

ANOTHER BODO OIL SPILL

ANOTHER FLAWED OIL SPILL
INVESTIGATION IN THE NIGER
DELTA



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1. INTRODUCTION

On or close to 21 June 2012 an oil spill was discovered in the Bodo creek area of the Niger Delta. The leak was stopped on 30 June.¹ The leaking pipeline at Bodo is the responsibility of the oil company Shell. The cause of the leak has not been officially recorded, and the affected community is deeply concerned that the investigation process is being compromised by a lack of transparency and by indications that Shell and the regulators are ignoring evidence of corrosion on the pipeline.

This briefing paper focuses on the investigation into the cause and extent of the June 2012 Bodo oil spill. Oil spill investigations in the Niger Delta have been repeatedly criticized because they are controlled by the oil companies, because they lack transparency and because systemic flaws in the process have never been addressed. The oil spill investigation at Bodo highlights several of the systemic challenges and the impact on the human rights of affected communities.



The oil spill near Bodo, Rivers State, Niger Delta. The spill began on or close to 21 June. This photograph was taken on 26 June, 2012. Oil can be seen gushing from the submerged leak point, before the pipeline was excavated. © Centre for Environment, Human Rights and Development (CEHRD)

1.1 PREVIOUS OIL SPILLS AT BODO

Two major oil spills occurred at Bodo in 2008 (see map), neither of which has been cleaned up. Almost four years after the first spill started, the oil from both spills is yet to be cleaned up and the local environment remains visibly impacted by oil.² In both cases, the oil spills were only stopped after ten weeks³ and the oil spill investigations were flawed. According to Shell's official investigation report, only 1,640 barrels of oil were spilt in total during the first spill. A United States (US) firm, Accufacts, however found that between 1,440 and 4,320 barrels of oil were flooding the Bodo area each day; the total amount of oil spilt over a 72 day period would therefore be between 103,000 and 311,000 barrels of oil.

Thousands of local livelihoods based on fishing and farming have been severely damaged and members of the community have taken a civil action in the UK to try to secure compensation from Shell and compel the company to do a proper clean up of the affected area.

2. THE OIL SPILL INVESTIGATION PROCESS IN THE NIGER DELTA

When an oil spill occurs in the Niger Delta, a joint investigation team should be mobilized to visit the site. The joint investigation team includes representatives of regulatory agencies, the oil company, the affected community and the security forces. The team investigates the cause of the oil spill and is supposed to jointly agree and sign a report, which confirms the cause and includes other key information such as the volume of oil spilt. The process is heavily dependent on the oil companies for transport to the site of the spill and for technical assessment of the cause of the spill and the volume of oil spilt.

The information recorded on the oil spill investigation form, known as a Joint Investigation Visit (JIV) report, is extremely important as it is the basis for deciding whether communities receive compensation for damage to their homes, fields and fisheries. The data also affects how much compensation they receive and may affect the extent and quality of clean up. If a spill is found to be due to sabotage or third party interference then the community gets no compensation from the oil company, regardless of the damage caused. However, the oil company is still required to clean up the spill, regardless of the cause.

In many – if not most – cases, the oil company has significant influence over determining what caused an oil spill, and over much of the data recorded on the investigation report. The regulatory bodies, including the Nigerian National Oil Spill Detection and Response Agency (NOSDRA), have no independent means to initiate oil spill investigations. They are usually dependent on the company both to take staff to the site and to supply much of the data about spills. The weakness of the regulators relative to the oil companies has been documented by numerous actors, including the World Bank and UN agencies.⁴ In August 2011, the United Nations Environment Programme (UNEP) issued a major report on the effects of oil pollution in the Ogoniland region of the Niger Delta. The report makes clear that in responding to oil spills, “Government agencies are at the mercy of oil companies when it comes to conducting site inspections”.⁵

“Government agencies are at the mercy of oil companies when it comes to conducting site inspections.”

United Nations Environment Programme, 2011

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.



The Joint Investigation Visit to the site of the recent oil spill near Bodo, 30 June 2012. © CEHRD

2.1. FLAWS IN THE INVESTIGATION PROCESS AND SHELL’S DISCREDITED CLAIMS ABOUT ‘SABOTAGE’

For many years Shell has responded to reports of oil spills in the Niger Delta by saying that most oil spilt is due to sabotage. These claims are based on the recorded outcomes of oil spill investigations. Research by Amnesty International, the Centre for Environment, Human Rights and Development (CEHRD) and others has exposed serious flaws in the oil spill investigation process, including documented cases where the data recorded during a joint investigation have subsequently been altered by the company, as well as cases where people have been asked to sign forms that do not include key data. For example, in 2002 Shell claimed that an oil spill at Batan in Delta State was due to sabotage – the claim was made two days before the joint investigation took place. The joint investigation team – which included armed police and army officers, representatives of the regulator, the community and Shell, as well as a professional diver, as the pipe was 12 feet under water – found that the spill was due to “equipment failure” and this was recorded on the investigation report. The events are captured on video.⁶ However, Shell later changed the cause back to “sabotage”. The company has never provided a satisfactory explanation for this incident.

Nor is this the only problem with the oil spill investigation process. The accuracy of key data recorded on the investigation forms has also been called into question. The recording of the volume of oil spilt is a case in point. Research by Amnesty International and CEHRD - which included interviews with community witnesses and oil company personnel - found no clear, recognised methodology for estimating the volume of oil spilt during the oil spill investigation process in the Niger Delta. According to community reports, estimation of volume is often based on visual assessments and rudimentary calculations by oil company representatives. In April 2012 Amnesty International and CEHRD obtained an independent assessment of the volume of oil spilt during the August 2008 oil spill at Bodo, based on video footage of the oil leak. This assessment exposed how the data recorded by Shell on the JIV report dramatically under-estimated the total volume of oil spilt.⁷ The JIV form states that 1,640 barrels of oil were spilt in total. The independent assessment found that between 1,440 and 4,320 barrels of oil were leaking per day, in a spill which went on for several weeks. Although Amnesty International has repeatedly asked Shell to explain how it calculates the volume of oil spilt during investigations in the Niger Delta, the company has not done so.

2.2 THE RESPONSIBILITY TO PREVENT SABOTAGE

While Shell is quick to point to illegal activity as a problem in the Niger Delta, the company has failed to take necessary action to prevent it. Instead they have left their pipes – and therefore the communities and the environment – vulnerable to sabotage and the impacts of sabotage. This is completely contrary to international oil industry standards as well as international standards on business and human rights, both of which require that Shell exercise adequate due diligence to prevent tampering with its oil infrastructure and address the associated human rights and environmental risks.

Much of the oil infrastructure in the Niger Delta runs close to homes, farms and water sources of the Delta communities. The proximity to people living a predominantly rural lifestyle, who have a significant dependence on their environment for food, water and income, should require the utmost care and additional protection measures.

SHELL'S RESPONSE TO CRITICISM OF ITS OIL SPILL INVESTIGATIONS IN THE NIGER DELTA

Following criticism of the oil spill investigation process in the Niger Delta, Shell announced in 2011 that it had hired a company called Bureau Veritas to verify the oil spill investigation system. Despite repeated requests by Amnesty International for information on what exactly Bureau Veritas has verified or will verify, and whether Bureau Veritas will be allowed to consider evidence provided by communities and NGOs, Shell has refused to respond. The value of the Bureau Veritas process, and the extent to which it addresses any of the long-standing problems with the oil spill investigation process, will depend on the parameters of its verification methodology. In the absence of a transparent process, there is serious concern that the Bureau Veritas initiative is a public relations response to mounting criticism of Shell's impact in the Niger Delta.

3. FLAWS IN THE BODO 2012 OIL SPILL INVESTIGATION

Following the discovery of the most recent Bodo spill in June 2012, a team from Shell excavated the site on 29 and 30 June, to expose the affected area of the pipe.



Leaking pipeline near Bodo, 30 June 2012: A wooden stick was hammered in to the leak point to prevent further spillage. © CEHRD

A wooden stick was hammered into the leak point to prevent further spillage (see photographs). The joint investigation into the cause of the spill was initiated at this time. Local people say there were visible signs of corrosion on the affected area of the pipe, but Shell and regulatory representatives said that the cause appeared to be sabotage and the issue needed further investigation. The justification for a preliminary assessment of sabotage was the fact that the hole in the pipe was at the “12 o clock” position. It was agreed that the joint investigation would continue on 3 July and Shell told the community to bring an expert who could assess whether the pipe was corroded. The community asked an engineer, Osita Kenneth, to accompany them to the site. He requested further information from Shell, but said that, based on his experience gained over more than 10 years in the pipeline industry, there was evidence of a corrosion failure.

Amnesty International shared photographs of the pipe at the leak point with the US company Accufacts, which has some 40 years experience of assessing oil infrastructure. Accufacts stated: “This is apparently

due to external corrosion. Notice the layered loss of metal on the outside of the pipe around the "stick" from pipe wall loss (thinning) due to external corrosion. It is a very familiar pattern that we have seen many times on other pipelines." (see photographs)

When Amnesty International contacted Shell's headquarters to ask for evidence to support the initial assessment of sabotage, Shell stated the company has not claimed that the cause of the spill was sabotage and the joint investigation has not been completed.⁸ However, Shell could not explain the statements made to the community that the cause appeared to be sabotage because of the position of the hole in the pipe at the "12 o'clock" position. Nor was Shell willing to make any comment about the visible corrosion of the pipe.

Amnesty International asked Accufacts to comment on the view that the "12 o'clock" position of the hole on the pipeline indicates sabotage and they noted "A release on the top of the pipe does not necessarily mean the pipe failed because of sabotage...We have seen a lot of pipe failures from the top of the pipe and none were related to sabotage."

"This is apparently due to external corrosion. Notice the layered loss of metal on the outside of the pipe..."

Accufacts, July 2012

Shell has said it is taking the affected length of pipe to a Shell facility for testing. The community, local environment and human rights activists are afraid that this process – which will be under the control of Shell – lacks transparency and the outcome will not be credible. Although Shell has said that the community will have ongoing access to the pipe, there is no clarity as to how this will happen in practice.

Amnesty International has asked Shell to explain how the company intends to assess the cause of the leak based on the removal of the pipe, given that a wooden stick has been inserted into the leak hole. If the claim is that the hole was deliberately bored into the pipe, then the insertion of a wooden stick is likely to have obscured the evidence to some extent.

Additionally, in cases of sabotage, it is commonly the case that there are signs of prior excavation of the area, suggesting that someone has dug the soil to find and tamper with the pipe. Video footage of the site taken during the oil spill investigation, which clearly shows the pipe had to be excavated by Shell using a mechanical shovel, does not appear to show any signs of prior excavation.

Shell has claimed that the joint investigation team, which includes community members, the regulators, Shell staff and representatives of the police and Joint Task Force, was not able to complete the oil spill investigation because local youths threw stones at the team. However, Amnesty International and CEHRD could not identify any witnesses to corroborate this. Amnesty International has asked Shell to provide further information on this incident but Shell has not responded.

QUESTIONS SHELL WON'T ANSWER

The investigation into the June/July 2012 Bodo oil spill has been characterised by a lack of transparency around the process for establishing the cause of the spill. Shell and regulators on the ground have appeared unwilling to engage with the evidence of corrosion or to explain what evidence base they plan to use to make the final assessment.

Answers to the following questions should be available to the community:

- Are there photographs of the hole in the pipe taken before the wooden stick was inserted?
- Was there evidence of prior excavation of the site?
- What is Shell's response to the evidence of external corrosion of the pipe at the leak point?
- What tests will be carried out at the Shell facility to which the company wants to take the pipe? Why can the company not explain the planned tests to the community?
- How has Shell calculated the oil flow rate?
- When was the pipe in this area last replaced?

4. SHELL'S OLD AND CORRODED PIPES

Both Nigerian and international organizations have criticised Shell for exaggerating claims of sabotage for PR purposes and to deflect attention from the spills that are due to Shell's poorly maintained infrastructure.

Shell's pipelines are old and many have not been properly maintained or replaced. Local people and NGOs report that the pipes in this area of Bodo have not been replaced in at least 30 years. Pipes usually have a lifespan of 15 years. Shell has consistently refused to disclose information about the state or age of its oil pipelines in the Niger Delta, despite many leaks due to corrosion. However, evidence of serious problems with Shell's infrastructure has been mounting.

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 in Nigeria 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 US cable concludes that this "assessment of the current state of pipelines has been confirmed by other of our interlocutors."⁹

“73 per cent of all pipelines [in the Niger Delta] are more than a decade overdue for replacement...”

A contractor in Nigeria, quoted in a US diplomatic cable from 2008

Research by Amnesty International and CEHRD confirms the statements of this contractor. A pipeline replacement programme initiated in the 1990s by Shell was ended before many pipes had been replaced. A Pipeline Integrity Management System established between 2003 and 2005 was under-funded and was reported to be behind schedule and lacked transparency.¹⁰ The results of the full asset integrity review (which examined the condition of Shell’s pipelines) have never been made public.

NIGERIAN LAW AND REGULATIONS ON MAINTAINANCE OF OIL INFRASTRUCTURE

Both the Nigerian Oil Pipelines Act and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) require companies to check and maintain oil infrastructure. EGASPIN requires monthly inspection of pipelines, including corrosion-monitoring indications and measurements. However, there is no transparency around this process, and it is not clear if companies carry out and report on pipeline inspections. Nor is it clear if the regulatory agencies have any capacity to check data supplied by the oil companies on the status of oil infrastructure.



Fisherman casts his net, Bodo creek, Nigeria May 2011. Today's catch in Bodo creek is meagre due to pollution. © Amnesty International

5. CONCLUSION

The oil spill investigation process in the Niger Delta has long been criticized for being subject to abuse and for a lack of meaningful transparency. The regulatory agencies have almost no effective oversight as they lack both technical capacity and basic resources. In this latest case, Shell has been unwilling to engage with the evidence of corrosion of the pipeline. The company has not explained why sabotage of the pipeline

was asserted locally, based only on the position of the hole in the pipe. The company is not willing to explain how taking away a length of pipe to a Shell facility will clarify matters. Shell's overall lack of willingness to respond to legitimate requests for information and transparency continue to damage the company's reputation in the Niger Delta and globally.

6. RECOMMENDATIONS

Amnesty International and CEHRD call on Shell to:

- Carry out a comprehensive clean-up of all oil pollution and environmental damage in Bodo, in consultation with the community.
- Provide the community, CEHRD and Amnesty International with answers to the questions listed above on page 11
- Disclose the age and integrity status of its oil infrastructure in the Niger Delta
- Ensure that all subsequent investigations and assessments related to the June 2012 oil spill at Bodo are videoed in full, and this video is made available to the community
- Explain clearly to the community, in writing, exactly what tests will be carried out and how they will be able to monitor the process.
- Commit to fully videoing all future oil spill investigations and making the video footage available for independent assessment
- Explain in plain terms what *Bureau Veritas* will verify and whether *Bureau Veritas* will be able to receive information about irregularities in oil spill investigation process from communities

Amnesty International and CEHRD call on the Federal government to:

- Ensure that the oil pollution in Bodo is cleaned up as a matter of urgency and the clean up is 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 should be made public.
- 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.

¹ The leak was initially stopped by workmen who pushed a wooden stake into the hole in the pipe to prevent the oil from escaping. The pipe was subsequently clamped on 8 July.

² Amnesty International and the Centre for Environment, Human Rights and Development (CEHRD), *The True Tragedy: Delays and failures in tackling oil spills in the Niger Delta* (Index: AFR 44/018/2011)

³ The start date of the 28 August 2008 oil spill is disputed by Shell. Shell claims the spill started on 5 October 2008. The Nigerian regulators have confirmed that the spill lasted for 72 days.

⁴ World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, Industry and Energy Operations Division West Central Africa Department

⁵ UNEP, *Environmental Assessment of Ogoniland*, 2011, p. 140

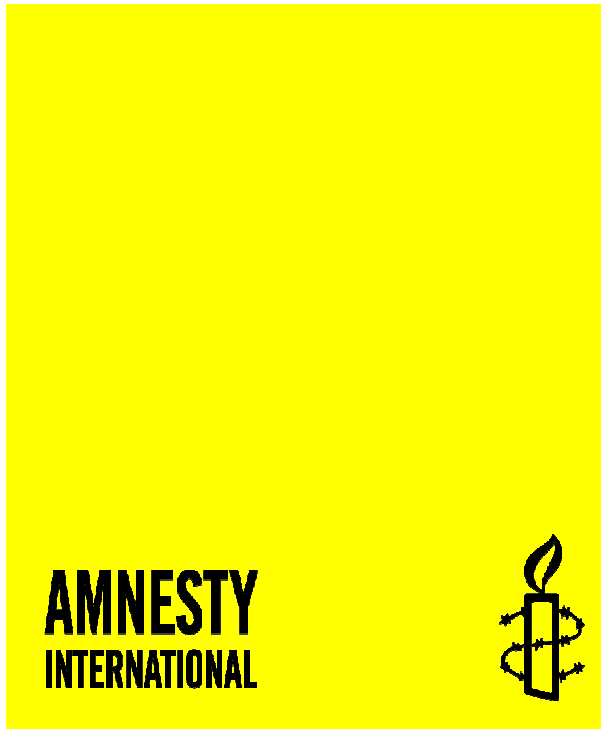
⁶ CSCR / Centre for Social and Corporate Responsibility, *Batan Oil Spill and Shell's Global Standards*, 29 June 2009 <https://adam.amnesty.org/asset-bank/action/viewAsset?id=82268>

⁷ Amnesty International and the Centre for Environment, Human Rights and Development (CEHRD), *Shell's wildly inaccurate reporting of Niger Delta oil spill exposed*, 23 April 2012 <http://www.amnesty.org/en/news/shell-s-wildly-inaccurate-reporting-niger-delta-oil-spill-exposed-2012-04-23>

⁸ Email communication dated 10 July 2012

⁹ Nigeria: Pipeline Expert Says 73 Percent Of Niger Delta Pipelines Need Replacement, Cause Spills, Consulate Lagos (Nigeria), 17 December 2008.

¹⁰ Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009 (Index: AFR 44/017/2009)



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