

NEGLIGENCE IN THE NIGER DELTA

DECODING SHELL AND ENI'S POOR
RECORD ON OIL SPILLS

CONTENTS

Executive summary	4
Methodology	8
1. Background	11
Nigeria’s oil industry	11
The causes of oil spills.....	12
Industry regulations	13
The human rights impact of oil pollution in the Niger Delta.....	14
Business and human rights	15
2. Oil spill totals and averages	17
Are the companies under-reporting the spills?	Error! Bookmark not defined.
Africa’s leakiest pipeline?	18
Conclusion.....	20
3. Slow oil spill response times	22
Lack of access is not the reason for delays	26
Unreliable claims of spill volumes, particularly on water	26
Unreliable spill volume estimates risk unfair compensation	27
Slow response to oil theft points	27
Conclusion.....	28
4. Lack of credible evidence for company assessments of spill causes.....	28
Conclusion.....	31
Conclusion	31
Recommendations	33

To the Government of Nigeria	33
To the National Oil Spill Detection and Response Agency	33
To oil operators (including Shell and Eni).....	34
To the Governments of the UK, Netherlands and Italy	34
Annex 1: Details of the 10 slowest responses.....	35
Annex 2: Accufacts analysis of unreliable spill cause reports	39

EXECUTIVE SUMMARY

The Niger Delta suffers from an epidemic of oil spills. Every year hundreds damage the environment and devastate the lives of people living there. Neither the powerful actors in the oil industry, nor the Nigerian government, have yet been able to put into practice lasting solutions that prevent the spills, and then clean them up effectively. The cumulative impact of decades of contamination makes the Niger Delta, Africa's most important oil-producing region, one of the most polluted places on earth.

This report presents the findings of a unique investigation into the operational practices of the oil industry in the Niger Delta. It is the result of hundreds of hours of work by more than 3,500 Amnesty International supporters and activists, based in 142 different countries. They took part in *Decode Oil Spills*, a ground-breaking online project for crowdsourcing research.

The *Decoders* helped Amnesty International researchers analyse thousands of documents and photographs relating to oil spills that have been made public by two of the largest companies operating in the Niger Delta – the Anglo-Dutch company, Royal Dutch Shell (Shell), and Eni, from Italy.

The findings presented in this report build on previous research that exposed systemic flaws in the oil spill investigation process, which was conducted by Amnesty International and the Port Harcourt-based Centre for Education, Human Rights and Development (CEHRD) and was published in the 2013 report, *Bad Information: Oil Spill Investigations in the Niger Delta*.

According to Nigerian government regulations, the oil companies, accompanied by government and community representatives, are supposed to visit each oil spill in order to assess key information. This information is then put into a "Joint Investigation Visit" (JIV) report.

In response to campaigning by Amnesty International and other organisations, Shell was the first company to start publishing its JIV reports in 2011. In 2014, Eni followed suit. The data reveals that even though it has a smaller pipeline network than Shell, Eni has reported more spills in its area of operations since 2014. Both companies report drops in the number of spills year-on-year.

From 2011, Shell reported 1,010 spills, with 110,535 barrels or 17.5 million litres lost along the network of pipelines and wells that it operates. From 2014, Eni reported 820 spills, with 26,286 barrels or 4.1 million litres lost along the network of pipelines and wells that it operates.

AFRICA'S LEAKIEST PIPELINE?

JIV reports and photographs provide a wealth of information about the spills. These have a variety of causes. Some are the result of operational faults and poor maintenance, others of "third party interference", such as sabotage or theft (also known in Nigeria as "bunkering").

According to the company JIV forms, the majority of spills during this period were caused by "third party interference." Shell reported that more than 80% of spills along its network during this period were caused by sabotage and theft. Eni reported that 89% were. The companies say that this means that the majority of spills and resultant pollution were not their fault.

There is no legitimate basis for such claims, as they are based on the flawed oil spill investigation process.

But even if these figures were correct, it would not absolve the companies of responsibility. Nigerian law requires all pipeline operators to employ the best available technology and practice standards in all of their operations. These include measures to protect against spills resulting from third party interference, such as by strengthening or burying pipelines and increasing surveillance.

The Decoders project reveals that while oil spills have occurred over the whole network of Shell and Eni's oil wells and pipelines, a handful of spill "hotspots" were repeatedly affected. As these acts were predictable, Shell and Eni should have taken appropriate measures to help prevent them, such as stepping up surveillance patrols.

For example, since 2014, Eni reported 262 spills along its 92km-long, "18" Tebidaba/Brass Pipeline," in Bayelsa state. Given that no other African country reports anywhere near this number of spills, this could well be the continent's leakiest stretch of pipeline. Eni blamed all but two of the spills on "third party interference". Amnesty International's analysis of JIV forms completed by the government regulator, the National Oil Spill Detection and Response Agency (NOSDRA), found that between 2014 and 2017, its agents had warned Eni on 162 different occasions to improve surveillance along the pipeline to prevent further spills.

Eni stated that after 2014 it had in fact taken measures to prevent attacks on this pipeline, such as increasing the frequency of aerial and ground surveillance, and that these measures had worked. It pointed to the fact that in 2017, it reported only four spills along the 18" Tebidaba/Brass Pipeline, compared to 162 in 2014.

Both companies say they have improved pipeline security in recent years, but neither publishes their plans to prevent spills, nor other relevant information, such as details of the condition of their pipelines and other assets, and the age of infrastructure, which would allow organisations and affected communities to independently verify these claims. Also, while both companies have recently reported drops in the number of spills in recent years, there are other possible explanations, such as the government programme to pay former militant groups to lay down their guns. The companies have also not explained why they did not introduce such protective measures earlier.

LONG DELAYS TO SPILL RESPONSE EXACERBATING POLLUTION

Regardless of the cause of a spill, Shell and Eni are responsible for limiting its harm: by acting promptly to prevent contamination, and then by cleaning up all pollution. Under Nigerian law, the oil companies are obliged to conduct the JIV within 24 hours of reporting the spill. Analysis of the time between the companies reporting a spill and conducting a JIV reveals that there is often a much bigger time lag. This matters because the companies frequently do not stop the leaks until during or after the JIV. Also, following industry practice in Nigeria the companies do not start the clean up until after the JIV, which means that pools of spilled oil may be left untouched for long periods of time, which can result in the oil spreading. Delays therefore are not just a breach of Nigerian law but also result in worse contamination.

The JIV forms show that Shell responded within 24 hours of a spill occurring on only 26% of occasions, whereas Eni did so on 76% of occasions. It took Shell an average of seven days to respond to each spill, Eni an average of 2 days. Even though the number of spills Shell has reported is reducing, the data shows that its response to spills has become slower, although there was an improvement in 2017. This is highly irresponsible as Shell is fully aware that the longer it takes to respond, the higher the likelihood that the spill

runs off in the environment and causes and contributes to further negative impacts on the right to water, health and livelihoods.

In most cases the companies provide no explanation in its JIV reports for the delays, and their cause is not obvious. For example, it took Shell 252 days to visit one spill, even though it was just outside the fence of a large facility operated by the Chevron oil company. This was not a remote location: it even has an airstrip.

For Eni, the figures are much better overall, however it still took the company 430 days to respond to a leak in Bayelsa state. Eni said that it has stopped the leak soon after detecting it, but the government reported that the spill continued for over a year. Eni did not provide a reason for the delay in its JIV report, however subsequently told Amnesty International that it was caused by the local community not granting them access.

The oil companies and NOSDRA frequently cite this reason, as well as poor weather, remoteness, or insecurity, for their slow response to spills. But the cause of delays is not routinely recorded; in most instances the time at which the spill is stopped is not included in the JIV report. While some JIVs mention that the spill was stopped previously, many note that spills are ongoing, and some photographs also appear to show the leaks continuing at the time of the JIV.

After reviewing publicly available information (including JIV reports) of the 10 slowest cases, Amnesty International found that only in three instances might such factors have caused or contributed to the delay (see Annex 1). In the other cases the companies reported no reasons for their delay in holding a JIV, nor did they provide any evidence in the JIV reports that access difficulties caused the delays.

Even in those cases when a company does stop the leak long before a JIV takes place, the delay matters because it is industry practice in Nigeria not to start the clean up until after one is completed. The United Nations Environment Programme has warned that such delays are leading to greater contamination of the Niger Delta, as the oil is spread, for example by rain, floods or river water.

UNRELIABLE OR MISLEADING INFORMATION

Amnesty International acknowledges that Shell and Eni may be more transparent than other companies operating in the Nigeria Delta since they publish JIV forms and other information. But analysis of this information shows that much of it is unreliable and misleading. This could mean that some communities are not receiving the right amounts of compensation or any at all, and also that the full extent of oil contamination is not being properly reported.

For example, the companies assess the spilled oil at the time of the JIV, mainly by a visual estimation of the covered area. But if the JIV has been delayed, as many are, much of the lost oil may no longer be visible. This is especially so if the spill occurred in water. There were a total of 983 spills reported by the companies in swamps and in or around waterways during this period.

Once again Shell performed worse than Eni. It took Shell an average of 9.68 days to hold JIVs for spills on water (as opposed to 5.35 days for spills on land), while Eni took an average of 1.53 days (compared to 3.64 days on land).

The reported volume of lost oil is likely to be a major understatement. This results in companies not paying the correct amount of compensation to affected communities.

Regarding the cause of the spill, the companies assess this visually at the time of the JIV and then take photographs to support their assertions. Yet many photographs of the spill point do not appear to support them. Using observations initially made by the Decoders, and following expert advice from Accufacts, an oil pipelines consultancy, Amnesty International researchers have identified that at least 89 spills may have been wrongly labelled as theft or sabotage when in fact they were caused by “operational” faults. Of these, 46 are from Shell and 43 are from Eni. If confirmed, this would mean that dozens of affected communities have not received the compensation that they deserve. Amnesty International has therefore sent the details of these spills to the Nigerian government, requesting it reopen investigations.

CONCLUSION

According to the UN Guiding Principles on Business and Human Rights (2011), companies have a responsibility to respect human rights wherever they operate in the world. This responsibility exists independently of a state’s ability or willingness to fulfil its own human rights obligations. So if a state where a company operates, such as Nigeria, is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights in their operations. The evidence presented in this report shows that Shell and Eni are failing to fulfil their responsibility to respect the human rights of communities living in the Niger Delta.

Shell and Eni are failing to operate responsibly and in line with Nigerian law and best practice standards. For these reasons, Amnesty International considers ENI and Shell to be deliberately reckless and therefore wilfully negligent. Their failures are resulting in worse pollution in the Niger Delta, which has a negative impact on the rights of the people living there.

Amnesty International provided Eni and Shell with the opportunity to respond to the findings as detailed in the Methodology. Their responses are printed in full in Annex 3.

KEY RECOMMENDATIONS

The government of Nigeria must significantly strengthen its regulation of the oil industry and guarantee that the oil spill regulator, NOSDRA, has the necessary tools to ensure that companies take all reasonable steps to prevent spills and clean up those that do occur, as required by Nigerian law.

The oil companies must stop making misleading statements about the causes and impact of leaks, and stop publishing false data. They must improve their operational practices in the Niger Delta.

The home states of Shell and Eni, the UK, the Netherlands and Italy, also have important roles to play. They should step up support for the Nigerian government and require by law that extractive companies that have their headquarters in their countries undertake human rights due diligence measures throughout their global operations.

METHODOLOGY

Since 2009, Amnesty International has repeatedly highlighted the harm caused by the oil industry on communities in the Niger Delta.¹ Working with organizations based in the region, Amnesty International has exposed the lack of accountability of the multinational corporations operating there, the industry's lack of transparency and the absence of accessible information relating to oil spills and the environmental and human rights impacts of pollution. The findings presented in this report build on previous research conducted by Amnesty International and the Port Harcourt-based Centre for Education, Human Rights and Development (CEHRD) which was published in the 2013 report, *Bad Information: Oil Spill Investigations in the Niger Delta*.² This exposed systemic flaws in the oil spill investigation process.

Since Amnesty International began campaigning on this issue, the industry has taken some steps to address some of the concerns. According to government regulations, the oil companies, such as the Anglo-Dutch multinational Royal Dutch Shell (Shell) and Italy's Eni, accompanied by government and community representatives, are supposed to visit oil spill sites 24 hours after a reporting a spill in order to assess key information.³ This includes: the date the spill started, its location, its likely cause and the amount of oil spilled. In line with industry practice, the companies usually take photographs as well. This information is then put into a "Joint Investigation Visit" (JIV) report.⁴

Shell was the first company to start publishing its JIV reports in 2011.⁵ In 2014, Eni followed suit.⁶ In 2015, the National Oil Spill Detection and Response Agency (NOSDRA) also started posting JIV reports online.⁷

¹ See, for example, Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009), available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>; and Amnesty International, *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta* (Index: AFR 44/2746/2015), available at: <https://www.amnesty.org/en/documents/afr44/2746/2015/en/>

³ National Oil Spill Detection and Response Agency (NOSDRA), *Oil Spill Recovery, Clean-up, Remediation And Damage Assessment Regulations*, 2011, Part VII (102), p76.

⁴ For examples visit the company websites: <http://www.shell.com.ng/sustainability/environment/oil-spills.html> and https://www.Eni.com/en_NG/sustainability/environment/response-to-oil-spills/response-to-oil-spills.shtml.

⁵ Amnesty International and the Centre for Education Human Rights and Development (CEHRD), *Bad Information, Oil Spill Investigations in the Niger Delta*, 2013 (Index: AFR 44/028/2013), available at: www.amnesty.org/en/documents/AFR44/028/2013/en/ (hereinafter, Amnesty International and CEHRD, *Bad Information*, 2013.)

⁶ It is worth noting that at least Shell and ENI publish JIVs and other information relating to spills. Other multinationals operating in Nigeria, such as Total and Chevron, do not. Neither does Nigeria's state-owned Nigerian National Petroleum Corporation (NNPC), nor do the host of smaller, Nigeria-based oil companies that are becoming increasingly important players. They should do so as a matter of urgency.

⁷ See National Oil Spill Detection and Response Agency (NOSDRA), *Nigeria Oil Spill Monitor*, available at

In July 2017, Amnesty International enlisted the help of supporters and activists to take part in its online project, *Decode Oil Spills*, to extract information from these handwritten reports and photographs.⁸

In total, 3,545 people, from 142 countries took part. They answered 163,063 individual questions, working 1,300 hours, the equivalent of someone working full-time for eight months. The *Decoders* analysed 3,592 JIV documents and photographs, helping create the first independent, structured databases of oil spills in the Niger Delta covering spills from January 2011 to December 2017.⁹

Analysis of the data that the *Decoders* captured was then verified and completed by Amnesty International researchers and a consultant data analyst. Amnesty International also asked an independent US firm with expertise in pipeline security, Accufacts Inc, to review information relating to 30 specific spills.¹⁰

Prior to publication, Amnesty International wrote to Eni and Shell and provided them with an opportunity to respond to the findings. The organisation reviewed the company responses in detail and took appropriate account of information provided in updating its findings. Shell stated that Amnesty International's allegations are false, without merit and fail to recognise the complex environment in which it operates. Eni said that it rejected the findings that it was failing to take prompt steps to prevent pollution, or was providing unreliable or misleading information. The company responses can be found in Annex 3.

Amnesty International held a meeting with NOSDRA in the Nigerian capital, Abuja, in January 2018 and followed up with a written set of questions, which NOSDRA replied to on 28 February 2018.

<https://oilspillmonitor.ng/>

⁸ Amnesty International, *Decode Oil Spills*, available at <https://decoders.amnesty.org/projects/decode-oil-spills>

⁹ A total of 37 JIV documents (nine from Eni and 28 from Shell) and 31 photographs (11 from Eni and 20 from Shell) could not be analysed as they were missing from the company websites which listed the spills. The data used in this report was last verified against the company websites on 31 January 2018 – any modifications the companies made since then will not be reflected in this report.

¹⁰ Accufacts also provided expert advice and analysis for the 2013 Amnesty International and CEHRD report *Bad Information*. Accufacts is a consulting firm that provides oil and gas pipeline expertise for government agencies, the industry and other parties. It is based in Washington, USA. Richard Kuprewicz, President of Accufacts Inc., is an engineer and pipeline safety expert who has assessed oil spill plan development and oil spills and pipeline failure investigations for various parties.

DECODING OIL SPILLS IN THE NIGER DELTA TIMELINE

2009 – Amnesty International calls for greater transparency in Nigeria’s oil industry.

2011 – Shell starts publishing data relating to oil spill investigations.

2013 – Amnesty International and CEHRD identify flaws in how Shell manages its pipelines and responds to spills.

2014 – Eni starts publishing data.

2015 – NOSDRA starts publishing data.

2017 – Amnesty International “Decode the Niger Delta” project crowdsources first mass independent study of the Nigerian oil spill data.

1. BACKGROUND

Nigeria's oil industry

Nigeria is Africa's largest oil producer.¹¹ Its industry is based in the Niger Delta, in the south of the country, where commercial production began in 1958.¹² A vast network of pipes connecting numerous oil and gas fields now crisscross the Delta. Many run close to people's homes, next to farmland and through swamps and waterways where people fish.

The industry is run by joint ventures involving the Nigerian government and subsidiaries of multinational companies such as Shell, Eni, Chevron, Total and ExxonMobil. Some joint ventures also involve Nigerian companies.

The largest joint venture is called the Shell Petroleum Development Company of Nigeria Limited- Joint Venture (SPDC JV).¹³ Its main shareholder is the state-owned Nigerian National Petroleum Corporation (NNPC), which owns 55%. The rest is owned by subsidiaries of international oil companies: Shell owns 30%, the French company, Total, owns 10%; and Eni owns 5%.

As well as owning 30% of the joint venture, Shell is also its operator.¹⁴ This means that Shell runs and maintains the wells, pipelines and other facilities that are needed to produce and transport the oil on behalf of the joint venture's owners. This infrastructure is massive. Even though it has sold its stake in a number of fields to Nigerian companies since 2011, Shell reports that it still operates around 1,400 oil and gas wells and manages a network of approximately 4,000km of oil and gas pipelines.

A second important joint venture (the Nigerian Agip Oil Company JV) is the co-owned by the NNPC (60%), Eni (20%) and the Nigerian company Oando (20%).¹⁵ This joint venture is operated by Eni, through its subsidiary the Nigerian Agip Oil Company (NAOC). It reports that its infrastructure includes 3000 km of oil

¹¹ Organization of the Petroleum Exporting Countries, *Oil data: upstream*, available at <https://asb.opec.org/index.php/interactive-charts/oil-data-upstream> (last accessed 7 February 2018).

¹² Shell Nigeria, *Shell in Nigeria Portfolio*, available at <http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/portfolio.html> (last accessed 26 February 2018).

¹³ Shell Nigeria, *Shell in Nigeria Portfolio*, available at <http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/portfolio.html>

¹⁴ This is through subsidiary in Nigeria, the Shell Petroleum Development Company (SPDC), Shell Nigeria, *Shell in Nigeria Portfolio*, available at <http://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/portfolio.html>

¹⁵ ENI, *NAOC Sustainability; Operations*, available at https://www.Eni.com/en_NG/Eni-in-nigeria/operations/operations.shtml (last accessed 26 February 2018).

pipelines and well.¹⁶

THE CAUSES OF OIL SPILLS

Every year hundreds of oil spills damage the environment and devastate the lives of people living in the Niger Delta. They have a variety of causes.¹⁷ Some are the result of operational faults and poor maintenance, others of “third party interference”, such as sabotage or theft (also known in Nigeria as “bunkering”).

“OPERATIONAL” SPILLS

These are often the result of corrosion, poor maintenance and equipment failure and occur along the main pipelines, smaller “flowlines,” and at the wells operated by both Shell and Eni. In relation to Shell, Amnesty International has collated a series of internal communications and other sources showing that these have been caused by decades of poor maintenance and underinvestment. For example:

- In 1994, the head of environmental studies for Shell Nigeria, Bopp Van Dessel, resigned, complaining that he felt unable to defend the company’s environmental record, “without losing his personal integrity.”¹⁸ Bopp Van Dessel went public in a TV interview in 1996, “Any Shell site that I saw was polluted. Any terminal that I saw was polluted. It was clear to me that Shell was devastating the area.”¹⁹
- Also in 1994, an internal paper revealed that Shell had not properly funded its pipelines and other infrastructure in Nigeria: “One measure of this deterioration is the frequency and severity of oil pollution incidents caused by corrosion and other integrity failures in the production system.”²⁰
- In 2002, an internal Shell presentation stated: “the remaining life of most of the [Shell] Oil Trunklines is more or less non-existent or short, while some sections contain major risk and hazard.”²¹
- In 2008, a US diplomatic cable stated that a contractor with many years’ experience of laying pipelines reported that, “73 per cent of all pipelines there are more than a decade overdue for replacement. In many cases, pipelines with a technical life of 15 years are still in use thirty years after installation.”²²
- In 2009, a Shell employee warned in an email that: “[the company] is corporately exposed as the pipelines in Ogoniland [in the Niger Delta] have not been maintained properly or integrity

¹⁶ Eni letter to Amnesty International, 9 March 2018.

¹⁷ Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, 2009 (Index: AFR/44/017/2009), p14, available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>

¹⁸ Shell, Exit Interview with JP Van Dessel, 28 November 1994 (Exhibit 82. DEF 057557).

¹⁹ ITV, *World in Action*, May 1996, cited in Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009), p 54, available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>

²⁰ Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, (Exhibit 5. Decl of J. Green in Opp to Motion to Dismiss Ric).

²¹ Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, available at: www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

²² Wikileaks, *Nigeria: Pipeline Expert Says 73 Percent Of Niger Delta Pipelines Need Replacement, Cause Spills*, Consulate Lagos (Nigeria), 17 December 2008.

assessed for over 15 years.”²³

SPILLS CAUSED BY “THIRD PARTY INTERFERENCE”

There is no doubt that many spills in the Niger Delta are caused by deliberate interference with wells, pipelines and other infrastructure by armed militant groups, criminal gangs and others. Some groups seek to disrupt oil production to put pressure on the government for political or financial reasons.²⁴ Others tap the pipelines to steal oil or intentionally create spills in order to receive money as the contractor hired for the clean-up.

The oil companies and the government state that the vast majority of spills have been caused by this “third party interference.” However, the proportion of oil spills in the Niger Delta that are caused by sabotage or theft is keenly contested by communities and cannot be determined with any degree of accuracy because of flaws surrounding the collection and presentation of oil spill data (as documented in *Bad Information* and later in this report).²⁵

INDUSTRY REGULATIONS

Regardless of the cause, the oil companies have clear responsibilities under Nigerian law to both prevent and then remediate the harm caused by spills.

The Oil Pipelines Act (1990) requires the holder of a permit to “take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon.”²⁶ The Petroleum (Drilling and Production) Regulations (1969) require that operators “adopt all practicable precautions” to prevent oil spills.²⁷

Nigerian law requires oil companies to ensure “good oil field practice” and to comply with internationally recognized standards, including those established by the American Petroleum Institute.²⁸ This has developed guidelines to protect operators from the risk of terror attacks and vandalism. These could include measures to protect the pipelines through more robust materials (such as thicker pipe walls and concrete casements), by burying the pipelines more deeply, or by improved leak detection systems and more rigorous and frequent inspections.²⁹

Nigerian law also makes it clear that regardless of the cause, the oil companies are responsible for the

²³ Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, available at: www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

²⁴ Amnesty International and CEHRD, *Bad Information*, 2013.

²⁵ Amnesty International and CEHRD, *Bad Information*, 2013, pp19-20.

²⁶ Section 6 (3) of the Oil Pipelines Act (1990).

²⁷ Petroleum (Drilling and Production) Regulations (1969), Section 25.

²⁸ Mineral Oils (Safety) Regulations 1962, Regulation 7.

²⁹ R. Steiner, report on behalf of Friends of the Earth Netherlands “*Double standard, Shell practices in Nigeria compared with international standards to prevent and control pipeline oil spills and the Deepwater Horizon oil spill*”, November 2010, available at <http://milieudefensie.nl/publicaties/rapporten/doublestandard>

containment, clean-up and remediation of all oil spills along their pipelines and infrastructure.³⁰ The rules are contradictory on when this should begin, but are consistent that the response should be swift. One set of regulations requires companies to report spills within 24 hours, and then visit the site for the first time 24 hours after that.³¹ Separate rules oblige companies to actually start the clean-up within 24 hours of the spill.³² The guidelines also stipulate that companies should prevent spills from spreading into neighbouring land, waterways and groundwater.³³

Regarding compensation, the Oil Pipelines Act (1990) states that if a spill is found to be due to sabotage or third party interference then the community gets no compensation from the oil company, regardless of the damage caused.³⁴

Amnesty International and other organizations have repeatedly exposed how, despite these regulations, the Nigerian government is failing to enforce its own rules on how firms should prevent and respond to oil spills.³⁵

THE HUMAN RIGHTS IMPACT OF OIL POLLUTION IN THE NIGER DELTA

The livelihoods, health and access to food and clean water of communities across the Niger Delta are closely linked to the land and environmental quality, and hence are vulnerable to oil contamination. This was documented by the United Nations Environment Programme (UNEP) in 2011. UNEP exposed an appalling level of pollution in the Ogoniland region, including the contamination of agricultural land and fisheries, the poisoning of drinking water, and the exposure of hundreds of thousands of people to serious health risks.³⁶

As shown by UNEP, oil spills damage both the soil and water system of the Niger Delta. Women, men and children in the Niger Delta have to drink, cook with, and wash in polluted water; they eat fish contaminated with oil and other toxins (if they are lucky enough to still be able to find fish); the land they use for farming has been contaminated. After oil spills the air they breathe reeks of oil, gas and other pollutants; they complain of breathing problems, skin lesions and other health problems, but their concerns are not taken seriously by the Nigerian government and oil companies. Instead they provide the communities with almost

³⁰ Department of Petroleum Resources, *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (EGASPIN), revised edition 2002, p148, para.2.6.3.

³¹ National Oil Spill Detection and Response Agency (NOSDRA), *Oil Spill Recovery, Clean-up, Remediation And Damage Assessment Regulations*, 2011, Part VII (102), p76.

³² These state that "clean-up shall commence within 24 hours of the occurrence of the spill," and that it is the company's responsibility to "restore to as much as possible the original state of any impacted environment." For all waters, "there shall be no visible oil sheen after the first 30 days"; for swamps, "there shall not be any sign of oil stain within the first 60 days". Department of Petroleum Resources, *EGASPIN*, revised edition 2002, p 148, section 2.6.

³³ Department of Petroleum Resources, *EGASPIN*, revised edition 2002, p 148, para 2.6.3.

³⁴ Oil Pipelines Act, 1990, Clause 11 (5). Also, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) state: "A spiller shall be liable for damages from a spill for which he is responsible" (Part 8 (B) 8.20).

³⁵ Amnesty International and CEHRD, *Bad Information*, 2013, and *Clean it up*, 2015.

³⁶ For a full discussion on the human rights impact of oil pollution in the Niger Delta, see Amnesty International's report, *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009, (Index: AFR/44/017/2009), available at www.amnesty.org/en/documents/AFR44/017/2009/en/

no information on the impacts of the pollution. The main human rights impacts documented by Amnesty International and CEHRD include:³⁷

– Violations of the right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agriculture and fisheries.

– Violations of the right to water – which occur when oil spills pollute water used for drinking and other domestic purposes.

– Violations of the right to health – which arise from the failure to secure the underlying determinants of health, including a healthy environment, and the failure to enforce laws to protect the environment and prevent pollution.

– Violations of the right to ensure access to effective remedy for people whose human rights have been violated.

– Violations of the right to information of affected communities relating to oil spills and clean-up.

The abuses and violations are, primarily, the result of the operations of the oil companies, including Shell and Eni, and the almost complete failure of the Nigerian government to regulate the oil industry and protect the rights of the people of the Niger Delta.

BUSINESS AND HUMAN RIGHTS

Under international human rights law, all states have a duty to take appropriate measures to prevent human rights abuses by all actors, including corporations, 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.³⁸ The duty of the state to protect from human rights abuses carried out by corporations is also clearly set out in the *UN Guiding Principles on Business and Human Rights* (UN Guiding Principles), a set of standards endorsed by the UN Human Rights Council in 2011.³⁹

Human rights monitoring bodies have clarified that the state “duty to prevent” has an extra-territorial dimension and that a state should take measures, consistent with international law, to prevent a company headquartered in its jurisdiction from abusing particular human rights in another.⁴⁰ This is relevant to the

³⁷ For a full discussion on the human rights impact of oil pollution in the Niger Delta, see Amnesty International’s report, *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009, (Index: AFR/44/017/2009), available at www.amnesty.org/en/documents/AFR44/017/2009/en/

³⁸ Amnesty international, *Injustice Incorporated: Corporate Abuse and the Human Right to Remedy* (Index: POL 30/001/2014) available at <https://www.amnesty.org/en/documents/POL30/001/2014/en/>

³⁹ 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

⁴⁰ For example see: Committee on Economic, Social and Cultural Rights, General Comment No 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras 30 to 35. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en, Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of

context of the Niger Delta as Shell and Eni have their headquarters in Europe.

Regarding the responsibility of companies, the UN Guiding Principles established that they must respect human rights wherever they operate in the world. The corporate responsibility to respect human rights exists independently of a state's ability or willingness to fulfil its own human rights obligations. This means that if a state where a company operates, such as Nigeria, lacks the necessary regulatory framework or is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights in their operations.⁴¹

work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para 70. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en, UN Guiding Principles on Extreme Poverty and Human Rights, paras 92 and 99. Available at: http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14 on The right to the highest attainable standard of health, UN Doc E/C.12/2000/4 para 39 (11 August 2000); CESCR, General Comment 15 on the right to water, UN Doc. E/C.12/2002/1 para 31 (January 2003); Committee on the Rights of the Child, General Comment 16 on State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16 paras 43 and 44 (April 2013); Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28 para 36 (December 2010).

⁴¹ UN Guiding Principles, Commentary to Principle 11. The UN Guiding Principles require that companies "do no harm" or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when they do occur. To "know and show" that they comply with their responsibility to respect human rights, companies must carry out human rights due diligence. This is a process "to identify, prevent, mitigate and account for how they address their impacts on human rights" (UN Guiding Principles, Principles 15(b) and 17).

2. OIL SPILL TOTALS AND AVERAGES

Data gathered by Amnesty International's *Decoders* reveals the extraordinary scale of oil pollution in the Niger Delta and the high frequency of spills.

Shell since 2011: 1,010 spills.⁴²

Eni since 2014: 820 spills (of more than one barrel).⁴³

These figures are vast, and of course do not include all those spills which occurred in the decades before the companies began publicly reporting. They have had an undeniably devastating impact on the lives and livelihoods of the people of the Niger Delta. According to figures based on publicly report JIV forms, both operators have however been reporting fewer spills from their networks per year since 2014.

In its letter to Amnesty International, Eni said that the reduction in spills along its network since 2014 had been a consequence of a series of measures that it had taken, including the deployment of new technologies to prevent and detect spills as well as increased surveillance both by overflights and members of local communities.⁴⁴

Amnesty International has no way of verifying this information, but according to NOSDRA, such measures by the operators were only partly responsible for the drop in reported spills. It assessed that the drop was also due to the impact of the so-called "amnesty programme," which since 2009, has seen the government provide payments to certain armed militant groups in the Niger Delta in exchange for them laying down their weapons. These groups have been blamed for many of the attacks on pipelines.⁴⁵

It is also worth noting that the number of spills only tells part of the problem. A more accurate guide is the reported volume of oil spilled into the environment. **Shell reported that from 2001, it lost 110,535 barrels or 17.5 million along the network of pipelines and wells that it operates. Eni reported a loss of 26,286 barrels or 4.1 million litres.** The companies have reported that these figures have also improved recently. Yet as demonstrated later in this report, these figures are only estimates, and as previously exposed by

⁴² On behalf of the SPDC JV.

⁴³ Eni only published JIV's relating to spills of more than one barrel. Shell reports spills of less than one barrel. On behalf of the NAOC JV.

⁴⁴ Eni letter to Amnesty International, 9 March 2018.

⁴⁵ NOSDRA letter to Amnesty International, 28 February 2018. The "amnesty" programme is nothing to do with Amnesty International.

Amnesty International and CEHRD, are based on a flawed methodology.⁴⁶

According to the company JIV forms, the majority of spills were caused by “third party interference.”

Shell reported that 189 spills from its network were “operational” (18.7% of its total). Eni reported that 90 from its network were operational (10.98%). The companies say that this means that the vast majority of spills and resultant pollution are not their fault. According to Amnesty International’s analysis, as demonstrated later in this report, these figures, as well the reported volumes of spilled oil are likely to be understatements.

AFRICA’S LEAKIEST PIPELINE?

While oil spills have occurred over the whole network of Shell and Eni’s oil wells and pipelines, analysis of spill locations shows that time after time the same stretches of pipeline are affected by oil theft and sabotage. Regardless of the cause, companies are still required by Nigerian law, and in line with international industry standards, to take all reasonable measures to prevent them. The high number of spills and their clustering at certain hotspots over a number of years demonstrates a major failure by companies not to put in place all reasonable precautions to prevent them. The fact that so many spills occur along the same stretches of pipeline means that these acts are predictable – companies can identify such hotspots and take appropriate measures to protect them, such as by stepping up surveillance patrols

For example, since 2014, Eni reported 262 spills along its 92km-long “18” Tebidaba/Brass Pipeline”, which runs through the Southern Ijaw region of Bayelsa state. Given that no other African country reports anywhere near this number of spills, the “18” Tebidaba/Brass Pipeline” could well be the continent’s leakiest stretch of pipeline. Eni blamed all but two of the spills on “third party interference”, such as criminal gangs seeking to install taps to steal oil.

It also reported that 96 of the 262 spills occurred on “previously repaired” sections of the pipe. This means that after the company had identified and repaired a theft point, someone had later attacked exactly the same point. In this case, access to the area was certainly not a problem for the company. In the overwhelming majority of cases (240 times out of 262), Eni conducted JIVs on the same day that spills were reported. If it had such regular and fast access to the spills, it would have been reasonable to expect Eni to increase surveillance patrols in specific locations.

⁴⁶ Amnesty International and CEHRD, Bad Information, 2013, p27-39.

Amnesty International’s analysis of JIV forms completed by NOSDRA found that the government had repeatedly raised its concern with Eni. In fact between 2014 and 2017, the regulator warned Eni on 162 different occasions that it needed to improve surveillance along the pipeline to prevent further spills.⁴⁷

Examples:

NOSDRA JIV from 26 June 2014 ⁴⁸

10. Investigation carried out by
 Foot Boat Aircraft

11. Remarks/Recommendation... NAOC SHOULD CARRY OUT REGULAR
AND INCREASE SURVEILLANCE OF ITS ACTIVITY

NOSDRA JIV from 14 January 2017 ⁴⁹

10. Investigation carried out by
 Foot Boat Aircraft

11. Remarks/Recommendation... NAOC SHOULD INTENSIFY SECURITY
ALONG ITS PIPELINES TO REDUCE SABOTAGE INCIDENTS.

In response, Eni stated that it had in fact taken measures to prevent attacks on this pipeline, and provided information that after 2014 it increased frequency of aerial and ground surveillance. Eni reports that these have measures worked – pointing to the fact that in 2017, Eni reported only four spills along the 18" Tebidaba/Brass Pipeline, compared to 162 in 2014. It is not possible to verify this claim, and Eni did not explain why the company did not put in place such measures prior to 2014.

The companies must take similar action to address attacks on other “spill hotspots” For example, Shell reported 62 spills, mostly caused by “sabotage” or “theft” along its “Imo River – Ogale 1 and 2” pipelines between 2011-17. It is notable that many spills occurred close to roads and were not far from Port Harcourt (i.e. were not remote).

⁴⁷ These comments are available on JIV forms published on <https://oilspillmonitor.ng/>. Eni stated that Amnesty International’s analysis of these comments by NOSDRA is misleading. It wrote that these reports “only recommended improved surveillance as a means for continual improvement.” Eni letter to Amnesty International, 9 March 2018.

⁴⁸ Spill reference 15292.2014/SAR/396, available at <https://oilspillmonitor.ng/data/attachments/15292/2014.sar.3960001.pdf> (last accessed 2 March 2018).

⁴⁹ Spill reference 2017/SAR/002/007, available at <https://oilspillmonitor.ng/data/attachments/60211/MBIKIBA%20002%202017.pdf>.

Put in table: spills along Shell's Imo River-Ogale pipelines

2011: 10

2012: 11

2013: 11

2014: 10

2015: 3

2016: 5

2017: 12

CONCLUSION

The data shows that there has been a staggering number of reported spills since the two companies started publishing their JIVs in 2011 and 2014 respectively.

The data also shows that many of these spills are clustered along the same stretches of pipeline. The oil companies blame most of these on oil thieves and sabotage. Even if all these reports are accurate (and, as will be discussed later in this report, there are reasons to question this), there is evidence that the companies are failing to do all they can to prevent them, as they should in line with international best practice and Nigerian law.

The UN Guiding Principles make clear that companies have an independent responsibility to respect human rights. This requires taking preventative steps to avoid human rights abuses from arising in their operations.

There are a series of measures that Shell and Eni should implement to prevent both operational oil spills and those caused by oil theft and sabotage. These include measures to protect the pipelines by burying them deeper, encasing them in thicker concrete, improving leak detection systems, intensifying surveillance and ensuring more rigorous and more frequent inspections. Eni has provided detail of how it is putting in place such systems, and claimed that they have succeeded in preventing attacks on its pipeline network. By contrast to Eni, Shell provided no information on the steps it is taking to prevent attacks, but has previously reported that increased surveillance and new technology had prevented attacks.⁵⁰

It is not possible for Amnesty International to verify these claims. Neither company publishes their plans to prevent spills, nor other relevant information, such as details of the condition of their pipelines and other assets, and the age of infrastructure. While both companies have recently reported drops in the number of spills, there have been hundreds spills on average every year from their pipelines for several decades, raising the question of why they did not act sooner.

⁵⁰ Shell, Sustainability Report, 2016, p35, available at <http://reports.shell.com/sustainability-report/2016/servicepages/download-centre.html>.

3. SLOW OIL SPILL RESPONSE TIMES

Government regulations require that the companies report a spill within 24 hours of it taking place, and then conduct a JIV 24 hours after that.⁵¹ Separate guidelines state that the clean-up of an oil spill should commence within 24 hours of it starting.⁵² Companies can face financial penalties for breaching these regulations.⁵³

Analysis of the time between the companies reporting a spill and conducting a JIV reveals that there is often a much bigger time lag. This matters because the companies frequently do not stop the leaks until during or after the JIV. Also, following industry practice in Nigeria, the companies do not start the clean up until after the JIV, which means that pools of spilled oil are left untouched for long periods of time, which can result in the oil spreading. Delays therefore are not just a breach of Nigerian law but also result in worse contamination.

It is notable that of the two, Shell is considerably slower than Eni. Even though the number of spills Shell has reported is reducing, the data shows that its response to spills has become slower over time, although there was an improvement in 2017.

Overall, Shell reported holding JIVs within 24 hours of reporting a spill in only 25.7% of cases. This is highly irresponsible as Shell is fully aware that the longer it takes to respond, the higher the likelihood that the spill runs off in the environment and causes and contributes to further negative impacts on the right to water, health and livelihoods.

By contrast, Eni responded on average much faster, holding JIVs within 24 hours of reporting on 76% of occasions.

On 13.6% of occasions (138), it actually took Shell 10 days or more to do a JIV. On 3% of occasions (26) Eni took 10 days or more to respond.

To mitigate the impact of delays, Shell and Eni both state that they usually shut off the flow of oil as soon as spills are reported.⁵⁴

⁵¹ NOSDRA, *Oil Spill Recovery, Clean-up, Remediation And Damage Assessment Regulations*, 2011, Part VII (102), p76.

⁵² Department of Petroleum Resources, *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (EGASPIN), revised edition 2002, p148, para 2.6.3.

⁵³ According to NOSDRA it has fined companies for slow responses to spills, citing the example of small Nigerian operators, SEEPCO and Platform Oil. NOSDRA letter to Amnesty International, 28 February 2018.

⁵⁴ According to Eni, "in the event of a spill, NAOC JV usually isolates/shuts-in the facilities involved." Eni letter to Amnesty

Amnesty International and CEHRD have previously exposed how there is no transparency over such claims that companies routinely turn off pipelines.⁵⁵In addition, pipelines expert, Accufacts, has cast doubt on claims by the companies that they are able to remotely detect spills and then automatically switch off the flow of oil. It stated that on some smaller lines (e.g. flow lines and transmission lines):

“It is most unlikely that a release would be remotely detected and shutting in by the facility operator. Depending on various factors (such as pipe diameter and elevation profile, etc) oil will continue to flow for some time even when the lines have been shut down and blocked in when a field call in is made (the operator may choose to not shut down until field confirmed that a release is occurring). Wellheads are a different matter depending on their design.”⁵⁶

It may be the case that it is possible for companies to stop the leak before organizing a JIV. In some cases, JIV reports state that leaks were indeed stopped before they took place. But such information is not routinely recorded; in most instances the time at which the spill is stopped is not stated in the JIV reports. In fact, many JIVs refer to spills ongoing at the time of the JIV, and some photographs even appear to show the leaks at the time of the JIV.

Even in those cases when a company does stop the leak long before a JIV takes place, the delay matters because it is industry practice in Nigeria not to start the clean up until after one is completed. The 2011 UNEP study found that oil left lying around at the leak site is likely to spread if clean up does not happen immediately: “Any delay in cleaning up an oil spill will lead to oil being washed away by rainwater, traversing communities and farmland and almost always ending up in the creeks.”⁵⁷

In some instances the companies reported laying temporary barriers, such as “booms” to contain the spread of oil before a JIV and clean up start.⁵⁸ Yet these may not always be effective. Photographs reviewed by Amnesty International show oil contaminating water on both sides of booms. UNEP found that the measures taken by Shell and other operators in Ogoniland were frequently inadequate:

“Where the oil operator appeared to have taken intervention measures, such as laying a skirt boom or absorbent boom to contain the spill, the equipment used was often observed to be in poor condition, rendering it ineffective. In such cases, pollution continued to spread well past containment points.”⁵⁹

International, 9 March 2018. Shell states that, “When a leak is identified, production is suspended,” Shell Nigeria, *How We Respond to Spills*, available at <https://www.shell.com.ng/sustainability/environment/oil-spills.html>

⁵⁵ Amnesty International and CEHRD, *Bad Information*, 2014, p39

⁵⁶ Accufacts email, 11 February 2018.

⁵⁷ UNEP, 2011, p151.

⁵⁸ Eni stated that “booms are the most effective means to reduce the spread of the oil impacts”, Eni letter to Amnesty International, 9 March 2018.

⁵⁹ UNEP, 2011, p151.

MORE THAN A YEAR TO STOP A SPILL

It took 430 days for a JIV to take place after a spill was first reported on the Eni-operated “8” Nimbe South-Obama flowline,” in Bayelsa state. The spill was first reported on 8 October 2015, and the JIV took place on 11 December 2016. Much of the reported information relating to this spill is inconsistent.

For example, in response to Amnesty International, Eni explained that the delay was the result of the company being denied access to the site by the local community.⁶⁰ However neither JIV form published by Eni nor the regulator provided this information.

Eni also stated that it had reported to the government that it had “isolated” the line and put in place “containment measures (deployment of booms)”, meaning that it had stopped the leak, and put in place measures to stop the spread of the oil. However according to information later posted by NOSDRA, the spill was only stopped on 17 December 2016, six days after the JIV, and over a year after it had begun.⁶¹

Eni also reported that the spill was caused by “external interference (induced corrosion)”.⁶² Eni also stated that at the time of the JIV, “it was a light spill” amounting to four barrels; it calculated the amount of oil spilled by measuring the area that was visibly contaminated.

However, given that the spill was slowing for more than a year, as reported by NOSRDA, it is hard to understand how this calculation can be credible, even if the flow rate was very low. The calculation does not take into account the fact that over the course of more than a year the spill will have spread, so no longer visible after 430 days. Satellite images show that the spill took place in swamp connected to a river in the south of the delta. A photograph posted by Eni shows the area heavily flooded with water.

Amnesty International asked the independent pipelines expert Accufacts to review the details of this spill. In its assessment, the photograph did not support the claim by Eni that the spill was caused by “induced corrosion.” Instead, Accufacts assessed that the photograph indicates that the hole was caused by “corrosion which is a natural occurring process if not properly operated and maintained.”⁶³

Accufacts also considered that the reported volume of spilled oil was “seriously understated...given the delay in investigation.”

⁶⁰ On 12 October 2015. Eni letter to Amnesty International, 9 March 2018.

⁶¹ Oil Spill Monitor, at <https://oilspillmonitor.ng/#/60307.2015/SAR/241/387>

⁶² Incident Reference number 2015/SAR/241/387, available at https://www.Eni.com/en_NG/attachments/sustainability/environment/response-to-oil-spills/spill-incident-data/2015/october/2015_SAR_241_387/JIV-Report-SAR-241-387.pdf (last accessed 21 February 2018).

⁶³ Accufacts, 11 February, 2018.

LACK OF ACCESS IS NOT THE REASON FOR DELAYS

The oil companies and NOSDRA blame slow response times on their difficulty in accessing the sites, for example because of poor weather, remoteness, insecurity, protests or being denied permission by the local community.⁶⁴ Yet after reviewing publicly available information (including JIV reports) of the 10 slowest cases, Amnesty International found that only in one instance might insecurity have caused or contributed to the delay (see Annex 1). In one other case Shell said that the delay was caused by the lack of “specialist equipment”, and in another by “heavy rains and flooding”.⁶⁵ In the other seven cases the companies reported no reasons for their delay in holding a JIV, nor did they provide any evidence in the JIV reports that access difficulties caused the delays.

For example, it took Shell 252 days to visit one spill, reported on 23 February 2016, even though it was just outside the fence of a large facility operated by the Chevron oil company.⁶⁶ Shell has not published a JIV form or photographs, and the government regulator, NOSDRA, has not produced any either. The spill occurred just beyond the perimeter of the Chevron-operated Escravos export terminal, one of the Niger Delta’s most important facilities which has an airstrip.

On another occasion, it took Shell 190 days to hold a JIV to a spill that was reported on 13 May 2015. The attached form did not give a reason for the delay.⁶⁷ The spill location was not in a remote area or hard to reach. It was north of Port Harcourt, and by the side of a tarmacked road. The Shell JIV reported that there was “no disruption” to the visit. Between 2011 and 2017 there were five other reported spills along the stretch of pipeline described as “12” Imo River – Ogale Pipeline at Owaza”. Shell responded to all the other spills in three days or less, according to their JIV forms, indicating that there was no problem with insecurity or community relations at this location.

UNRELIABLE CLAIMS OF SPILL VOLUMES, PARTICULARLY ON WATER

The companies and NOSDRA make an assessment of the volume of spilled oil at the time of the JIV. This is one reason why it is critical that companies act prudently and conduct JIVs within the legally prescribed timeframe of 24 hours after reporting the spill.

The companies and NOSDRA estimate the spill volume by measuring the amount of land or water that is visually impacted. This approach is inadequate when assessing spills, especially those that have occurred over a long period of time, when they take place in, or spread into, streams, rivers and swamps. The oil may no longer be visible as it may have spread downstream, been flushed by rains, or moved due to the tide, for example.⁶⁸ According to NOSDRA:

⁶⁴ NOSDRA letter to Amnesty International, 28 February 2018, and company letters, in Annex 3.

⁶⁵ See Annex 1.

⁶⁶ See details reported on the Shell website, <https://www.shell.com.ng/sustainability/environment/oil-spills/february-2016.html> (last visited 3 March 2018).

⁶⁷ Spill reference number 1399526, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2027.pdf>

⁶⁸ Amnesty International and CEHRD, *Bad Information*, 2013, and *Clean it up*, 2015.

“Once spills occur only an estimate to the best practical extent can be derived and never the actual quantity spilled due to seepage, evaporation, degradation, dispersion, etc.”⁶⁹

There were a total of 983 spills reported by the companies in swamps and in or around waterways during this period.

Once again Shell performed worse than Eni. It took Shell an average of 9.68 days to hold JIVs for spills on water (as opposed to 5.35 days for spills on land), while Eni took an average of 1.53 days (compared to 3.64 days on land).

UNRELIABLE SPILL VOLUME ESTIMATES RISK UNFAIR COMPENSATION

In the case of spills caused by the companies (“operational” spills) the spill volume calculation is important because the amount of compensation paid to the affected community or communities is determined by the size of the spill decided at the JIV.

Inaccurate or unreliable estimates can mean that communities receive much less compensation than they should. One example of this relates to the Bodo community. Shell’s JIV for a spill there in 2008 claimed that only 1,640 barrels of oil were spilled. However, based on an assessment published by Accufacts, Amnesty International calculated that the total actually exceeded 100,000 barrels.⁷⁰ For years, Shell defended its far lower figure but in November 2014, during a court case in the UK, Shell admitted that the amount was indeed larger than it had previously stated.⁷¹ Shell provided no explanation for this gross underestimation. Having initially offered the Bodo community £4,000 in compensation, Shell ended up paying them £55 million.

According to the latest data, there were a total of 169 (Shell 113, Eni 56) spills reported by the companies that they blamed on their own equipment failure and operational faults that occurred in swamps or in or near waterways. It took the companies an average of 6.37 days to hold JIVs (Shell 8.31, Eni 2.46). On 21 occasions it took them more than 10 days (Shell 17, Eni 4). In these instances the information reviewed by *Decoders* further points to the conclusion that it is highly likely that Shell and Eni have been underestimating the volumes of spills. That is because, as noted above, if spills last for a long period of time and take place in water, they are more likely to spread over a wide area and not be accurately assessed by the companies’ current methodology. As a direct result, it is likely that affected communities have received less compensation and inadequate remediation. This problem is further exacerbated by the failure of NOSDRA to effectively monitor and take action once these spills occur.

SLOW RESPONSE TO OIL THEFT POINTS

Amnesty International’s *Decoders* analysed 1,799 photographs published by the oil companies to accompany their JIV forms. This revealed that on 842 occasions these showed where illegal “fittings” had been welded or fitted to the pipelines in order to facilitate the theft of crude (this is where thieves have

⁶⁹ NOSDRA letter to Amnesty International, 28 February 2018.

⁷⁰ Amnesty International and CEHRD, *Bad Information*, 2013, pp49-53.

⁷¹ Amnesty International, *The Nigerian Community that took on Shell and won*, 2015, <https://www.amnesty.org/en/latest/campaigns/2015/04/nigeria-shell-oil-compensation/>

drilled holes into the pipeline and attached taps or hoses to extract the oil).

This analysis showed the Shell was much slower in organizing JIVs when illegal fittings were identified than Eni, which was also frequently slow. According to its own records, it took Shell at least 10 days to respond and shut down oil theft points on 53 different occasions.

According to Nigerian law and to best international industry practice, companies must take all reasonable precautions to prevent the theft of oil from their pipelines and respond as soon as possible.⁷² By not doing so, Shell risked allowing the theft of oil to continue, as well as further contamination of the environment, violating the human rights of local communities.

CONCLUSION

The repeated failure to respond to spills promptly – especially in the case of Shell – is evidence of serious negligence by the oil companies and is resulting in much worse contamination of the Niger Delta. It is also likely to be resulting in communities receiving less compensation than they should. It may also mean result in criminal gangs being allowed to continue their theft of oil unhindered for days after their activities are first reported.

The companies often complain that the reason for the delay is issues around access and insecurity, however analysis for this report shows that there is little support for this in the information provided in the JIVs. At the very least this indicates that companies and NOSDRA are not publicly disclosing critical information.

Under the UN Guiding Principles, companies have a responsibility to respect human rights.⁷³ The facts cited above clearly illustrate that Shell and Eni have failed to make reasonable efforts to stop oil spills. Regardless of their cause, the companies have too often been too slow to both conduct JIVs and stop the spills, in violation of Nigerian law and international standards. If Shell and Eni had conducted a meaningful human rights due diligence assessment of their operations, there is no reason why they would have not identified its own failing pipelines, spill hot spots, and delays in responding to oil spills more broadly as contributing to human rights harm. This should have compelled them take steps to prevent or mitigate this risk. Shell and Eni's failure to take these reasonable steps on such a large scale and over such a long period, is deeply problematic.

4. LACK OF CREDIBLE EVIDENCE FOR COMPANY ASSESSMENTS OF SPILL CAUSES

One of the main objectives of the JIV is to assess the likely cause of the spill and whether the company is

⁷² Mineral Oils (Safety) Regulations 1962, Regulation 7.

⁷³ UN Guiding Principles, Principles 15(b) and 17

directly at fault, in which case affected communities are entitled to compensation.

NOSDRA, Shell and Eni have explained that one of the main ways in which they identify the cause is by visual assessment, including the nature of the hole or leak point and whether there has been prior disturbance of the soil.⁷⁴ The companies attach photographs of the spill sites to the JIV forms to provide corroborating evidence.

Amnesty International and CEHRD have previously highlighted how these assessments are based on a flawed methodology and that spills caused by “operational” faults have been mislabelled as being caused by sabotage and theft.⁷⁵ Research has shown that many photographs taken by the companies of the spills either do not provide enough evidence to support the claims or in fact actually contradict them. Pipeline experts, Accufacts, following their review of JIVs and photographs taken between 2015 and 2018, found many photographs are simply not clear enough, and “do not permit a close-up review of the actual failure site to permit an independent forensic analysis.”⁷⁶ More seriously, Accufacts reported several cases in which the photographs do not support the claim of “third party interference” made by the JIVs. Accufacts concluded that:

“The JIV reports do not provide sufficient information to verify or properly support the indicated determination of cause. Preconceptions (such as evidence of loose soil at the release site, location of the pipe failure site – top of pipe is sabotage, while bottom of pipe is corrosion, or hole appearance) introduce prejudiced and highly probably false conclusions as to the real cause of the pipe’s failure. Based on an Accufacts review of photographic evidence of some of the claimed Niger Delta pipe failures, cause determinations based on the information entered on current JIV reports can be very subjective, misleading, and downright false.”⁷⁷

In light of this, Amnesty International asked the *Decoders* to review and describe all of the photographs published by Shell and Eni and to highlight any inconsistencies in the photographs or JIV forms. These included whether they observed an irregular hole or corrosion on the leak point, or if the affected community had objected to the conclusion of the JIV; such details are sometimes mentioned in the JIV forms or photographs. They were also asked to note if the photographs do not clearly show whether the leak was caused by a cut or by a crack.

As a result of this analysis, Amnesty International researchers identified at least 89 spills, which the companies blamed on “third party interference” (cuts or drilling), but about which there are reasonable doubts on the basis that the photographs do not clearly support the company claims. Of the 89, 46 are from Shell and 43 are from Eni. If confirmed, this could mean that dozens of affected communities have not

⁷⁴ Amnesty International and CEHRD, *Bad Information*, 2013, p19-27.

⁷⁵ These flaws were first exposed by Amnesty International and CEHRD in their 2013 report which provided several examples of where spills had been wrongly classified as being caused by “third party interference”. See Amnesty International and CEHRD, *Bad Information*, 2013, pp19-27.

⁷⁶ Amnesty International and CEHRD, *Bad Information*, 2013, p23. In January 2018 Accufacts confirmed that these conclusions were still relevant to the new set of forms and photographs it had reviewed.

⁷⁷ Amnesty International and CEHRD, *Bad Information*, 2013, p23. In January 2018 Accufacts confirmed that these conclusions were still relevant to the new set of forms and photographs it had reviewed.

received the compensation that they deserve.

For example, in one case flagged by the Decoders, Shell reported a spill caused by a “hacksaw cut” on 10 June 2011 on its 24" Nkpoku - Bomu Pipeline at Biara.⁷⁸ It was a big spill as 195 barrels of oil were lost.

Following an analysis of the available evidence, Accufacts agreed that the photograph did not support the company’s assertion that the spill was caused by a cut:

“The accompanying photo does not support JIV report assertions of hacksaw cut, sabotage, or third party interference. Ironic that more detailed close-up photos to verify sabotage assertion have not been provided.”⁷⁹

On four occasions, Eni reported that spills were caused by what it termed “induced corrosion”. One of these occurred on the “8" Nimbe South-Obama flowline” on 12 March 2014.⁸⁰

According to Accufacts, the Decoders were correct to state that the photograph was not clear and therefore did not support the company’s claim:

“The JIV report claim of ‘induced corrosion’ is not supported by the photo. There is clearly evidence of external corrosion but there is insufficient evidence to support the claim of ‘induced corrosion’ which has a very specific meaning within the industry, though not defined in regulation. The use of ‘induced’ appears to be an attempt to miss-convey inaccurate or misleading cause, suggesting manipulation of the investigation.”

A third case that the Decoders flagged related to a spill along Shell’s “4" Obele-Ibaa Delivery Line” at Ibaa/Omueze on 14 April 2015 in which 87 barrels were reportedly lost.⁸¹

After reviewing the photo, Accufacts noted that it “does not provide evidence to verify claim of sabotage from hacksaw cut as indicated in the JIV report. Looks more like a corrosion leak, but photo is strangely not sufficient in close-up to properly verify, especially the asserted hacksaw cut.”

Details of seven other cases, also reviewed by Accufacts, where photographs do not support the company assessment that spills were caused by “third party interference” can be found in Annex 2.

In addition, the *Decoders* identified a further 74 spills which the companies blamed on a “third party” removal of fittings, such as nuts, bolts or other pieces of equipment, from well heads and other infrastructure to release the flow of oil. While the photographs purport to show the location of the spills, they provide little or no evidence of how they were caused or who or what was responsible for parts becoming missing (that is, who caused the spill, for what reason and how). No supporting evidence is

⁷⁸ Spill reference 671421, 12 June 2012, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2453.pdf>

⁷⁹ Accufacts, 11 February, 2018.

⁸⁰ Spill reference no 2014/SAR/167/229, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2157.pdf>

⁸¹ Spill incident no 1380641, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/640.pdf>

provided in the JIV reports to back up the claim of “third party” removal of fittings. In the absence of such evidence, the accusations cannot be accepted at face value and would appear to be without merit, as the examples below illustrate.

CONCLUSION

The evidence presented above raises serious doubts about the accuracy and credibility of Shell and Eni claims relating to the cause of a number of oil spills. In each instance, Amnesty International believes that companies may well have recorded spills as being caused by sabotage or theft when in fact their operations were at fault. This is important because the inaccurate labelling of spills would result in communities not receiving compensation. They also allow the companies to play down the number of spills caused by their own operational errors.

Amnesty International has provided details of its findings to the regulator, NOSDRA, and asked it to reopen each case for investigation. NOSDRA should require the companies to urgently compensate the affected communities if they find that the causes of spills have been wrongly reported. The findings of NOSDRA’s investigations should be made public and the companies and NOSDRA should urgently review how they assess the cause of oil spills and improve the way these are documented and photographed.

CONCLUSION

The analysis of large volumes of corporate data in the *Decoders* project supports Amnesty International’s previous research and long-standing position that Shell and Eni are failing to fulfil their responsibility to respect the human rights of communities living in the Niger Delta. In particular, this analysis reveals:

FAILURE TO TAKE ALL REASONABLE MEASURES TO PREVENT SPILLS AND PROTECT PIPELINES

As pipeline operators, Shell and Eni have a responsibility under Nigerian law to employ the best available technology and practice standards in all of their operations. These include ensuring that infrastructure such as pipelines and wells are well maintained.

Best international industry standards outline the measures that companies should take to protect against spills resulting from “third party interference”. These include, for example, strengthening or burying pipelines and increasing surveillance. The high and ongoing frequency of spills, caused by a variety of factors, reveals a failure by both companies to adopt these measures and find lasting solutions to the problem.

In the specific case of oil theft and sabotage, the fact that so many spills occur along the same stretches of pipeline means that the companies are in a position to identify such hotspots and take appropriate measures to protect them, such as by stepping up surveillance of pipelines.⁸²

⁸² According to NOSDRA, steps to improve surveillance could involve the deployment of “state of the art technology such as a Defiled Optic System” that it says has been used by Shell to secure some of their facilities, as well as efforts to improve relationships with local communities, which could then be contracted to conduct surveillance patrols. NOSDRA

Eni and Shell both claim that they have successfully deployed such technologies. It is not possible for Amnesty International to verify these claims. Neither company publishes enough information to do so, and there are other possible factors. While both companies have recently reported drops in the number of spills, it is clear from the figures from 2017 that there are still too many. Also, there have been hundreds of spills on average every year from their pipelines for several decades, raising the question of why they did not act sooner.

FAILURE TO TAKE PROMPT STEPS TO PREVENT POLLUTION

Regardless of the cause of a spill, oil companies are responsible for limiting its harm by acting promptly to prevent contamination and then by cleaning up all pollution. This data revealed by the project shows that Shell and Eni are regularly in breach of government regulations. Their failure to respond promptly means they are exacerbating the impact of the spills. This is especially so in those instances when the spill occurs in water, as the spill is likely to contaminate a much wider area.

The companies often say that they cannot reach areas because of insecurity or other access difficulties, but the JIV forms do not provide evidence to support this.

UNRELIABLE OR MISLEADING INFORMATION

Amnesty International acknowledges that Shell and Eni may be more transparent than other companies operating in the Nigeria Delta since they publish JIV forms and other information. But analysis of this information shows that much of it is unreliable and misleading. This means that some communities are not receiving the right amounts of compensation or none at all, and also that the full extent of oil contamination is not being properly reported. For example:

- **Oil spill volumes:** the companies assess this at the time of the JIV, mainly by a visual estimation of the covered area. But if the JIV has been delayed, as many are, much of the lost oil may no longer be visible. This is especially so if the spill occurred in water, and containment practices failed. The reported volume of lost oil is likely to be a major understatement. This would result in companies not paying the correct amount of compensation to affected communities.
- **Oil spill causes:** the companies assess the cause of a spill visually and then take photographs to support their assertions. Yet many photographs do not appear to support these assertions. At least 89 spills have been wrongly labelled as theft or sabotage when in fact they were caused by “operational” faults.

What is clear from these findings is that Shell and Eni are failing to operate responsibly and in line with Nigerian law and best practice standards. For these reasons, Amnesty International considers ENI and Shell to be deliberately reckless and therefore wilfully negligent. Their failures are resulting in worse pollution in the Niger Delta, which has a negative impact on the rights of the people living there.

letter to Amnesty International, 28 February 2018.

RECOMMENDATIONS

The government of Nigeria must significantly strengthen its regulation of the oil industry and guarantee that the regulator, NOSDRA has the necessary tools to ensure that companies take all reasonable steps to prevent spills and clean up those that do occur, as required by Nigerian law.

Once again, Amnesty International calls on the oil companies to stop making false statements about the causes and impact of leaks, and stop publishing false data. Amnesty International also calls on them to improve their operational practices in the Niger Delta. This report focuses on Shell and Eni, but applies to all operators.

The home states of Shell and Eni, the UK, the Netherlands and Italy, also have important roles to play. They should step up support for the Nigerian government and require by law that extractive companies that have their headquarters in their country undertake human rights due diligence measures.

TO THE GOVERNMENT OF NIGERIA

Substantially strengthen the capacity of NOSDRA, including by providing an increased budget for its operations.

Require oil operators to take all reasonable action to prevent sabotage and theft and impose effective penalties on those that fail to do so. If companies fail to take reasonable measures, then make them liable for compensating affected communities.

Require operators to publish all JIVs and associated photographs and video footage. 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 provide the required basic evidence, 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.

Take steps to address the negative environmental and human rights impacts of the oil pollution. As a matter of urgency these should include health monitoring of affected communities, improvements in health care facilities and a survey of drinking water and food sources in case of contamination by hydrocarbons. The results should be made public. All communities should be consulted, and measures should be taken to ensure that women are given adequate access to the community engagement process at all stages.

TO THE NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (NOSDRA)

Develop a uniform reporting format for all companies to follow regarding oil spills and JIVs. This should include information on when a spill was stopped, and reasons for a delay in the JIV (if any).

Take reasonable steps in line with Nigerian law to ensure that companies conduct JIVs within 24 hours of reporting a spill and impose effective penalties on those that do not.

Review how companies estimate the volume of oil that is spilled, ensuring they adopt international best practice and publish the findings.

Conduct an expert review of how companies assess the likely cause of spills, in line with international best practice and publish the findings.

Investigate all the oil spills on the list Amnesty International has presented where there are reasonable doubts that companies have accurately described the cause of the spills. Where an investigation reveals that a spill has been wrongly labelled (that is where an “operational” spill has been attributed to theft or sabotage), ensure that the company pays the relevant communities the appropriate level of compensation.

TO OIL OPERATORS (INCLUDING SHELL AND ENI)

Publish all JIV forms and associated photographs and video footage; ensure photographs are clear and provide verifiable evidence of the cause and impacted area; ensure video footage will enable independent verification of the rate of oil flowing at the time of the JIV, where possible; and publish details of how and when oil flow is stopped or parts of the system are isolated.

Overhaul the way the volume of oil spilled is calculated, including through the use of the best available technologies and the publication of verifiable evidence.

Ensure that oil flow is always turned off and publish verifiable confirmation that this is done.

Publish all certificates and reports relating to spill site clean-up and remediation, along with the underlying data.

Publish details of the condition of pipelines and other assets annually and disclose the age of infrastructure and all repairs and replacements.

Significantly improve surveillance and monitoring of oil infrastructure to prevent sabotage and theft and commit to implementing the best available technology to prevent spills in the Niger Delta.

As a matter of urgency, publish all the steps taken or planned to prevent sabotage and the theft of oil from facilities.

TO THE GOVERNMENTS OF THE UK, NETHERLANDS AND ITALY

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

Require by law that 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.

ANNEX 1: DETAILS OF THE 10 SLOWEST RESPONSES

The below information is based solely on publicly reported information, including JIV forms.

1. 430 DAYS: ENI'S 2015 SPILL AT THE 8" NIMBE SOUTH-OBAMA FLOWLINE

The spill was first reported on 8 October 2015 and the JIV took place on 11 December 2016.⁸³ The attached form did not give a reason for the delay. The location was not physically hard to access as it was just 1.3km from a tarred road. Eni apparently had no problem accessing the same location before or after the spill. It took Eni fewer than 10 days to respond to three spills along the same stretch of pipeline in 2014. On 24 December 2015, two and half months after this spill was reported, Eni organized a JIV to a separate spill less than 4km away.

2: 252 DAYS: SHELL'S 2016 SPILL AT THE 20" TEP AT UGBUEGUNGUN

This spill was reported on 23 February 2016, but the JIV did not take place until 1 November 2016.⁸⁴ Shell reported on its website that 10 barrels of oil had been spilled. Shell has not published a JIV form or photographs, and the government regulator, NOSDRA, has not produced any either. The location of the spill was reported on the NOSDRA website (<https://oilspillmonitor.ng>).

There is no obvious reason why it took Shell so long to respond to this spill and then clean it up. The spill occurred just beyond the perimeter of the Chevron-operated Escravos export terminal, one of the Niger Delta's most important facilities which has an airstrip.

DETAILS REPORTED ABOVE

3. 190 DAYS: SHELL'S 2015 SPILL 12" IMO RIVER – OGALE PIPELINE AT OWAZA

According to Shell's website, the company reported the spill on 13 May 2015. The JIV took place on 19 November 2015, 190 days later. The attached form did not give a reason for the delay.⁸⁵

Shell and NOSDRA both reported, following the JIV, that minimal oil had been spilled at this location, where a fitting had been attached to the pipe in order to steal oil. NOSDRA described it as a "non-leaking point".

The spill point is not in a remote area or hard to reach. It is north of Port Harcourt, and by the side of a

⁸³ Spill reference number SAR-241-387-107, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/498.pdf>

⁸⁴ See details reported on the Shell website, <https://www.shell.com.ng/sustainability/environment/oil-spills/february-2016.html> (last visited 3 March 2018).

⁸⁵ Spill reference number 1399526, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2027.pdf>

tarmacked road. The Shell JIV reported that there was “no disruption” to the visit.

Between 2011 and 2017 there were five other reported spills along the stretch of pipeline described as “12” Imo River – Ogale Pipeline at Owaza”. Shell responded to all the other spills in three days or less, according to their JIV forms, indicating that there was no problem with insecurity or community relations at this location.

4. 189 DAYS: SHELL’S 2016 SPILL AT UBIE WELL 5S/L FLOWLINE AT IDU-EKPEYE

This spill was reported on 21 July 2015, but the JIV took place only on 26 January 2016, 189 days later.⁸⁶ Shell said that it was caused by a hacksaw cut to a flowline.

Shell reported that during the first day of the JIV community members prevented any work being done unless they were paid. This delayed the JIV by one day. Shell made no reference to community protests or insecurity preventing the JIV from taking place sooner.

Since 2011 there had been seven earlier spills on the wells and flowlines at Ubie, in Akwa Ibom State, according to Shell JIV forms. These are connected by road. The other spills were all responded to within seven days, indicating that access was not a problem for Shell in this area.

On two of those occasions (19 December 2013 and 8 October 2014), NOSDRA warned that Shell needed to “improve on surveillance” to prevent further spills in the area. On 26 January 2016, NOSDRA again said that Shell needed to do this.

5. 180 DAYS: SHELL’S 2016 SPILL AT 20” OTUMARA-ESCRAVOS PIPELINE AT OGIDIGBEN

This spill was reported on 4 May 2016, but the JIV did not take place until 31 October 2016, 180 days later.⁸⁷ The attached form does not give a reason for the delay.

The spill took place at the exact same location as two earlier spills the previous year and close to a third one, according to information presented in Shell JIV forms. It took 19 days to organize the JIV for one of these spills, but only two and three days for the others. In total, in 2015 and 2016 Shell reported undertaking 14 visits to this location to investigate or clean up these spills and on no occasion did it report that access was a problem.

6. 156 DAYS: SHELL’S 2014 SPILL AT THE BONNY WELL 2L FLOWLINE AT EREREKIRI / OKOLO LAUNCH

This spill – marked “operational” by Shell and caused by corrosion – was reported on 15 August 2014, with the JIV taking place on 18 January 2015.⁸⁸ Both Shell and NOSDRA reported that the cause of the delay was not lack of access, but a lack of equipment. As the spill occurred in a swampy area, Shell required a “swamp buggy excavator” to lift the affect flowline to the surface. Shell reported that the spill was minimal (0.03 barrels) as the well’s “surface safety valve” had tripped after five minutes of the spill, cutting off the oil flow.

⁸⁶ Spill reference number 1563611, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/1180.pdf>

⁸⁷ Spill reference number 1628084, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/219.pdf>

⁸⁸ Spill reference number 1232262, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/1710.pdf>

7. 126 DAYS: SHELL'S SPILL AT THE 16" SOUTH FORCADOS TRUNKLINE AT OVIRI OLOMU

Shell reported that this spill was caused by corrosion.⁸⁹ It was reported on 5 October 2011 and the JIV took place on 8 February 2012. Shell estimated that close to 19 barrels were spilled. Shell explained that the delay was caused by "inaccessibility of the site following heavy rains and flooding."⁹⁰

8. 123 DAYS: ENI'S 2015 SPILL AT THE IDU 11LS THERMO WELL (123 DAYS)

This spill was reported on 12 December 2015 and the JIV was held on 13 April 2016.⁹¹ Eni did not give a reason for the delay or cite any access issues.

ENI reported four other spills less than 1.5km from this spill point between 2014 and 2016. It took ENI 21 days to organize a JIV in response to one of those, but just one or two days for the others. In none of those cases did ENI cite access problems.

NOSDRA suggested in its comments that ENI had failed to provide enough security to prevent the spills, which it blamed on theft. The regulator commented, after investigating the first of these spills on 28 April 2014, that Eni "should improve on security to prevent further theft." More than two years later, on 17 August 2016 NOSDRA again said that Eni should "improve on surveillance". NOSDRA did not mention any access issues.

9. 121 DAYS: SHELL'S 2017 SPILL AT THE 12" IMO RIVER – OGALE PIPELINE AT UMUOLOLO

This spill, caused by a leaking oil theft point was reported on 3 February 2017, but the JIV did not take place until 4 June 2017.⁹² The spill took place by the side of a busy, tarmacked road approximately 10km northeast of Port Harcourt. Two other spills that took place close to this location in 2013 were responded to the next day, according to JIV forms. Neither Shell nor NOSDRA reported that lack of access was an issue. In its JIV form, NOSDRA criticized Shell for not reporting the spill within 24 hours.

10. 113 DAYS: SHELL'S 2016 20" KOLOCREEK TO RUMUEKPE PIPELINE RISER AT AMINIGBOKO

This spill was reported on 28 June 2016, but a JIV was not held until 19 October 2016.⁹³ Neither Shell nor NOSDRA reported that insecurity or community protests had caused the delay. There have been two other spills at the exact same point. On both occasions, Shell reported in JIV forms that it responded swiftly. Following a spill reported on 15 August 2014, it took the company five days to organize one.⁹⁴ After a spill

⁸⁹ Spill reference number 723263, available at http://www.shell.com.ng/sustainability/environment/oil-spills/october-2011/jcr_content/par/textimage.stream/1479311778061/5f58bb433ae5a2634f8bd11c200014e408ca298ecb27bf8e933095a5dec2eca3/723263-16in-south-forcados-trunkline-at-oviri-olomu-jiv.pdf

⁹⁰ Shell Nigeria, oil spill data for October 2011, available at <https://www.shell.com.ng/sustainability/environment/oil-spills/october-2011.html> (last accessed 3 March 2018).

⁹¹ Spill reference number LAR-179-478-753, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/331.pdf>

⁹² Spill reference number 1796265, available at http://www.shell.com.ng/sustainability/environment/oil-spills/february-2017/jcr_content/par/oil_spills.stream/1499329968127/8d2cc647f8c4472a5cca5f61c22e4da874a646c884a1e1180c14db1ef0620630/1796265-jiv.pdf (last accessed 2 March 2018).

⁹³ Spill reference number 1663168, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/506.pdf>

⁹⁴ Spill reference number 1232130, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/1840.pdf>

on 12 October 2015, it took Shell just three days to do so.⁹⁵

⁹⁵ Spill reference number 1502962, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/313.pdf>

ANNEX 2: ACCUFACTS ANALYSIS OF UNRELIABLE SPILL CAUSE REPORTS

SHELL SPILL AT UBIE WELL 9S FLOWLINE AT IDU/EDRASS (2012)

Shell reported this spill on 26 January 2012 and stated it was caused by a hacksaw cut.⁹⁶ According to Accufacts, Shell provided an *“inadequate photo to support the claim of third party interference, especially claims of hacksaw. This is also odd given the pipeline was not leaking at time of photo and that coating had also been removed to permit a better close-up examination of the exterior of the pipe at failure site.”*

SHELL SPILL AT 10" DIEBU CREEK-NUN RIVER PIPELINE AT ONYOMA (2014)

Shell reported that the spill was caused by sabotage.⁹⁷ It conducted a JIV on 3 July 2014. This was a large spill; Shell said that 367 barrels were spilled. According to Accufacts, the photograph accompanying the JIV does not *“support assertions of sabotage from drill hole... My ex*

*perience would suggest this is a corrosion failure associated with pitting failure, not a drilled hole.”*⁹⁸ In addition, Accufacts questioned why Shell did not produce *“better pictures that might actual show sabotage if this really was the case.”*

ENI SPILL AT 24" OGODA/BRASS PIPELINE (2015)

Eni reported the spill on 4 April 2015, stating that it had been caused by “third party interference,” and someone drilling into the underside of the pipeline.⁹⁹ One barrel was reportedly spilled. According to Accufacts, the *“assertion of drilled hole in 5 o’clock position cannot be verified from photograph provided. Not likely a drilled hole given photo evidence provided to date.”*¹⁰⁰

ENI SPILL AT TAYLOR CREEK 2LS FLOWLINE (2015)

Eni reported the spill on 13 November 2015 and assessed it was caused by a hacksaw cut.¹⁰¹ Eni stated that

⁹⁶ Spill reference number 769360, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/743.pdf>

⁹⁷ Spill reference number 1201770, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2313.pdf>

⁹⁸ Accufacts, 11 February, 2018.

⁹⁹ Spill reference number 2015/LAR/037/129, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/89.pdf>

¹⁰⁰ Accufacts, 11 February, 2018.

¹⁰¹ Spill reference number 2015/LAR/163/434, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/1661.pdf>

515 barrels were spilled as a result. According to Accufacts' assessment of the supporting photograph:

*"This is a very poor photo to support claim of third party interference, especially claims of hacksaw. This is especially strange given the pipeline was not leaking at time of photo and that coating had been clearly removed to permit better close-up photos of the exterior of the pipe at failure site."*¹⁰²

ENI SPILL AT OBIAFU 26SS FLOWLINE (2016)

Eni reported the spill on 26 August 2016.¹⁰³ Eni reported that the leak point was a drill hole caused by "third party interference" and resulted in the loss of three barrels. Accufacts once again doubted that the accompanying photographs supported these claims. It concluded that Eni *"appear to be misusing the term 'drill hole' in JIV as cause to bias or imply sabotage when photo of pipe does not support this conclusion. Again very odd that better photos at the leak site have not been provided when sabotage is claimed for pipe release."*¹⁰⁴

ENI SPILL AT 6" TUOMO/OGBOINBIRI DELIVERY GAS LINE (2016)

This spill was reported on 6 October 2016.¹⁰⁵ Eni reported that the leak point was a drill hole caused by "third party interference" and resulted in the loss of five barrels. However the JIV also noted that the local community representatives did not agree that this was the cause and stated that "the JIV was inconclusive." According the Accufacts, the photographs once again do not support the company's assessment that the spill was caused by drilling:

*"Poor photo quality at/near weld does not support conclusion of a drilled hole in the 6 o'clock position as reported on JIV report. Could be just external corrosion and/or poor weld at joint leak site."*¹⁰⁶

ENI SPILL AT OBIAFU 26SS FLOWLINE (2016)

Eni reported another spill on the Obiafu 26Ss flowline (see above) on 2 November 2016.¹⁰⁷ It also assessed that the leak point was a drill hole caused by "third party interference" and reported that three barrels were lost.

Accufacts' assessment is that the photograph does not support the conclusion on cause: *"photo clearly indicates extensive external corrosion and that the holes are not drilled as reported on JIV report."*¹⁰⁸

¹⁰² Accufacts, 11 February, 2018.

¹⁰³ Spill reference number 2016/LAR/085, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/2585.pdf>

¹⁰⁴ Accufacts, 11 February, 2018.

¹⁰⁵ Spill reference number 2016/LAR/107, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/204.pdf>

¹⁰⁶ Accufacts, 11 February, 2018.

¹⁰⁷ Spill reference number 2016/LAR/113, available at <https://decoder.blob.core.windows.net/oil-spill-assets/data/32.pdf>

¹⁰⁸ Accufacts, 11 February, 2018.