



Assessment Report

Complaint filed to the CAO regarding the Nigeria Delta Contractor Revolving Credit Facility.

August 2001

Office of the Compliance Advisor/Ombudsman
of the International Finance Corporation and the
Multilateral Investment Guarantee Agency

Introduction

This assessment report summarizes the findings of the CAO in relation to a complaint filed with the CAO regarding the Niger Delta Contractor Revolving Credit Facility. The assessment comprised interviews and meetings with relevant staff of IFC, interviews with outside experts in issues of the Niger Delta, in particular the background of oil industry activities in the Delta and the social, political and environmental situation there. The assessment concluded with a mission to Lagos and Port Harcourt from August 12 – 18, 2001.

CAO is grateful to all those who freely gave of their time in patiently answering questions, agreeing to meet with CAO staff and to those who organized aspects of the mission in the Delta. In particular CAO acknowledges the staff of IFC Lagos, the staff and members of ERA as well as other affiliated organizations, the Council of Chiefs and people of Nembe, the people of Ken-Khana LGA, Ogoni, the staff of ACCORD, the management and staff of Diamondbank in Lagos and Port Harcourt, Human Rights Watch, UK Department for International Development and the staff and management of Shell/SPDC also in Lagos and Port Harcourt.

1. The complaint

On June 19, 2001 the CAO received a complaint from Environmental Rights Action regarding the Niger Delta Contractor Revolving Credit Facility (the Facility). The complaint was comprehensive and wide ranging encompassing issues of lack of consultation with communities and organizations in the Delta, lack of transparency in preparing the Facility, the choice of Shell Petroleum Development Company (Shell in Nigeria) as a partner given its past and present environmental and social record, the environmental and social performance of Shell contractors, the security situation in the Delta, employment practices of Shell contractors, the present record of community development by Shell and the lack of preexisting conditions of regulation and enforcement that would support compliance with the procedures for any Facility operating in the Delta and in the oil economy (Annex I).

The CAO met with Oronto Douglas of ERA on June 21, 2001. The CAO accepted the complaint and acknowledged to the complainant that while some aspects of the complaint would be taken up under the Ombudsman role, those aspects of the complaint that relate to broader policy issues of IFC would be considered under the CAO's Advisory role.

During the months of June, July and August the complainants maintained contact with IFC directly. On July 25, 2001 in a letter from the complainant to IFC, the complainant outlined a series of recommendations that, they felt, would enhance the project's development impact and feasibility and would assure the complainant's constituency of IFC's intent (Annex II). These included:

- A moratorium on implementation pending dialogue between IFC and communities and NGOs related to concerns raised in the complaint;
- The need for NGO and community involvement in monitoring of the Facility;

- Involvement of NGOs and communities in ascertaining compliance and evaluating performance of the Facility and the Facility's manager, Diamondbank.

In an August 9 reply, IFC reiterated its commitment to the project and to consultation on its working details, but did not respond to the specific recommendations made by the complainant (Annex III).

2. Background

Context in brief: The oil industry has been operating in the Niger Delta for almost 50 years. By far the biggest operator is the Shell Petroleum Development Company (SPDC) a joint venture between Shell and the NNPC in Nigeria. In the mid-1990s following Shell's problems with Brent Sparr, attention focused on their operations in Nigeria, as Ken Saro-Wiwa and the cause of the Movement to Save the Ogoni People (MOSOP's), to rid their land of Shell, was embraced by interest groups and consumers in the North, principally in Europe. With the death of Saro-Wiwa in 1995 the impact of Shell's battered image on its market share and sales forced an evaluation of its approach to business, the environment and social development.

Since that time, on the international stage, Shell has been increasingly lauded as an industry leader in seeking more socially responsible forms of business activity and has taken a prominent role private sector and industry-wide initiatives such as the United Nations Global Compact and together with Amnesty International, the Business Principles for Human Rights.

In 2001 Nigeria was ranked number 90 out of 91 in Transparency International's Corruption Perceptions Index. This is in part due to continued siphoning of oil revenues. Under the present system between 80 – 90 % of the gross revenue from oil (depending on the barrel price – the oil companies take a fixed margin) goes to the Federal Government. This figure does not include the profit from the majority shareholding in the joint ventures held by the Nigerian state petroleum company.

The current federal government, under pressure from the Delta states, has increased the percentage of the revenues that are re-allocated to the nine oil states. Today that amount is 13%, although in an agreement between the federal government and the states only half of that – the amount from terrestrial drilling, is given back. Nevertheless, 6.5% of 80-90% of revenues accounts to some many millions of dollars each month to each state.

Accounting for these funds and their use – at the federal and state level is beyond most Nigerians who lack the information or the capacity to analyze the acts or omissions by their elected leaders. In the Delta, where the presence of the state is sporadic the permanent presence, and the symbols of wealth that has been taken from them, are the oil companies.

3. Situation assessment

IFC in Nigeria: Since the completion of open elections and the coming to power in May 1999 of President Obasanjo, IFC together with other international development and financial institutions has begun operations in Nigeria again. At present IFC has extended credit lines to some 7 banks in Nigeria and has focused its activities primarily on the promotion of a stable financial sector. The concept for a credit facility around oil contractors was first muted some three years ago and was discussed and consulted on for some two years before Board approval, though not with the direct involvement of IFC Lagos.

IFC project preparation: The Facility was prepared in line with the procedures for a financial intermediary. As IFC has repeatedly stated the project preparation would appear to be in compliance and the categorization of the project would appear to be correct.

IFC has referred to the engagement of a consultant who spent considerable time in the region developing the project concept and to extended consultations with likely contractors as well as an extensive effort to identify the right local partner Bank to manage the facility.

Nevertheless, aside from a reference to the reputational risk to IFC of working with Shell in the Niger Delta in the Board paper, nowhere does there appear to have been a systematic, pre-approval analysis of the present activities and record of Shell, an assessment of the upside and downside of Shell as the major partner, attempt to canvass other opinion leaders in Nigeria, specifically the Delta, including civil society, nor to analyze whether the development impact (noted in Board papers as employment opportunities) could be realistically achieved in the present circumstances.

Without this base line risk analysis and assessment it would appear IFC has been unable to examine seriously suggestions on how to improve the concept of the Facility to meet development needs as expressed by some NGOs in the Delta.

In selecting Diamondbank the process used has been a closed one, not open tendering, which may lay IFC open to accusations of being untransparent.

While not mandated to consult with NGOs and civil society for such a category of FI project, in hindsight, building support for IFC's re-entry into the oil economy in Nigeria, in and of itself an objective supported by allies and critics alike, would have made good business sense. Similarly the decision to streamline the procedure, not giving the Board a chance to fully scrutinize and sign-off on what should have been seen as a highly sensitive project, in hindsight, may have been ill advised. The decision was eventually reversed following letters from local NGOs to the President and international press interest..

The lack of public awareness about IFC's role and its activities means that many have believed that the Facility is the first activity for IFC in Nigeria since 1995. It was therefore a surprise to people that IFC would reenter Nigeria in the oil economy, with Shell as a partner, when other parts of the economy are in need of the kind of support IFC may give. The other credit lines and IFC's broader strategy in Nigeria are not known. This could in part be rectified by the disclosure of the interim strategy and other documents

related to the process for the preparation of a CAS. That Nigerian people have no access to the strategies developed for them by the World Bank/IFC is in this case self-defeating.

There seems to be a widespread recognition of the need for term money at reasonable interest rates for small and medium sized businesses locally owned in the Niger Delta. Therefore the criticisms of those who have spoken out cannot be dismissed as those who will not do business with Shell or who are opposed to the role of the World Bank Group. There would appear to be a willingness from all to try to make the Facility the first step in a sustainable plan for greater access to credit for local entrepreneurs in the Delta. Shell's lead in allowing its contracts to be used as security for credit simply codifies the already existing practice in the Delta – but in this Facility extends that practice to term money at market rates.

There is deep concern that the Facility be open to and favor contractors from the Delta. There appear to be some contradictory messages from IFC officials on to what extent the Facility is to be targeted at Delta based contractors, or to Nigerian contractors. The use of the phrase “indigenous contractors” by IFC and Shell needs to be better defined. For communities in the Delta, who have contractor numbers and who seek to build their capacity and to build their businesses, the Facility is recognized as an opportunity. But there is concern that the Facility will have to be aggressively marketed in Delta communities to ensure that they exploit the opportunity.

4. CAO conclusions

Given the assessment above the CAO concludes that for the Facility to go ahead with increased operational relevance and development impact, the following steps could be considered.

- i. A participatory design process should be put in place to maximize the development impact and mitigate concerns of Delta contractors and other groups in the Delta that a Facility in their name will not be available to them. Elements of this design process include:
 - a. Criteria for ensuring that the Facility serves local or indigenous contractors, local and indigenous to the Delta. These could include targets by volume and/or by funds lent.
 - b. Participatory monitoring and evaluation be developed to ensure that criteria are met and to examine success of the Facility over time.
 - c. The marketing of the facility to be undertaken by Diamondbank be appropriate to the Delta and be designed in such a way as to ensure that contractors in communities know of the Facility and how to access it.
- ii. IFC/World Bank may want to examine complementary facilities to cater to the express needs of small-scale entrepreneurs for micro-credit and to ensure access to credit in the Delta (not necessarily well served by existing Nigerian banks) for credit above the amounts catered for by the Facility. If this has already been considered, then information on the analysis and the plans should be disclosed and discussed with opinion leaders in the Delta. This could perhaps be in the context of further CAS consultations, but in this case documents related to the CAS process should be disclosed.

5. Suggested path forward

If these suggestions are felt to be useful by the complainant, the CAO will canvas all other parties to establish their willingness and capacity to participate in the processes outlined above and will seek to facilitate such a process. This should happen as soon as possible, balancing the demands for a moratorium or delay, pending greater public engagement, and the recognized needs of contractors for term, lower interest, financing.