

# 'No Clean-up, No Justice'

## EXECUTIVE SUMMARY

For more than five decades, the people of Ogoniland, in the Niger Delta, have struggled against oil pollution, destruction of the environment and human rights violations. In 2011, a ground-breaking report by the UN Environment Programme (UNEP) on oil pollution in Ogoniland acknowledged the devastating impact of the oil industry and made concrete recommendations for clean-up and immediate support for the affected communities.

This report, published by Amnesty International, Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN), Friends of the Earth Europe, and Milieudefensie investigates to what extent Nigeria's government and the Anglo-Dutch oil giant Shell have implemented UNEP's recommendations to provide the people of Ogoniland with 'emergency measures', clean-up the pollution, prevent re-pollution and ensure alternative livelihoods.

Since 2011, two different Nigerian Presidents have attempted to implement the UNEP report. Under then President Goodluck Jonathan, from 2010 till 2015, the first Hydrocarbon Pollution Restoration Project (HYPREP) totally failed as no initiatives for clean-up were started. It then took President Buhari, who became president in 2015, 19 months to create the second HYPREP. But the progress is very slow and HYPREP's operations are failing to deliver.

The findings presented in this report are based on a series of detailed assessments of HYPREP's performance, produced by UNEP, since early 2019. These documents have not previously been made public. Researchers also visited spill sites where HYPREP has appointed contractors to conduct clean-up, reviewed satellite images, photographs and videos of the sites, reviewed publicly available information on HYPREP, and conducted interviews with experts with knowledge of HYPREP's operations. Researchers wrote to HYPREP, Shell and the Nigerian government. HYPREP and Shell provided detailed responses.

This report is a follow up to '*No Progress*,' published in 2014 by the same organizations, which documented the failure of the first attempt by the Nigerian government and Shell to implement the UNEP report. It also builds on the consistent annual monitoring and progress reports on the clean-up process by ERA/FoEN.

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In 2011, UNEP recommended an initial fund of \$1 billion for the first five years, to be paid by the oil companies that operate in Ogoniland – including the largest one, Shell. But nearly nine years, and many promises later, the people of Ogoniland still wait for a thorough clean-up of their environment. This is despite hundreds of

millions of dollars being transferred to HYPREP by the companies and it spending some thirty million dollars.

According to UNEP, which has been re-engaged as technical advisor to the project, HYPREP has been beset by a series of structural flaws.

For example, in November 2019, UNEP concluded that “HYPREP is not designed, nor structured, to implement a project as complex and sizable as the Ogoniland clean-up.”

UNEP stated that flaws in HYPREP’s procurement process meant that at the rate it was disbursing funds, “it will take HYPREP 100 years to utilize its 5-year budget”.

The result of these failures is that communities still do not have access to clean drinking water, nine years after UNEP warned of the profound health risks caused by contaminated ground water. In one particularly shocking case – that of the Nisisioken Ogale community - UNEP found in 2011 that community members were drinking water from wells contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization guideline. The wells were close to a Nigerian National Petroleum Company pipeline. Yet no comprehensive public health or environmental monitoring is yet in place.

The 21 sites currently being cleaned up by HYPREP cover only a fraction – some 11 percent - of the total area identified by UNEP. Yet none of the work has been completed. Most sites, which have been categorized as “less complex,” have engineering problems, researchers found.

By May 2020, most sites had closed down. Some of these stopped work due to the COVID-19 lockdown in parts of Rivers State. However, the majority had stopped work earlier, researchers found.

HYPREP is yet to even start the bid process for the more complex sites, and it is unclear if there is a strategy in place for this clean-up, which is likely to take much longer than for the current one.

There is also a potential conflict of interest with the oil company, Shell. Although most spills have come from its pipelines, wells and other infrastructure it has managed to get a key role in HYPREP’s oversight body and is involved in decision making regarding the clean-up process. Shell, which is the largest oil operator in Nigeria, has also seconded a senior staff member in a key position in HYPREP.

Meanwhile, every year that Ogoniland waits for clean-up, more oil spills occur. While there has been an increase in artisanal refinery and ‘sabotage’, causing pollution, operational failures still cause many spills due to the operational failure of the oil companies.

Amnesty International, ERA/FoEN, Friends of the Earth Europe, and Milieudefensie urge the Nigerian government to finally ensure that HYPREP implements UNEP’s recommended emergency measures. To strengthen HYPREP, the government should

introduce legislation to make the agency truly independent, transparent and accountable. Oil companies like Shell should have no role in the oversight bodies and should not second staff to HYPREP. Ultimately, the government should ensure that the people of Ogoniland have access to alternative livelihoods and are part of the decisions made about their future.

In order to address its devastating legacy of pollution in Nigeria, Shell should also pay for clean-up of the rest of the Niger Delta and compensate communities affected by its activities.

Finally, the tragic and unresolved situation in Ogoniland demonstrates the urgency for governments – including those of the UK and the Netherlands where Shell is headquartered - to issue strong legislation mandating companies to respect human rights and environmental standards across their global operations.

## METHODOLOGY

This report investigates to what extent the government of Nigeria and the oil company Shell have implemented the recommendations of the United Nations Environment Programme (UNEP) report published nearly nine years ago.<sup>1</sup>

The findings presented in this report build on two decades of research on the human rights impact of oil pollution in the Niger Delta, including previous research that exposed systemic flaws in the oil spill investigation and clean-up process.<sup>2</sup> This research was conducted jointly as well as individually by Amnesty International, ERA/FoEN, Friends of the Earth Europe, and Milieudefensie. This report is a follow up to the joint report ‘No Progress’ published in 2014, which documented the failure of the Nigerian government and Shell to implement the UNEP report.<sup>3</sup>

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United Nations Environment Programme (UNEP), *Environmental Assessment of Ogoniland*, 2011, [www.unep.org/disastersandconflicts/Coun-tryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx](http://www.unep.org/disastersandconflicts/Coun-tryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx) (hereafter, UNEP, 2011)

<sup>2</sup> These reports include: Amnesty International, [Nigeria: Petroleum, Pollution and Poverty in the Niger Delta](#), 2009 (Index: AFR 44/017/2009); [The True Tragedy: Delays and Failures in Tackling the Oil Spills in the Niger Delta](#), 2011 (Index: AFR 44/018/2011); Amnesty International and the Centre for the Environment, Human Rights and Development (CEHRD), [Bad Information: Oil Spill Investigations in the Niger Delta](#), 2013 (Index: AFR 44/028/2013); Amnesty International and CEHRD, [Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta](#), 2015 (Index: AFR 44/2746/2015); Amnesty International, [Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills](#), 2018 (Index: AFR 44/7970/2018); Environmental Rights Action/Friends of the Earth Nigeria, “Justice Delayed: When will the first drop of oil be cleaned in Ogoniland”, 2017; Environmental Rights Action/Friends of the Earth Nigeria, “Ogoni clean up: when will clean up start and when will the first drop of oil be cleaned up?”, 2018; Environmental Rights Action/Friends of the Earth Nigeria, “Ogoni clean up: Monitoring and progress report, 2019.

<sup>3</sup> Amnesty International, Centre for the Environment Human Rights and Development (CEHRD), Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN), Friends of the Earth Europe, Platform, *No Progress: An Evaluation of the Implementation of UNEP's Environmental Assessment Of Ogoniland, Three Years On*, (Index: AFR 44/013/2014),: [www.amnesty.org/en/documents/afr44/013/2014/en/](http://www.amnesty.org/en/documents/afr44/013/2014/en/).

This research is based on a review of publicly available information, documentation on HYPREP, interviews with experts with knowledge of HYPREP's operations and two field visits to 17 of the 21 clean-up sites in March and April 2020 (two sites were visited twice).

The website of HYPREP as well as the social media channels were also reviewed to assess the actions taken to implement the UNEP report.<sup>4</sup> However, HYPREP's communications lacked transparency about their activities, budget, implementation and performance. Amnesty International, ERA/FoEN, Friends of the Earth Europe and Milieudefensie could not find any annual reports on HYPREP's website.

The organisations wrote to the UNEP headquarters in Geneva to request their views on the progress in implementation of the 2011 report. UNEP's response, which has been reflected in this report, included four assessment reports by UNEP of HYPREP's institutional and technical capacity, dated February 2019.<sup>5</sup>

Through local sources in Nigeria, researchers also received a number of other documents by UNEP assessing HYPREP's capacity and progress, which were shared with HYPREP and its Governing Council and Board of Trustees in 2019. In addition, researchers received meeting notes from meetings held in Geneva in November and December 2019 and attended by representatives of HYPREP, the Governing Council, Board of Trustees, the Ministry of Environment, SPDC, and the communities. Researchers also reviewed historic satellite images of sites, photographs and videos of the spill sites and ongoing clean-up.

The report authors requested detailed information on the implementation of the UNEP report from Shell, HYPREP and the Nigerian Ministry of Environment, as well as broader information regarding their approach to remediation. Shell and HYPREP's detailed responses have been reflected in this report.

#### **TIMELINE**

1958	Shell starts commercial drilling of oil in the Nigeria Delta
1990	Peaceful protests against the oil industry begins in Ogoniland
January 1993,	Shell withdraws from Ogoniland
November 1995	Execution of Ogoni leader, Ken Saro-Wiwa
July 2006	Nigeria asks UNEP to conduct an assessment of impacts of oil pollution in Ogoniland following local and international pressure.
August 2011	UNEP report published

<sup>4</sup> <https://hyprep.gov.ng/>, <https://www.facebook.com/HYPREP/Nigeria>, <https://twitter.com/HYPREP/Nigeria>, [https://www.instagram.com/Ogoni\\_cleanup/](https://www.instagram.com/Ogoni_cleanup/)

<sup>5</sup> In November 2017, HYPREP requested UNEP for assistance in an advisory role to inspect the sites recommended for clean-up in the UNEP report, assess other impacted sites and train a technical team to manage the remediation project. In a subsequent meeting, HYPREP requested further support, including with the public health assessment. UNEP's assistance, which started in December 2018, is ongoing.

July 2012	HYPREP established
August 2015	New HYPREP structure announced, to break with previous failed efforts
June 2016	Ceremonial start of new HYPREP structure
December 2016	New HYPREP established
January 2019	Clean up starts

## CHAPTER 1: THE Ogoni STRUGGLE FOR JUSTICE

Nigeria is Africa's largest oil producer.<sup>6</sup> Its industry is based in the Niger Delta, in the south of the country, where commercial production began in 1958.<sup>7</sup> The industry is run by joint ventures between the Nigerian government and multinational companies. Shell has always been the most important of these. Shell runs its oil operations in Nigeria through its subsidiary, Shell Petroleum Development Company (SPDC).<sup>8</sup>

Every year there are hundreds of oil spills, devastating people's livelihoods, health, and access to clean water and food.<sup>9</sup> The impact of the oil industry on the people of the Niger Delta gained worldwide attention in the 1990s.

On 10 November 1995, the writer and activist, Ken Saro-Wiwa was one of nine people executed after a trial that Amnesty International described at the time as "politically-motivated and grossly unfair."<sup>10</sup> Ken Saro-Wiwa had led a mass movement against Nigeria's then military rulers, challenging them to grant his home region of Ogoniland, which is part of the Niger Delta, with political autonomy and a greater share of the oil wealth. The protesters also argued that pollution had "led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster."<sup>11</sup>

In 1993, amid huge protests and a worsening security situation, the Anglo-Dutch oil giant Shell withdrew from Ogoniland.<sup>12</sup> The company has not been able to pump oil

<sup>6</sup> Organization of the Petroleum Exporting Countries, *Oil data: upstream*, available at <https://asb.opec.org/index.php/interactive-charts/oil-data-upstream>

<sup>7</sup> Shell Nigeria, Shell in Nigeria Portfolio, available at <http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/portfolio.html>

<sup>8</sup> Shell is a major shareholder and the operator of the country's largest joint venture, which produces almost 40 percent of Nigeria's oil Witness Statement of Osagie Okunbor in Okpabi v Shell, Managing Director of SPDC, 26 June 2016, p5, on file with Amnesty International.

<sup>9</sup> Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, 2009 (Index: AFR 44/017/2009), <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>; Amnesty International and the Centre for the Environment, Human Rights and Development (CEHRD), *Bad Information: Oil Spill Investigations in the Niger Delta*, 2013 (Index: AFR 44/028/2013), [www.amnesty.org/en/documents/AFR44/028/2013/en/](http://www.amnesty.org/en/documents/AFR44/028/2013/en/); *Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills*, 2018 (Index: AFR 44/7970/2018), <https://www.amnesty.org/en/documents/afr44/7970/2018/en/>.

<sup>10</sup> Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

<sup>11</sup> The Ogoni Bill of Rights, article 16, the Movement for the Survival of the Ogoni People, 1990.

<sup>12</sup> Shell used to operate 96 wells in five oil fields in Ogoniland and produced 28,000 barrels a day – some 3% of its total. Amnesty International, "A criminal enterprise? Shell's involvement in human rights violations in Nigeria in the 1990s", November 2017, <https://www.amnesty.org/download/Documents/AFR4473932017ENGLISH.PDF>.

from its wells there since, although its pipelines continue to run through Ogoniland carrying oil from other regions.

In an attempt to end the stand-off, the then democratically elected Federal Government of Nigeria commissioned the United Nations Environment Programme (UNEP) to carry out an environmental assessment of Ogoniland in 2006. Shell funded the work, based on the “polluter pays” principle. UNEP commenced operations in Ogoniland in 2009 and published its report in August 2011.<sup>13</sup>

## THE UNEP REPORT

The UNEP report is the most comprehensive study yet on the impact of oil pollution in the Niger Delta. It demonstrates the failure of Shell and successive Nigerian governments to respect their national and international legal obligations. While its detailed assessment focuses on the impact of oil pollution on Ogoniland, its conclusions and recommendations are valid for the whole oil-producing region.

The study exposes how the oil companies and the government failed to clean up oil spills, even sometimes for decades after they had occurred.<sup>14</sup> The pollution has caused an appalling level of pollution, including the contamination of agricultural land and fisheries and drinking water, and exposing hundreds of thousands of people to serious health risks. The UNEP report concluded that:

“The Ogoni people live with this pollution every minute of every day, 365 days a year. Since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives. Children born in Ogoniland soon sense oil pollution as the odour of hydrocarbons pervades the air day in, day out.”<sup>15</sup>

In one particularly shocking case – that of the Nisioiken Ogale community - the report found that community members were drinking water from wells contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline.<sup>16</sup> The wells were close to a Nigerian National Petroleum Company pipeline.

UNEP also heavily criticized the operations of Shell. It recommended that the oil company overhaul its clean-up practices because they had not proved effective and had “failed to achieve either clean-up or legislative compliance.”<sup>17</sup> UNEP also criticized Shell’s selection process for contractors to carry out the clean-up.<sup>18</sup>

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<sup>13</sup> UNEP, 2011.

<sup>14</sup> UNEP, 2011, pp. 10-11.

<sup>15</sup> UNEP, 2011, p. 204.

<sup>16</sup> UNEP, 2011, p. 13.

<sup>17</sup> The Shell Petroleum Company of Nigeria (SPDC) used primarily remediation by enhanced natural attenuation (RENA) to clean up impacted sites. But there is no continuous clay layer across Ogoniland, exposing the groundwater in Ogoniland (and beyond) to hydrocarbons spilled on the surface. In 49 cases, UNEP observed hydrocarbons in soil at depths of at least 5m.

<sup>18</sup> UNEP, 2011, p. 147.

UNEP estimated it could take up to 30 years and cost US\$1 billion to clean up the region and made detailed recommendations to Shell and the Nigerian government.<sup>19</sup>

#### UNEP'S MAIN RECOMMENDATIONS

- Take emergency measures to provide clean drinking water, placing signs near polluted wells and warning people not to use the water to drink, bathe or fish in; conduct a survey of all wells near those wells that were found to be contaminated; inform people whose rainwater tested positive; and mount an awareness-raising campaign on the dangers of artisanal refining.
- Establish an Ogoniland Environmental Restoration Authority to oversee the clean-up of the region. The work of the authority should be funded by an Environmental Restoration Fund for Ogoniland.
- Carry out a comprehensive medical examination of people in communities with poisoned water as well as a focused study to monitor the health of people in Ogoniland over their lifetimes.
- Establish a public health registry for the entire Ogoniland population in order to determine health trends and take proactive action.
- Undertake a joint campaign to end illegal oil-related activities and raise awareness of the disproportionate environmental footprint of artisanal refining and provide alternative training, employment and livelihood incentives.
- Shell should overhaul its clean-up methodology.
- Comprehensive air quality monitoring across Ogoniland should be initiated to detect ongoing pollution, to help establish guidelines for protecting public health and to track improvements at sites where clean-up activities are under way.

Since UNEP released these findings, other studies have confirmed the serious health consequences of Ogoniland's oil pollution and the urgent need for action. In November 2017, for example, a study on the impact of oil spills on infant mortality warned that oil spills had been responsible for the deaths of thousands of Nigerian infants within the first month of their life.<sup>20</sup>

Research by Amnesty and Port Harcourt-based Centre for the Environment, Human Rights and Development (CEHRD), have further shown Shell's failure to remediate oil spill sites in Ogoniland identified by UNEP and exposed its false statements about these clean ups.<sup>21</sup>

<sup>19</sup> UNEP, 2011, Chapter 6.

<sup>20</sup> Based on data from more than 20,000 Nigerian mothers, the researchers concluded that the neonatal mortality rate more than doubles if the mother lived near an oil spill prior to conception, increasing the rate by 38 deaths per 1,000 live births. *The Guardian*, 'Absolutely shocking': Niger Delta oil spills linked with infant deaths', 6 November 2017. And Anna Bruederle and Roland Hodler, *Effect of oil spills on infant mortality in Nigeria*, Proceedings of the National Academy of Sciences Mar 2019, 116 (12) 5467-5471, <https://www.pnas.org/content/116/12/5467>.

<sup>21</sup> Amnesty International and CEHRD, *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta*, 2015 (Index: AFR 44/2746/2015, <https://www.amnesty.org/en/documents/afr44/2746/2015/en/>)

## LEGAL OBLIGATIONS

Nigeria's Constitution and its international human rights obligations guarantee the rights to an adequate standard of living, to water, to health, to an effective remedy and freedom of expression and access to information.

Under international human rights law, all states have a duty to protect against human rights abuses by all actors, including companies and those involved in artisanal refinery. States are required to take appropriate measures to prevent human rights abuses by private actors and to respond to these abuses when they occur by investigating the facts, holding the perpetrators to account and ensuring effective remedy for the harm caused.

Companies also have an independent responsibility to avoid causing or contributing to human rights abuses. According to the UN Guiding Principles on Business and Human Rights, 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 does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."<sup>22</sup>

Nigerian standards make it clear that regardless of the cause, the oil companies are responsible for the containment, clean-up and remediation of all oil spills along their pipelines and infrastructure.<sup>23</sup> These require oil companies to inspect pipelines monthly to prevent equipment failure.<sup>24</sup> They must take practical precautions to prevent pollution and prepare an oil spill contingency plan.<sup>25</sup>

## FAILED INITIAL GOVERNMENT RESPONSE

Soon after the publication of the UNEP report, in July 2012, the then government established the Hydrocarbon Pollution Restoration Project (HYPREP), pledging to fully implement its recommendations.<sup>26</sup>

Officials posted signs at polluted sites across Ogoniland warning people of the dangers of contact with contaminated water and land.<sup>27</sup> Emergency water supplies,

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Office of the High Commissioner for Human Rights, UN Guiding Principles on Business and Human Rights, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), Principle 11

<sup>23</sup> Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002

<sup>24</sup> EGASPIN, Part VI, 3.2

<sup>25</sup> EGASPIN, Part VIII B, 1.1.1

<sup>26</sup> HYPREP Bulletin No1 of 2013.

<sup>27</sup> Social Action, *STILL POLLUTED: Monitoring Government and Shell's Response to UNEP's Environmental Assessment of Ogoniland*, 2014, [http://saction.org/wp-content/uploads/publications/Still\\_Polluted\\_2014.pdf](http://saction.org/wp-content/uploads/publications/Still_Polluted_2014.pdf)



including water tanks, were brought to some affected communities.<sup>28</sup> But HYPREP had not taken any further, meaningful, action to ensure a long-term solution.

By July 2014, HYPREP staff complained that they had not been paid for 18 months.<sup>29</sup> Following an internal crisis over alleged fraud in the recruitment of staff, the project became dormant without having made any progress to initiate the clean-up.<sup>30</sup>

In 2014, a joint report, commissioned by Amnesty International, CEHRD, ERA, Friends of the Earth Europe and Platform, concluded that both Shell and the Nigerian government had failed to implement the recommendations made in the UNEP report.<sup>31</sup> Shell had not addressed the pollution identified by UNEP and continued to use deeply flawed clean-up practices. Beyond the implementation of some emergency measures, the government had also failed in its responsibility to ensure the recommendations of the report were implemented, offering the communities little more than empty rhetoric in the three years that had passed since the UNEP report was published.

## CHAPTER 2: “UNSATISFACTORY IMPLEMENTATION REQUIRING URGENT IMPROVEMENT”

*“We have a very rare opportunity to make history in Nigeria, we have a very rare opportunity to put Nigeria on the global map. This is a flagship project that has received overwhelming international endorsements, it is a project that should enjoy the support of all Nigerians”*

The project coordinator HYPREP, February 2020.<sup>32</sup>

In 2015, Nigeria elected a new government. Following campaign promises, President Buhari announced a fresh attempt to clean up Ogoniland, with the establishment of a new governing structure for HYPREP to mark a break with the first failed clean-up attempt and learn from its failures.<sup>33</sup>

A Governing Council, consisting of representatives of the federal and state governments, the oil industry and communities, was to oversee its operations.<sup>34</sup>

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<sup>28</sup> Platform, *Polluted Promises: how Shell failed to clean up Ogoniland*, 2014, <https://platformlondon.org/publications/polluted-promises-how-shell-failed-to-clean-up-ogoniland/>

<sup>29</sup> Channels Television, *Senate Promises to Intervene In Non-payment Of HYPREP Workers Salary*, 2 August, 2014, <https://www.channelstv.com/2014/08/02/senate-promises-intervene-non-payment-hyprep-workers-salary/>

<sup>30</sup> Crisis Group, *Curbing Violence in Nigeria (III): Revisiting the Niger Delta*, Report N°231, 29 September 2015

<sup>31</sup> Amnesty International, the Centre for Environment, Human Rights and Development (CEHRD), Environmental Rights Action (ERA), Friends of the Earth Europe and Platform, *No Progress: An Evaluation of the Implementation of UNEP’s Environmental Assessment of Ogoniland, Three Years On*, 4 August 2014, <https://www.amnesty.org/en/documents/AFR44/013/2014/en/>

<sup>32</sup> Federal Ministry of Information, *Ogoni Clean-Up: FG through HYPREP will provide portable water in Ogoniland*, 12 February 2020, <https://fmic.gov.ng/ogoni-clean-up-fg-through-hyprep-will-provide-portable-water-in-ogoniland/>

<sup>33</sup> See: Sahara Reports, *President Buhari Approves Actions To Fast-Track Environmental Clean-Up Of Ogoniland*, 5 August 2015, <http://saharareporters.com/2015/08/05/president-buhari-approves-actions-fast-track-environmental-clean-ogoniland>

<sup>34</sup> HYPREP, *About Us: Governing Council*, <https://hyprep.gov.ng/governing-council/>

Meanwhile, a Board of Trustees, similarly made up of government, industry and community representatives, was set up to oversee the use of funds.<sup>35</sup>

Expectations among civil society, companies and the international community were high, and the government appeared committed to make it a success. The Federal government gave the impression of having learned from past mistakes. For example, the then minister of Environment said the implementation “requires transparency, accountability, genuine partnership and proper representation of the people at the grassroots in what we are doing in investing in their future”.<sup>36</sup>

It took more than a year - until December 2016 - to establish the new HYPREP, as a project under the Federal Ministry of Environment, tasked with the implementation of the UNEP report.<sup>37</sup> The Ogoni Trust Fund received the first payment of US\$10 million from the oil industry in 2017 and further payments in 2018 and 2019, bringing the total to US\$360 million.<sup>38</sup> HYPREP has already had a budget of more than US\$30 million with a financial report neither audited nor published.<sup>39</sup> In January 2017, a Project Coordinator was appointed and in May 2017, a one-year workplan was presented to the Governing Council.

But progress has been extremely slow. The following is an assessment of what HYPREP has achieved.

#### LIMITED SCOPE OF CLEAN UP

In its report, UNEP had identified 67 sites, covering a surface area of 943 hectares, as in need of clean-up.<sup>40</sup> But, to date, HYPREP has only focused on a fraction of the total area in need of remediation.

HYPREP divided the 67 sites into three categories: “complex” (category A), “less complex” (category B) and “further investigation required” (category X).<sup>41</sup>

To date, contractors hired by HYPREP have begun work on 10 of the “less complex” category B sites.<sup>42</sup> These had a surface area of 106 hectares, representing only 11 percent of the total area identified by UNEP as requiring remediation.<sup>43</sup>

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<sup>35</sup> HYPREP, About Us: Board of Trustees, <https://hyprep.gov.ng/board-of-trustees/>

<sup>36</sup> Premium Times, *Osinbajo flags off Ogoni cleanup after Buhari cancelled trip*, 2 June, 2016, <https://www.premiumtimesng.com/news/headlines/204564-osinbajo-flags-off-ogoni-cleanup-after-buhari-cancelled-trip.html>

<sup>37</sup> Federal Government of Nigeria Gazette, Vol 106, no 176, 12 December 2016, <https://gazettes.africa/archive/ng/2016/ng-government-gazette-dated-2016-12-12-no-176.pdf>

<sup>38</sup> Kingsley Jeremiah and Cornelius Essen, *NNPC, IOCs release \$360 million for Ogoni cleanup*, The Guardian (Nigeria), 18 February 2020, <https://guardian.ng/news/nnpc-iocs-release-360-million-for-ogoni-cleanup/>

<sup>39</sup> Letter from HYPREP to Environmental Rights Action, June 3<sup>rd</sup> 2020.

<sup>40</sup> UNEP, Environmental assessment of Ogoniland report, <https://www.unenvironment.org/explore-topics/disasters-conflicts/where-we-work/nigeria/environmental-assessment-ogoniland-report>.

<sup>41</sup> Letter from HYPREP to ERA, 3 June 2020, and HYPREP, *Categorization of Sites For Clean-Up / Remediation of Hydrocarbon Impacted Sites in Ogoniland*, on file with Amnesty International / Friends of the Earth Europe.

<sup>42</sup> Letter from HYPREP to ERA, 3 June 2020.

<sup>43</sup> and HYPREP, *Categorization of Sites For Clean-Up / Remediation of Hydrocarbon Impacted Sites in Ogoniland*.

In April 2020, HYPREP named contractors to remediate a further 15 of the category B sites identified by UNEP, covering 48 hectares, or 5 percent of the total area.<sup>44</sup>

HYPREP is yet to even start the bid process for the category A and X sites.<sup>45</sup>

## SLOW PROGRESS

Even though work has only begun on a relatively small number of “less complex” sites, progress even on these has been disappointing. These were supposed to have finished their work by the end of 2019.

Before work started on the first ten sites, HYPREP subdivided them into 21 lots.<sup>46</sup> HYPREP explained that the reason for this was to hire more contractors in order to create extra local employment.<sup>47</sup>

It took HYPREP at least nine months to select these contractors.<sup>48</sup> They finally took control of the 21 lots in early 2019.

Researchers from ERA visited 19 of the 21 lots in March and April 2020. They observed that there had been some work done at all locations, but the standard of work was poor.

According to an internal HYPREP document assessing progress of the clean-up by the various contractors, by April 2020 just over 40% of the clean-up of the 21 lots had been completed. Only four contractors had finished more than 60% and four contractors had finished less than 25% of the remediation process.<sup>49</sup>

Following restrictions imposed by the authorities to tackle the COVID-19 pandemic, work stopped at most sites. However, it was clear from the field observations that most sites had stopped before researchers visited the locations in March.

HYPREP responded to concerns raised by ERA, by stating that it had worked on the planning and tender process between April 2017 and December 2019 and any delays were caused by the Nigerian procurement process and land issues, which were resolved in January 2019.<sup>50</sup>

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<sup>44</sup> HYPREP, *Phase 1, batch 2 tender document*. The total volume is 507,850m3.

<sup>45</sup> Interviews with experts in clean-up and remediation, April 2020.

<sup>46</sup> Letter from HYPREP to ERA, 3 June 2020, and HYPREP, *Categorization of Sites For Clean-Up* / on file with Amnesty International / Friends of the Earth Europe.

<sup>47</sup> HYPREP letter to ERA, 3 June 2020.

<sup>48</sup> In March 2018, pre-qualified companies were invited to submit a bid for the remediation of polluted sites in Ogoniland (<https://hyprep.gov.ng/wp-content/uploads/2018/03/HYPREP-ADVERT-FOR-ENVIRONMENTAL-REMEDICATION-FINAL-1.pdf>) They reportedly received nearly 400 bids. By June 2018, 183 companies, including 11 foreign companies, had been prequalified and would have their bids evaluated. See List of prequalified companies for the remediation of hydrocarbon impacted sites in Ogoniland, <https://hyprep.gov.ng/list-of-prequalified-companies-for-the-remediation-of-hydrocarbon-impacted-sites-in-ogoniland/>

<sup>49</sup> Document on file with Amnesty International/ Friends of the Earth

<sup>50</sup> Letter from HYPREP to ERA, 3 June 2020

It blamed further delays on “inclement weather, terrain and community issues” and estimated that 70% of the work would be finished by August 2020 and the rest by November 2020.<sup>51</sup>

## FLAWED CLEAN-UP OPERATIONS

According to the field observations of ERA researchers only a few sites appeared to follow the required remediation procedures while the rest were poorly constructed, not well maintained or had been abandoned (see Annex). Some of the sites visited even lacked simple safety precautions, such as signs and fences.

### WHAT SHOULD THE CLEAN-UP LOOK LIKE?

Each site should have a site office, signs, fences around the site and remediation/bio-cell, running water

**A Bio-cell** is an on-site mini treatment centre for bioremediation and excavation water. Under the right conditions, micro-organisms will transform contamination into innocuous by-products. It is supposed to prevent the oil pollution from further leaking into the environment. It should be constructed with a protective layer of sand and proper gradient towards the drainage-sump, to prevent flooding, which would impact the microbial activity and slow down the remediation. The bio-cell should have protective lining on the base and side walls. Frequent tests are required to determine if the remediation is working.

**A drainage tank** is a tank into which the bio-cells discharge. The tank should be big enough to prevent overflowing contaminated water into the environment.

**Soil** should be broken down into finer pieces as large clumps of soil will not bio-remediate.

During **excavation**, heavily and lightly contaminated soil should be separated. Some sites can have pits of up to 10m deep; the walls should not be vertical to prevent collapse. There should be fences around such pits.

ERA researchers observed serious flaws in the construction of the bio-cells at some sites, which are likely to negatively impact on the remediation. In addition, many drainage tanks seem to be too small. Some bio-cells contained too much soil, which can also impact the remediation process. In addition, in some sites, heavily and lightly contaminated soils appeared to be mixed before treatment in the bio-cells. Researchers also observed in some sites free-phase oil on the ground-water. This makes clean-up more complicated and could delay the remediation of the site.

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<sup>51</sup> Letter from HYPREP to ERA, 3 June 2020

ERA researchers observed many worrying aspects of operations at the sites, such as uncovered drainage sumps which overflow when it rains, spreading contamination in the environment; overfilled bio-cells with contaminated soil spilling out; poor materials being used and leaking pipes.

ERA researchers could not determine if samples were taken for testing to ensure the remediation process is actually working.<sup>52</sup> HYPREP also could not confirm if this happens daily or weekly, but said contractors took samples “as frequently as required”.<sup>53</sup> Likewise it is unclear how contractors improve microbial activity in areas in the bio-cell where the remediation process is not having the expected results. ERA researchers also were unable to confirm if the contractors take the hazardous waste to an accredited waste treatment centre, as HYPREP claims.<sup>54</sup>

The observations of ERA researchers are corroborated by UNEP assessments of the sites.<sup>55</sup> One of these found, for example that, “a range of engineering, process and supervisory problems were identified, relating to: 1. Bio-cell construction; 2. Bio-cell operation; 3. Excavation of contaminated soil; 4. Sampling and laboratory analysis.”<sup>56</sup>

As these sites have been earmarked as the “simple” sites, the level of progress is extremely disturbing and does not bode well for clean-up of more complex sites.

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<sup>52</sup> Bioremediation indices that should be monitored daily are moisture content, soil gas (CO<sub>2</sub>), pH, temperature, microbial count and families, and nutrient concentration.

<sup>53</sup> Letter from HYPREP to ERA, 3 June 2020

<sup>54</sup> Letter from HYPREP to ERA, 3 June 2020

<sup>55</sup> HYPREP, *CONTRACTORS ACTIVITIES TRACKING - REMEDIATION PROJECT*, 25 OCTOBER 2019.

<sup>56</sup> UNEP, *Support to HYPREP Second Progress Report*, February 2020

## SHELL SITES STILL POLLUTED

In 2011, UNEP found a number of sites which Shell said it had remediated, but which were in fact still contaminated. UNEP investigated 15 locations in Ogoniland that Shell had classified as “remediation completed,” and found that 13 of these were still contaminated, in some cases to a depth of at least five metres.<sup>57</sup>

The oil company challenged these findings and retested the sites using a consulting company called Fugro.<sup>58</sup> According to Shell, these tests showed that only six were still contaminated. It blamed this on re-contamination caused by subsequent spills since 2011. In 2013, the company said it had remediated all the sites again and the government had certified them as clean.<sup>59</sup>

It then said it had hired a team to conduct a “monitoring programme of independent verification” of these sites.<sup>60</sup> This team consisted of two academics, two consultants from the company Bureau Veritas and two NGO representatives. Shell has never published the findings of this “independent verification” team and has not answered requests to see a copy. However, one member of the “independent verification” team said that it had found that most sites were still contaminated, despite Shell’s clear assurances to have remediated them.<sup>61</sup>

These sites remain polluted, as evidenced by the fact that all 15 are included in a 2019 HYPREP overview of sites to be cleaned up.<sup>62</sup> Moreover, seven are classified A, meaning HYPREP has categorized them as “more complex” sites.<sup>63</sup>

### Inadequate monitoring of remediation work

While the remediation of sites is carried out by contractors, HYPREP is responsible for the monitoring their work.

HYPREP has stated that the contractors work together “in harmony because they have direct supervision by HYPREP supported by UNEP to ensure good interface management and compliance with approved standards.”<sup>64</sup> In March 2020, the project coordinator speculated that Nigerians would be proud of the clean-up project upon its completion: “this is more because the on-going remediation work across the impacted communities is constantly being quality checked.”<sup>65</sup>

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<sup>57</sup> UNEP, 2011, p135.

<sup>58</sup> Shell Nigeria, *SPDC action on matters addressed in the UNEP report*, July 2012, [www.shell.com.ng/environment-society/our-response/unep-july-2012.html](http://www.shell.com.ng/environment-society/our-response/unep-july-2012.html)

<sup>59</sup> Shell, *RDS Report on the SPDC commitments towards the UNEP report*, September 2013.

<sup>60</sup> Letter from Mutiu Sunmuno, Chair, Shell Nigeria, to Amnesty International, 10 June, 2014.

<sup>61</sup> Amnesty International interview with Father Edward Obi, Port Harcourt, 4 August 2015.

<sup>62</sup> Document on file with Amnesty International / Friends of the Earth

<sup>63</sup> In a letter to the authors of this report, Shell explained that it had “carried out assessment, remediation or monitoring activities at these sites while HYPREP was being set up and obtained regulatory certifications for them based on the applicable conditions on the sites at that time.”

<sup>64</sup> Letter from HYPREP to ERA, 3 June 2020, HYPREP/COMMS/GEN/101

<sup>65</sup> HYPREP, *Norwegian Ambassador Commends HYPREP on Work Done*, March 2020, <https://hyprep.gov.ng/norwegian-ambassador-commends-hyprep-on-work-done/>

But according to UNEP's assessment of HYPREP's institutional capacity, its staff seldom visit the sites and they do not monitor progress in the field or assess the constructions of bio-cells or remediation methods.<sup>66</sup>

While HYPREP does have a monitoring and evaluation unit, there is, according to the UNEP capacity assessment, no clear monitoring and evaluation plan or even understanding what to monitor.<sup>67</sup> Moreover, there is also no clarity about who is responsible for the monitoring. According to UNEP, "it remains unclear within the HYPREP structure, who is responsible for assessment and clean-up supervision."<sup>68</sup>

UNEP also attributes the lack of monitoring to the inability to access the necessary resources.<sup>69</sup> For example, one of the reasons given for failing to monitor sites was that HYPREP field staff did not have access to vehicles.<sup>70</sup>

As a direct consequence of the lack of overview, many contractors have built faulty bio-cells. HYPREP does not appear to have adequately overseen the clean-up activities, allowing contamination to continue and spread. ERA researchers also noted the risk of contamination spreading to from one lot to another, as they are operated by different contractors.

#### FAILURE TO CREATE A CENTRE OF EXCELLENCE

UNEP recommended the creation of a centre of excellence for environmental clean-up which could go on to play a leading role and share expertise with other oil polluted communities in the Niger Delta.<sup>71</sup>

To date, HYPREP has not made any tangible progress in implementing this recommendation and claimed, in March 2020, that the intention was to create the centre of excellence only after the initial remediation period of five years.<sup>72</sup>

While UNEP did aim for the centre to "ultimately become a model for environmental restoration", the centre was also supposed to build capacity during the remediation phase and develop a public awareness-raising campaign to improve understanding of the environmental and health impacts of oil pollution.<sup>73</sup> Delaying the

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<sup>66</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019, and *UNEP- HYPREP Geneva Technical meetings report*, November 2019.

<sup>67</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019, and *UNEP- HYPREP Geneva Technical meetings report*, November 2019.

<sup>68</sup> UNEP, *Support to HYPREP Second Progress Report*, February 2020.

<sup>69</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019, and *UNEP- HYPREP Geneva Technical meetings report*, November 2019.

<sup>70</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019, "There are, however, no vehicles specifically available for field-work, which is primarily undertaken by the Operations Unit. Therefore, essential field-work is severely restricted by the ability to borrow vehicles from other Units within the organization." and *UNEP- HYPREP Geneva Technical meetings report*, November 2019. "It was noted that within HYPREP severe delays are incurred with most, if not all, procurement activities. Even purchase of simple office items can take several months, often longer. UNEP noted that this problem is significantly impeding the delivery of HYPREP's mandate, with impacts ranging from an absence of vehicles and fuel to undertake urgent site-work through to an almost complete absence of basic office facilities such as computers, printers, printing paper, printing cartridges etc."

<sup>71</sup> UNEP, 2011, p227.

<sup>72</sup> HYPREP, *Reps Confirm Remediation Is On-Going, Appeal For Patience*, March 2020. <https://hyprep.gov.ng/reps-confirm-remediation-is-on-going-appeal-for-patience/>

<sup>73</sup> UNEP, 2011, p227.

establishment of the centre will undoubtedly delay the clean-up of the Niger Delta even further.

#### FAILURE TO PROVIDE “EMERGENCY MEASURES”

Since 2015, HYPREP has failed to deliver on UNEP’s call for “emergency” action to deliver safe drinking water to communities in Ogoniland. To date, “no households have improved access to clean drinking water” according to UNEP’s assessment of HYPREP’s progress.<sup>74</sup>

In July 2017, the first tender request for new water supplies was sent out.<sup>75</sup> A year later, in June 2018, HYPREP released another request for expressions of interest for consultancies to develop new water supplies and repair old pipes.<sup>76</sup> It is unclear if any companies were appointed, what they did or what impact this had

In June 2020, HYPREP said it had carried out water quality assessment of all drinking water sources in Ogoniland, enabling it to determine the areas most needed for “the emergency water supply scheme,” but this had not yet started. It stated that “the tender processes are ongoing.”<sup>77</sup>

#### OGALE

In Ogale, a town of 40,000 people on the outskirts of Port Harcourt, people have been drinking water contaminated with benzene, a known carcinogen, at over 900 times above the international guideline, according to UNEP’s 2011 report. The report concluded this was “certain to lead to long-term health consequences.” Many people were aware of the pollution and its dangers but had no alternative but to continue to use the water for drinking, bathing, washing and cooking.<sup>78</sup>

In response, in 2014, Shell said that it had had completed construction of a permanent piped water distribution facility to Ogale, the Eleme Regional Water Supply Project, with a potential 450,000-litre capacity in August 2013. The facility was then handed over to the Rivers State government.<sup>79</sup> However, according to research by CHERD and Platform, this was based on a borehole water drilling mechanism to purify the heavily contaminated underground water.<sup>80</sup>

During visits by Amnesty International researchers to the Ogale community in 2015 and 2018, residents complained that this pipeline only supplied water sporadically and in inadequate amounts. Residents said that when water was supplied, it was not continuous and only ran for a short period at a time. In a meeting with Amnesty

<sup>74</sup> UNEP- HYPREP Geneva Technical meetings report, November 2019.

<sup>75</sup> <https://twitter.com/HYPREP/Nigeria/status/884443330427457542?s=20>

<sup>76</sup> HYPREP, *Expressions of Interest/Prequalification of Consultants and Contractors for 2018 Water & Public Health Projects, June 2018*, <https://Hyprep.Gov.Ng/Wp-Content/Uploads/2018/06/2018-ADVERT-FOR-WATER-AND-HEALTH.Pdf>

<sup>77</sup> Letter from HYPREP to ERA, 3 June 2020

<sup>78</sup> UNEP informed the government already in December 2010 that they should prioritise emergency water supply. UNEP, 2011.

<sup>79</sup> Shell in Nigeria, *The UNEP Report*, 2014

<sup>80</sup> Platform, *Polluted Promises: how Shell failed to clean up Ogoniland*, 2014, <https://platformlondon.org/publications/polluted-promises-how-shell-failed-to-clean-up-ogoniland/>



International in August 2018, the Minister of the Environment acknowledged that the Eleme water supply project was not functioning properly.<sup>81</sup> The government has also warned residents that even when water is supplied, they should not touch it. Official signs next to communal taps in Ogale warn: “CAUTION: NOT FIT FOR USE.”

The lack of an adequate supply of clean drinking water forces community members to buy water from commercial suppliers. Community members said that they spend the bulk of their earnings on water. This then reduces their ability to pay for other essential goods and services, such as school or hospital fees, perpetuating the cycle of poverty. Families told researchers that when families run out of money for water, they have no option but to go back to their old wells, which UNEP identified as being not fit for use.

## FAILURE TO MONITOR PUBLIC HEALTH

UNEP recommended a comprehensive and long term health monitoring programme.<sup>82</sup> It recommended that, “all members of households who have ingested water from hydrocarbon-contaminated sources are registered in a central data base and requested to undergo a **comprehensive medical examination** by medical personnel familiar with adverse health effects arising from contaminated drinking water. In addition, their health should be tracked during their lifetime as some of the impacts of hydrocarbon exposure, such as cancer, may not manifest, for a very long time.”

On its website, HYPREP claims that it is committed to carrying out this recommendation and has begun collecting preliminary data for a comprehensive health study<sup>83</sup> It also claims to have developed a work plan for the study and to have been waiting for a response to this by the UN system before the outbreak of Covid-19<sup>84</sup>. HYPREP did carry out medical outreach in 2017 and 2018 in Gokana, Tai, Khana and Eleme local government. In January 2019 HYPREP reported that “20,000 patients were treated with over 400 surgeries carried out”.<sup>85</sup> It stated that this data would be used for the health survey.

According to UNEP’s assessment of HYPREP’s progress in November 2019, only limited progress had been made. HYPREP had assessed 65 public health facilities for “institutional strengthening,” however “no people have been studied, identified nor treated”.<sup>86</sup>

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<sup>81</sup> Amnesty International meeting with Minister of Environment, Abuja, 28 August 2018

<sup>82</sup> UNEP, 2011, p215.

<sup>83</sup> HYPREP, *Public Health*, <https://hyprep.gov.ng/health-portal/>

<sup>84</sup> In correspondence with Environmental Rights Action, received June 12<sup>th</sup> 2020

<sup>85</sup> HYPREP Press Briefing By Dr. Marvin Dekil, The Project Coordinator Hydrocarbon Pollution Remediation Project (Hyprep) On Saturday 19th January, 2019, <https://hyprep.gov.ng/press-briefing-by-dr-marvin-dekil-the-project-coordinator-hydrocarbon-pollution-remediation-project-hyprep-on-saturday-19th-january-2019-in-the-conference-room-on-the-journey-so-far/>.

<sup>86</sup> UNEP- HYPREP Geneva Technical meetings report, November 2019.

## FAILURE TO MONITOR THE ENVIRONMENTAL IMPACT

In 2011, UNEP advised that a monitoring programme be set up, including comprehensive air quality monitoring, across Ogoniland.<sup>87</sup> The purpose of the monitoring was to detect ongoing pollution and establish guidelines and track improvements on sites where clean-up activities were under way. UNEP advised that all monitoring activities should be communicated to the community and all results made publicly available.

Researchers found no evidence that HYPREP did a baseline study or created key performance indicators to measure progress (KPI). In 2019, ERA/FoEN researchers along with support from Milieudefensie and Friends of the Earth Europe developed a detailed KPI to fill the vacuum with copies made available to HYPREP.<sup>88</sup> It is currently unclear that a comprehensive monitoring system is up to date and running.

At the time of writing, no information on environmental monitoring had been made public.

## LACK OF COMMUNITY ENGAGEMENT

A project of this magnitude in an area where people have suffered for decades as a result of oil pollution requires a detailed and thoroughgoing plan to engage affected communities and ensure that they support the clean-up. Projects need to be informed by the communities' concerns and priorities. They must also ensure that affected communities are able to fully take advantage of employment opportunities and own the solutions. This would also enable communities to play a lead role when other parts of the Niger Delta are cleaned up.

UNEP reflected this in its recommendations and asked for the Ogoni community to be enabled to take full advantage of the employment, skills development and other opportunities.<sup>89</sup>

HYPREP has organized many community-level events about the clean-up and the environmental impact of illegal refining. HYPREP states on its website that it has "carried out several trainings" on remediation for Ogoni scientists and livelihood training for "some Ogoni youths". It also states that sensitization sessions with local authorities, traditional rulers, women leaders, youth groups, village heads and religious groups have taken place, in addition to roundtable meetings with "high level stakeholders". HYPREP also says that held a "community by community engagement to sensitize them of the engagement of contractors" and task the communities with the following roles: "first as watch dogs to ensure the contractors delivered quality work and also to ensure security and peace during and after the clean-up."<sup>90</sup> There is no information available on how communities should fulfil

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<sup>87</sup> UNEP, 2011, p217.

<sup>88</sup> Environmental Rights Action/Friends of the Earth Nigeria, *Key performance indicators for the clean-up of Ogoni*, 2019, Benin City.

<sup>89</sup> UNEP, 2011, p228-9.

<sup>90</sup> HYPREP Press Briefing By Dr. Marvin Dekil, The Project Coordinator Hydrocarbon Pollution Remediation Project (Hyprep) On Saturday 19th January, 2019, <https://hyprep.gov.ng/press-briefing-by-dr-marvin-dekil-the-project-coordinator->

these roles, what these trainings actually focus on and if they result in actual access to jobs.

But HYPREP has failed to institutionalize community ownership of the project, as envisaged by UNEP and set out in the Official Gazette, which created a Central Representatives Advisory Committee (CRAC), chaired by the Project Coordinator and with membership from the oil companies, civil society, state government, traditional rulers and six community members.<sup>91</sup> The CRAC was not inaugurated until April 2019,<sup>92</sup> and held only its third meeting in January 2020; it is supposed to meet monthly.<sup>93</sup>

Through its communications, HYPREP creates the impression that it works closely with and involves the communities.<sup>94</sup> But its “community sensitisation” has little to do with community ownership of the clean-up project. Indeed, UNEP highlights that there are “high incidences of community disputes with HYPREP”.<sup>95</sup>

HYPREP publicly claims that it has given 1,000 Ogonis work,<sup>96</sup> but according to the internal HYPREP progress report, only 506 community workers have been “hired and trained to work with remediation contractors”.<sup>97</sup>

Pollution has seriously affected the livelihoods of the people living in Ogoniland, who largely worked in farming and fishing. The lack of adequate investments in the region and the failure to provide people with alternative income generation opportunities, has resulted in many local people, and particularly youth, turning to criminal activities to make ends meet. As long as the oil pollution in Ogoniland is not cleaned up and people are not provided with other livelihood options, illegal activities are likely to continue as part of income generation in this impoverished region.

#### FAILURE TO TAKE STEPS TO PREVENT FUTURE POLLUTION

UNEP recommendations also look to prevent future environmental oil pollution, as well as dealing with the consequences of past activities. In particular it called for a joint campaign to raise awareness of the disproportionate environmental footprint of artisanal refining, end illegal oil-related activities and provide alternative training, employment and livelihood incentives.<sup>98</sup> This is yet to happen.

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[hydrocarbon-pollution-remediation-project-hyprep-on-saturday-19th-january-2019-in-the-conference-room-on-the-journey-so-far/](#).

<sup>91</sup> Through monthly meetings, the CRAC is supposed to be aware of all relevant issues in the communities. Its tasks include to communicate about the project, engage with all stakeholders and handle any grievances from the communities. Federal Government of Nigeria Gazette, Vol 106, no 176, 12 December 2016.

<sup>92</sup> [https://twitter.com/HYPREP\\_Nigeria/status/1115287856497479680?s=20](https://twitter.com/HYPREP_Nigeria/status/1115287856497479680?s=20)

<sup>93</sup> [https://twitter.com/HYPREP\\_Nigeria/status/1219952973532536832?s=20](https://twitter.com/HYPREP_Nigeria/status/1219952973532536832?s=20)

<sup>94</sup> See for example HYPREP’s website: [Sensitization/Community Engagement](https://hyprep.gov.ng/sensitizationcommunity-engagement/), <https://hyprep.gov.ng/sensitizationcommunity-engagement/>

<sup>95</sup> *UNEP- HYPREP Geneva Technical meetings report*, November 2019.

<sup>96</sup> “The remediation works going on across Ogoniland has provided employment opportunities for about 800 youths on the 21 remediation sites as well as about 200 Ogoni youths in the Project Coordination Office (PCO). Overall, HYPREP has generated about 1000 jobs for youths of Ogoni.” HYPREP, Ogoni Clean-Up: FG through HYPREP will provide potable water in Ogoniland, February 2010, <https://hyprep.gov.ng/ogoni-clean-up-fg-through-hyprep-will-provide-portable-water-in-ogoniland/>

<sup>97</sup> Federal Ministry of Environment, HYPREP, Progress report 2019, Q4, March 2020

<sup>98</sup> UNEP, 2011, p228.

While HYPREP has started work to clean up, oil spills and operational faults continue to occur in Ogoniland. Analysis of hundreds of oil spills by Amnesty International has demonstrated the failure by Shell to take all reasonable measures to prevent spills and protect pipelines.<sup>99</sup>

Another very disturbing trend in Ogoniland is the exponential rise in illegal refining and bunkering in recent years. Local human rights organizations estimate that this has at least doubled since 2015.<sup>100</sup> Artisanal refining has become an industry involving officials, security forces and community members, creating employment for thousands of local people who have lost their livelihoods because of decades of oil pollution and the failure to make concerted efforts to provide them with alternatives.<sup>101</sup>

#### CHAPTER 4: INSTITUTIONAL WEAKNESS AND LACK OF TRANSPARENCY

According to UNEP's technical assessments of HYPREP, the organization has been beset by structural problems since it began. The February 2019 UNEP assessment of HYPREP's capacity observed: "There is no overall strategy for HYPREP to achieve its mission of implementing the UNEP report. As a result, it is not possible for the various elements of HYPREP (both within, as well as the consultants) to formulate their respective strategies and action plans."<sup>102</sup>

In November 2019, UNEP concluded that "HYPREP is not designed, nor structured, to implement a project as complex and sizable as the Ogoniland clean-up."<sup>103</sup>

It highlighted the following issues:

1. The absence of a work/implementation plan;
2. Severe financial and administrative bottlenecks;
3. A lack of relevant project experience at the level of unit managers;
4. Cumbersome federal government administrative and financial procedures."<sup>104</sup>

Flaws in HYPREP's procurement process meant that at the rate it was disbursing funds, "it will take HYPREP 100 years to utilize its 5-year budget," UNEP warned.<sup>105</sup>

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<sup>99</sup> Amnesty International, *Negligence in the Niger Delta*, 2019.

<sup>100</sup> Stakeholder Democracy Network, *More Money, More Problems: Economic Dynamics of the Artisanal Oil Industry in the Niger delta over Five years*, May 2019, <https://www.stakeholderdemocracy.org/wp-content/uploads/2019/06/AOR-digital-layout-28.05.19-JB-24.06.19-DT.pdf>. This estimated that there are five times more artisanal refineries in Rivers and Bayelsa state in 2019 than in 2015.

<sup>101</sup> Stakeholder Democracy Network, *More Money, More Problems: Economic Dynamics of the Artisanal Oil Industry in the Niger delta over Five years*, May 2019, <https://www.stakeholderdemocracy.org/wp-content/uploads/2019/06/AOR-digital-layout-28.05.19-JB-24.06.19-DT.pdf>

<sup>102</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019.

<sup>103</sup> UNEP- HYPREP Geneva Technical meetings report, November 2019.

<sup>104</sup> UNEP- HYPREP Geneva Technical meetings report, November 2019.

<sup>105</sup> UNEP- HYPREP Geneva Technical meetings report, November 2019.

## UNRELIABILITY OF LABORATORIES

Privately owned laboratories are used for assessing the effectiveness of remediation. But according to a preliminary assessment by UNEP of the laboratories used by HYPREP, none of the four had the required accreditation.<sup>106</sup>

The preliminary assessment, which was shared with HYPREP's Governing Council and Board of Trustees among others, highlights some "very worrying trends" observed during UNEP's inspection of the local laboratories. UNEP raised "serious concerns about the quality and reliability of results produced within local laboratories" and advised that the results be treated "with caution until such time as the raft of recommendations are implemented."<sup>107</sup>

Following this assessment HYPREP discontinued the use of two of the four laboratories by the end of 2019.<sup>108</sup>

## LACK OF RELEVANT EXPERTISE AMONG CONSULTANTS AND CONTRACTORS

In May 2019, *Premium Times* revealed how the tender process for the clean-up of sites resulted in the hiring of "companies [which] were set up for businesses such as poultry farming, cars sales, textile dealership and fashion, palm-oil production, building design, and construction." It verified the registration files of 16 of the 21 companies hired; none had five years of experience in hydrocarbon remediation. On the contrary, 11 of the 16 had not registered any expertise in oil pollution remediation or related areas.<sup>109</sup> For example, the company in charge of Lot 2 was registered as a palm oil business; the company in charge of Lot 11 was registered as specializing in agricultural and poultry farming; and the company responsible for Lot 18 had registered a wide range of activities varying from car dealing, to "fashion house", import and exports and "supply services and maintenance of oil field equipment".<sup>110</sup>

HYPREP claimed that all companies have the required documents and are accredited with the National Oil Spill Detection and Response Agency (NOSDRA).<sup>111</sup> NOSDRA is responsible for the accreditation and for all new applicants and is supposed to conduct an inspection of the facilities.<sup>112</sup> The government did not investigate the allegations, but simply said that all companies had met their procurement requirements.<sup>113</sup>

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<sup>106</sup> UNEP, *Preliminary Assessment of HYPREP-Approved Laboratories*, September 2019.

<sup>107</sup> UNEP, *Preliminary Assessment of HYPREP-Approved Laboratories*, September 2019.

<sup>108</sup> HYPREP letter to ERA, 3 June 2020.

<sup>109</sup> Premium Times, *INVESTIGATION: How Buhari administration awarded Ogoni cleanup contracts to unqualified firms*, 5 May 5, 2019, <https://www.premiumtimesng.com/investigationspecial-reports/328460-investigation-how-buhari-administration-awarded-ogoni-cleanup-contracts-to-unqualified-firms.html>

<sup>110</sup> Premium Times, *INVESTIGATION: How Buhari administration awarded Ogoni cleanup contracts to unqualified firms*, 5 May 5, 2019, <https://www.premiumtimesng.com/investigationspecial-reports/328460-investigation-how-buhari-administration-awarded-ogoni-cleanup-contracts-to-unqualified-firms.html>

<sup>111</sup> Premium Times, *INVESTIGATION: How Buhari administration awarded Ogoni cleanup contracts to unqualified firms*, 5 May 5, 2019, <https://www.premiumtimesng.com/investigationspecial-reports/328460-investigation-how-buhari-administration-awarded-ogoni-cleanup-contracts-to-unqualified-firms.html>

<sup>112</sup> See NOSDRA, <https://nosdra.gov.ng/accreditation.php>

<sup>113</sup> Premium Times, *Ogoni Cleanup: Despite Violations, Nigerian govt insists contracts followed due process*, 8 May, 2019, <https://www.premiumtimesng.com/news/headlines/328901-ogoni-cleanup-despite-violations-nigerian-govt-insists-contracts-followed-due-process.html>

The Ministry of Environment is responsible for all procurement, including all consultants, who also report to the Ministry as well as the HYPREP Project Coordinator.<sup>114</sup> HYPREP has made very limited information publicly available about individual contractors, their expertise, why they were selected, budgets and how they perform.<sup>115</sup>

#### POTENTIAL CONFLICTS OF INTEREST

From the outset, the oil companies, including Shell, were given oversight roles in the Governing Council and Board of Trustees of HYPREP:<sup>116</sup> SPDC's managing director sits on the Governing Council and shares a rotating post on the Governing Council with two representatives of other oil companies. There are also two experts from SPDC seconded to HYPREP – focusing on health, safety and the environment and general project management – who report directly to SPDC's Head of the Ogoniland Restoration Project.<sup>117</sup> In addition, Shell has been part of meetings on HYPREP's strategy, workplan and budget.<sup>118</sup>

There are also reports that individuals in senior positions in HYPREP have or have had links with Shell or SPDC.

HYPREP's Project Coordinator is listed as one of three directors of a private company, Dexcom Solution Limited,<sup>119</sup> registered in 2005.<sup>120</sup> According to the

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<sup>114</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019. This document lists three project management consultants; three monitoring and evaluation consultants; and four communication consultants.

<sup>115</sup> Three consulting firms have been hired to provide project management, monitoring and evaluation and communications support. In addition, some consultants working on technical, communications and project management, funded by UK Department for International Development (DFID), report directly to the Project Coordinator. Foster, Facility for Oil Sector Transparency and Reform, is a programme that has worked in Nigeria since 2011. It supported amongst other things the development of the HYPREP gazette. See: <https://devtracker.dfid.gov.uk/projects/GB-1-205126/documents>

<sup>116</sup> The Board of Trustees has one representative from the oil companies and the Governing Board. They are not paid allowances.

<sup>117</sup> UNEP, *Institutional Capacity Assessment of HYPREP*, February 2019.

<sup>118</sup> Shell, *The UNEP Environmental Assessment Of Ogoniland*, April 2018,

<https://www.shell.com.ng/sustainability/environment/unep-environmental-assessment-of-ogoniland.html>

<sup>119</sup> DEXCOM SOLUTION LIMITED <https://ng-check.com/dexcom-solution-limited/1073956.html>

<sup>120</sup> Corporate Affairs Commission, RC number 614155, registered on 10 January 2005, <https://publicsearch.com.ng/>

HYPREP website, he was Managing Director of Dexcom Solutions from 2014<sup>121</sup>. According to his LinkedIn page he was Managing Director from January 2005 to March 2017<sup>122</sup> In 2012, he started working at HYPREP as Head of the Environmental/Land/Coastal Restoration Unit and in 2017 he was appointed Project Coordinator.<sup>123</sup>

Dexcom Solutions have “cleaned up” at least one SPDC site that UNEP listed as a remediated site and which HYPREP is currently cleaning up again (Lots 13 and 14). Dexcom Solutions reports that Shell is a “major client” of the company.<sup>124</sup>

The current Head of Operations at HYPREP, who is responsible for all clean-up processes, was in charge of Shell’s clean-up of Ogoniland as the head of Shell’s Ogoni Restoration Project, until his retirement.<sup>125</sup> According to the Nigerian Association of Petroleum Explorationists, he has “designed and executed over 700 remediation projects of hydrocarbon contaminated soil in Niger Delta”.<sup>126</sup> Under his leadership at Shell, the company claims to have cleaned up some of the sites that HYPREP is currently cleaning up again.

Such potential conflicts of interest risk eroding public confidence in HYPREP’s independence. If trust in HYPREP is reduced among local communities, they are less likely to turn to HYPREP to express concerns about how the clean-up is carried out.

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ch.cac.gov.ng/

<sup>121</sup> <https://hyprep.gov.ng/project-coordinator/>

<sup>122</sup> <https://www.linkedin.com/in/marvin-dekil-ph-d-458b79a>

<sup>123</sup> See the CV of the Project Coordinator on HYPREP’s website, where he also includes his role as Managing director of Dexcom Solutions Ltd. <https://hyprep.gov.ng/project-coordinator/>

<sup>124</sup> UNEP, *Preliminary Assessment of HYPREP-Approved Laboratories*, September 2019. See [Dexcom](#)

<sup>125</sup> The Nigerian Association of Petroleum Explorationists, Technical / Business Presentation, February 2020, <https://nape.org.ng/abuja-chapter-february-technical-business-meeting/>

<sup>126</sup> The Nigerian Association of Petroleum Explorationists, Technical / Business Presentation, February 2020, <https://nape.org.ng/abuja-chapter-february-technical-business-meeting/>

## CONCLUSION

Almost nine years after the publication of the UNEP report this research reveals that there is still no clean-up, no fulfilment of 'emergency' measures, no transparency and no accountability for the failed efforts, neither by the oil companies nor by the Nigerian government. The efforts that have been made have been too little, too weak and have not resulted in effective clean up. The government of Nigeria must now drastically step up its ambition to implement in full the recommendations of the 2011 UNEP environmental assessment report for Ogoniland. This starts by prioritising the interests of the communities of the Niger Delta over those of the oil companies and the continuation of oil production. In cases of past, present, and future environmental damage, pollution and human rights violations, those responsible should be held accountable and liable. Prosecution of offenders is crucial. Wherever they are an obstacle to the protection of the local population and the environment, extraction, processing and transport operations should be ended.

In order to deliver a successful clean up the Nigerian government must ensure that effective, transparent and accountable structures are in place, using the best independent external expertise. This will require a thorough overhaul of how HYPREP operates, the elimination of conflicts of interests and the use of qualified professionals. The reasons for the ongoing failure to implement the clean-up need to be made public and the necessary corrective measures have to be carried out without delay.

While oil companies, including Shell, must commit to funding the full clean-up of Ogoniland as they are responsible for the ongoing pollution, but they should no longer be involved in the management and oversight structures, such as the Governing and Management boards.

All old and ageing pipelines and other facilities should be finally and effectively decommissioned to prevent further pollution and human rights violations from their equipment and operations.

The communities of the Niger Delta who have enduring decades of pollution have waited far too long for justice. It is time to end oil pollution in Ogoniland and the rest of the Niger Delta

## RECOMMENDATIONS

### **TO THE FEDERAL AND RIVERS STATE GOVERNMENT**

#### **RESPECT, PROTECT AND FULFIL THE RIGHTS OF THE PEOPLE IN OGO NILAND**

- As a matter of urgency, provide the 'Emergency measures' UNEP recommended in 2011, including ensure safe drinking water for all people.



- Develop publicly accessible multi-annual plans with assigned budget to implement all other recommendations of the UNEP report, including:
  - Remediation of all polluted sites to international standards
  - the Public Health Study,
  - Environmental monitoring,
  - Alternative livelihoods
  - A campaign against environmental degradation
  - Community engagement.
  - the Centre of Excellence for Environmental Restoration.
- Develop and implement a strategy to address the root causes of oil pollution, in consultation with the local communities, local and state authorities, regulatory bodies and civil society. This includes the effective decommissioning of all aging and damaged pipelines and facilities and ending production, processing and transporting oil if it is needed to protect local communities and the environment.
- Ensure the local communities are fully involved in, and consulted with regarding the restoration of Ogoniland to enhance local ownership of, and cooperation with, the process including through the development of Key Process Indicators (KPIs)

#### STRENGTHEN HYPREP

- Reinvigorate HYPREP and introduce legislation to ensure that HYPREP is an independent agency with the necessary legal backing.
- Publish and enforce a robust conflict of interest policy that ensures that the oil companies have no role in the staff, management, or oversight structure of HYPREP.
- Ensure HYPREP are totally transparent and publish all information about the operations, budgets, reports (including audits) and performance, including on the HYPREP website.
- Ensure that HYPREP has all of the necessary equipment, tools and resources to implement this billion-dollar project.
- Seek UNEP's assistance to substantially strengthen the capacity of HYPREP and ensure that it functions in compliance with the highest professional standard, that it operates with full transparency and that staff are held accountable for their actions.

#### ENSURE ACCOUNTABILITY AND TRANSPARENCY

- Publish all oil spill clean-up and remediation certificates and other documents relating to remediation. Information should include the names of contractors and laboratories, results of soil and water sampling before and after the remediation work is conducted, maps of the contamination, a detailed work plan, how the work was completed, and site photographs.
- Make available to the public, on a regular basis, information about HYPREP's performance, including budgets, procurement activities and the award of

contracts; performance against KPIs; annual audit reports; and reports to the Governing Council and Board of Trustees.

- Undertake an independent external audit of HYPREP's senior staff, consultants and contractors to assess their performance and if there are any conflicts of interest. Under-performing staff must be terminated, or re-deployed, immediately and suitable replacements sought as a matter of urgency.
- Make publicly available the list of criteria for hiring clean-up contractors and how they meet those criteria. Ensure that only qualified contractors are hired.
- Conduct an independent assessment of the clean-up progress for the sites currently undergoing 'clean up' including soil and water sampling, by qualified laboratories. Under-performing contractors must be terminated and suitable replacements sought as a matter of urgency.
- Provide an audited report on the 31 million USD made available thus far, including verifiable information on which UNEP recommendations have been effectively implemented with this budget.
- Ensure regular monitoring of clean-up efforts and publish reports on progress against KPIs
- Undertake an independent audit of how NOSDRA certified as clean the sites UNEP recommended for clean-up in 2011 and which HYPREP is currently cleaning up, publish this audit along with recommendations for addressing weaknesses in NOSDRA to better enable the organisation to fulfil its mandate.
- Set up an independent, multi-stakeholder, investigation into illegal activities, such as artisanal refinery and bunkering, and make public the findings with a view to identifying long-term and sustainable solutions and livelihood options.

#### ENSURE OIL COMPANIES PREVENT AND CLEAN UP OIL POLLUTION

- Require oil operators comply with the polluter pays principle and take all reasonable action to prevent sabotage and theft and impose effective penalties on those that fail to do so.
- Require operators to publish all documents and associated photographs and video footage related to oil spills. Companies should be required to provide clear, close-up photographs of spill points, clear photographs of the affected area and video footage of any oil release. In the event that the company fails to keep proper records, financial penalties should be imposed.
- Require operators to publish all certificates and reports relating to spill site clean-up and remediation, along with the underlying data.
- Require operators to publish each year the condition of their pipelines and other assets and to disclose the age of infrastructure and all repairs and replacements

#### RECOMMENDATIONS TO SHELL

- Ensure that all communities affected by failed or delayed in the clean-up of oil spills receive adequate compensation for their losses.
- Carry out effective clean-up and remediation operations at Shell oil spill sites not being cleaned up by HYPREP, notwithstanding Shells final responsibility for the clean-up for those sites in consultation with the local communities, as a matter of urgency.
- Improve its strategy and interventions on maintenance pipelines/ infrastructure and prevention of oil spills. This includes effectively decommissioning all aging and insufficient facilities and pipelines as the current old network is responsible for many of the oil spills and other accidents.
- Avoid any real or perceived conflict of interest in relation to the clean-up – which means withdrawing from all the bodies responsible for the remediation of the pollution, including governing and oversight structures.
- Commit to funding the clean-up of Ogoniland until it is completed and commit to funding the clean-up of the rest of the Niger Delta.
- Overhaul Shell’s failing remediation methodology in line with the recommendations of UNEP (2011), and publish details of how it has changed.
- Publish the data that underpins Shell’s claims that it cleaned up and remediated sites named in the UNEP report. State which sites, identified by UNEP as in need of clean up, Shell has not yet cleaned up and why.
- Publish the criteria by which Shell selects clean-up and remediation contractors, including the weight now given to different criteria, as well as quality control measures in place.
- Publish the names of all clean-up / remediation companies used by Shell.

## **RECOMMENDATIONS TO UNEP**

- Engage in open and forthright discussions with the Government of Nigeria about the reasons behind HYPREP’s failure to implement the UNEP recommendations.
- Explore ways in which UNEP can provide greater assistance to the Government of Nigeria in the implementation of the 2011 recommendations.
- Devise and implement strategies to strengthen and, to the extent necessary, re-structure HYPREP to ensure that it can deliver on its mandate, and that the clean-up of Ogoniland finally becomes a reality – albeit it that almost ten years has passed since the publication of UNEP’s 2011 report.

## **RECOMMENDATIONS TO OTHER GOVERNMENTS**

Home states of the oil companies active in the Niger Delta, such as the Netherlands, the UK, France and Italy should recognise that for decades, they have prioritised the interests of ‘their’ companies over the interests of the communities in the Niger Delta and their interventions were all too often guided by the oil companies. They should make a fundamental shift and prioritise the clean-up of Ogoniland and the rest of the Niger Delta.

In order to do that, they should increase engagement with and support for the Nigerian government to ensure effective implementation of UNEP's recommendations, and independent oversight of the oil industry as well as better access to effective remedy for people whose rights are adversely affected by oil operations in the Niger Delta

Moreover, they should make sure that the oil companies are required to act responsibly and can be held liable for their negative impacts. They must require by law that Shell and other extractive companies that have their headquarters or are domiciled in their 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. This should include liability for harm caused and access to remedy in the home states of the companies, for affected communities. They should therefore initiate and support domestic and EU proposals for corporate accountability legislation. They should also engage with and support a strong UN Treaty that would provide access to justice for victims and tools to hold companies accountable for their impacts.

