR Committee, General Comment 14 (2000), The right to the highest attainable standard of health, E/C.12/2000/4.

21 Shell stated: "Shell has always acknowledged that the two spills in the Bodo area in 2008… were caused by such operational failure. Even when, as is true in the great majority of cases, spills are caused by illegal activity such as sabotage or theft, we are also committed to cleaning up spilt oil and restoring the surrounding land."

22 G. Wurthmann, Ways of Using the African Oil Boom for Sustainable Development, Economic Research Working Paper Series, No. 84, African Development Bank, March 2006.

23 EGASPIN, part VII, B, 2.11.3 (i) and (ii), also states "there shall be no sign of oil stain within the first 60 days of occurrence of the incident."

24 Shell MD Discusses The Status Of The Proposed Petroleum Industry Bill, Embassy Abuja (Nigeria), 20 October 2009.

25 Netherlands: Shell Discusses Business In Iran, Embassy The Hague (Netherlands) Cable time, 2 January 2009.

26 Amnesty International has asked Shell and NOSDRA to confirm when the company reported the spill to the authorities, which they are required to do within 24 hours. No response was received from Shell. NOSDRA replied that Shell did report the spill within 24 hours after it occurred on 28 August 2008.

27 According to the Joint Investigation report, the spill lasted for four weeks. According to the community, it lasted for 10 weeks.

28 Email communication with Sue Lloyd Roberts of the BBC, who covered the case in a report on the Niger Delta in 2008.

29 NOSDRA Act 6.(1) The Agency shall; (a) be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector.

30 NOSDRA Act 7(b).

31 A major spill is either called a tier 2 (between 50 and 5,000 barrels) or tier 3 (more than 5,000 barrels).

32 NOSDRA Act 19 (b), (c), (d) and (e).

33 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, Part VI, 3.2 (EGASPIN).

34 EGASPIN, Part VIII B, 1.1.1.

35 EGASPIN, Part VIII B, 2.2.

36 EGASPIN, Part VIII B, 4.1.

37 EGASPIN, Part VIII B, 2.11.1.

38 EGASPIN, Part VIII A, 2.0. The report should include a description of the spill, qualitative and quantitative descriptions of the affected environment, loss of environmental resources, plans to address the environmental impacts, and an environmental management plan post-EER.

39 EGASPIN, Part VIII B, 2.6.1.

40 EGASPIN, Part VIII B, 6.0.

41 EGASPIN, Part VIII B, 2.6.3.

42 EGASPIN, Part VIII B, 2.10.1.

43 EGASPIN, Part VIII B, 2.10.2.

44 EGASPIN, Part VIII B, 7.0.

45 The Joint Investigation was, according to the JIV report, carried out from 19 to 21 February 2009.

46 On 9 June 2009, NOSDRA wrote to Shell, referring to a previous letter dated 19 May 2009, asking the company to "conclude modalities for the conduct of damage assessment of areas impacted by the Bodo spill incidents of August and December 2008".

47 According to the JIV report, five Shell staff participated in the investigation, alongside one NOSDRA representative, one person from the State Ministry of Environment, one Joint Task Force member, and three community members. The DPR was not present.

48 Expert advice provided to the Bodo community's lawyers estimates that more than 4,000 barrels a day were spilled.

49 Amnesty International wrote to NOSDRA on 14 July 2011, requesting a reaction by 30 July 2011. Reminders were sent on 10 August and 12 September 2011.On 16 September 2011, NOSDRA replied to Amnesty International.

50 UNEP report, p. 139.

51 Nigeria: Pipeline Expert Says 73 Percent Of Niger Delta Pipelines Need Replacement, Cause Spills, Consulate Lagos (Nigeria), 17 December 2008.

52 Meeting the energy challenge, The Shell Sustainability Report 2006, http://www.shell.com/static/envirosoc-en/downloads/sustainability_reports/shell_sustain_report_2006.pdf (accessed on 21 September 2011).

53 Amnesty International and CEHRD obtained a letter from NOSDRA to Shell.

54 UNEP report, p. 140.

55 "Without independent assessment there is no way of confirming the scale and extent of poor pipeline maintenance and integrity in the Niger Delta. However, by SPDC's own admission, the situation prior to the 1990s was poor, a pipeline replacement programme was ended before many pipes had been replaced, and the subsequent Pipeline Integrity Management System is under-funded and behind schedule." Amnesty International, *Nigeria: Petrol, Pollution and Poverty in the Niger Delta*, June 2009.

56 Amnesty International wrote in July 2011 to DPR and requested copies of Shell's (SPDC) monthly inspection reports between January 2008 and May 2011, containing details on the monthly inspection of the Trans-Niger pipeline. Two reminders were sent in August and September. No reply was received.

57 Amnesty International, *Amnesty International Report 2009*.

58 Amnesty International, Friends of the Earth (FoE) International and FoE in the Netherlands submitted the complaint under the OECD guidelines for Multinational Enterprises on 25 January 2011. The process of considering the complaint was ongoing at the time of printing.

59 15 August 2011 exchange rate.

60 15 August 2011 exchange rate.

61 NOSDRA Act, Section 6 (2) and (3).

62 EGASPIN, Part IX, 4.7.

63 Shell in Nigeria, Environmental performance-oil spills, April 2011.

64 UNEP report, p. 151.

65 While some additional oil spills have occurred in Bodo since 2008, available evidence suggests they were small in scale compared with the devastation caused by the two 2008 spills.

66 Letter from Shell Head of Pipeline East to B.M. Wifa & Co., dated 7 May 2009, Re: Demand for Twenty Billion Naira Compensation Claim and Immediate Remediation of Impacted Site; Letter from NOSDRA to SPDC, dated 9 June 2009, Re: Modalities for the Conduct of Damage Assessment of Areas Impacted by the Bodo Spill Incidences of August and December 2008; Letter from NOSDRA to Amnesty International, dated 16 September 2011, Re. Statutory Request for Information in Terms of the Freedom of Information Act.

67 Amnesty International, *Nigeria: Petroleum, pollution and poverty in the Niger Delta*, June 2009.

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THE TRUE 'TRAGEDY'

DELAYS AND FAILURES IN TACKLING OIL SPILLS IN THE NIGER DELTA

In August and December 2008, two major oil spills disrupted the lives of the 69,000 people living in Bodo, Nigeria. Both spills continued for weeks before they were stopped.

Three years on, the Shell Petroleum Development Company has still not cleaned up the oil. As the evidence in this report illustrates, this continues to have catastrophic consequences for tens of thousands of people in Bodo, whose lives have been directly affected by ongoing pollution.

This report is based on research by Amnesty International and the Centre for Environment, Human Rights and Development (CEHRD), an NGO and local partner of Amnesty International in the Niger Delta.

The True "Tragedy" details the human cost of the oil spills in Bodo three years on, and outlines Nigeria's obligations to address this under human rights law. It calls on Shell to finally address the "tragedy" it acknowledged responsibility for in 2008, and argues that Shell's failure to comply with Nigerian regulations for a timely and proper clean-up represents the true tragedy of the Bodo disaster.

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