



## **Niger Delta – Oil Pollution Special**

Two reports in the last week are set to cause a fundamental shift in the response to oil pollution in the Niger Delta. A report by UNEP on Ogoni has found that the extent of damage is far greater than has previously been acknowledged. Meanwhile Shell's admission of responsibility in a British court for two large oil spills, also in Ogoni (Bodo), underscores the damage and liabilities that have been lying dormant in the region for years.

The scale of these developments is not to be understated. UNEP has estimated initial clean up costs of over \$1 Billion for the first five years of a 25 to 30 year process.

Shell may contest estimates of its liability for the Bodo spills - reportedly running to hundreds of millions of dollars - but its swift concession to have the case settled under British law appears to be driven by evidence that would be a public relations disaster should it ever reach court hearings.



## The UNEP report in summary

The UNEP assessment of environmental pollution in Ogoni throws a spotlight back on a small part of the Niger Delta known for its peaceful protests in the 1990s and the subsequent execution of Ken Saro Wiwa and 8 MOSOP (Movement for the Survival of Ogoni Peoples) leaders. Oil has not been produced in Ogoni since 1993, but spills have continued from ageing pipelines, oil theft (known as bunkering), and hastily abandoned infrastructure.

The choice of Ogoni for UNEP's study was part of a faltering reconciliation process started under President Obasanjo in 2005/2006. The other components have largely ground to a halt. It took almost three years for the UNEP study to get started before two years of substantive work were completed between 2009 and 2011.

In the period of its work, UNEP has come under criticism from several sides. It has had to defend the rationale of accepting funding for the study solely from Shell. There have been serious breakdowns with the Ogoni grassroots movement MOSOP and limited engagement with other civil society groups. Most embarrassing of all was the controversy that broke over UNEP's concerns about ongoing oil bunkering, which were swiftly and widely interpreted as a precursor to the agency issuing a biased and flawed report. The final report did not do this.

The findings of the UNEP assessment contain a stout defence of their methodology – in fact close to 100 pages of the 262 page main report are dedicated to the method followed by the team. The body of the report is too short for the dozens of fact sheets on individual sites that have also been released. The report also contains findings that are damning for most of the major actors in the oil industry and in particular in relation to the reality of their operational practices. This report highlights their collective failings in Ogoni, but should be read with the equally serious implications for ongoing

operations across the Niger Delta in mind.

## **Levels of Pollution**

The central finding of the report is that pollution from incidents that span 40 years is far more pervasive than has previously been acknowledged. The headline damage to soil and groundwater have already been highlighted in [executive summaries](#) and media reports.

While the case of Ogale in Eleme has been highlighted – at over 900 times the WHO standards for water contamination – there are 28 communities that have been surveyed and found to be using water from community wells far in excess of safe limits.

The report does not mince words on the implications for local populations. It concludes that people in communities around oil facilities have been living with chronic exposure to pollution that spans up to forty years. This is equivalent to the full lifespan of Nigerians in rural communities.

The gravity of these findings is already sinking in locally – a presentation by UNEP of the report to local stakeholders that included many from Ogoni was met with shock over the day-to-day implications for those living in contaminated zones.

Other actors familiar with the extent of oil spills across the Niger Delta are re-examining how they confront the institutional indifference which has characterized the response to oil spills over decades.

## **Soil and Water Pollution- Clean up failures**

*“Clean up efforts by SPDC are not leading to environmental restoration nor legislative compliance, nor even compliance with its own internal procedures”*  
UNEP Assessment p135

In a context where the findings of oil pollution are extensive and its damage is found to be wide ranging the impact of clean up exercises is vital. The findings by UNEP visiting 15 *'successfully remediated'* sites have implications across the Niger Delta.

UNEP found that at a number of sites soil pollution has penetrated to 5 metres or more in depth. Previously Shell and government agencies had not even measured beyond 1 metre. In Shell's case this was apparently due to a desktop study finding that a continuous layer of clay would prevent oil from seeping deeper (see p145 for details). The UNEP study finds that this *'continuous layer'* simply does not exist.

At 10 of the 15 sites pollution was found above the levels deemed by Shell and

inspectors as 'safe' for closure. At 9 of these 10 sites oil pollution was found at below the 1 metre level designated by Shell as the deepest point worthy of investigation.

The levels of persistent pollution appear to be damning. At four 'cleaned' sites the levels of toluene in groundwater measured were more than 100 times the WHO standards. A table summarizing the levels of contamination at these 'cleaned' sites (p135 of the report).

Shell will need to radically overhaul its policy and practices if it is not going to continue to contribute to the environmental crisis facing Ogoni and the Niger Delta.

### ***Bunkering and 'Operational Failure'***

The report highlights that despite the extraordinary levels of pollution there is ongoing damage from a variety of sources. Almost all actors share responsibility for ongoing spills, ranging from 'operational failure' through to criminal damage.

However, the eagerness with which parties seek to apportion blame for pollution to each other without taking responsibility for their own continued failings is something that should be condemned. Shell's response to the UNEP report claimed that its position on the pre-eminence of bunkering damage was vindicated by the report was both a misrepresentation and a stunning blunder. Shareholders will likely demand accountability, in a context where after a decade of reassurances its practices had been found to have profoundly and now demonstrably failed.

The report delicately points out the obvious – that extraordinarily damaging makeshift refineries are so obvious that either authorities are incompetent or they are complicit. All actors must face this issue squarely, from oil operators whose facilities are simply insecure, through to security agencies and communities who must find the will to act against a criminal industry that does extensive damage for the community as a whole which is way out of all proportion to the profit for those involved.

The national oil company NNPC earns a well deserved case study that highlights the shared responsibility – with one particularly graphic spill from 1990 that has had absolutely no clean up and is very likely to be culpable for the shocking levels of contamination at Ogale.

Less mention is made of the more obvious roots of 'operational failure' – Shell and NNPC continue to operate pipelines across Ogoni that are in places nearly 40 years old. Most of these 'operational failures' have been the predictable consequences of using facilities far beyond their intended lifespan.

## **Regulatory Failure**

*“In the five years since NOSDRA was established, so few resources have been allocated that the agency has no proactive capacity for oil-spill detection. In planning their inspection visits to some oil spill sites, the regulatory authority is wholly reliant on the oil industry for logistical support”*

UNEP report on the National Oil Spill Detection and Response Agency (NOSDRA)

The UNEP report has looked at a number of the causal factors as to why pollution in Ogoni was allowed to continue and reach its present appalling levels. One of the key points raised is familiar to anyone who has followed the case of the *Deepwater Horizon* in the Gulf of Mexico.

Regulation of oil operations is largely governed by the Department of Petroleum Resources (DPR), a unit of the national oil company NNPC and a confusing host of less influential agencies. In turn NNPC is a joint venture partner in every oil field in Nigeria. In the case of Ogoni NNPC is even the major shareholder in the joint venture operated by SPDC.

The situation is made worse by a lack of clarity over the roles of the DPR and a series of overlapping agencies such as NOSDRA (Niger Delta Oil Spill Detection and Response Agency) – tasked with oil spill response and situated within the Ministry for the Environment. It has even less resources than the DPR and almost no capacity to visit oil facilities without the active assistance of the companies it is supposed to regulate.

In circumstances where oil pollution continues at an extraordinary rate UNEP's recommendation that the inspection and oversight of oil operations needs to be made fully independent of the industry should take on an urgency that reflects an ongoing crisis. SDN fully supports NACGOND's call for President Goodluck Jonathan to seize the moment created by this crucial report and undertake a Presidential review of why the current system of oil spill identification, response and redress is broken with a mandate to identify a clear new path of regulation and oversight.

## **The UNEP Recommendations**

*“Let me assure you that we are not just going to put this report in our drawer and lock it up. We are going to act on it.”*

President Goodluck Johnathan at presentation of UNEP report

This short update will not do justice to a set of [recommendations](#) that deserve close examination by any actor involved in the Niger Delta.

There are detailed recommendations about the type of institutions and interventions that will be required to champion an unprecedented clean up exercise over a period of more than twenty years. The recommended formation

of world class institutions to support clean up and restoration initiatives is also vital. There is a profound lack of institutional capacity which will need both international expertise and a sound base for local capacity to grow.

The UNEP also points out the obvious – that a restoration on this scale will be labour intensive and is precisely the sort of large public works scheme that would have an impact on mass unemployment. It would be foolish for the government to ignore the benefits that a major increase in public works employment could bring to rural economies and stability.

The implications of the report are profound – the practices and failings outlined in the report are not limited to Ogoni, nor are the extensive oil spills. The report has now made obvious what activists have claimed for many years – that the stabilization and restoration of the Niger Delta will require decades of work and come at a cost that runs into billions of dollars.



## **Timely responses to this report are crucial**

A delay in effective follow up will allow indefensible and perhaps irreparable environmental damage to continue.

In particular, there should be immediate Federal Government led responses to protect communities identified in the report whose sources of drinking water are contaminated. It is noteworthy here that UNEP broke off from its work to inform the government of the situation in Ogale in January and yet SDN checks indicate that as at this week no action appears to have been taken.

Several key actors now need to reconsider their position. Some activist groups – including MOSOP – have condemned the process followed by UNEP and disassociated themselves from the whole process. SPDC has responded by claiming that the report vindicates its position about the predominant problem being bunkering – something which was not a finding. This leads some to question whether Shell can break free of its obsessively defensive position to acknowledge real failings. Shell needs to acknowledge that their policies have not met Nigeria's standards or met the basic environmental standards the company has set for itself.

To date the Federal Government comments on the report has been the most mature and constructive, but it is vital that its easy words are followed by action. The starting point is obvious – emergency water supply for Ogale, about which it was briefed six months ago, and at least 28 other badly affected Ogoni communities.

The report makes it clear there is a need for government leadership on three fronts:

1. **Acknowledge and act on Regulatory Failure** – where institutions are both wrongly structured and totally inadequate funds have been provided

for proper oversight.

2. **Provide a credible framework for Ogoni restoration** – The UNEP report has recommended a fund that will run into billions of dollars and new institutions. The Federal Government must find ways to implement this knowing that they will operate in an environment where severe levels of corruption and mismanagement have undermined past efforts.
3. **Recognize the inevitable extension of work in Ogoni** -There is no question that the systemic failures identified in Ogoni have affected the Niger Delta as a whole.



## **The Bodo Oil Spills – More than a footnote**

The admission by Shell of liability for two oil spills in southern Ogoni forestalled their appearance for the first time in a British court for their operations in Nigeria. The case was brought by class action specialists Leigh Day – who also acted for local communities in the infamous Trafigura [toxic dumping in Ivory Coast](#).

The implications for Shell and the wider industry are profound and globally important for international oil companies operating in developing countries where the management and enforcement of regulations is lax.

To avoid their day in court Shell have agreed to settle the case under English law – an entirely new terrain that has given rise to the estimates of damages in excess of £100 million.

Aside from the issue of compensation the process of settling the case in the English courts will bring about several changes that will benefit the community. The delays in court proceedings – which routinely are stretched into decades – will be truncated. Equally the arbiter of Shell's remediation in Bodo will shift from the pliant Nigerian authorities to the British court system which may prove far more demanding over the standards of anticipated work.

In light of the UNEP report Shell can also expect pressure to undertake immediate steps to prevent further damage both to the local environment and the health of communities around Bodo. SPDC has taken a constructive step by admitting liability but the integrity of its response from this point forward will now be more closely monitored than ever before.

Although Royal Dutch Shell has been excused from the case by SPDC's admission of liability, it falls to the parent company to provide resources and expertise that the UNEP report has made clear are clearly not available to

SPDC. Having defended SPDC's environmental management over the past decade Royal Dutch Shell also shares a critical responsibility in acknowledging failings and putting them right.

### **Why did Shell settle so quickly ?**

The detail of the Bodo case would seem to be damning. An oil spill which is sourced from corroded and aged pipelines, a failure to respond to the spill for weeks nor an initial process of inspection and negotiation with the communities, which highlights all that is wrong with the industry.

By now Shell will be confronted with another uncomfortable fact – SPDC continues to operate some pipelines and facilities far outside Nigeria's and Shells own standards and their operational lifespans, including the pipelines that are the subject of this litigation.

The inevitable question – how large will the liability be, if operations continue using inadequate and aged equipment and how many more cases like Bodo are awaiting attention?

### **Where Next?**

SDN and a number of Nigerian NGOs have been advocating over the past year for root and branch reform of the prevention and response measures for pollution arising from the oil industry.

The findings of the report imply a number of other steps not already dealt with which logically also should follow:

- ✦ The Petroleum Industry Bill (Still before the National Assembly) must be re-considered in the light of regulatory questions raised by the report
- ✦ The Federal Government (Ministry of Finance) must make immediate provision for its liability in beginning environmental restoration in Ogoni and the wider Niger Delta
- ✦ Immediate steps to assess oil impacts across the Niger Delta should be commenced – with known hotspots taken as an urgent priority
- ✦ Oil companies operating in the Niger Delta should make immediate provision for their own liability in clean up costs – and set aside funds accordingly

## **Further Information**

[>> Press Statement from the National Coalition on Gas Flaring and Oil Spills in the Niger Delta](#)

[>> Download the full UNEP Report](#)

[>> Guardian: Shell accepts liability for two oil spills in Nigeria](#)

[>> Shell: United Nations report on Nigeria oil spills](#)

[>> Next: Federal Government response to UNEP report](#)

[>> Guardian: Clean up of Ogoni could be 'environmental model'](#)