



Follow-up regarding the Specific Instance of Aminigboko Community versus the Shell Petroleum Development Company of Nigeria Limited and Shell Headquarters

Date: 23 January 2025

Follow-up on the Final Statement by the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises. The Final Statement was published on 10 February 2023.

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Note: The conclusions and recommendations in the Final Statement as well as the outcomes of the Follow-up were based on the Guidelines' versions 2000 and 2011. In the conclusion of this Follow-up the NCP has taken into account the updated Guidelines' version, which came into force on the 8th of June, 2023.

1. Introduction

On 10 February 2023, the Dutch National Contact Point (NCP) concluded the notification of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by The Shell Petroleum Development Company of Nigeria Limited, Nigeria, and Shell Headquarters, based in the Netherlands (hereinafter jointly: the enterprise) at the time of the submission.

The notification was submitted by the Uwema (Paramount Traditional Ruler) of the Aminigboko Community, Council of Chiefs and Elders and Community Development Committee in Aminigboko Community, Emughan Clan in Abua/Odual Local Government Area of Rivers State, Nigeria.

The notification regards alleged violations of the first eight chapters of the OECD Guidelines, amongst which General Policies, Disclosure, Human Rights and Environment. According to the notifying parties, the enterprise has, amongst others, established parallel leadership of the community and polarized it, not disclosed the environmental impact assessment to

the community, not cleaned up oil contamination and forcefully entered the land with armed forces.

In its Initial Assessment of 3 June 2021, the NCP concluded that the issues raised merited further consideration and offered its good offices to facilitate a dialogue between the parties.

The notifying party accepted the good offices, however, the enterprise did not. Subsequently, the NCP conducted a further examination, to assess whether the enterprise concerned had or had not observed the OECD Guidelines on the grounds put forward in the notification. The further examination resulted in the Final Statement.

In the Final Statement, the NCP made the following assessment regarding the issues raised in the specific instance:

Based on the detailed information provided by the notifying party and the lack of meaningful response by the enterprise on questions posed by the NCP in the examination phase, the NCP assessed that the enterprise had failed to demonstrate that it had acted in line with the Guidelines and that therefore the NCP was unable to establish that the enterprise had observed the chapters General Policies, paras 1, 3 and 7; Disclosure, paras 1, 2 and 4; Human Rights, paras 1-3; Employment and Industrial Relations, para 5; Environment, paras 2a, 2b, 3 and 5.

The NCP made the following assessment regarding cooperation in the NCP Procedure and related responsibilities:

While the enterprise had displayed a certain cooperative stance throughout the procedure in terms of providing some basic information, it was the NCP's assessment, given i) the lack of information provided in relation to the possibilities of exercising leverage over the SPDC JV, ii) its non-acceptance of the good offices and iii) the lack of a meaningful response to the questions the NCP posed in the examination phase, that the enterprise had not acted as could have been expected from it under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to "Provide for or cooperate in remediation when appropriate", based on Chapter II General Policies, para A.10 and A.12 of the Guidelines. The lack of cooperation in the NCP procedures by the enterprise therefore meant it also had not acted as could have been expected from it under paragraph 21 of the Commentary on the Procedural Guidance.

Furthermore, the NCP provided the enterprise with several recommendations, which are the subject of the Follow-up and can be found in section three of this document.

2. Procedure of the Follow-up

The standard procedure for a Follow-up is that the NCP initiates a Follow-up one year after the publication of a Final Statement. The purpose of such a Follow-up is for the NCP to assess, based on information provided by the parties, what follow-up actions parties have taken in relation to the results of the dialogue and/or the recommendations made by the NCP. Usually, this process is done in writing. However, if parties prefer, the NCP can also organize a meeting. In the case of the specific instance concerned, the procedure was carried out in writing.

In accordance with the NCP procedure, the Follow-up was scheduled to be conducted one year after the publication of the Final Statement. Due to the extensive workload of the NCP, the Follow-up procedure was delayed by a six months. Parties were duly informed of this delay.

The NCP initiated the Follow-up by contacting both parties with the request to give an account of the follow-up actions that were taken in relation to the NCP’s recommendations. After receiving written feedback from the parties, the NCP drafted the Follow-up and shared the draft with both parties. Only the notifying party provided comments, after which the NCP finalized the Follow-up and posted it on its website.

Date	Actions
5 Aug 2024	NCP sent mails to both parties requesting information on what follow-up they gave to the NCP’s recommendations
23 Aug 2024	NCP received response from the enterprise
26 August 2024	NCP received response from the notifying party
9 Dec 2024	Draft text sent to both parties for comments
16 Dec 2024	Comments received from the notifying party
19 and 27 Dec 2024	Reminders sent to enterprise
23 Jan 2025	Publication of the Follow-up of the Final Statement

3. Outcomes of the Follow-up

While the notifying party responded in detail to the NCP’s request to give an account of the follow-up actions that were taken in relation to the NCP’s recommendations, the enterprise only communicated by referring to its previous responses given during the procedure. It also stated that *“as a responsible operator, it is committed to conducting its operations in full compliance with applicable laws, regulations, and international environmental standards. SPDC remains open to addressing genuine concerns through constructive stakeholder engagement and it remains committed to recognising and participating in grievance management processes that are established and recognised by the laws of the Federal Republic of Nigeria. We appreciate your continued interest in resolving the issues raised.”* The NCP interpreted the enterprise’s response to mean that it had not taken any action in relation to the recommendations. For the purposes of the Follow-up, the NCP reviewed the response of the notifying party and conducted its own desk research.

In the Final Statement, the NCP made a number of recommendations, that it will evaluate in this Follow up.

Concerning the issues raised in the specific instance, the NCP made the following recommendation:

- a) to align its conduct with the Guidelines as explained in the section ‘Examinations and conclusions’ concerning all the issues raised in the specific instance, where current practices are not yet fully aligned.

With regard to recommendation a), the notifying party reported in detail that the issues raised are still ongoing and that the project activities have continued. It mentioned *i.a.* the presence of

mercenaries which led to a feeling of unsafety with the community; new agreements with (according to the notifier) unlawful representatives; and further deterioration of the environment.

The NCP conducted online desk research and identified relevant news articles pertaining to the period after the FS was published. They concerned claims made by several local communities, including the Aminigboko community, about environmental pollution not being addressed by the enterprise. The NCP also identified news articles reporting grave violence by militants in several local communities, including the Aminigboko community; however there was no mention of any relation to the enterprise.

Concerning the findings related to this specific instance, the NCP made the following recommendations:

b) to cooperate in good faith and more meaningfully with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rightsholders. (Due Diligence Guidance, section 6.2);

c) to exercise to the fullest extent possible its leverage on the SPDC JV partners in order for them to cooperate with remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed by the enterprise. (Due Diligence Guidance, section 6.2)

d) In the event that the enterprises' leverage has been exercised to the fullest extent possible without the expected behavioral change of the SPDC JV, the NCP recommends the enterprise to consider ways to build additional leverage with the SPDC JV partners, including for example through outreach from senior management and through commercial incentives. In addition, to the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in the industry (Due Diligence Guidance, section 3.2.d)

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

With regard to recommendations b) to e), the notifying party communicated that it had two meetings (in April and May, 2023) with the enterprise under the auspices of the Ministry of Environment, Rivers State, to resolve several matters. The notifier claims that the enterprise had "*rejected the Final Statement of the NCP*" in the meeting and that none of the recommendations made by the Ministry until now have been implemented by the enterprise. Furthermore, the enterprise had truncated all other mediation processes facilitated by several other Rivers State authorities and Federal Government Ministry/Agency (Federal Ministry of Environment, Abuja; Joint Task Force, Operation Delta Safe, HQ).

The NCP noted that the official minutes provided by the notifier showed the enterprise had indeed rejected the NCP's Final Statement. This information, in combination with the inactivity of the enterprise in relation to the NCP's recommendations, leads the NCP to conclude that the enterprise

has made no progress with regard to the issue of meaningful cooperation with a legitimate remediation mechanism and that the enterprise has not exercised its leverage on its business partners in this regard.

Based on the general context of the oil industry, the regional context in which the enterprise operates and the common risks identified generally in the upstream supply chain, the NCP adopted in its Final Statement the following recommendation to the enterprise:

f) To engage more directly and meaningfully with its stakeholders, including the local communities that are directly affected by the enterprise's operations, in order to foster a relationship of confidence and mutual trust. These stakeholders should be informed and consulted as part of project planning and provide their consent prior to decision making for projects or other activities that may significantly impact them. (Chapter II, para 3,7, commentary 14). Stakeholder engagement is an essential part of the due diligence process and involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings.

The notifying party reported that the enterprise had not responded to the requests for engagement which the notifier and other families affected by the project had sent after the publication of the Final Statement.

The NCP was copied in letters the notifier had sent to the enterprise. The NCP has not received a response from the enterprise to these letters. This, combined with its inactivity in relation to the NCP's recommendations, leads the NCP to conclude the enterprise has indeed not responded and therefore not meaningfully engaged with the Aminigboko community.

4. Conclusion of the NCP

Based on the information provided by the parties, the NCP concludes the following.

Overall, the NCP has not been able to identify any progress made by the enterprise regarding the NCP's recommendations in relation to the specific instance. It appears that the enterprise: a) has not made any efforts to align its activities with the Guidelines, b) has not made its cooperation with the NCP more meaningful, c) has not exercised any leverage on its business partners to cooperate with a remediation mechanism, and d) has not engaged in a meaningful manner with its stakeholders, i.e. it has not improved the relationship with the Aminigboko community.

The NCP is concerned about this outcome and considers it problematic that a multinational enterprise operating in a high-risk sector is not following up on any recommendation regarding responsible business conduct. The NCP notes that in the updated Guidelines (2023), the importance of meaningful engagement with stakeholders has been emphasized, as well as the expectation to cooperate in remediation, *i.a.* by giving the NCP's offer of good offices serious consideration (General Policies, paras 12 and 15, Commentary 15-16, 28; Part II, Commentary 26).

Although the NCP would have expected and appreciated a more active and meaningful participation by the enterprise, the NCP thanks both parties for sharing information in this Follow-up procedure.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP Website](#)

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