7. Embedding human rights mechanisms within Shell subsidiary in Nigeria

This chapter analyses how and to what degree an operating company of Shell implements and internalises human rights mechanisms in Nigeria and how this can be explained. This subsidiary is selected in this research because the materiality of the country to Shell Group, the sensitivity of Shell's human rights performance and the use of human rights training as a tool. The bulk of the data used for this chapter was obtained in three field visits in the period August 2005 – July 2006 in the context of developing human rights and conflict resolution training for Shell's operating company in Nigeria (see section 7.4.4). The data is based on field notes, participatory observation and semi-structured employees with 20 employees complemented with literature, as described in section 3.5.4.

As described in chapter 3, some parts have been indicated as confidential for different reasons. In this chapter, this is valid for certain internal guidelines and assurance mechanisms that are not in the public domain, quotes, security forces, government relations and the relationship between Headquarters and subsidiary. The confidential parts have been disclosed to the committees that had to assess this PhD thesis. Besides, the analysis from these confidential parts is drawn into the public conclusions at the end of this chapter and chapter 8 and has been shared within Shell for policy analysis.

The chapter starts by explaining the impact of oil in Nigeria and the human rights situation (section 7.1). Section 7.2 describes Shell's subsidiary in Nigeria, SPDC, after which different human rights dilemmas are discussed in section 7.3. Sections 7.4 to 7.9 analyses how SPDC deals with human rights in relation to its spheres of influence: core operations, contractors, security forces, communities, government and the international society. Following this analysis, the relationship between SPDC and Shell Headquarters[1] is explained in section 7.10. The chapter ends by drawing conclusions from the analysis in section 7.11.

7.1 Nigeria and the impact of oil

This section provides the background of Nigeria (7.1.1), the impact of oil in Nigeria (7.1.2) and the human rights situation (7.1.3).

7.1.1 Nigeria

In a brief way, Nigeria is described according to the geography, history, politics, economy, labour, culture and regulation.

Geography
Nigeria is the 14th largest country in Africa with a total land area of 923,768 square kilometres, bordering Niger, Chad, Cameroon and Benin (UNDP, 2004). Nigeria holds many minerals, forest and water resources. Fossil fuels, metallic, non-metallic and radioactive minerals are the basic groups of mineral resources found in Nigeria.

In terms of its population, Nigeria is the largest

Figure 1 Map of Nigeria

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[1] As stated in chapter 4, 'Headquarters' is the compilation of the support functions to Shell International, such as Finance, Human Resources, Corporate Affairs, etc.

country in Africa with a population of more than 130 million people. It accounts for 47 percent of West Africa's population and 41 percent of the region's GDP (World Bank, 2006). The spatial distribution of the population is uneven, with a majority of the population in rural areas; approximately 36 percent of the population live in urban areas (UNDP, 2004).

History
From 600, Hausa kingdoms and the Kanem kingdom prospered in the North, Yoruba kingdoms from 1400 in the southwest and Benin kingdoms in the south central of Nigeria from the 12th century. From the 15th century, Europeans started to trade slaves from Africa, including Nigeria. It is estimated that around one million people from Nigeria have been put to work on plantations in the Americas as slaves until 20th century.

From 1861, the Southern part of Nigeria became a British colony. Northern Nigeria was a separate British protectorate, which was formed in 1900. In 1914, Southern Nigeria unites with Northern Nigeria into the Colony and Protectorate of Nigeria. The way Britain governed its colony increased the division between North and South of Nigeria. The South became Christian, English speaking and based on Western traditions. The North stayed Muslim, Hausa speaking and based on the Koran. It is often mentioned that current ethnic conflicts in Nigeria are linked to this colonial division (Dave, 2006).

In 1947, Nigeria gets its own legislature and self-government and independence is granted in 1960. Nigeria becomes a federal parliamentary democratic monarchy under the British crown. Increasing corruption led quickly to chaos and anarchy. Between 1960 and today, Nigeria saw seven different military governments, following seven military coups, and three unstable civilian governments. The periods of military rule in Nigeria marked the peak of human rights abuse (Peters, 2000). In 1967, the Igbo declared the independent state Biafra, strongly motivated by the finding of oil in the region. This led to a bloody war until 1970, with casualties of at least half a million people. After the end of the last military regime in 1999, Nigeria returned to civilian rule and adopted a new constitution.

Politics
From 1999 to 2007 and at the time of field research, the president of the federal republic of Nigeria was Olusegun Obasanjo[2]. He is Yoruba, a former general and a member of the biggest People's Democratic Party (PDP). Other main parties in Nigeria are the All Nigeria Peoples Party (ANPP) and the All Progressives Grand Alliance (APGA). Given the intricate and expanding network of patron-client ties which permeated the Nigerian political society, ethno-clientalistic linkages provided the bases on which the parties were formed, which circumscribed inculcating national values (Ikein & Briggs-Anigboh, 1998). The CIA World Factbook states that the bicameral National Assembly consists of a Senate (109 seats, 3 from each state plus 1 from Abuja) and House of Representatives (360 seats). As a result of the internal conflicts, the number of states increased from 3 to a total of 36 today. These are further divided into approximately 774 local government areas. The government resides at the central capital Abuja since 1991, transferred from the Southwest Lagos in an attempt to create more national unity.

As required under the Nigerian Constitution, the Federal Government returns a significant proportion of the revenues it receives to state governments (31%) and

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[2] After elections in April 2007, the president changed to Umaru Yar'Adua from the Hausa people and from the same party.

local government Areas (15%). However, the states are competing for access to federal funds rather than trying to generate revenue by themselves (Frynas, 2003; Ite, 2005). State boundaries do not correspond to ethnic boundaries and therefore the dominant ethnic group of a state may be able to place other minorities of that state at a disadvantage in terms of allocation. Problems of ethnic and religious violence have confronted the Obasanjo government since its inception and have been increasing towards the general elections in 2007. The country is dogged with political instability, because of these ethnic tensions (Ikein & Briggs-Anigboh, 1998).

Nigeria's international standing has increased as the country is moving from dictatorship to democracy and started implementing economic reforms. Nigeria is a leading player in the Commonwealth, in the New Partnership for Africa's Development (NEPAD), and in the Economic Community of West African States (ECOWAS). The civil society of Nigeria has grown substantially during civil rule and is composed of the labour movement, student movement, women's associations, professional associations (e.g. Nigerian Bar Association, Nigerian Union of Journalists, Nigerian Medical Association), human rights organisations, and religious associations. The peasantry is the weakest link in the chain of the civil society in view of the lack of a national organization of peasants, its low level of education and articulation (Mohammed, 2004). According to the independent Dutch specialist on Nigeria Van der Aa (2002), they suffer from problems such as good governance, management experience and technical expertise. According to the Nigeria focal point of Shell Headquarters, the characteristics of civil society in Nigeria are 'many and varied'; they are ethically based, thematically based ranging from well-organised groups to one man behind a computer. Lee & Coussirat-Coustere (2007), who analysed the human rights organisations in Nigeria, state that they face a legitimisation crisis because of a lack of an active and effective membership base and a lack of sufficiently democratised decision-making structures.

Most civil society leaders and most Nigerians see a marked improvement in human rights and democratic practice under Obasanjo (World Bank, 2006). The press enjoys greater freedom than under previous governments, although the media are accused of underreporting actual human rights abuses, self-censorship, occasional bias and sensationalism, due to susceptibility to bribery and limited professional training (Oloyede, 2004; US state, 2006). President Obasanjo's rule also led to many disappointments, since the standard of living did not increase for the average Nigerian. Obasanjo is mostly accused of being indecisive (Van der Aa, 2002).

Regulation
Nigeria is a common law jurisdiction and much of English law has been received in Nigerian law. Nigeria has ratified and incorporated many human rights conventions and treaties into national laws. In addition, Nigeria ratified the African Charter on Human and People's Rights in 1983 (ACHPR, 2007) and it has been consistent not just about the enforceability but also on its superiority over domestic legislation (Peters, 2000; Jones, 1998). Furthermore, Nigeria has set up a National Human Rights Commission in 1995 to enhance human rights situation in the country.

The legislature and judiciary suffered years of neglect during the military regimes, but the human rights situation improved considerably under democratic rule in 1999. Yet, there is still room for improvement. The 2005 US state department human rights country report states that:
> 'although the law provides for an independent judiciary, the judicial branch remained
> susceptible to executive and legislative branch pressure. Political leaders influenced the

judiciary, particularly at the state and local levels. Understaffing, under funding, inefficiency, and corruption continued to prevent the judiciary from functioning adequately. Citizens encountered long delays and frequent requests from judicial officials for small bribes to expedite cases'.

As a result, the Nigerian people do not trust the judiciary to be effective in regulating the country, which leads to impunity.

Economy: level of development
Despite the large human and natural resource base of the country, the Nigerian economy has suffered considerable decline, especially since the mid-1980s. This is perceived to be due to negative shocks in the international crude oil market and the adoption of the orthodox types sectoral adjustment programme in 1986 (UNDP, 2004). The GDP per capita for Nigeria is $1,154, which puts Nigeria among the poorest countries in the world. About 37% of the population lives in extreme poverty. Nigeria's Human Development Index is 0,448, which gives Nigeria a rank of 159th out of 177 countries with data. This shows large gaps in living a long and healthy life, having access to education, and a decent standard of living (UNDP, 2006).

Nigeria's major challenge rests in the area of corruption. Transparency International (2006) ranked Nigeria as number 142 in a total list of 163 countries in the Corruptions Perceptions Index (where nr. 163 is the worst). In October 2006, the Chief Corruption officer of the Nigerian government stated that more than $380 billion has either been stolen or wasted by Nigerian governments since independence in 1960 (BBC News, 2006). While the federal government has made some efforts to tackle corruption (issuing Anti-Corruption Bill, establishing Independent Corrupt Practices Commission), it remains a pervasive problem even as the vast majority of Nigerians continue to live in extreme poverty.

Culture
Nigeria's population is made up of about 200 ethnic groups, 500 indigenous languages, and two major religions: Islam and Christianity. The largest ethnic groups are the Hausa-Fulani in the North, the Igbo in the Southeast, and the Yoruba in the Southwest (World Bank, 2006). The Hausa are predominantly Muslim and the Ibo, Christian. Indigenous religious practices remain important, especially in the South, and are often blended with Christian beliefs.

The diversity in the Nigerian society forms a source of inspiration for many people. No other African country delivers that many successful soccer players, writers and musicians. Specific to the work of Nigerian artists is the tension between African and Westerns traditions (Van der Aa, 2002). This ethnic and religious diversity also has another side: it is regarded as the root of many local conflicts and political instability. Moreover, the focus of most Nigerian is on their tribe rather than their country (Debrah, 2000).

Using the classification of culture of Hofstede (2001), Nigeria can be classified as relatively high on collectivistic orientation, power distance, femininity, uncertainty avoidance and context dependent (Kanungo, 1998). This is opposite to the classification of the home countries of Shell Group, The Netherlands and the United Kingdom (see chapter 4), which may lead to tensions between Shell Headquarters and the subsidiary. Although much of the Nigerian culture has been 'westernised' (Iruh, 2006), Grootings (2004) has analysed and senior managers within SPDC confirm, the organisational structure is much more hierarchal than in the home countries of Shell Group. Ethnicity and age are highly valued and structures (and connections) are organised around them. Other cultural aspects may also cause friction between Headquarters and subsidiary, such as indirect form of communication, arguing publicly, slower pace of business deals (Iruh, 2006).

Labour
In the 1960s, the quality of Nigerian education belonged to the best on the African continent. Since the 80s, however, the level of education has decreased considerably (Van der Aa, 2002). The combined primary, secondary and tertiary gross enrolment ratio is 55%, which puts Nigeria at the 140th place in a total of 172 (UNDP, 2006).

There are no restrictions on the membership of labour unions. The labour unions in Nigeria are organised in the National Labour Congress, which counts 29 unions and 3,5 million members. The Nigerian Union of Petroleum and Natural Gas Workers (Nupeng) is by far the most powerful union. Nigerian unions love to strike, especially for higher salaries, but do not strike for labour rights with the result that companies can still easily fire people (Van der Aa, 2002).

7.1.2 The impact of oil

For Nigeria, oil is the primary source of income. Oil exports generate almost 90 percent of the country's revenue and generate 40% of the country's GDP (World Bank, 2006)[3]. In 2006, Nigeria produced on average 2,6 million barrels of oil per day (Nigeria oil and gas, 2007), which makes the country the 12th largest producer of oil in the world and the largest in Africa. Since the 50s, Western multinational oil companies formed joint ventures with the national oil company of Nigeria (NNPC). Over 90% of oil is produced by these joint ventures. In the last couple of years, Chinese firms are also becoming increasingly involved in the Nigerian oil sector (Dave, 2006).

The level of production and demand for oil is heavily dependent on Western economies, which makes the stability of income from oil revenues fragile. The discovery of oil transformed Nigeria's political economy (Manby, 1999). Despite the political instability, the petroleum policy and the oil production levels in Nigeria has been unaffected by the frequent changes in government (Frynas, 2003; Ahmad Khan, 1994).

The oil reserves are found in the South of Nigeria, in an area called the 'Niger Delta'. The Niger Delta includes nine states of the federation and the population is to be estimated at 27 million people. The Niger Delta is a wetland of 112.000 square kilometres containing a number of ecological zones: sandy coastal ridge barriers, brackish or saline mangroves, freshwater permanent and seasonal swamp forests, and lowland rain forests. Oil production is said to have damaging effects on the environment of the oil-producing region, though the extent of the damage is subject to dispute (Manby, 1999).

Despite the oil revenues, even more people live in poverty today than before oil was found, especially in the rural areas and in the oil producing areas (Ikein & Briggs-Anigboh, 1998). The Human Development Index (HDI) of the Niger Delta has the low value of 0,564 (with 1 being the highest score). While these ratings put the Niger Delta at a slightly higher level than Nigeria's overall HDI, the area rates far below countries or regions with similar oil and gas resources. The difficult topography encourages people to gather in small communities (of the estimated 13.329 settlements in the region, 94 per cent have populations of less than 5000). These are rural communities, which offer very limited economic opportunities.

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[3] Even though Nigeria produced various petrochemical items, often it has to import these very items for its own economy. This is because plants to facilitate the production of various items are very expensive and the multinationals that build these plants use the end products for export purpose, leaving Nigeria to import them (Dave, 2006).

Infrastructure and social services are generally deplorable and inadequate. The general neglect of infrastructure, often rationalized by the difficulty of the delta's terrain, has worsened people's access to fundamental services such as electricity, safe drinking water, roads and health facilities that are taken for granted in many other parts of Nigeria. As an illustration, during my visits to the area, the power went down many times. The Nigerians joke that the National Electric Power Authority (NEPA) stands for 'Never Ever Power Again'. Many people in Nigeria also walk around with four different mobile phones in case the networks break down.

This phenomenon is called the 'oil curse' (see e.g. O'Neill, 2007). How is this possible? Firstly, as Shaxson (2007) states: '*oil tends to supercharge corruption. Governments don't tax their citizens, so there's no accountability'*. Nigerian rulers were mostly concerned with filling their own pockets from the oil revenues. Other economic sectors have been neglected (Van der Aa, 2002). In spite of the substantial flow of oil money to state and local governments, many communities see no sign of improvement in their standard of living. Especially local governments have been known for its corruption and unaccountability; investments in education and health have even declined since the budget of these government institutions increased, substantially impacting the human rights situation (Human Rights Watch, 2007). This intensifies a sense of hopelessness and mistrust that for the most aggrieved people leads to a call to arms, especially among youths (as defined in the Niger Delta as below 40 years old). They feel they are condemned to a future without hope, which makes them leave school. They see conflict as a strategy to escape deprivation. The delta is a place of frustrated expectations and deep-rooted mistrust that erupted in violence.

Secondly, the production of oil is said to have a dependency effect by '*alienating people from their land and resources that led to the inefficient use of remaining resources and poor or inequitable land-use practices'* (UNDP, 2006). When oil was first discovered in Nigeria in the 1950s, it was still a colony of Great Britain. Nigeria was one of the world's leading exporters of cocoa, groundnuts and palm oil, and a notable exporter of rubber, cotton and hides. With the discovery of oil and its subsequent progress there has been a rapid decline in the size of the agriculture and its contribution to GDP (Dave, 2006). However, the World Bank also reports other significant causes of the decline in agricultural production, such as population increases and migration, as well as the construction of upstream dams (Detherige & Pepple, 1998).

Thirdly, the division of the oil revenues creates political tensions between the North and South of Nigeria. According to regulations, 13% of the revenues are returned to the four states where most of the oil and gas production took place. In reality, however, the amount that actually went to the four states in 2005 was almost three times higher (nearly 38%). In this respect, Dave (2006) says that at the moment, the states that are not producing oil feel that they are being left out as they do not have much say in the matter.

Fourthly, the production of oil in the Niger Delta is said to lead to a breakdown of local governance structures and values. In Nigeria, respect for the elderly is a reciprocal relationship in which the elderly are supposed to take care of the younger people (Beugre and Offodile, 2001). However, the money that the Nigerian government offer for development of the Delta largely disappears in the pockets of local leaders. While the rest of the population lives in huts, many chiefs strikingly built expensive villas (Van der Aa, 2005; Manby, 1999; Mohammed, 2004). Seeing this irresponsibility of their leaders, youths take justice into their own hands. In addition, violence is exacerbated by competition for contracts and other benefits of oil company favour (Manby, 1999) and over

control of the theft of crude oil. Communities fall apart as a result, which results in fighting amongst each other.

7.1.3 Human rights situation in Nigeria and the Niger Delta

According to the World Map of Risks and Opportunities (see chapter 4), Nigeria is indicated as 'high risk' to violate human rights for companies who operate in the country. Freedom House (2006) also indicates that Nigeria is partly free, in which political rights are scored a 4 on a scale of 1-10 (where 10 is total freedom). This sub-section explains why the Niger Delta is indicated high risk. Different sources are used to provide a summary of the human rights situation, such as annual reports on Nigeria by Human Rights Watch (2006a) and Amnesty International (2006), the US state department human rights country report on Nigeria (2006) and the UNDP Niger Delta Report (2006).

In Nigeria, the following human rights problems are reported in 2005: abridgement of citizens' right to change their government, politically motivated and extra judicial killings by security forces and use of excessive force, vigilante violence, beatings of prisoners, detainees, and suspected criminals, harsh punishments by Shari'a courts (primarily in the North), impunity, harsh and life-threatening prison conditions, arbitrary arrest and prolonged pre-trial detention, forced evictions, executive interference in the judiciary and judicial corruption, infringement of privacy rights, restrictions on freedom of speech, press, and assembly, limited freedom of religion and movement, domestic violence and discrimination against women, female genital mutilation, child abuse and child prostitution, communal violence and ethnic, regional, and religious discrimination, trafficking in persons for purposes of prostitution and forced labour, restrictions on workers' rights and child labour.

Not all of these abuses occur in the Niger Delta, where the oil operations are. The sources report that violent conflict and violation of social and economic rights (poverty) are the largest problems in the Niger Delta, in which the conduct of security forces, inter-communal violence, impunity, corruption and low freedom of expression are eminent. The Niger Delta is the scene of recurring violence between members of different ethnic groups competing for political and economic power, and between militia and security forces sent to restore order in the area.

Human Rights Watch (2006b) reports that the presence of many ethnic groups in the Niger Delta (40 different ethnic groups speaking 250 languages and dialects) creates many disputes over land ownership. For example, in and around the city of Warri, the Niger Delta's broader problems have become bound up with a long-running controversy over who the 'true indigenes' of the city are. Warri is home to three different ethnic groups that each claim to be the town's true owners. Each group has made attempts to claim that they were the first to settle the area. Since 1997, Warri's ownerships controversy has given rise to a series of intercommunal clashes that have claimed hundreds of lives. Other issues that human rights organisations mention are oil spills and gas flaring, contributing to environmental degradation and affecting health and livelihoods, which is discussed further in section 7.3.2.

The violence is aggravated by the widespread availability of small arms, a problem that exists throughout Nigeria but is particularly acute in the Delta. Despite a robust military and police presence in the region, local communities remain vulnerable to attack by militias, criminal gangs, and the security forces themselves. Lives are lost, and investments drop along with the availability of jobs as the result of violence. The response to violence has at times meant further violence is unleashed randomly on unsuspecting communities or oil workers. Whole villages have been destroyed and their populace displaced

because of disputes that could have been amicably resolved. While no firm statistics are available, NGOs estimate nearly 1,000 violent deaths occurred in the Niger Delta alone in 2003, some of which are intra-communal or inter-communal, but also the result of excessive use of force by Nigerian security forces or the police force (Amnesty, 2004b). The NGO 'Stakeholder Democracy Network' reports that this number increased to 1,500 a year since 2003 (SDN, 2007).

In 2003, the government began 'Operation Restore Hope', a joint task force consisted of approximately five thousand army, navy, air force, and mobile police personnel, in response to violence in the Niger Delta region. The human rights organisations express the concern that some people, particularly unscrupulous politicians and political organizations, benefit from violence, and that they sponsor some of the youth gangs in the region. Arms merchants along with police and military personnel have supplied weapons to various gangs, and the increased incidence of oil theft has been linked to the need for foreign exchange to purchase arms.

In September 2005, federal authorities arrested Niger Delta People's Volunteer Force (NDPVF) leader Asari on charges of treason; that same month, UK police arrested Bayelsa state Governor Diepreye Alamieyeseigha in London on charges of money laundering. The two arrests in 2005 led to a sharp rise in tensions throughout the Niger Delta. Human rights organizations accused the military and police of harassment, extortion, and excessive use of force in the region. Police and the armed forces are instructed to use lethal force against suspected criminals and suspected vandals near oil pipelines in the Niger Delta region. According to the US state department's 2006 human rights report, freelance and former security forces accounted for a portion of the violent crime committed during 2005.

There have also been numerous cases of arrests, detention, ill treatment, intimidation and harassment of critics and opponents of the government. Security forces have harassed and intimidated activists from the Niger Delta. In June 2006, the government is accused to reduce the criticism about the country's human rights record to attempt to remove the executive secretary of the country's National Human Rights Commission (NHRC). Impunity from prosecution remains a big obstacle to combating the recurrent human rights abuses by security forces and government officials. There is no independent mechanism to ensure that abuses by the police are addressed or even properly investigated. Since the end of military rule there have been no successful prosecutions against Nigerian police officers alleged to have committed torture.

7.2 Shell in Nigeria: SPDC

Shell was first granted a license to produce oil for Nigeria in 1937. Oil was first discovered in 1956 and exported in 1958. During the Biafran war, Shell withdrew temporarily from the Delta, but expanded during the 1970s and 1980s (Bird, 2004). There are four Shell companies in Nigeria (Shell Nigeria annual report, 2005):

1. *Shell Petroleum Development Company (SPDC)*: incorporated in 1937 to produce oil and gas in Nigeria. SPDC has over 6,000 kilometres of pipelines and flowlines, 87 flowstations, eight gas plants and more than 1,000 producing wells. SPDC produces 900,000 to 1,000,000 barrels of oil per day on average. Employees: 4500 people.

2. *Shell Nigeria Exploration and Production Company (SNEPCO)*: established in 1993 to produce oil and gas in deepwater with two major projects in Bonga. It started production in 2005 and is expected to increase to 225,000 barrels per day. Employees: 655 people.

3. *Shell Nigeria Gas (SNG)*: incorporate in 1998 to produce natural gas. Its operations consist of a transmission and distribution network of approximately 80 kilometres of gas pipeline comprising two systems. Employees: 34 people.

4. *Shell Nigeria Oil Products (SNOP)*: incorporated in 2000, producing and providing lubricants and chemicals, marine/coastal, aviation fuel supplies and inland fuel deliveries on the Nigerian market (currently < 5% market share). Employees: 32 people.

In addition, Shell Nigeria has 25,6% stake in the Nigeria Liquefied Natural Gas (NLNG) joint venture agreement and is also the technical advisor. SPDC will be the focus for the purpose of this research, since this subsidiary of Shell is the largest in Nigeria and is also the company that developed the human rights training. SPDC is the operator of a joint venture involving the Nigerian National Petroleum Corporation – NNPC (55%), Shell (30%), EPNL - subsidiary of Total (10%) and Agip (5%). Shell operates SPDC.

SPDC's operations take place in the Niger Delta. Although the oil fields in the Niger Delta are small, there are a large number of them. As such, it has been necessary to link the various field through increasingly complex networks of pipelines (Bird, 2004). SPDC's operations are spread throughout the region. The total land take for all of its operations amounts to about 400 square kilometres (0,4% of the Niger Delta). Figure 2 shows the spread of SPDC's operations within the Niger Delta.

Figure 2 Operations SPDC in Niger Delta

Compared with SPDC's competitors, the company is by far the most present company on land (see appendix 10). The region has the potential to yield approximately 10 billion barrels of oil. Oil is relatively easily extracted in Nigeria and also of a very high quality (low sulphur). For Shell as a whole, Nigeria is a material country because it is Shell's third largest oil-producing country.

SPDC employs 5,000 people directly of whom 95 per cent are Nigerian and about 66 per cent from the Niger Delta. Another 20,000 people are employed indirectly through the network of companies, which provide supplies and services. The

company also interfaces with the 1600 individual communities who live around their facilities in the Niger Delta.

Nigeria is a priority country for Shell Group, because of its business interests in the country (the Shell Group relies on Nigerian oil and gas for about 10% of its production). About one third of the 2004 reserves downgrade was in Nigeria (see chapter 4), which lead to a negative reputation impact with the Nigerian government.

Full information on Shell's activities in Nigeria is available in the 2005 Shell Nigeria Report at www.shell.com/nigeria. The next section discusses an important event in Nigeria that strongly impacted the human rights reputation SPDC and Shell Group, i.e. the conflict with the Ogoni and Ken Saro Wiwa.

7.3 Human rights related issues faced by SPDC

The poor human rights situation impacts SPDC's operations substantively. This section analyses certain human rights related issues faced by SPDC. The first sub-section describes the conflict with the Ogoni people in the mid 90s that had a large impact on the overall human rights reputation of the Shell Group. The second sub-section 7.3.2 explains a number of SPDC's more current human rights related issues.

7.3.1 SPDC and the conflict with the Ogoni

The human rights situation in the Niger Delta has a big impact on Shell in Nigeria and even Shell's worldwide reputation. One of the most important dilemmas that Shell Nigeria faced in the past concerning human rights is the conflict with the Ogoni people in the mid 90s. This section briefly summarises the story of the Ogoni, based on Van Tulder & Van der Zwart (2006), Boele et al (2001), Shell statement MOSOP[4] (2006), Human Rights Watch (1995) and the SPDC 2005 annual people and environment report.

SPDC drilled for oil in Ogoniland in Nigeria since 1958. The Ogoni tribe is one of 250 tribes in Nigeria and consists of 500.000 people. The Ogonis live on one of the richest oil fields in Nigeria. As a result of water and soil pollution, agriculture and fishing have become seriously impeded. While the Ogonis were bearing the costs, they were receiving precious little benefits from the revenue their oil-rich soil was generating.

In 1990, writer and activist Ken Saro-Wiwa founded the Movement for the Survival of the Ogoni People (MOSOP). The UN named 1993 the year of indigenous peoples and Ken Saro-Wiwa made good use of the international attention. In the eyes of MOSOP, SPDC was one of the greatest evildoers in the oppression of the Ogonis. SPDC was accused by MOSOP of paying protection money to the military regime to forcefully suppress Ogoni protests, pollution of the area and compensating the local population insufficiently for their land. It was through the income that SPDC generated for the Nigerian dictatorial regime that the latter remained in power, the environment was polluted and the Ogonis received no share in the proceeds.

SPDC interpreted the situation differently. It viewed the protest actions of MOSOP as an attempt to gain acknowledgement for the problems of people in oil-producing regions. SPDC admitted to the environmental problems, but pointed out that the company cleaned up polluted areas and compensated affected

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[4] MOSOP means 'Movement for the Survival of the Ogoni People'.

parties. According to SPDC, it did everything in its power to prevent environmental damage but also maintained that the local population frequently sabotaged the oil pipeline in order to pocket the damages.

In the course of 1993, the protests against SPDC and the Nigerian government acquired a more violent character. The Nigerian government and the military retaliated with force violating human rights, including extra judicial executions, indiscriminate shooting, arbitrary arrests and detention, floggings, rapes, looting and extortion. In that year, hundreds of Ogonis were killed in conflicts with the army. According to Ken Saro-Wiwa, SPDC was partly responsible for the army's violence against the peaceful protesters. SPDC decided to discontinue operations in Ogoniland in January 1993, in the face of increasing intimidation and attacks that included physical beatings, theft and destruction of personal belongings and equipment. The safety of SPDC's employees could no longer be guaranteed. International societal organisations and MOSOP were partly credited with SPDC's withdrawal from the region. The sources used in this section indicated that SPDC's production of oil in Nigeria apparently declined by more than 20 percent as a result.

In May 1994, four government-affiliated tribal chiefs were murdered and Ken Saro-Wiwa, along with eight other MOSOP members, were arrested and jailed. Saro-Wiwa stated: '*This is it. They are going to arrest us all and execute us. All for Shell*'. Eighteen months later, on 31 October 1995, the Nigerian government sentenced them to death for engaging in activities undermining the state, inciting violence in younger MOSOP members and for the alleged murder. Shell Group CEO, Herkströter, responded by stating that the company could not undertake action to prevent the executions. It was not SPDC's responsibility as a commercial company to interfere with local politics. Societal organisations in several countries called for a boycott of the oil firm. On several occasions, however, SPDC communicated to the Nigerian government that it was of utmost importance that people were given a fair and objective trial.

In November 1995, environmental organisation Greenpeace and human rights organisation Amnesty International appealed to the Board of Shell to put pressure on the Nigerian government to refrain from carrying out the sentence. On 8 November 1995, SPDC requested the Nigerian president to grant clemency to the nine prisoners. The request was of no avail and on 10 November 1995, despite fervent protests from Amnesty International, Pax Christi, international pressure groups, the UN, governments all over the world and SPDC, the executions were carried out.

The public outcry against Nigeria, but also against Shell Group and SPDC, was immense. Headlines appeared that painted Shell as callous and a supporter of dictators. Shell Group found its role in Nigeria the focus of much analysis in the media, consumer boycotts and protests at e.g. the Shell Annual General Meetings.

Figure 3 Protests / campaign logos accusing Shell for execution Ken Saro Wiwa and others.

After the death of Ken Saro-Wiwa and his fellow Ogonis, SPDC and Shell Group were accused of not doing enough to speak out on human rights in Nigeria.

Consequently, the Shell Group was one of the first companies to make an explicit commitment to human rights.

The conflict with the Ogoni continues to this date. In March 2001, the relatives of Ken Saro-Wiwa decided to take SPDC and Shell Group to court in the US under the ATCA (see chapter 1)[5]. On 10th of November 2005, a worldwide 'Remember Saro Wiwa' day was organised, stating that nothing has changed to date (see e.g. www.remembersarowiwa.com). In 2006, a 'Living Memorial' to Ken Saro-Wiwa was unveiled in London. The current President Obasanjo appointed Father Matthew Kukah to bring about a lasting reconciliation to the benefit of all Ogonis in 2005. This is the fourth reconciliation effort initiated by the government. Progress towards full reconciliation has been difficult and slow. To date, SPDC has not yet returned to Ogoniland.
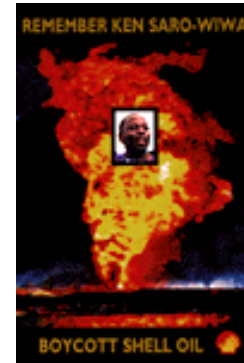
Figure 4 Anti-Shell poster remembrance death of KSW

If the typology of section 2.4 is used, the issue of SPDC and Ken Saro-Wiwa and the Ogoni can be indicated as a complicity dilemma. This event even had a wider impact than SPDC, because other MNCs then started to think about their social and environmental responsibilities much more explicitly. In other words, this event is seen (amongst others) as a catalyst for the trend on Corporate Social Responsibility (see chapter 1). A few companies indicated at conferences visited to refer to the 'Ken Saro-Wiwa moment', when they face a difficult and timely decision that may impact the reputation of the company.

7.3.2 Current human rights related issues faced by SPDC with communities and security forces

Shell Nigeria companies face other complicity dilemmas in Nigeria as well. These dilemmas are illustrated by a Chief from the Ugborodo community in the Niger Delta:

> *'It is like paradise and hell. They have everything. We have nothing; if we protest, they send soldiers. They sign agreements with us and then ignore us. We have graduates going hungry, without jobs. And they bring people from Lagos to work here' (Amnesty International, 2005b).*

There are several elements in this statement. Firstly, communities feel that their social and economic rights are violated by SPDC, because they see little being invested from the oil revenues in the development of the Niger Delta. Local communities were for years perpetually marginalized and excluded, while they continued to bear the full brunt of oil production. As a consequence, communities' perceptions of the Nigerian state, the oil industry and oil companies took a form in which these institutions are seen as antagonists to be confronted (Idemudia & Ite, 2006). According to the lecturer Uwem Ite, who conducted research on SPDC's relationships with communities, communities perceive oil companies in using their resources to buy the cooperation of leaders at all levels of government (Ite, 2005). Hence, they blame SPDC for their deprived situation, as the largest and the oldest oil company in the region, and see SPDC as the enemy. As an illustration, a book appeared in 2005 with the very telling title 'Where vultures feast: Shell, human rights and oil in the Niger Delta' (Okanta & Douglas, 2005). It describes SPDC as '*a powerful multinational company bent on extracting the last drop of blood from the richly endowed Niger Delta'*.

Secondly, the community chief complains that SPDC does not recruit people from the Niger Delta, despite 66% of SPDC's employees are from the Niger Delta. Bird (2004) explains why communities have these views:

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[5] These cases were finally settled out of court in June 2009.

'although Shell's operations provide wages and job opportunities for several thousand workers, the numbers employed are insignificant in a Delta population of seven million. Furthermore, oil production is a high-tech activity, which does not easily provide job opportunities for largely unskilled or semi-skilled indigenous people living in rural areas'.

The disputes over land ownership also have its impact on SPDC. When acquiring land for oil extraction, SPDC is often confronted with different communities that claim to own the same land (see box 10 for an example). On top of this, communities only have 'surface rights' and the government owns the land from six feet below the surface. However, when SPDC extracts oil and gas, the surface is also damaged. The Nigerian government has set a lower rate for compensating these damages than industry. People do not feel satisfied with the compensation offered by government or industry for these damages or the acquisition of their land. In Nigeria's land Act of 1978, it states that a 'fair and adequate' compensation should be provided, which is subject to multiple interpretations. In addition, communities do not have adequate governance structures that represent all interests in a balanced way. This makes maintaining stabile community relations for dealing with land issues and development projects for SPDC more complex.

Box 10 The Odioma Incident

In 1998, SPDC acquired land from the Obioku community for exploration and production of oil. At the time of the sale, and up to the time survey operations commenced at the location in 2005, no protest was made by any neighbouring community, either in Court or through any direct approach to the company, to contest the ownership of the land.

When survey commenced at the site in January 2005, representatives approached the contractor from the Odioma community (a community different from the one from whom the land was acquired), who stated that the land belonged to them. Since the ownership of the land was in dispute, the contractor demobilised and the matter was reported to the Bayelsa State Government in order for the ownership issue to be clarified. Subsequently, the dispute between Odioma and Obioku communities resulted in attacks during which 12 people were killed.

On 19 February, the Government's Joint Task Force raided Odioma to arrest those thought responsible. A number of people died and a large part of the town was burnt to the ground.

In the aftermath of the incident, the Bayelsa State Government established a Commission of Enquiry to investigate the incident, of which the report is still awaited.

Members of the vigilante group in Odioma suspected of killing the 12 community representatives were reported to have been recruited by a subcontractor of Shell Nigeria to be responsible for security in the area, despite their alleged record of criminality. Amnesty asks Shell to investigate this accusation and those responsible for human rights violations brought to justice.

Source: Amnesty (2005)

Communities therefore resolve to oil theft from SPDC's pipelines, defending it as a revolutionary act by delta residents taking what is rightfully theirs. Communities state: *'We have decided to take our oil to use it to sustain ourselves', 'We said to the villagers: go and collect it, it is your oil'.* SPDC confirms large quantities of oil theft by communities and more recently, by organised armed militant groups (estimation of 40.000-60.000 barrels a day in 2004). The stolen crude is pumped directly from pipelines through hoses onto barges, which hold as much as 5,000 barrels each, or into containers on smaller boats. The oil is then transferred at sea to larger ships. Much of the stolen petroleum is sold to refineries in Ivory Coast, Cameroon and other nearby countries. Some finds its way to government-owned refineries in Nigeria. Some oil company workers have been charged with playing roles in the thefts. But protection networks include officials at the highest level, according to both investigators and smugglers. Many of the tribal militias and criminal gangs operating in the region fund their organisations through illegal bunkering and sometimes trade oil for weapons. Security experts note the appearance of warlords. Territorial struggles over the control of oil facilities deemed easy to tap have been blamed for much of the recent violence in the Niger Delta (Althaus, 2004).

Besides this oil bunkering, this antagonistic view of communities has other negative effects. SPDC is accused of impeding on the right to adequate standard of living and the right of all peoples to a general satisfactory environment according to the African Charter by causing environmental problems through oil spills from pipelines combined with failure to clean up after spills (Amnesty, 2004; Eweje, 2006b). Shell Nigeria companies are legally disallowed payment of compensation for spillage caused by sabotage (Oil Pipelines Act Nigeria, 2004), and the process of determining the cause of spills fuels antagonisms between the company and communities. The environmental NGO Friends of the Earth (FoE) has published several annual reports with the title 'The other Shell report' (see chapter 4), stating that *local people in Nigeria have suffered from decades of pollution as a result of oil spills and fires from Shell's rusting network of pipes'* (McRae, 2003).

SPDC reports, however, that the majority of oil spills in terms of volume is caused by sabotage and only a small proportion by equipment failure, corrosion or human error. SPDC suspects that this sabotage is usually motivated by the desire for economic gain on the part of some, though by no means all, in host communities. The prospect of compensation payments (if the incident can be disguised as a controllable one), employment opportunities during the spill cleanup and the attempted charging of 'access fees' before people and equipment are allowed on site are all temptations for communities that feel that they have not benefited from nearby oil production. Furthermore, SPDC states that they are often denied of access to spill sites by some communities, which restricts its ability to respond and clean up spills in good time (SPDC, 2006). Independent researchers of the World Bank also concluded that overpopulation and industrial outlets are the largest contributors to the environmental problems, not the oil companies (Moffat & Linden, 1995).

A related accusation is that the human rights of communities in the Niger Delta are abused by flaring of natural gas. Friends of the Earth report that:

'gas is flared in Nigeria 24 hours a day, producing deafening noise and pollution. Gas flaring has severe health consequences and is a primary contributor to a host of environmental problems that include acid rain in the Niger Delta and significant greenhouse gas emissions. Under pressure from Nigerian peoples and the international community, Shell has committed to eliminating gas flaring in the Niger Delta by 2008. However, Shell is now publicly stating that it may miss the deadline for ending gas flaring. Although the Nigerian government is poised to impose penalties on Shell if it fails to meet the deadline, Shell has demonstrated its disregard for such governmental orders' (Harden, 2004).

In a judgment of 14 November 2005, all oil companies were indeed ordered to stop gas flaring by the High Court in Benin state, on the grounds that it contravened human rights including the right to life. The oil companies, including SPDC, appealed to this ruling and were granted 'a stay of execution' in 2006 by the High Court of Port Harcourt (SPDC, 2006). The criteria for a fair trial appeared not to be sufficiently followed in the Benin court case. Furthermore, others indicate that the actual environmental pollution caused by gas flaring is never proved (see e.g. Van der Aa, 2005).

According to a company lawyer interviewed, some people have taken SPDC to court for compensation to gas flaring. In that respect, SPDC senior management report that in the past five years, over 350 of compensation claims have been brought against the company. The courts have upheld just six of them (Detheridge & Pepple, 1998). Besides, several people within SPDC indicated that the disinterest in exploiting the gas reserves of the previous military governments prevented the company to invest in infrastructure to gather and adequately process the gas earlier. Gas was regarded as a waste product from the extraction of oil and not seen as an energy source. According to SPDC, constructing the

infrastructure takes time in the difficult terrain of the Niger Delta and ending gas flaring is therefore delayed.

Another, more aggressive, way of confronting Shell and the government and sustaining a livelihood includes the invasion of SPDC's facilities and taking SPDC employees and/or contractors hostage in exchange for ransom. In its 2006 report, SPDC reports that these disruptions (which include closure of production facilities, seizure of assets, blockade of access and disruption of drilling activities) have resulted in the closure of several producing stations and deferment of production of 600,000 barrels of oil per day (SPDC, 2006). The number of attacks on oil facilities and kidnappings of workers in the Niger Delta have increased considerably in 2006, sometimes with a fatal result. In January already, SPDC shut down a tenth of Nigeria's oil production, after armed militants kidnapped four expatriate oil workers and vandalised a major pipeline. By December 2006, Shell evacuated all dependants of expatriate workers after a car bomb hit the residential area. For a full overview of attacks on the oil industry in the Niger Delta in the period 2000 – 2006, refer to the map of Hunsiker & McClelland (2007) in appendix 11. In reaction to these events, Amnesty in The Netherlands said that '*Shell is also becoming the victim of human rights abuses'*.

The second element in the statement of the community chief is that communities regard the often fatal clashes between them and the security forces as the result of their protests against the oil companies. They hold SPDC and other oil companies in the region directly responsible for sending these armed security forces to suppress their protests and violate their right to life, freedom of expression and freedom from torture. If SPDC directly employs or contracts these security forces, the company would indeed be responsible for human rights abuses. However, these armed forces are public security forces and are employed by the Nigerian government, not SPDC.

Furthermore, one can explain why the communities would potentially view SPDC to 'send the soldiers', because SPDC must comply with national legislation regarding reporting any risks to the country's strategic assets. The international NGO Human Rights Watch aimed to clarify SPDC's responsibility in this dilemma in a letter addressed to the Managing Director of SPDC in 2003:

> '*we are extremely concerned by the response of the government security forces that have been sent to restore law and order. … we strongly encourage oil companies to publicly state that the response of government security forces must not be disproportionate to the threat; that they should only resort to force as absolutely necessary in accordance with international standards; that their operation should be conducted in a manner that ensures respect for due process and fundamental human rights; is focused on arresting and prosecuting the actual perpetrators rather than retaliating against whole communities; and any allegations of human rights violations should be thoroughly and impartially investigated and the perpetrators brought to justice. These public steps would demonstrate the company's commitment to human rights and could help to prevent further violations in response to current unrest. We also appeal to you to continue raising these issues with the Nigerian authorities and security forces'.*

SPDC is regarded by HRW to be able to exert influence on the government, which can contribute to the prevention and punishment of human rights abuses by security forces (see also Manby, 1999)[6]. SPDC may, however, not experience this expected ability to influence the government, which will be discussed later in this chapter. A final element in the statement of the Ugborodo chief relates to development agreements, which relates more to section 7.7 in which SPDC's relation with the communities that live around its facilities is explained.

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[6] There are more dilemmas that SPDC is confronted with regarding security, but these have been indicated as confidential to ensure the safety of Shell staff, communities and contractors.

Although the dilemmas described above are only a few that SPDC is confronted with, it gives a general impression of the complexity of the local human rights context where the Shell subsidiary operates. The next sections will describe what activities SPDC undertakes to respect and support human rights in respect of its different spheres of influence.

7.4 Core operations SPDC: implementation and internalisation of human rights mechanisms

The former section described which human rights issues SPDC is facing in the Niger Delta. This section summarises how SPDC aims implement and internalise human rights mechanisms in its core operations. As the Shell Group, SPDC makes a commitment to human rights in SPDC's annual report of 2005:

'Shell Nigeria supports fundamental human rights. In practice, this means responding to many different concerns, including respecting the rights of employees and contractors – for instance, providing grievance procedures and offering access to unions or staff councils where applicable. It also includes working with Governments and their agencies in accordance with national legislation to ensure our operations do not violate the rights of local communities'.

General labour conditions are discussed in sub-section 7.4.1, health, safety and security issues in sub-section 7.4.2 and bribery and corruption in sub-section 7.4.3. The last sub-section discusses the human rights and conflict resolution training for staff. The data used stems from the 2005 SPDC People and Environment Report, the series of SPDC Briefing Notes (all available at the public website www.shell.com/nigeria), People Survey 2004, Country Chair Questionnaires 2004 and 2005, communications between ID and the country chair in 2004 and 2005, field notes, participatory observations and interviews.

7.4.1 General labour conditions

In terms of labour practices, Shell Nigeria aims to be an equal opportunities employer relating to the right to freedom from discrimination (SPDC Briefing Note 3, 2005). SPDC employs a diverse multiracial mix of staff from several countries within an aggressive 'Nigerianisation' policy. Pro-active measures SPDC takes is learning programmes for employees, an education programme aimed at developing newly qualified Nigerian graduates and technicians for employment, diversity and inclusiveness (group standard, see chapter 4) and women's career development workshops and support to women's networks. Establishing an in-house childcare facility may promote the right to family life as well.

Regarding the right to freedom of discrimination, according to Grootings (2004), ethnicity and close personal networks is common in Human Resources practices in Nigeria. Based on Hofstede's model (see chapter 3), he analyses the Human Resources practices according to the culture of Nigeria. The collectivistic orientation of Nigeria means that the employees' responsibilities are derived from team (and tribe) activities rather than from individual jobs (Anakwe, 2002). Moreover, the Yoruba and Ibo tribes had enjoyed better education in the past and members of these tribes have therefore obtained higher positions in society (Vickers, 2000; Davis & Kalu-Nwiwu, 2001). Furthermore, a tight social framework in which people distinguish between in-groups and out-groups characterizes a collectivistic orientation. Power distance indicates that the subordinates in the Nigerian society do not question hierarchy and subordinates have total belief in their managers (Dorfman and Howell, 1988). Additionally, because of a strong respect for the elderly, Nigerian employees rather like to have an older person as their manager. This can create some tension, when younger qualified people are promoted to higher positions in the organisation (Alo, 1999). And, Grootings (2004) indicates that high on femininity implies that it is more important to take care of family or tribe members than the drive to

increase individual performance. Whether these issues are also experienced within SPDC remains confidential. Another issue raised that relates to the right to freedom from discrimination is the presence of few women in management, as described in the Shell Nigeria's People and Environment Reports.

SPDC also states in its 2005 annual report that it allows staff to join labour unions, relating to the right to freedom of association. SPDC has in-house branches of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and National Union of Petroleum and Natural Gas Workers (NUPENG). Currently, over 50 per cent of employees are unionised (managers and lawyers are not allowed to join a union according to local law). The union leadership is involved in business-related discussions with the Country Chairman and management teams. According to the Country Chair Questionnaires (CCQ) of 2004 and 2005, there are also regular engagement sessions with non-unionised staff. Grootings (2004) confirms that the trade unions are strong in Nigeria, because they are affiliated with the Nigerian Labour Congress, which strengthens the bargaining power of the trade unions. Related to the right to freedom of expression, a staff forum was installed recently within SPDC and staff can raise their concerns anonymously.

Another labour related concerns expressed by employees interviewed include the workload of SPDC staff, sometimes as a result of managing crisis situations (kidnappings of staff, sabotage of oil pipelines or explosions caused by youth militias), but also because of business pressures. This relates to the right to just and favourable conditions at work.

7.4.2 Health, safety and security

In order to respect and promote the right to health and right to life for employees, SPDC aims to comply with the Shell Group Health, Safety and Environment (HSE) and the Minimum Health Management Standards (see chapter 4). Since the prevalence of tropical diseases (e.g. malaria) is relatively high in the Niger Delta, clinics are provided on several locations for staff. SPDC also takes a number of pro-active measures, including regular communication of lateral learning from incidents, company-wide campaigns on safety, reporting and analysis of unsafe acts/unsafe conditions/near-misses, worksite supervision, 'hearts and minds' workshops and training sessions. Visits are made to field locations to monitor compliance and regular fitness-to-work health checks are conducted for staff and contractors and talks are given at various locations on alcohol and drug abuse. To ensure acceptable hygiene standards, regular inspections of catering facilities, as well as laboratory testing of food and water samples are conducted.

Despite all of these measures, the annual reports of Shell Nigeria report 'major safety challenges'. The number of work related fatalities counted 22 in 2004, 9 in 2005 and 17 in 2006 (eight of them due to armed attacks). According to Shell Nigeria's 2006 People and Environment report, some of the root causes revealed failures in some critical areas such as supervision at worksites, procedures, competence, and communication (Shell Nigeria, 2006). The 'hearts and minds' campaign (see chapter 4) in HSE is therefore strongly pursued by SPDC, which has to lead to improved supervision and behavioural change.

An important issue that employees interviewed raised during the training workshops (see next section) is that they do not always feel SPDC protects them adequately from violence of outsiders. When the trainers started to discuss the human rights of communities in the first sessions, the result was that staff first wanted to talk about their own human rights and their need for safe working conditions.

7.4.3 Preventing bribery and corruption

SPDC also wants to ensure that employees and contractors adhere to integrity and transparency in the business transactions, which promotes human rights[7]. The SGBP are again too narrowly defined in terms of preventing bribery and corruption only (see chapter 6). Training and workshops are organised and copies of the policy and procedures are distributed to raise awareness and encourage employees and contractors to report any observed breaches through whistle-blowing process. Employees are mandated to sign up to a Conflict of Interest Declaration every year. Additionally, a recent re-organisation, named 'Securing our Future' (SOFU), aimed primarily at increasing efficiency and cost-effective operations, also increased transparency by promoting an open door policy and open office (Shell Nigeria, 2006).

In general, Shell Nigeria report that several staff attend business principles and fraud risk management training and in 2006, 17 employees and 32 contractors were released/deregistered (Shell Nigeria, 2006). Nevertheless, Shell has more trouble with corrupt employees in Nigeria than anywhere else in the world (Hoyos & Maitland, 2006). The Shell Nigeria annual report states that in 2005, 74 cases were reported and investigated, leading to the dismissal of 24 career and contractor staff (26 in 2004). Another 49 employees received warning letters for various infractions.

The close personal and ethnic ties, as described in section 7.4.1, may also form the cause of a heightened tendency to not follow the procedures that prevent bribery and corruption, despite the presence of a strong system. A study from Transparency International on the causes and level of corruption in Nigeria recognises that the role of tribalism, ethnicity and religion is one of the causes as well as the principle of hospitality and exchange of gifts (Ekeanyanwu et al, 2004). Other causes mentioned are level of poverty and the dearth of public services, inadequate legal framework and low capacity in government. These causes cannot be easily changed by the company because it is part of the local context. SPDC is strongly embedded into this local context with 95% of employees being Nigerian.

7.4.4 Training employees on human rights and conflict resolution

External stakeholders to SPDC Nigeria have raised the issue that a gap exists between Shell's global commitment to support human rights and its actual practices in the field. Recognising that society's expectations regarding business and human rights had changed, SPDC recognised a need for more awareness and knowledge of both SPDC field staff (and managers) and security forces on how their day-to-day activities touch upon human rights. The Managing Director of SPDC and the external stakeholders agreed that the way forward would be to first design and develop a training programme on human rights and conflict for SPDC managers and field staff.

The objective of the SPDC training programme for staff is to raise awareness of Shell's commitment to human rights and support behaviour of staff in the field, especially in the interaction with communities.

Olisa Agbakoba, one of the Nigeria's foremost legal experts on human rights, led a series of workshops in August 2005 with 100 senior managers of SPDC, raising managers' understanding of Shell's commitment to human rights and what it means in practice. At the same time, SPDC requested Shell Headquarters to undertake a human rights training needs assessment. The purpose was to identify

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[7] See section 1.5 for the link between corruption and human rights.

the gaps in awareness and skills of SPDC field staff regarding human rights. The overall conclusion of the needs assessment was that a need for training on human rights did exist. Amnesty International and Father Kevin O'Hara of the Centre for Social and Corporate Responsibility provided external inputs on their perspectives on SPDC training priorities.

Based on the outcomes of the needs assessment, a joint team from SPDC and Shell Headquarters developed a plan and tested the human rights and conflict training for field staff. The first element of the programme integrated a human rights component into a four-day training course on peace, conflict and mediation skills for 120 field staff, including community liaison officers, engineers and security advisors. SPDC staff (with support from Shell Headquarters) from security, legal and External Affairs departments provided the training.

Figure 5 Human rights pilot training in Warri, November 2005.

In order to ensure the quality and external credibility of the training, the Danish Institute for Human Rights (DIHR) was involved. The DIHR is one of the largest human rights expert institutions in human rights and has extensive experience in training (see also chapter 6). They reviewed SPDC's training materials and accredited the training. They also developed the material into a Train the Trainer programme, consisting of contents based three-day training and two-day facilitation skills training. The objective of this approach was to build the knowledge and skills on human rights and conflict of a small group of 'human rights champions' within SPDC to a level that is above average, so they can train other staff in SPDC and serve as company advisors on human rights. This way, human rights and conflict mediation is more embedded within SPDC. Thirty-five managers from different departments in SPDC were trained on human rights knowledge (three day training) and training skills (two day training).

The training for field staff started at the end of 2006 and around 500 field staff were trained by mid 2007. The training consists of one-day course on human rights and one-day course on conflict mediation skills. The modules include Shell's global commitment to human rights, such as the Universal Declaration on Human Rights, information about international law, Nigerian law and its relation to human rights, how SPDC views human rights, the Voluntary Principles on Security and Human Rights and human rights dilemma exercises.

The next steps include the development of on-line human rights and conflict training in Nigeria for a wider range of staff, which can also be used for training of Shell staff in other countries.

It was found to be important that the training included a component on conflict resolution, especially how to prevent and respond in conflicts while respecting human rights. This conflict resolution component of the training was the main 'selling' point to middle management for sending their staff to the training. The human rights and conflict components of the training needed to be integrated, which was not always easy since the outcomes of conflict resolution need to be in line with the human rights principles.

A lot is expected from management to take SPDC's commitment to human rights forward within the company. Other priorities, such as production targets, may otherwise prevent real actions to be taken. Furthermore, employees suggest that managers should discuss real human rights cases with each other, in talks with staff and external stakeholders regularly. Despite some concerns from staff, top management of SPDC provided support by e.g. committing to train 1000 staff on human rights, expressing the priority for human rights in the trainings and by obtaining middle management support to clearing their subordinates to become human rights champions.

Besides, many employees suggest mainstreaming human rights into existing management structures, such as planning of capital projects, crisis management, human resources processes, diversity and inclusiveness standards, financial costs calculations, health and safety processes, etc. The idea to integrate human rights into the Total Score Card (means to assess performance) is often brought forward. It should also be embedded into trainings for media, SCD, IT, medical, security, technology and production departments.

What is the impact of the human rights and conflict resolution training? The initial feedback of participants has been very positive and people have seemed to pick up the linkage between their work and human rights. For example, the planning department recognised that resettlement and land planning touches upon human rights.[8] The Dutch section of Amnesty was pleased about the thorough approach that was taken on the training, as expressed in an interview. However, the same organisation also expressed concerns about the real impact. It is a challenge to develop indicators that measure changes of behaviour in the interaction with communities as a result of the training. It is figured that it will take at least 3-5 years to change behaviours. The human rights champions will play a crucial role in the impact of the training to raise awareness of the commitment to human rights within SPDC and support behaviour of staff in the field, especially in their interaction with communities.

7.5 Contractors SPDC: implementation and internalisation of human rights mechanisms

This section describes how SPDC implements human rights in relation to its business partners, i.e. contractors and suppliers.

7.5.1 Local Content

SPDC aims to develop Nigerian content of its business, following the Group policy on local content (see chapter 4). This relates to the right to work and right to freedom from discrimination. A local content policy was introduced within SPDC in 2005. This way, the company wants to contribute to economic sustainable development in the Nigeria and thus promoting social-economic human rights. The company therefore encourages the development of Nigerian companies and their increased participation in our business through contracts. According to the SPDC Briefing note 3 (2005), Out of SPDC's over 17000 contractors, about 70% are Nigerian businesses and 40% are from the company's host states in the Niger Delta. The latter should be increased to 70% by 2010. In line with the national aspiration, there has been a move towards the use of Nigerian contractors in high technology and complex work types through capacity building, opportunities creation, and strengthening the financial capability of Nigerian contractors. The International Finance Corporation (IFC) and SPDC are jointly participating in a

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[8] A small survey conducted in 2007 by Columbia University with the aim to measure the initial output of the training.

risk sharing credit facility for the provision of financing in foreign currency to indigenous contractors in the Niger Delta.

SPDC also contracts communities to provide surveillance on the pipelines or clean up oil spills. However, if SPDC finds that the spill is caused by sabotage, no contractors are sourced from the communities that are responsible for the sabotage. Nevertheless, tracking who committed the sabotage is not always easy, which makes the sourcing process more complex.

The local content plan is in effect for a short period only (since 2005). There are many different opinions whether this plan is working in practice as well. The view of the communities of Shell taking the oil out of the ground without returning anything to the region, such as contracts, has not changed.

7.5.2 Following procedures

Compliance with the Business principles, Health Safety and Environment (HSE) and the Health Standards are monitored for contractors and third-party clinics are inspected where staff and contractors are treated. According to the Shell Nigeria annual reports, six contractors were de-registered in 2005 (two in 2004) and more have been suspended as a result of breaches with HSE standards, forming cartels, fraudulent invoicing and payment of bribes. Contractors are also trained in complying with these policies and future plans exist to incorporate human rights into these trainings.

A survey conducted between September 2000 and April 2001 amongst stakeholders of SPDC illustrated they were concerned about non-compliance with contracting and procurement processes, issues concerning terms and conditions of service of contract staff and the inadequate challenge when outside parties attempt to compromise the Business Principles (SPDC Briefing Note 11, 2005). This seems to be the case still. During visits to SPDC during 2005 and 2006, several employees interviewed expressed their concerns about the compliance of contractors with the Business Principles and to what extent contractors can represent the company in e.g. community relations.

In relation to community relations, two examples illustrate that contractors do not always facilitate good relations between SPDC and the communities. In the area around the Soku LNG facility, a contractor of SPDC killed a big snake, which appeared to be the royal python of the community. Consequently, the company faced a community claim. Another example is that contractors supposedly guarding the pipelines paid boys from the communities very little to do the work. This lead to resentment from the communities feeling exploited. Employees brought several suggestions forward during the workshops, such as an open forum for bidding and not a bid-list, talking to senior management of the major contractors and develop guidelines of behaviour and requiring a breakdown of subcontractors.

7.6 Security forces SPDC: implementation and internalisation of human rights mechanisms

Most of this section has been indicated as confidential, to ensure the safety of Shell staff, communities and contractors, but the conclusions will be integrated into the general, public, conclusions of this thesis.

7.6.3 Peace and Security Strategy

In 2004, a Peace and Security Strategy (PaSS) was developed in cooperation with other stakeholders in which communities also play a role. It came about as a

result of a report produced by a conflict expert group, WAC global services in 2003[9]. It brings expertise on security and the Sustainable Community Development (SCD) department together. PaSS is composed of two key parts. An internal component focusing on issues within the company's control and an external component that relates to the wider conflict situation across the region, also involving other oil companies in the region. The external component of PaSS now forms part of the Federal Government's peace and security strategy for the Niger Delta.

During 2005, Shell focused on the internal elements of PaSS and completed a pilot study, in consultation with the communities, on an early warning system to help reduce the overall risk of conflicts. The results of this study led to the development of a pilot model early warning system for the Gbaran Integrated Oil and Gas Project (IOGP), which is being implemented as the project progresses.

Further, a more in-depth programme of conflict resolution and peace building training has been conducted. Currently, a total of 240 staff (including community interface and security personnel as well as representatives of ten indigenous NGOs) has received training on conflict resolution and peace building, negotiation and mediation. In addition, the first batch of 120 staff has received hands-on training on peace and conflict impact assessments (PCIAs) and has conducted active fieldwork by pilot-testing the PCIAs tools on two of SPDC's projects.

As part of the implementation of PaSS in 2005 and 2006, Shell engaged the services of two Nigerian conflict resolution NGOs (Academic Associates Peace Works and Initiatives for Community Development) to help resolve a long-standing conflict among seven communities in Bonny (East) and the Odidi Node (West) respectively. In 2005, SPDC also organised the first Niger Delta Youth Summit, which brought together 200 youths from the nine Niger Delta States. The summit provided an opportunity for the youths to contribute ideas on solving the problems of conflicts and youth unrest in the region. The summit was well received and those attending requested that it should become an annual event.

The PaSS strategy has had positive feedback from participants, various communities as well as government, especially because it is aimed at preventing conflicts by pro-active security. Its actual impact cannot be measured yet. However, there is a concern that by 2006, the PaSS team had been disintegrated and people moved to different jobs, which resulted into one person that needs to execute the total programme. Besides, the international NGO Pax Christi indicated in an interview that SPDC's peace efforts have not been coordinated; *'everybody is doing bits and pieces'*.

7.6.4 Voluntary Principles on Security and Human rights

It became clear during the first visit to SPDC mid-2005 that, from the employees interviewed, a limited number of people had heard about the Voluntary Principles on Security and Human Rights (the VPs) to which Shell signed up in 2000 (see chapter 4)[10].

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[9] This report is an internal Shell report and not publicly available.
[10] After the research period of 2005-2006, SPDC trained more than 1,100 staff on human rights and conflict resolution using the Voluntary Principles. In 2007, SPDC trained 115 security officials, including district, project and rig security supervisors and senior Supernumerary Police personnel seconded by the Nigeria Police Force, in human rights and conflict resolution (IPIECA, 2008).

The ones that did hear about the VPs, found out about them through personal contacts with Headquarters or external stakeholders, such as international journalists. Hence, the implementation is still in a pre-mature phase.

The situation changed when a full-time resource was appointed at Shell Headquarters, who is currently providing guidance on the VPs to the security department of SPDC and government on the implementation of the VPs. In 2006, SPDC '*organised a workshop on the VPs, attended by 20 senior government security officers. A key recommendation from the workshop was to engage the National Human Rights Commission to encourage the Nigerian government to adopt and ratify the voluntary principles*' (Shell Nigeria, 2006). Future company plans include contributing to human rights training for public security forces deployed in the region.

7.7 Communities in which SPDC operates: implementation and internalisation of human rights mechanisms

This section explains how SPDC respects and supports the human rights of the communities that live in its operating environment. Firstly, SPDC's community development programme is explained in sub-section 7.7.1, after which external views (sub-section 7.7.2) and internal views (sub-section 7.7.3) about its effectiveness are discussed. The final sub-section 7.7.3 aims to find explanations for the perceived effectiveness of SPDC's community programme.

7.7.1 SPDC's community development

In order to promote the social-economic rights of communities in the Niger Delta, at the time of research 2004-2006, SPDC runs a Sustainable Community Development (SCD) programme. Annually, an amount of $30 million is spent on SCD (Shell Nigeria, 2005/06). According to the independent Dutch specialist on Nigeria Van der Aa (2005), SPDC is one of the largest development aid organisations in Nigeria, measured in the size of the budget. SPDC's briefing notes indicate that the team of community relations and development officers executes the current SCD programme. It focuses on agriculture, environment, education, health care, micro-credit and business development, women development, youth skills development and sports. The different Community Liaison Officers (CLOs) engage the communities and negotiate a Memorandum of Understanding (MoU) that describes how SPDC and the community can benefit from each other. When the company avoid potential negative impacts (e.g. environmental pollution) and maximises its potential positive impacts (e.g. development projects, employment, contractor work), the communities may grant SPDC a 'license to operate' by not interfering with company activities. These MoUs are subsequently reviewed by Legal and Finance to ensure achievability of the projects.

SPDC asks the communities to form councils that represent them adequately, which facilitates the negotiation process. For example, the construction of an integrated terminal at Bonny island, the potential negative impacts (teachers leaving schools to join construction; higher prevalence of sex workers and HIV/Aids, etc) needed to be mitigated.

The CLOs interviewed have a diverse background (nursing, engineers, lawyers), but have a university degree and relation skills in common. They receive training on community entry, stakeholder engagements and how the needs of communities are identified and negotiated. Key relation skills according to the CLOs interviewed are listening, communication, networking, being outgoing, know how to reach people, interpersonal skills, conflict and crisis management.

According to Shell Nigeria annual reports (2005/06), SPDC works together with several local NGOs to support the implementation of SCD, such as the National Advisory Council on AIDS (NACA), Accord for Community Development, Delta Ecological Watch, Delta Environmental Network, Federated Niger Delta Ijaw Communities, Itsekiri National Youth Council, Niger Delta Peace Coalition, Warri Urban Development Initiative, etc. Furthermore, SPDC have signed different partnerships with United Nations Development Programme (5 year, $18 million)[11], USAID (5 year, $20 million) and Africare (3 year, $4,5 million) to enable solutions that the company may not be able to achieve on its own.

Also mentioned in the Shell Nigeria annual reports, SPDC contributes three percent of its turn-over to the Niger Delta Development Commission (NDDC) annually, which amounts to $75 million. All oil companies operating in the Niger Delta are required by law to provide these funds. NDDC is a governmental institution that has the primary role of providing basic infrastructure and services for its citizens.

Despite these initiatives, they are 'drops in the ocean' in comparison with the oil revenues earned by the government. According to employees interviewed, SPDC and Shell Headquarters therefore trust multi-partner initiatives with government to have a bigger impact. The government (NDDC) has developed a regional development master plan together with the oil industry and communities. SPDC also participates in the River State development plan in which the UK and US governments also participate. The plan is aimed to build cassava plantations and currently employ 20.000 youths.

7.7.2 External views

Overall, SPDC has faced very mixed responses. Large numbers of individuals, household and villages have been helped directly and have expressed their gratitude; yet many others continued to complain (Bird, 2004). Many stakeholders at the local and international level indicate that the SCD programme is ineffective. Professor Frynas (2005), whose research is focused on the role of oil companies in Nigeria, states:

> 'while SPDC, or, more specifically, its SCD unit, has been ahead of other oil companies in terms of its development thinking, there are still major flaws in Shell's development work, and the results of that work are likely to remain disappointing'.

The international NGOs Christian Aid, Friends of the Earth and Stakeholder Democracy Network state: *'Shell's Community Development programme in the Niger delta is failing'* (Joint publication, 2004). They say:

> 'Shell claims that 75% of the development projects it supports are successful, but Shell only allows external reviewers to examine projects that are no more than one year old. A recent Christian Aid news article revealed that a critical internal Shell report about community relations was shredded' (Joint Publication, 2004).

When an independent review team with representatives of the World Bank and Unicef evaluated 82 of SPDC's community projects in 2001, 36% was found to be unsuccessful, 33% partially successful and 31% successful. SCD projects, such as hospitals, schools or even libraries, are found to be abandoned or working inadequately (Van der Aa, 2005; Idemudia & Ite, 2006; Frynas, 2001, 2005). Further, the numbers of SCD spending have been inflated and only serve as a public relations response (Frynas, 2001).

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[11] For example, the 384-page UNDP report of the Niger Delta was conducted with aid of SPDC funds.

7.7.3 Internal views: learning from the past

SPDC recognised that past community programmes have been less than effective, which eventually resulted into the introduction of the SCD programme (SPDC briefing notes, 2005).

From the 1960s, SPDC's executed a traditional philanthropic or grant-making programme that concentrated on education (scholarships), agriculture, infrastructure-type projects, and health care. But by mid-1997, an internal review showed that though the majority of these projects were functional, others were poorly executed, poorly maintained and lacked sustainability. In 1998, SPDC began a strategic transition from community assistance (CA) to community development (CD). This shift aimed to bring structure and planning to the delivery of community development. The goal was to empower the communities by helping them to build their capacity and confidence to take the leading role in decisions for their own development. Accordingly, community participation, partnering and local capacity building were given priority, as were social investment programmes for micro-credit and business development, women in development, and water and sanitation (SPDC Briefing Notes, 2005; Ite, 2006a).

According to the SPDC Briefing Notes and Ite, achieving the full objectives of the new CD strategy was difficult as the CA model (which focuses on traditional corporate philanthropy) continued to be operated side by side with the CD model in some parts of the company. Further, a review published in 2002 concluded that there were several shortcomings in areas of SPDC's interaction with communities. In particular, it identified the need for a coordinated approach to enhance community ownership and sustainability of CD programmes. In 2004, the CD strategy changed to the current SCD strategy, which includes shifts from cash payments to a partner for communities development; from taking direct responsibility for public services to partnering and supporting government; and from infrastructure development to assure human and institutional capacity (SPDC Briefing Notes, 2005; Ite, 2006a). An example of this shift is the way of working, according to CLOs interviewed. Previously, SPDC would send a team to provide and maintain generators and provide water holes. Now, the communities receive training to do the maintenance of the generators themselves. This way, the sustainability of the community projects is increased.

To support the shift to the SCD programme, the 'Big rules' were introduced that regulate the interaction of Shell with the communities (see appendix 12, see also Shell Nigeria, 2005). One of the most important rules concerns the rule that SPDC must deliver its SCD commitments (nr. 11). Many of SPDC's commitments to communities have not been delivered in the past and resulted in a deep mistrust of communities towards SPDC's promises.

There is no internal debate that SPDC has a role to play in the development of the Niger Delta. However, an internal debate does exist what SPDC should and could do to contribute to a positive development. A number of employees interviewed say that the company should build more schools and roads, others say that providing energy supplies, jobs and/or contracts is enough. Again others are concerned that the SCD programme makes communities dependent. In this respect, Idemudia & Ite (2006) indicate that the SCD programme:

> *'may have engendered a culture of dependency and facilitated blame on oil companies for the state of environment and development in the Niger Delta, as community members and government officials depend on oil companies to provide basic socio-economic development infrastructure'.*

The two authors further explain that SPDC and other oil companies failed to observe the moral minimum and overstretched their moral responsibility. This

debate is continued further in the next section. Hence, what are the main explanations for these concerns about the SCD programme?

7.7.4 Explanations from external sources

External and internal sources have put several explanations forward that clarify the concerns about the effectiveness of the SCD programme.

Organisation
Houte de Lange (2003) states: '*SPDC executes the community development projects in a faster way than most NGOs would do'.* Hence, performing proper stakeholder engagement is also under time pressure. The integrity of CLOs also played a role. Funds allocated for local communities were on some occasions kept by SPDC's community liaison officers with the collusion of corrupt village chiefs (Frynas, 2005). This was one of the reasons why the big rules were introduced.

Competencies
The competencies of SCD staff are also questioned, as the local NGO Environmental Rights Action (ERA) states:

> '*Shell has to cancel its SCD programmes immediately. Oil companies have to deal with oil exploration in a social and environmental friendly manner. Development aid is for Shell just a side issue, which has the consequence that it does more harm than good. It is better to leave development aid to people who have the expertise. The longer the SDC programme continues, the larger the damage' (IS, 2003).*

Frynas (2005) and Amnesty (2004a) point to a '*lack of developmental expertise and the technical and managerial approaches of oil company staff'* as constraints to the effectiveness of the SCD programme as well. Frynas states that staff with generally a high technical background approach the SCD programme as a technical and managerial challenge, which can be reduced to 'metrics', 'indicators' or 'guidelines'. Indeed, various CLOs interviewed have engineering backgrounds, as described before. These technical approaches might be insufficient in addressing complex social problems and may lead firms to accelerate discussions with local people and to try to achieve an immediate goal rather than to build bridges with the community and spend long periods discussing the causes of problems.

Wheeler et al (2002) make the same point, after analysing the conflict between SPDC and the Ogoni. They conclude that the company and communities have 'radically different world views'. For example, environmental impact assessments conducted by SPDC and other companies are:

> '*undeniably part of a Western, rational approach to the environment. They deliver quantitative, scientific assessments of damage to the environment. This is a conceptual approach at odds with the communities' more emotional and spiritual relationship with their homeland. For the Ogoni, their environment holds a cultural and spiritual value that can only be appreciated and felt; not measured in figures or summarised in tables and graphs'.*

In the conflict with the Ogoni, Wheeler et al (2002) also analysed that '*a harshness in the rhetoric and a continuing inability to engage on the terms of the community'* was an important constraint in overcoming the conflict.

Staff motivation
An important contributing factor may also be the motivation of CLOs. The job of a CLO may be dangerous sometimes, since they are the first to come into the communities and the focal point for any grievances the communities may have. In principle, they enter the communities as early as possible, before any real issues start. However, this may not prevent violent incidents from happening.

Community engagement
Another point is that '*there has been no systematic attempt to study and understand the nature of community perceptions by oil companies to integrate*

community perceptions into the design and implementation of their CSR initiatives. Rather community perceptions are often taken at face value, assumed or tacitly neglected' (Idemudia & Ite, 2006). Houte de Lange (2003) also indicates that the SCD programme has a lack of taking into account the cultural identity and structures of local communities.

Besides the SCD programme, Amnesty (2004) accuses oil companies such as SPDC of operating on community traditional lands without consulting communities, or consulting them inadequately. According to Amnesty, this led to abuses and violations of these communities right to freedom of information and expression. The lack of access to Environmental Impact Assessments and consultation around these studies often results in discrimination against impoverished local communities.

Frynas (2005) stipulates that SPDC's *'consultation exercises have usually been superficial and grossly inadequate'*. He points the finger at very few and brief visits of company representatives (not more than once a year), and a failure to consult beyond local chiefs and community leaders. Indeed, SPDC learnt that the chiefs often do not represent the views of the whole community and found that chiefs and community leaders sometimes used the received funds for their personal gain (see section 7.1.2).

In this respect, the international NGOs state that although the SCD programme *'was conceived as a means of improving relations with local communities, it is in some instances souring those relations and, at worst, aggravating divisions within and between communities'* (joint publication, 2004). Amnesty calls creating these divisions between communities a 'divide and rule' policy. This means that SPDC interferes with the traditional governance structures of the communities by supporting one faction, usually the chief and groups associated with the chief, who then, allegedly in some cases, use force to secure compliance of other community factions who may be opposed to the project (Amnesty, 2004).

The new SCD programme therefore introduced the earlier mentioned community councils that represent community groups equally. However, communities seem to disagree often about the type of projects they ask for because a lack of internal organisation. These internal disputes within communities and the lack of organised civil society (Lee & Coussirat-Coustere, 2007) that could represent these communities contributed to the delay of a number of the SCD projects. However, Wheeler et al (2002), who analysed the case of Ken Saro Wiwa, say that SPDC cannot use this internal disagreement of communities as an excuse for inaction:

> *'all nations of peoples are diverse; a truly stakeholder-responsive approach demands the acceptance of multiple stakeholders and requires the company to develop a tolerance for ambiguity together with the sensitivities and capabilities needed to inspire trust with diverse and sometimes competing interests'.*

Further, Professor Frynas (2005) identified a mismatch between projects and real community needs, blaming the brief and rare encounters between communities and SPDC, based on his own research with communities. He states that these encounters result in *'spontaneously demanding obvious amenities, without proper community consideration of the economic cost, the local needs, the impact of such schemes or the causes of the community's problems'.*

Several employees interviewed felt that local NGOs may be more successful to conduct the visits and MoUs instead of CLOs who are seen to be representatives of the company. Additionally, CLOs often do not come from the community, which

leads to mistrust[12]. Nevertheless, the Niger Delta is home to a richly varied society with many NGOs, sometimes existing of just one person and which are divided amongst themselves (UNDP, 2006). This makes the selection of local external parties complex, since it is difficult to determine who really represents a balanced view from the perspective of the Niger Delta communities.

One of the results is that communities sometimes do not uphold their commitment to the MoUs and/or asking for projects outside the MoU, which leads to conflicts between SPDC and these communities. Another result is that communities do not see themselves as the owners of these projects and/or projects have not been designed to use local resources (Frynas, 2005). SCD projects can therefore not function without outside help and fail to bring about sustainable development.

Engagement cross-community
SPDC is also said to create conflicts between communities. Agim (1997) identifies three principal groups of communities, each of which claims equal rights to be catered by the oil companies. These are a) producing communities, b) terminal communities and c) transit communities. SPDC creates MoUs with these communities in order to minimise the negative impacts and maximise the positive impacts. However, a few communities that are neither producing, terminal nor transit, by virtue of being situated within the region, are also laying claims to be catered for by the oil companies (Idemudia & Ite, 2006). Sometimes, this leads to clashes between communities*.*

Although sometimes dragged into existing inter-communal conflicts, the 2005 Shell Nigeria report confirmed that:

> *'the MoUs were found to be linked to individual short-term activities in communities, leading to a proliferation of uncoordinated projects. In their place, longer-term comprehensive MoUs (known as Global MoUs) covering a wider cross-section of communities and cooperation with government are introduced'.*

By introducing these Global MoUs and linking up to government development plans, such as the regional development master plan, SPDC aims to mitigate these concerns of external stakeholders that the SCD programme creates conflicts between communities.

Connection to violence and government
The SCD programme is also said to make communities dependent and being too closely tied to the company's commercial activities (e.g. targeted at winning access to areas for production staff). For example, ERA states: *'Shell starts development projects particularly in communities that are hostile and violent. This gives the impression that violence pays off'* (IS, 2003). The Dutch specialist on Nigeria Van der Aa (2005) confirms this concern:

> *'in fact, the community development programmes of the oil companies amount to giving in to terror. Everybody in the Delta knows that a company like Shell builds schools and hospitals in the violent communities, because one of the main goals of the projects is to break down this violence'.*

Despite the identification of all of these factors that may impact the effectiveness of the SCD programme, the lecturer on CSR practices in Nigeria Uwem Ite argues that the community development projects will never really succeed, due to a lack of national macro-economic planning and management, backed by equitable resource allocation and an enabling environment (Ite, 2004). At best, the SCD

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[12] One of the main problems identified by MOSOP of the Ogoni people was that, in order to execute planned community development, Shell reactivated the network of Ogoni Chiefs and contractors that local people largely saw as Shell people (Wheeler et al, 2002).

programme can only be complementary so as to enable the government to focus its development effort on other crucial needs (Idemudia & Ite, 2006).

This view is shared by Frynas (2005), when he states after his analysis of SPDC's SCD efforts:

> *'by implication, it is arguable that Corporate Social Responsibility (CSR) may provide a lose–lose outcome for a country's governance: governance failures lead to calls for a role of CSR in development; usually CSR is unable to play such a positive developmental role, but even if CSR could play such a role, this would ease the pressure on the government to undertake a developmental role itself'.*

Things will really change for the people in the Niger Delta if the Nigerian government begins to bear full responsibility and take the lead for development in the Niger Delta. Stricter control on the spending of the oil money and tackling corruption is a first demand. The only thing what oil companies can do is to insist with the Nigerian government to an honest distribution of the oil money (Van der Aa, 2005). The latter relates to how SPDC's relationship is with government on human rights, discussed in the next section.

7.8 Government and SPDC: implementation and internalisation of human rights mechanisms

This section explains what SPDC's relationship is with the Nigerian government regarding human rights on national as well as state and local levels. Firstly, two important joint initiatives are explained in sub-section 7.8.1, after which the relationship between the government and SPDC is discussed (sub-section 7.8.2). The third sub-section 7.8.3 deals with the notion that SPDC is often seen as an alternative government.

7.8.1 Two important initiatives: NEITI and NDDC

Several of SPDC's engagements with the national government have been mentioned above in relation to improving the human rights situation in the Niger Delta, especially promoting development and security of the Niger Delta.

Another significant cooperation with the government that in the long-term aims to promote human rights of the people in the Niger Delta, is the Nigerian Extractive Industries Transparency Initiative (NEITI – www.neiti.org). The NEITI follows the international initiative (EITI) that advocates transparency in the amounts that host governments receive from natural resources – both from private companies and state oil companies. An umbrella group of NGOs campaigns for companies to publicly declare the revenues that they pay host governments (the 'Publish What You Pay' campaign). They argue that this transparency will reduce corruption and encourage debate on how the government spends the revenues.

The Nigerian government was approached by Shell Group to become part of the EITI because SPDC is one of the major operations within Shell and within Nigeria. The government agreed to publish the payments they receive from SPDC. Schouten & Remme (2006) explain that *'the specific terms and conditions of the joint venture between NNPC and Shell did not have to change; only permission was required to publish the revenues and what was paid to the federal government'.*

An audit of the NEITI on the years 1999 – 2004 showed that SPDC paid $8,56 billion to the government, which is more than three quarters of all revenues. The government received 88% of the revenues per produced barrel in 2005. The

following figure shows the division of costs and revenues per barrel of oil (Shell Nigeria, 2005):
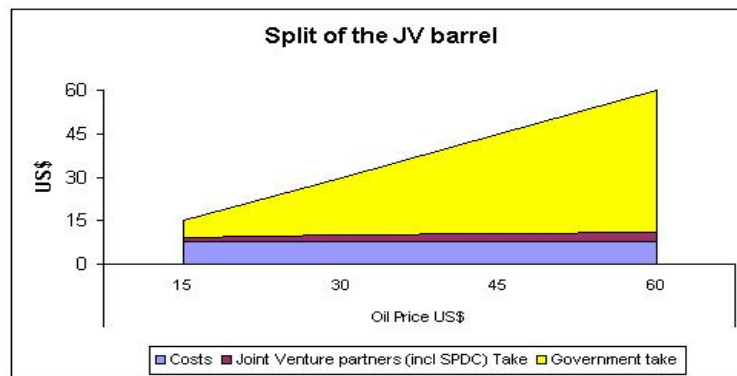

Figure 6 Split of the oil barrel

Next to the NEITI, SPDC built a partnership with the Niger Delta Development Commission (NDDC). As described earlier, NDDC is a governmental institution that has the primary role of providing basic infrastructure and services for its citizens and thereby promoting social and economic human rights of communities. The NDDC was established in 2000, but both the NDDC and SPDC realised by 2003 that they could not effectively tackle the development challenges and opportunities in the Niger Delta alone (Ite, 2006).

Thus, besides the mandatory annual contribution to the NDDC, SPDC supported the NDDC in:
- provision of development infrastructure in the Niger Delta;
- develop technical and managerial capacity of NDDC's key staff by e.g. seconding staff to NDDC to develop the Niger Delta Regional Development Master Plan;
- aligning community development plans with other oil companies.
- organising workshops for leaders at state and local government levels about governance and community development.

The lecturer Uwem Ite (2006) researched the partnership of NDDC and SPDC and indicates that it has the potential of bringing benefits to all parties, but requires transparency and genuine cooperation, matched by sound corporate and political governance from both parties. Its success will be influenced by four key challenges (Ite, 2006):
1. political support for NDDC: the NDDC management board is currently overly politicised and nominees are regarded as controversial.
2. funding constraints: although required, the federal government and state governments provide insufficient or no funds at all.
3. public perceptions and expectations of NDDC: many see the NDDC as the last hope in the development of the Niger Delta, others have serious doubts that the benefits hardly reach the intended communities.
4. institutional priorities: the development priorities of the NDDC are different from those of the major oil companies in the Niger Delta and NDDC lacks significant accountability and transparency.

This analysis is confirmed by Shomo Omotola (2007), who indicates that NDDC's failure is rooted in '*the character of the Nigerian state, which remains predatory, rent-seeking, and above all, lacking in autonomy*'.

7.8.2 Relationship between SPDC and the Nigerian government

At the surface, working with the government to enhance human rights situation seems to be fruitful, e.g. Frynas (1998) states that SPDC's '*good relations with*

the administration help to hedge the political risk of operating in the country'. For example, in case of the NEITI, SPDC seemed to be effective in engaging the government to commit to this initiative and provide transparency about the funds received from oil. Furthermore, several employees of government end up working for SPDC or vice versa (Frynas, 1998), although this does not necessarily say anything about the relationship (Detheridge & Pepple, 1998; Omeje, 2005). In addition, as described earlier, SPDC and the government work together in different regional structural development programmes and through the NDDC.

Yet, the relationship between SPDC and the Nigerian government does not always run smoothly. In 2003, for example, the Nigerian House of Representatives ordered SPDC to pay the Ijaw people US$1,5 billion over ten years to compensate for hardships and environmental damage caused by their operations since 1956 (Bird, 2004). According to some employees interviewed, SPDC is sometimes knowingly blamed, because this transfers the responsibility to adhere to community rights from government to a third party.

Secondly, SPDC may risk its business position in the country when engaging the government on human rights, as illustrated by the independent Dutch specialist on Nigeria, Van der Aa (2005):

> *'a company like Shell has less power than activists claim. The oil companies can ask what they want, but it stops if the government does not listen. Too much criticism works counter-productive. Nigerian government leaders can decide to put Shell out of the country and to go in business with other oil majors from China and Malaysia if Shell keeps pushing. The situation will worsen when they come. At least, Shell is a bit sensitive to complaints about corruption and environmental damage'.*

Thirdly, in 2003, SPDC reported in its annual report that the governmental shareholder NNPC does not always pay its investment share to the joint venture, which results into a forced scaling down of exploration and production work. This also affected the payments to contractors and employees sometimes (Frynas, 1998). Demanding financial incentives are also made with some of the human rights related initiatives with delays or blocking as a result.

7.8.3 SPDC perceived as alternative government

An important issue that plays a role in government relations is that communities (and people in government, according to the government advisors) see SPDC as an alternative or surrogate government (Eweje, 2006a). Amnesty (2004a) states in this respect: *'as few communities have had direct contact with the state, they expect the oil companies, which they see as partners of the government, to provide facilities that the state has not provided'.* In absence of developmental investment during especially the military rule and local governance, SPDC felt it was necessary to step in with community programmes, although developing the Niger Delta is primarily the task of government. The result is that the expectation was created that Shell will provide when needed.

For many communities, people from SPDC are the people closest to the government they see regularly. Eweje (2006a) confirms: *'the host communities know that if they put pressure on the companies by involving the international community, the companies will in turn put pressure on the government to protect their image'.* This is why militants attack SPDC staff, pipelines and facilities. Sometimes, the company's own actions confirm the expectations of communities that Shell is there main contact to the government. For example, a community invaded and shut down a flow station and asked SPDC to deliver a petition to the government, after which the company delivered the message. Moreover, the national oil company NNPC owns SPDC for 55% and is therefore regarded as primarily a governmental organisation.

Employees within Shell as well as external international stakeholders argue that SPDC have overstepped its responsibilities. There is therefore a call for ensuring that the company does not overstep its human rights responsibilities and rectifying these (community) views, as Idemudia & Ite (2006) stipulate: *'this situation overstretches the minimum moral responsibilities and resources of oil companies'*. The NEITI is one initiative in that direction as well as working more in partnerships with government.

Olisa Agbakoba, the legal expert from the human rights training, points out that the failure of local governance is the main problem in the Niger Delta and suggests that SPDC needs to help reform the law and increase local governance. For example, the local state governors enjoy impunity and cannot be easily held accountable for things such as corruption[13]. This prevents a reform in local governance.

7.9 International society and SPDC: implementation and internalisation of human rights mechanisms

This section explains the relationship between SPDC and its international stakeholders regarding human rights. Firstly, the way how this relationship is managed is explained in sub-section 7.9.1, after which the persisting negative international image of SPDC is discussed (sub-section 7.9.2). The third sub-section 7.9.3 analyses how Shell struggles to deal with this negative image.

7.9.1 Nigeria team at Shell Headquarters

Due to the importance of Nigeria for Shell in terms of oil production and the complexity of the local operating environment, a separate team is installed at the Headquarters level of Shell to deal with issues and communications with the international society around Shell's operations in Nigeria. No such team is installed for other countries at the international level. Initially, the team was set up to defend the company's position, but later started to build constructive relationships to find solutions. The team exists of four people that come from (senior) positions within SPDC in external affairs and/or community relations and therefore have local knowledge and networks. Other team members have European backgrounds with knowledge and networks within the international society as well as working experience within SPDC.

This team establishes and maintains relationships with Western and Nigerian (local) government institutions, United Nations organisations, international and local developmental NGOs, academics, etc. These relationships are established only when it can make a difference on the ground in Nigeria, according to the head of this team. For example, the EITI is initiated and coordinated by this team. Members of the team also speak at (human rights) international conferences to share what SPDC is doing in Nigeria and share its dilemmas.

The presence of the special Nigeria team installed at Headquarters level has allowed more and more structural and constructive external engagement of SPDC with international stakeholders. Partnerships have been set up successfully, involving stakeholders at the local and international level.

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[13] In December 2005, however, the federal government impeached and imprisoned the corrupt Bayelsa state governor named Diepreye Alamieyeseigha (Aiyekoti, 2005).

7.9.2 Negative international human rights image due to Nigeria

Few positive, or even balanced, stories, if any, are published about SPDC and human rights. This is confirmed in the interviews with international stakeholders; all stakeholders are concerned about the human rights record Shell has in Nigeria (see chapter 4). As described in the previous sections, SPDC and the Shell Group are accused for environmental damage, creating community conflicts and complicity in human rights abuses. Stakeholders say that many mistakes were and are made in Nigeria by Shell Nigeria in managing human rights and many stakeholders do not see much improvement.

The mistakes of SPDC according to these stakeholders include hiring Nigerians in key positions who are part of the elite and are therefore not keen to change anything, a focus on development projects instead of a right based approach and no engagement with a number of local important human rights NGOs in Nigeria. The Voluntary Principles on Security and Human Rights is often mentioned as an area where stakeholders like to see improvement, e.g. engaging government about the performance of public security forces.

In general, the Shell Nigeria companies are regarded to take a very defensive and too much of a victim role in Nigeria. Certain stakeholders find it worrisome that Shell does not want to speak in public about the problems they face in Nigeria. Stakeholders indicate they want to see more openness about the dilemmas that SPDC faces, how they deal with these dilemmas and what they learn in dealing with them. The human rights training in Nigeria is regarded as a very good initiative, but stakeholders would like to see what the real impact is.

7.9.3 Dealing with negative image

Within SPDC and Shell Headquarters, it is recognised that SPDC had to go through a learning journey in the past (e.g. regarding community development programme of SPDC) and therefore understanding exists for the accusations of international stakeholders to a certain extent. Yet, several other SPDC staff interviewed does not understand the demands from certain international stakeholders, such as the demand from Amnesty international to focus on security issues only, whilst there are much wider issues that need to be addressed.

Part of the explanation is the vivid memory of Ken Saro Wiwa and Ogoni conflict that strongly influenced Shell's international reputation and trust in the company (see section 7.3.1). In addition, the recent violent incidents and the lack of visible improvements in the human rights situation in the Niger Delta do not help to change this negative image. Employees interviewed indicate their wish to share more information on what the company is doing and the dilemmas the company faces.

On the other hand, senior managers interviewed at SPDC and Shell Headquarters level think that more pro-active engagement does not always help, since international stakeholders may not 'be willing to hear the positive stories'. As Detheridge & Pepple (1998) explain:

> *'respected independent journalists have visited the area during 1996 and 1997 and call into question the claims of environmental devastation which, in the past, have been made by campaigners. They are dismissed with such phrases as 'laughable', 'exaggerated' and 'hard to see what the environmental fuss has been out'.*

However, in a reaction to this statement, Frynas (2000) indicated that *'journalists were not as independent as they claim. Shell sponsored trips to Nigeria for journalists from different countries. On their return from Nigeria, many journalists presented Shell in a more favourable light than before'.*

International stakeholders continue to have the image that oil companies are responsible for the environmental and social degradation of the Niger Delta. One example used in Shell includes a journalist from the New York Post who came to the Niger Delta in 2005 to write another negative story about the Niger Delta. He found that there was also a positive side to tell and said: *'Shell does not have good public relations; Shell has been hurt by the public relations of the other side'.* When he came back to New York, he had to strike the story. More recently, international stakeholders had shifted by also denouncing the violence against SPDC employees and contractors.

Many of Shell Headquarters and SPDC's external affairs staff interviewed experience that several stakeholders seem to lack knowledge about the complexity of the challenges of SPDC in Nigeria, especially the general public. In that respect, the human rights focal point of Shell Headquarters noticed that many international stakeholders did not read the SPDC People and Environment reports, only the Shell Group Sustainability reports. In addition, they criticise international NGOs that base their information on the opinions of a few activists from the Niger Delta without checking the facts. Often, staff of the international NGOs have never been to the Niger Delta and therefore may not have a good appreciation of the context.

7.10 Relationship SPDC and Shell Headquarters

Now that all spheres of influences of SPDC have been discussed, the relationship between SPDC and Shell Headquarters will be analysed. As described in section 7.9.1, at the time of research, there is a special Nigeria team based in London to strengthen the internal and external international relationships regarding sustainability issues, including human rights.

Given the negative image of SPDC regarding human rights in contrast to Shell's commitments and activities (see previous section), international stakeholders start to question the relationship between SPDC and Shell Headquarters. After analysing the Ogoni crisis (see section 7.3.1), Wheeler et al (2002) state:

> *'the company too is not a homogeneous entity. Shell International, based in London and the Hague, is very different from Shell in Nigeria. Within these two 'Shell actors', there are individual managers and directors, and different departments, who do not necessarily share the same understanding of the Ogoni situation and how to resolve it'.*

They conclude that there seems to be a *'lack of consistency between corporate leadership and strategy (in London and the Hague) and local leadership and operational behaviour (in Nigeria)'.* The interviews with international stakeholders of Shell agree: *'there are two Shell's: Shell and Shell in Nigeria'* and *'Shell is one of the most responsive companies in the world, but why is there so little progress in Nigeria?'.* At Headquarters level, Shell is seen to be fully committed to human rights, but Shell does not sufficiently translate the global policy to practice on the ground. Wheeler further argues that this questionable relationship is unique, since *'there are parts of Royal Dutch Shell which understand and practice effective stakeholder management, such as the Camisea example in Peru'.*

The rest of this section has been made confidential, but conclusions will be integrated into the general, public, conclusions of this thesis. Here ends the analysis of how SPDC implements and internalises human rights in Nigeria. The next section draws conclusions from this analysis.

7.11 Summary and conclusion

This section summarises and draws conclusions from the analysis above on the way SPDC implements and internalises human rights mechanisms in Nigeria and tries to identify explanations (based on the research model as described in chapter 2).

SPDC identified several stakeholders in its spheres of influence: core operations (employees), business partners (suppliers, contractors, security forces), communities (people affected by SPDC's operations, local and international developmental organisations), government (federal and state governments) and the international society (Western governments, non-governmental organisations, media, United Nations, academics). All stakeholder demands can be regarded as urgent, because of the volatile situation in the Niger Delta. However, not all stakeholder demands are as legitimate or powerful to SPDC. Stakeholders can therefore be categorised as expectant or definitive stakeholders. SPDC has developed many initiatives as a response to stakeholder demands, which can all be typified as co-operative strategies with the aim to increase management power and divert stakeholder power.

SPDC made an explicit commitment to the UDHR through the adoption of the revised SGBP in 1997 and started to define its spheres of influence, extent of complicity and a management programme in 2006 through the development of the human rights and conflict resolution training and the VP working group. Other initiatives and processes within SPDC link to human rights, but not in an explicit way. Thus, although events in Nigeria led to the international commitment of Shell to human rights, it appears that SPDC started to pay explicit attention to human rights in 2005, when society's expectations on business and human rights increased and the situation in the Niger Delta deteriorated. One explanation can be found in the declining activities in Shell Headquarters on human rights after 1998 (see chapter 4). All of these aspects together with the enormous challenges SPDC faced on the ground did not facilitate support for the initiation of any explicit human rights activities.

The degree of implementation and internalisation and the corresponding explanations of SPDC's approach to human rights are analysed for each stakeholder. In section 2.6, the definitions were provided:
- The degree of implementation means the state in which the subsidiary and Headquarters follow the formal rules implied by the practice of human rights mechanisms.
- The degree of internalisation means the state in which the employees are committed to, satisfied with and have psychological ownership of the practice.
The analysis is done through analysing cause and effect relationships between the results (degree of implementation and internalisation) and the different levels of possible causes.

Employees
SPDC's employees are stakeholders with organisational and economic stakes and claim that SPDC provides job security (by maintaining production levels) and want to be treated fairly and respectfully. SPDC makes efforts to implement Shell Group policies and standards in areas of Human Resources, Diversity & Inclusiveness, Health and Safety and bribery and corruption. Nevertheless, employees remain concerned about discrimination based on ethnicity and gender, wages and benefits and personal safety. Besides, SPDC has difficulties to maintain integrity within the organisation despite having a strong system in place, including retaliation (explained below). This means that the degree of implementation can be improved.

The degree of internalisation of human rights mechanisms by staff was explicitly addressed by the human rights and conflict resolution training, specifically developed to fit the local context and values of employees. As a result, the degree of internalisation of human rights mechanisms is increased. Although this is an innovative approach, the following step needs to be linking the increased awareness of staff on human rights to existing systems within SPDC in order to embed the results (implementation). Furthermore, it can be noticed that employees do not understand the Security and some of the HSE Standards and therefore do not feel ownership or commitment to these standards. This low degree of internalisation can partly be explained by a degree of mismatch between the local context and the Shell Group Standards, because of the different geographical and developmental situation. Section 8.10 clearly illustrated the inherent tensions that can occur as a result of a clash between global and local contexts (see chapter 2) and the importance of the relational context in managing these tensions. Shell aims to bridge these tensions by strengthening relationships between key people in Shell Group and SPDC, through reducing the geographical and cultural distances.

The close personal and ethnic ties, as described in section 7.4, may form the cause of a heightened tendency to not follow procedures or changes. The company continues, nevertheless, its efforts to tackle the (in)direct causes by strengthening the transparency of the systems and building internal understanding and capacity to follow these systems.

Contractors
Contractors of SPDC primarily have an economic stake and claim that SPDC provides them with lucrative contracts. SPDC designed systems and trains contractors on primarily respecting health and safety and anti-bribery and corruption policies. However, contractors breach SPDC's regulations despite these systems and concerns exist whether contractors can represent the company. This can be explained by insufficient monitoring and low transparency of the formal rules as well as a lack of understanding, psychological ownership and commitment to these rules. Thus, the degree of implementation and internalisation can be strengthened.

No formal rules are in place in terms of labour conditions of employees of contractors or whether contractors build good community relations. The degree of implementation in this respect reflects the situation at Shell Headquarters level (as described in chapter 4). Guidance from Headquarters in priorities and implementation of global procedures appears to be crucial.

A high degree of poverty and lack of education explain why SPDC has had trouble of contracting highly skilled people from Nigeria that have the means to follow and understand the high HSE standards. This is also recognised by the Shell subsidiary and the company makes efforts to build the financial and technological capacity of (potential) contractors. However, increasing compliance with the integrity rules may prove to be more difficult to tackle because of the strong ethnic and personal ties and the level of poverty that have been described earlier.

Communities
Communities primarily have a social stake and claim that SPDC's activities have a negative impact on the human rights situation of the Niger Delta, that SPDC uses human rights abusing methods and lacks a will to account for its human rights commitment. In addition, communities have an economic stake as well, since they wish to prosper from the oil exploration. The social claims of these stakeholders carry far with the wider public and resulted into realisation of their

economic stake, since the production of oil is strained because of violence against pipelines, installations and people working for SPDC and international boycotts and campaigns (adversarial influence strategy). In other words, the communities are redrawing their license to operate for SPDC. Whilst communities' demands of SPDC are urgent and powerful, these are not always legitimate, since they actually demand that the government develops the region.

After the Ogoni crisis, SPDC recognised some performance gaps related to the claims of societal stakeholders. SPDC therefore implemented the SCD programme and has other multi-stakeholder partnerships to address human rights of communities of the Niger Delta. SPDC monitors the demands from communities actively, evaluates the SCD programme and adapts the programme based on the lessons learned when possible. Nevertheless, the SCD programme is regarded as ineffective both externally as well as internally, despite the many improvements over the years. The programme is even accused of making the human rights situation worse by fuelling conflicts and rewarding violence.

Section 7.7.4 tries to find explanations for the ineffectiveness of the SCD programme and identifies both implementation issues (time and budget constraints, bureaucracy and poor coordination) as well as internalisation issues (poor listening, integrity, and competency community liaison officers). These issues can be explained by a lack of training in effective sustainable community development and whether officers feel valued and protected by the company. Both explanations may be a derivative from a possible under valuation of the SCD programme within SPDC.

However, it was also recognised that the external context has a strong influence on the degree of implementation and internalisation as well. Prioritising stakeholder demands from communities have proofed to be difficult due to a high level of variety in demands and internal conflicts. This is caused by the absence of a well-organised civil society and a breakdown of local governance in the Niger Delta, facilitated by impunity and the level of poverty (see also section 7.1). Especially the large difference between rich and poor, both present in the Niger Delta, leads to conflicts. As described above, SPDC has limited power to influence this and thereby increase the effectiveness of the community development programmes.

Government
The government has a political and a large economic stake in SPDC's activities and claim that SPDC continues and increases its oil production and exploration with proper return on investment. The government seems to lean on SPDC to develop the Niger Delta, which makes their stake powerful and urgent (the government can decide to cast out the company), but not always legitimate.

SPDC deploys some successful human rights initiatives together with the government and especially the non-public relationship between SPDC and the Nigerian government appears to be good. The degree of implementation of the NEITI, for example, can be typified as high. However, SPDC is dependent on the government in granting the company with a license to operate and its corresponding rules and practices. The degree of implementation of SPDC's human rights commitment is therefore strongly dependent on these rules and practices and can enable or restrain. Speaking out against some of the government's human rights practices publicly is possible to a limited extent; despite international stakeholders demand exactly that. Other issues, such as the transfer from government's responsibility to provide the proper conditions for respecting human rights to SPDC are dependent on the practices of the government as well. Previously, SPDC followed its business instinct to manage

the situation and in doing so, the company unwittingly overstretched its responsibilities from which it is difficult to return. Thus, the degree of implementation and internalisation of human rights rules and practices on the part of government first need to be strongly improved in order to make SPDC's rules and practices successful.

In order to make the governments' initiatives such as the NDDC more successful, the integrity and the competence/expertise of local government and judicial officials need to be increased, which are undermined by the high level of corruption, weak governance and impunity in the region. The road that SPDC has taken to form partnerships with government institutions to build their governance capacity therefore has a strong potential to be fruitful.

International society
The international society has a social stake in SPDC's activities, because they claim that SPDC's activities have a negative impact on the human rights situation of the Niger Delta and lacks a will to account for its human rights commitment. In addition, the international society has an economic stake in SPDC's activities, because of the growing global need for energy. A team is present at Shell Headquarters to manage international communication and relationships regarding Nigeria and human rights issues. Nevertheless, the image of SPDC and therefore Shell Group regarding human rights remains negative and the relationships with some international stakeholder are not always cordial as a result.

The direct causes of this continuing negative image lie inside and outside Shell. On the one hand, the implementation and internalisation issues identified at SPDC such as bureaucracy and lack of competence and resources in the media department cause a poor level of communication to the external world. This may be a derivative from a possible under valuation of communications within SPDC (see also chapter 4). An important internalisation issue forms the internal misunderstanding and sometimes insufficient knowledge of where stakeholders are coming from, possibly brought about by large cultural and normative distances. Besides, the fact that the government is the primary shareholder of the company and the increasing scarcity of oil cause restrictions to share some information publicly.

On the other hand, budget constraints of the media relations caused by the low integrity of the Nigerian media, who play an important role in shaping the international image of SPDC, plays a role as well. The high level of poverty and poor education may elicit the integrity of the media, which are also important causes to increase the independence and professionalism of the media. Another explanation for the negative image external to SPDC is the seemingly low level of knowledge of important international stakeholders about the complex reality a company faces in the Niger Delta. This is fuelled by a natural distrust against companies, as discussed in chapters 1 and 4, which may lead to a biased view on SPDC's approach to human rights.

The following figure summarises the cause and effect analysis, as described above:

Figure 7 Cause and effect analysis

In sum, it can be concluded that SPDC deploys a number of initiatives to increase its human rights performance of which the degree of implementation and internalisation varies and which are influenced by factors within as well as outside the control of the company. The local context of Nigeria and the Niger Delta plays a crucial role here, as can also be seen in figure 7. As described in the first sections of this chapter, Nigeria is recovering from a period of military rule in which many human rights were violated and the country heavily depends on the revenues from oil to realise that. The oil revenues brought a lot of money into the Delta, but also lead to increased inequality, corruption, ethnic and political tensions, break down of governance and violence. Being the oldest and biggest oil company present in the Niger Delta, SPDC has been the centre of attention for governments, security forces, communities and international stakeholders. Stakeholders expect SPDC to step into the void of government failure and be a 'force for good'. To some extent, SPDC has tried to fulfil this expectation, despite the many dilemmas that SPDC faces. In doing so, SPDC had to take a learning journey in the implementation and internalisation of human rights, but the overall weak governance of the Niger Delta strongly influences this as well.

No company human rights initiative will work properly when civil society and communities violently clash and are not able to organise themselves, when public security forces use excessive violence and when government institutions put resources in their own pockets. Not for nothing, 'good governance' is a prerequisite for receiving development aid from donors. Despite this grooming picture, a company operating in such an environment can still aim for respecting its commitment to human rights by clearly defining its responsibilities regarding human rights (and not crossing it) and building competencies within the company that facilitates human rights performance (see figure 7). SPDC seems not to have

addressed both issues adequately because the company did not know how to approach the situation as a result of a lack of experience. The company, however, is now on the path to recovery from its past through partnerships with government and staff training on human rights. Apparently, SPDC needed to 'learn by doing' and increase its human rights performance. This way, SPDC plays a pioneering role for other companies operating in such a challenging environment.

With the end of this chapter, the empirical part of this thesis ends as well. The next chapter provides an overall reflection on the results of this research.