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Nigeria: Shell's response to Amnesty International's report *Petroleum, Pollution and Poverty in the Niger Delta* is disappointing

In reaction to Amnesty International's report of 30 June 2009, *Petroleum, Pollution and Poverty in the Niger Delta*, Shell has made a number of email statements to the media. Amnesty International takes this opportunity to set the record straight.

Shell has stated that Amnesty International "forgets that about 85% of the pollution from [Shell] operations comes from attacks and sabotage".

Amnesty International disputes this statement:

- Sabotage is only an issue in relation to *one* form of oil industry pollution - oil spills. As Amnesty International's report points out, there are many other ways that the oil industry has caused pollution and harmed the environment in the Niger Delta over the past half century. These include discharge of waste, dredging of creeks and rivers, disposal of drilling waste, seismic activities and road construction that has blocked water systems. Sabotage is not a factor in any of these forms of pollution or environmental damage.
- The proportion of oil spills caused by sabotage, as opposed to corrosion and equipment failure, cannot be determined because the causes of oil spills in the Niger Delta have not been subject to any independent assessment or verification. In many cases the oil company has significant influence on determining the cause of a spill – even when a regulatory representative is present. As the company is liable for compensation payments if the spill is found to be due to corrosion or equipment failure, the practice of allowing companies so much control over the designation of oil spill causes creates a deeply troubling conflict of interest. Amnesty International's report provides examples of cases where Shell claimed the cause of a spill was sabotage, but this claim was subsequently called into question by other investigations or the courts.

For example, in the case of a major oil spill at Batan in Delta State in 2002, Shell wrote to the Governor of Delta State claiming the spill was caused by sabotage. The letter was written two days *before* the oil spill investigation was done. Moreover, video footage of the investigation – and the follow-up by a local non-governmental organisation – does not correspond with Shell's statements on causality. Independent investigation shows the cause of the spill to be equipment failure. The video is available on Amnesty International's web site.

Court actions in Nigeria have also challenged Shell's assertions on sabotage. For example, in *Shell v Isaiah* (1997) the Appeal Court stated:

“[it was] convinced that the defence of sabotage was an afterthought. The three defence witnesses were agreed on one thing, that is that an old tree fell on and dented the shell pipe ... How could this have metamorphosed into an act of cutting the pipe by an unknown person? What is more, there is no evidence whatsoever in proof that the pipeline was ‘cut by hacksaw’.”

- It is generally acknowledged that the majority of the oil spills prior to the mid-1990s were due to infrastructure problems. For example, most of the oil spilt by Shell (the major operator on land) between 1989 and 1994 was, by their own admission, due to corrosion or operational problems. Of the volume spilt, only 28 per cent was attributed to sabotage. In 2007 Shell’s estimates had risen to 70 per cent. In response to Amnesty International’s report, the figure now given by Shell has increased to 85 per cent (for pollution). While Amnesty International acknowledges that sabotage and vandalism are serious problems, Shell has provided no support for its contention that there has been a threefold increase in sabotage in the last fifteen years.

Shell does not believe Amnesty International has reflected the complexity of the situation.

The report released by Amnesty International focuses on some of the root causes of the complex conflict situation in the Niger Delta. These include: the impact of half a century of pollution and environmental damage on the people of the delta; the lack of effective accountability and redress for harm to the environment and human rights; and a lack of transparency and information in relation to the impacts of the oil industry. These factors have been key drivers of conflict and poverty in the Niger Delta.

Shell repeatedly refers to the complexity of the situation in the Niger Delta. It seems to be a stock response of Shell to use complexity as a way to avoid responsibility. Shell blames the communities and militants for oil spills, and then blames them again for not allowing access to clean up. However this is only *part* of the picture. Shell’s own poor practice is also a fundamental part of the problem. Moreover, the communities’ actions – while not condoned by Amnesty International – have emerged after years of Shell’s poor practice, including failure to prevent and clean up pollution, and a lack of transparency in investigation of oil spills and payment of compensation.

For example, at Kira Tai in Ogoniland, where an oil spill occurred on 12 May 2007, the community told Amnesty International that Shell had accepted that corrosion was the cause of the spill – but the company had not properly cleaned up or paid compensation. Amnesty International subsequently obtained the investigation report, which was signed by five Shell representatives, as well as the regulatory agency and the community. This confirmed the community’s account. However, when Amnesty International representatives took the case to Shell they were told it was a case of sabotage, notwithstanding the official investigation report. Amnesty International subsequently asked for evidence to back up why Shell changed the finding of the investigation. We did not receive this information.

When Amnesty International visited them, the community at Kira Tai had no idea Shell had changed the cause of the spill, and they were still waiting for compensation. When Shell talks about needing to understand the complex nature of the situation in the Niger Delta, the company must face up to the fact that it is this kind of behaviour that feeds community distrust and anger, and in turn fuels conflict.

In pointing to complexity and the actions of other actors Shell is simply shifting the spotlight off its own bad practice and failures. In reality this exacerbates the problems of the Niger Delta.

Shell has said Amnesty International’s report does not contain ‘new insights’.

Continued abuses of human rights must be addressed. By calling for “new insights”, Shell appears to be trying to deflect attention away from existing evidence. This includes:

- Shell’s failure to ensure adequate action to prevent pollution and damage to human rights. For years Shell has engaged in practices that have been damaging to the environment and people – for example pipelines were not adequately maintained, and waste products were released into the environment.
- Shell’s failure to adequately clean up and remediate contaminated land and water.
- Shell’s lack of transparency within the systems for joint investigation of oil spills and payment of compensation to victims
- Shell’s failure to disclose information. Although some information was disclosed to Amnesty International, communities in the Niger Delta frequently do not have access to even basic information about the impacts of the oil industry on their lives.
- Shell’s poor practices in community engagement, which fuels conflict.

Shell is aware of many of these issues. Amnesty International’s report makes a number of recommendations to both the government of Nigeria and the oil companies to address the problems outlined. Shell must clean up its operations in the Niger Delta - in every sense of the phrase.

Amnesty International does not hold Shell solely responsible for the environmental pollution and damage, and its human impacts, in the Niger Delta. There has clearly been a significant government failure over decades. Moreover, as acknowledged above and in the organization’s recent report, the actions of communities and armed groups are now a significant part of the problem of pollution.

Shell says it wants to look to the future.

The way forward involves accountability and redress for the past. A lack of accountability for past abuses is, effectively, impunity. Moreover, unless and until oil-related pollution and environmental damage are addressed, the people of the Niger Delta cannot look to the future. They have to live with Shell’s past – its legacy of environmental and human rights harms.

Shell does not believe that Amnesty International has adequately reflected the security threat facing the oil industry in the Niger Delta.

The oil industry in the Niger Delta does indeed face major security threats. Amnesty International’s report describes the Niger Delta as one of the most unsafe oil production areas in the world, where armed groups and gangs have increasingly engaged in kidnapping of oil workers and their relatives, including children, and attacks on oil installations. This is a serious problem that urgently needs to be addressed appropriately.

However, addressing insecurity in this complex environment requires a multifaceted approach – addressing root causes of problems, as well as the symptoms. The use of force by the government of Nigeria in response to threats to the oil industry in the Niger Delta, has all too frequently led to serious human rights abuses by both the Nigerian security forces and the armed groups operating in the Niger Delta. This exacerbates rather than addresses problems.

Insecurity in the Niger Delta is not only a problem of armed violence – it is a problem of abuse of human rights, lack of accountability, lack of transparency, corruption and serious government neglect. In some respects conflict and armed violence are symptoms as much as causes of the human rights tragedy of the Niger Delta.

Shell states that Amnesty International did not engage in open dialogue with them when preparing our report.

Amnesty International met with Shell twice to present our findings and interview the company:

- The first meeting was on 1 April 2008 in Port Harcourt in Niger Delta, where Amnesty researchers presented our findings to Shell and asked questions.
- The second meeting was on 15 September 2008 in The Hague, Netherlands, at Shell's headquarters. Amnesty International sent Shell questions in writing in advance of this meeting. Shell declined to answer most of the questions.

Amnesty International also sent Shell the first draft of all the relevant sections of the report including all cases referring to Shell for comment. We received a response; however it did not address the substantive issues in the report. We further sent to Shell a second draft of the report, again requesting their response. We did not receive any substantive response on the issues raised in the report. The few relevant comments we received were included in the report.

Shell's statement the Amnesty International did not engage in open dialogue but rather "came to Port Harcourt to confront [Shell] with questions" is both inaccurate and represents a fundamental misunderstanding about the role of Amnesty International. Shell, in each dialogue we have had with them on this report, appears to want to have general conversations about the issues, so long as we do not focus on specific questions about their operations in the Niger Delta. Amnesty International has had many discussions with Shell on the Niger Delta and the human rights issues over the years. Such discussions are too frequently, in our experience, a way for companies to maintain 'engagement' while avoiding meaningful action to address corporate failures and bad practice.

Shell does not believe Amnesty International has adequately acknowledged the company's contribution to Nigeria's economy and community development in the Niger Delta.

Amnesty International's report acknowledges that Shell has made some positive contributions in Nigeria, including provision of employment. However, we have pointed out to Shell that, in human rights terms, positive action in one area does not absolve any actor of responsibilities for human rights harms elsewhere. Human rights abuses cannot be 'offset'.

In short, Amnesty International finds Shell's response to the organization's recent report, *Petroleum, Pollution and Poverty in the Niger Delta*, disappointing. Shell appears to want to talk about the complex issues in the Niger Delta as if they were an onlooker – but do not acknowledge that the company's operations are a contributing factor.