

# Nigeria

## Are human rights in the pipeline?

### 1. Introduction

*"I have trees on 6 acres but now they are all destroyed. You can only see small leaves on the trees. My trees are burnt to ashes. The soil is now contaminated and bad. I fear that during the rainy season the oil spill will double and all the trees will be under the mix of oil and water.....it could have been a nice farm."*

Chief Jonathan Wanyanwu to Amnesty International, March 2004

The Niger Delta is the main oil producing region of Nigeria, which is the largest oil producer in Africa, and the fifth-largest oil producer within the Organization of Petroleum Exporting Countries (OPEC)<sup>1</sup>, the cartel of world's leading oil producing countries. However, little of this wealth is distributed within the Niger Delta, or to the Nigerian people as a whole. Economic and social rights, such as the right to health and the right to an adequate standard of living, remain unfulfilled for many Nigerians.

Many of the traditional responsibilities of the state are fulfilled in parts of the Niger Delta by transnational oil corporations operating there, such as providing basic services or building local infrastructure. These activities have left local people unclear about how to seek redress for any adverse consequences or human rights abuses as the companies frequently act on a voluntary basis without any accountability mechanisms.

Amnesty International is very concerned that civil and political as well as economic, social and cultural rights are being violated and abused in the process of the oil exploration and production in the Niger Delta. This report highlights how human rights of individuals and communities have been abused and violated as a result of practices of transnational corporations (TNCs) and inaction and action by the Federal Government, including non-inclusive consultation processes (see case concerning an individual from Rivers State and the Nigerian Agip Oil Corporation (NAOC) in Appendix A and the case concerning a community of Bayelsa States and the Shell Petroleum Development Corporation (SPDC) in Appendix C), policies of 'divide and rule' and failures to clean up after oil spills (see case concerning an individual from Rivers State and SPDC in Appendix B). These abuses are occurring in a context of escalating violence in the Niger Delta, between the state and armed groups as well as between different armed groups. Oil companies' employees and assets, such as pipelines, are frequently targeted for attack and sabotage.

As part of Amnesty International's monitoring and reporting on human rights in Nigeria and the Niger Delta in particular, an Amnesty International delegation visited the Niger Delta in March 2004 and interviewed representatives of oil companies operating in the region, community activists, farmers, scientists, police officers, academics, and members of non-government organizations (NGOs). This report does not aim to be a comprehensive

survey of violations and abuses of human rights in the Niger Delta, either by the state or by non-state actors such as TNCs. Rather, it aims to provide examples of the kind of abuses and violations of human rights which are the result of actions or inactions by TNCs and the Nigerian Federal Government, and which are widespread and appear to be common practice. It highlights some of these practices, which have led to human rights abuses, and the policy implications for the TNCs by providing an analysis which is illustrated by three specific case studies. These are individuals and communities from two different states in the Niger Delta (Rivers State and Bayelsa State) and two TNCs SPDC and NAOC. Amnesty International is concerned that the human rights of these individuals and communities are not respected, in particular: the right to security of the person; the right to seek, receive and impart information; the right to an adequate standard of living; the right to a general satisfactory environment and the right to an effective legal remedy and redress.

As a result Amnesty International urges the Nigerian Government to ensure that all law enforcement agencies respect human rights in their activities, that the Nigerian Government ensures enforcement and proper implementation of the environmental protection legislation in order to enable a fully inclusive consultation process and clean up of oil spills, as well as guarantees mechanisms of redress of violations of both civil and political as well as economic, social and cultural rights.

## **2. Background**

Nigeria is a country rich with natural and mineral resources and human talent which, if properly harnessed, can enable the country to develop economically, which is necessary for the country to meet its developmental goals. Nigeria is the largest oil producer in Africa, and fifth-largest within OPEC. Instead, even 44 years after independence, seven out of ten Nigerians live on less than US\$1 per day<sup>2</sup>. Economists widely accept this as the measure of absolute poverty.

Economic and social rights, such as the right to health and the right to an adequate standard of living, remain unfulfilled for many Nigerians. This is particularly pronounced in the Niger Delta which is coincidentally the main oil producing – and hence main revenue-generating – region in the country. The amount of oil that Nigeria produces could go a long way for the state to deploy resources to realize economic, social and cultural rights.

The Nigerian State is primarily responsible for the respect, protection and fulfillment of all human rights in Nigeria. While international human rights conventions acknowledge resource constraints that most states face, and therefore accept that states should progressively realize the economic, social and cultural rights of the population, states are nevertheless required, irrespective of resource constraints, to ensure a minimum core level of economic, social and cultural rights. The Nigerian State, despite the availability of resources, has failed to take the necessary steps to ensure the core content of these rights, in violation of international law. It has not provided enough essential services, nor built the social and physical infrastructure in large parts of the country, necessary to ensure a minimum

acceptable level of the rights to health, education, and access to drinking water, and an adequate standard of living. The Nigerian State must honour its human rights obligations.

The lack of realization of the economic, social and cultural rights affects all sections of the society. A relatively better-off female activist from the region poignantly stated:

*“I don’t have a borehole. I don’t have electricity, I have to pay for kerosene and candles because I can’t afford a generator. The government is not performing its role and paying its dues.”*

In the absence of the state providing such services and infrastructure, oil companies<sup>3</sup> operating in the Niger Delta have often stepped in to provide basic services or build infrastructure, for a variety of reasons ranging from social responsibility and philanthropy to practical concerns such as providing electricity to their own facilities, and offering the surplus to local communities. In some cases, it is a deliberate strategy to ward off potential political or security risks to operations.<sup>4</sup> In general, companies engage in these activities to secure their social licence to operate<sup>5</sup>. One human rights activist from the Niger Delta told Amnesty International:

*“The social licence to operate should be on global standards, TNCs in Nigeria have lost their social licence to operate.”*

Most companies operating in the Niger Delta claim to have state-of-the-art policies for engaging with local communities in place. Indeed, several companies have large development budgets, and run a range of services for the communities in which they operate. The voluntary codes of conduct, and the principles by which the companies aim to operate, while not legally binding, endeavour to reflect the best practices in the industry. And yet, the gap between those intentions and the effects of the activities on the ground, between the promise and the performance, is often large. The policies are often theoretically sound. But the effect of implementation of these policies has often not been benign. Companies typically provide benefits and facilities to the communities closest to their area of operations. But by doing so, the companies often end up antagonizing other parts of the region, which do not benefit from the companies’ community development programs. Even within communities, divisions emerge, between those benefiting from particular projects, and those who do not. This divides communities and in many instances, creates conditions for conflict, resulting in human rights abuses of the people living in the communities around their area of operations.

The oil companies have also become the target for the communities’ anger as a result of other aspects of their operations. This is partly because of the oil companies’ chequered record of failing to restrain the use of force by security forces against peaceful protestors (when provided by the State)<sup>6</sup>, and their frequent failure to clean up land polluted after oil spills (see Appendix C).

It is also partly due to local communities’ unrealistic expectations of oil companies. Despite the abundant local natural resources, exemplified by land which contains resources of

commercial value and those resources being pumped out through the pipelines, local communities receive few benefits from the state, leading to expectations that the oil companies will fulfil the role that the state should play. One community activist in Port Harcourt told Amnesty International:

*“The public debate does not usually mention the fact that State Governments should be giving money to the local communities, but rather that the TNCs don’t give money.”*

Companies are neither designated to, nor do they have expertise in, providing such services. When companies do, they have sometimes acted arbitrarily, often without transparency, and have virtually no accountability towards the communities.

In some instances, companies have not performed the environmental or social impact of their activities, as required under Nigerian law<sup>7</sup>, or helped to ensure that environmental impact assessment documents have been made adequately available, for instance by not placing copies in or at a reasonable and accessible distance from the actual communities (see Appendix C). In some cases companies have been fined by the state for not pursuing the environmental impact assessment (EIA) process adequately, as in one case with NAOC.<sup>8</sup> In several cases, in these reports they have often failed to reveal all relevant information to the community, which is a precondition for prior informed consent.

Unless adequate safeguards are put in place, companies acting voluntarily could cause more harm rather than good. By definition, companies acting voluntarily do not have a legal obligation to perform the tasks that they perform voluntarily. But through the failure of the Nigerian State to rigorously enforce its obligation to protect human rights should there be adverse consequences, companies end up acting in an environment without an adequate accountability framework, making it harder for the victims of human rights abuses to seek redress.

Nigerian civil society is concerned about this. Sharing that perception, one of Amnesty International’s contacts in the Niger Delta said: *“The fact that the behaviour of companies differ in Nigeria and Norway depends on the attitude of the governments.”*

Grievances against the companies have accumulated in the communities, and this has fueled violence. The violence has escalated over the last few years to over a thousand deaths in 2003, making the conflict in the Niger Delta in certain respects one of the most intense in the world according to conflict experts and security analysts. The activities of the TNCs are not the sole cause of conflict; clearly many other issues lead to violence. But because of the TNCs overwhelming presence in the region, the widely-held perception that they are benefiting, together with the state, from the region’s resources, and because they are often the only functioning entity in a particular area, oil company assets and people become the targets of sabotage and violence. This has been claimed by most companies and accepted by many local NGOs in interviews with Amnesty International, and divulged by leaders of local armed groups in media interviews.

Amnesty International acknowledges that any company operating in a violent area such as the Niger Delta is bound to face a range of problems and issues. SPDC has acknowledged 'contributing' to the conflict, as described in the SPDC-funded conflict survey from December 2003<sup>9</sup> and which Amnesty International has seen. Amnesty International believes that states have the primary responsibility to respect, protect and fulfil all human rights. However, this includes the obligation to ensure that companies respect human rights when acting in their area of operations and sphere of influence.

States are bound by international treaties which they have ratified, and by rules of customary international law. Do international human rights obligations apply also to TNCs? Some TNCs argue that human rights treaties are signed by states, and as such, obligations to respect, protect and fulfil human rights fall on the state. As non-state actors, TNCs argue, that they have no international legal obligations towards the protection of human rights. They may choose to protect human rights voluntarily, but they have no obligations under international law<sup>10</sup>.

The Universal Declaration of Human Rights (UDHR), however, extends responsibilities to "every individual and every organ of society". "Every organ of society", includes non-state actors, such as companies, public and private. Although the phrase "every organ of society" has not been included in either of the human rights Covenants<sup>11</sup>, there has been, particularly over the recent years, a growing recognition of the need to regulate corporate activity from the human rights perspective. The UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights<sup>12</sup> are the most recent step in a process towards ensuring corporate accountability for human rights.

Governments that ratify human rights treaties are expected to take measures to respect, protect and fulfil the rights in the treaties. One of the ways in which states should implement international treaties is through their domestic laws. Company actions should therefore be governed by these laws, and therefore indirectly by the provisions of human rights treaties that states have ratified. As well as legally binding treaties and laws, there are other, non-binding standards which do not have the force of law but set out minimum standards of good practice to which all companies should adhere.

All companies have a responsibility to respect human rights in their own operations. Their employees and other people with whom they work are entitled to rights such as freedom from discrimination, the right to life and security, freedom from slavery, freedom of association (including the right to form trade unions) and fair working conditions.

In the context of civil and political rights, for example, companies recognize that their legal responsibilities include proper training of their security staff, and that they must not violate international and national labour laws, regarding the use of forced labour and exploitative child labour. The Tripartite Declaration of the International Labour Organisation<sup>13</sup> also applies to companies. Similarly, companies are covered by sector-specific

enforcement mechanisms, such as Responsible Care for the chemical industry<sup>14</sup>, Forest Stewardship Programme in forest management, and the Kimberley Process Certification Scheme to regulate the trade in rough diamonds. Over time, companies have recognized some of their responsibilities voluntarily, and established codes of conduct to govern their behaviour.

As recent human rights literature<sup>15</sup> however suggests, while voluntary approaches are a necessary starting point, Amnesty International believes that corporate responsibilities for human rights should go beyond voluntary approaches. Companies operating in Nigeria must act within the Nigerian laws that apply to their operations. It is therefore vital that they do not pursue policies that contribute directly or indirectly to human rights abuses.

Economic globalization, however, has sometimes weakened regulation at the national level due to internationally-binding trade, economic and investment agreements of which they are part, and due to the power some large investors wield in demanding to safeguard their interests. The nature of TNCs in today's global economy makes it more difficult for individual governments to regulate them and hold them to account. Sometimes the host country has inadequate legislation. Using the human rights framework as a benchmark to measure the impact of companies' activities will help to provide a common and universal standard. The UN Norms for Business, an emerging international initiative, offer a comprehensive set of human rights responsibilities for companies within their sphere of influence and they are extremely helpful in clarifying the role companies should play in relation to human rights.

Therefore Amnesty International calls on companies operating in the Niger Delta to take steps to avoid human rights abuses by adopting a code of conduct that complies with the UN Norms for Business, particularly to:

- act transparently
- secure the free, prior and informed consent of the indigenous peoples and communities to be affected by their projects, and
- ensure that their security arrangements observe international human rights norms and relevant UN codes of conduct and Voluntary Principles for Security and Human Rights<sup>16</sup> (where applicable)

### **3. The Niger Delta conflict, oil and the disproportionate allocation of resources**

Nigeria's economy is overwhelmingly dependent on the production of crude oil. Oil exports account for 98.5% of Nigeria's total exports. This shows that the oil industry is of utmost strategic economic importance for the Federal Government. In view of the instability in the Middle East, oil companies are increasingly turning to West Africa<sup>17</sup> to explore new oil fields, and therefore Nigeria's strategic importance is only going to increase. SPDC has the biggest operations in Nigeria, and it recently announced that it will relocate its African headquarters

to Nigeria (from the Hague). It also announced that its top management will be Nigerian, and not expatriate.

Amnesty International believes that Nigeria has a responsibility to set standards that can be applied throughout the region, being a leading oil producer in the world and Africa's biggest producer. The policies and practices applied in Nigeria should be improved considerably in order to set benchmarks for best practice for the exploration and production industry across the rest of the continent.

Nigeria's daily output of oil varies between 1.8 million barrels (mbd) and the recently highest output of 2.4 mbd<sup>18</sup>. Nigeria's oil reserves are estimated to be 32 billion barrels, which means at the current rate of exploration, Nigeria has enough oil to last another 48 years. In recent years, Nigeria has sought a higher quota for its daily production from its OPEC partners, claiming it has found new reserves.<sup>19</sup> The United States is the largest export market for Nigerian oil, and oil industry officials believe the United States expects some 25% of its future energy needs to be met from West Africa and the Atlantic Ocean.

In 2003, oil prices averaged US\$30 per barrel, which amounts to total export of US\$ 19.7 billion<sup>20</sup>. In 2004, the oil price has reached US\$55 per barrel in late October and on average, the price has remained around US\$40 per barrel, which would increase total export by at least US\$7 billion. At US\$ 40 per barrel, the Nigerian State's share was approximately US\$21.98 billion, assuming production based on approximately 1.8 million barrels daily for 2004. This amount, of US\$21.98 billion, can be deemed to be more than sufficient for the Nigerian Federal Government to take serious steps to reduce poverty and inequality<sup>21</sup>. As noted earlier, seven out of ten Nigerians live on less than US\$1 per day, which is widely accepted as the measure of absolute poverty by the World Bank. The poorest 20% of Nigerians have access to only 4.4% of the country's income or consumption; and some 7% of Nigerians receive less than the minimum level of dietary energy consumption<sup>22</sup>.

Oil companies have been operating in Nigeria for over six decades<sup>23</sup>. Shell companies in Nigeria struck oil in 1956, and have the largest network of land-based assets in Nigeria, employing nearly 4,000 people directly, and another 10,000 on contract, owning some 87 flow stations, eight gas plants, some 1,000 wells, and running a network of pipelines through the Niger Delta, which stretches along 6,000 kilometers<sup>24</sup>. Of the other companies, Chevron-Texaco, Total and Nigeria Agip Oil Company (NAOC) have some exposure to the onshore Delta itself; the operations of Exxon-Mobil and Statoil are primarily offshore.

The Nigerian Federal Government is the prime beneficiary of the revenue earned from selling the crude oil abroad. As the international oil price rises the state's share of the total oil revenue increases, under a formula with companies.<sup>25</sup> In spite of this injection of revenue and resources, the Nigerian Federal Government has invested little of these resources in the Niger Delta, where the oil producing communities reside. Poverty in this area is widespread. Roads are in a constant state of disrepair; power outages are frequent; the water

available is of poor quality and is often contaminated; schools are almost non-existent; and state-run hospitals and clinics are under-equipped or short-staffed, or both.

Many people in the Niger Delta wish to get jobs with the oil companies, as jobs with the oil companies in the Niger Delta are better paid than those in the local job market. Responding to the discrepancy in living standards between the island of prosperity in which the staff of oil companies live, and the wider community, oil companies have, over the years, funded several dozen projects of roads, clinics, schools, transport, and other infrastructure, in the communities surrounding their operations. A series of interviews over the past six months with company officials and stakeholders<sup>26</sup>, including local NGOs, suggests a variety of motivations why companies undertake these activities. Some companies do this out of a sense of philanthropy, some do it in order to secure their license to operate, some do it in their enlightened self-interest, and some to 'buy' peace from communities that are suspicious or resentful of their presence. Some projects have worked well and delivered services where none were previously provided, but recent research by an NGO<sup>27</sup>, and video documentation prepared by the Centre for Social and Corporate Responsibility in Port Harcourt<sup>28</sup> and seen by Amnesty International, shows that in other instances the delivery has been far from adequate, and, in some instances, even non-existent.

Oil companies are under no legal obligation, nor are they able to, provide universal access to these facilities. The provision of such facilities remains the responsibility of the Nigerian State. Unfortunately this can create resentment within and between communities. Communities that do not receive the same benefits as neighbouring communities, and communities that are left out of the development plans of oil companies, can develop a sense of grievance. As few communities have had direct contact with the state, they expect the oil companies, which they see as partners, or a part, or extension of the government, to fund facilities that the state has not provided. This raises expectations from companies which they are not able to fulfil. Therefore, companies which choose to act voluntarily and build infrastructure or provide services, should take adequate measures to ensure that their programs deliver.

This would still leave large areas of the region without adequate infrastructure or facilities, and which would make them feel resentful towards their neighbouring communities which do have such facilities. But ensuring universal access to basic services is the state's obligation; the companies' responsibility lies in ensuring that the areas they have voluntarily taken on to service are adequately provided for, without discrimination.

Unless adequate safeguards are put in place, companies acting voluntarily could cause more harm than good. As the Nigerian State has not been rigorous in enforcing its obligation to protect human rights if corporate activities have adverse consequences, companies end up operating in an environment without an adequate accountability framework, making it harder for the victims of human rights abuses to seek redress.

However, another factor is critical in increasing grievances against oil companies. In the opinion of activists and local NGOs in the Niger Delta<sup>29</sup>, several oil companies have historically acted arbitrarily, or failed to deliver on promises made, or thought to have been made to communities. In other cases companies have pitted one community against another, or interfered with the traditional governance structures of the communities. For the communities, oil companies then appear as external players who are taking the wealth from the region, sharing it with the federal government, and providing little in return. Worse, the companies are seen as operating on the traditional lands of the communities without consulting them, or consulting them inadequately (see Appendices A, C). When communities object to specific projects, or ask for more compensation, the companies create divisions within the communities by supporting one faction, usually the chief and groups/gangs associated with the chief, who then forcibly secure the compliance of other community factions who may be opposed to the project. This has been a repeated pattern in many statements made by stakeholders to Amnesty International during 2004 and is referred to as a policy of 'divide and rule' by various stakeholders in interviews conducted by Amnesty International. Finally, in 40 years of operation, oil companies have left large areas of the Niger Delta unusable for farming, due to frequent oil spills<sup>30</sup>, leakages, and the effect of gas flaring or other accidents.



©AI Land devastated by oil spill in December 2003 and subsequent fire (March 2004)

In many instances, the grievances turned into outright antagonism leading to frequent instances of abduction of company officials, sabotage of company property, and violence targeting companies<sup>31</sup>. The companies have turned to the state security forces which in some cases have used force, often arbitrarily and disproportionately, against individuals. The easy availability of small arms in the region has made the situation more serious. While no firm statistics are available, NGOs estimate that there were nearly 1,000 violent deaths in the Niger Delta alone in 2003, some of which were intra-communal or inter-communal but also the

result of excessive use of force by security forces or the police force. In terms of intensity of violence, this would be equivalent to the conflict in Chechnya or Colombia.<sup>32</sup>

It is difficult to establish the exact number of deaths because of discrepancies in media reporting, and also the significant difference between official figures published by government authorities and those given by local witnesses and other sources. Amnesty International's calculations based on local and international media reports, show that the number of people killed in the Delta, Rivers and Bayelsa States in 2004 up to and including incidents late August, could be in the region of 670. Independent sources in the Niger Delta, however, estimate that the number of people killed in August 2004 in Rivers State alone as a result of the violence in and around Port Harcourt could be as high as 500.<sup>33</sup> In January 2004 an attack on the Ohoror-Uwheru community in Ughelli North Local Government Area in Delta State included soldiers of the joint task force Operation Restore Hope. On top of reportedly killing an undefined number of people, the soldiers also allegedly raped up to 50 women and girls.<sup>34</sup> These deaths have occurred in part because of the easy availability of arms, some of which are manufactured locally, and some of which have entered the Niger Delta allegedly through returning soldiers from The Economic Community of West African States Monitoring Group (ECOMOG).

Oil companies claim that between 160,000 to 200,000 barrels per day, worth about US\$8 million at the late-August 2004 price of about US\$40 per barrel, are being stolen due to illegal oil bunkering<sup>35</sup>. Some oil companies and communities have alleged that the revenues from these illegal activities have funded the acquisition of sophisticated arms.

To break this cycle of violence and to gain the confidence of the communities, oil companies and the government, both at the federal and the state level, will need to take urgent steps to redress the violations and abuses of civil and political as well as economic, social and cultural rights experienced by many, and to listen to and address the grievances of the communities. The task ahead is difficult given the four decades of suspicion and hostility. But peril lies ahead, if it is ignored.

#### **4. Layers of the Niger Delta conflict and proliferation of arms**

The factors for the conflict are manifold and complex. Reasons include ethnic rivalry, mainly between the Ijaw and Itsekiri ethnic groups<sup>36</sup>, the disproportionate allocation of economic resources between communities, high unemployment in the region, measures taken by the companies to protect their assets (oil companies' fixed assets such as installations and pipelines), or the use of force by criminals who are protecting illegal oil bunkering.

There is also a growing perception that the Nigerian Federal Government, state governments, the Niger Delta Development Commission (NDDC), and to a certain extent the TNCs, are not transparent about their allocation of resources and their payments to communities. In addition, as Transparency International notes, there is widespread corruption in Nigeria at all levels.<sup>37</sup>

The Niger Delta Development Commission (NDDC) was formed through an act of the parliament in 2000 (the Niger Delta Development Commission Act 2000), in response to long-standing demands from the states in the Delta region for a more equitable distribution of the wealth generated by the exploitation of resources found in the states. The NDDC is funded by the federal government, other levies, and contributions from oil companies operating in the region (based on an agreed formula). According to Article 7(1) of the Act of 2000, the Commission has the following powers, to:

- (a) formulate policies and guidelines for the development of the Niger-Delta, area;
- (b) conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger-Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;
- (c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development;
- (d) prepare master plans and schemes designed to promote the physical development of the Niger-Delta area and the estimates of the costs of implementing such master plans and schemes;
- (e) implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the member states of the commission; (f) identify factors inhibiting the development of the Niger-Delta and assist the member states in the formation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta;
- (g) assess and report on any project funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including NGOs and Ensure that funds released for such projects are properly utilised;
- (h) tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the member states on the prevention and control of oil spillage, gas flaring and environmental pollution;
- (i) liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control;
- (j) execute such other works and perform such other functions which, in the opinion of the Commission, are required for the sustainable development of the Niger-Delta area and its peoples.

The members of the governing board are nominated by the president and subject to consent by the Senate and includes members of oil- as well as non-oil producing states within Nigeria, as well as representatives of the oil producing companies. It should be noted with concern that there is no representation of the communities concerned in the oil-producing states, representatives of NGOs or independent environmental or development experts.

In order to secure support and protection for a project many companies operating in the Niger Delta region enter into an agreement with the community's chief, promising in return to build roads, schools, clinics, or other infrastructure that the state and federal governments have historically failed to build. Companies now say they have realized that this can only be a short-term measure and that they cannot, realistically, treat every community equally. Representatives of several oil companies acknowledged to Amnesty International that their corporate social responsibility projects may not only undermine the legitimacy and capacity of the state, but that it can also foster a dependency mentality in the communities, creating false expectations about the company's role.

However, because each company provides such services and infrastructure to the communities nearest to its facilities, other poor communities, which lie beyond that area of relative proximity defined by the company, have expressed grievances because they have not benefited from such projects. There have been reports that unemployed youths from such excluded communities target the benefiting community, or the company itself, for violent attacks against people or property. The danger emanating from such attacks is aggravated by the easy availability of weapons.

#### **The proliferation of small arms**

Amnesty International is concerned by the serious scale of the problem of legal and illegal weapons proliferation in Nigeria. Some estimates suggest that each of the Delta's 1,600 communities may have access to anything between 20 and 50 sophisticated weapons each. If their estimates are accurate, that would indicate over 70,000 sophisticated weapons are circulating in an area the size of Slovenia (20,000 sq. km)<sup>38</sup>. With an estimated population of over 10 million<sup>39</sup>, it means that access to weapons is seven weapons per 1,000 inhabitants, the same figure applies to access to personal computers on a national basis according to World Bank figures from 2002<sup>40</sup>. In the whole of West Africa it is believed that non-state actors are in possession of about eight million illegal arms<sup>41</sup> many of which are found in Nigeria. It is believed that the weapons enter the country through its porous borders, that some of these weapons originate in Eastern Europe and some come in as illegal import via, for example, Sierra Leone or Liberia<sup>42</sup>. Community activists and official sources allege that many weapons have come from soldiers returning from the Economic Community of West African States (ECOWAS) missions to Sierra Leone and Liberia. These weapons are not handed back to the barracks, and it is claimed they were "lost in service".

Weapons are sold within reach of most communities. They are often more sophisticated and powerful than those of the Nigerian Police Force. The state police authorities claim not to have any information about the proliferation of arms, or their sophistication, by saying: "*We don't act on rumors but on documentation.*"<sup>43</sup>

ECOWAS has acknowledged the seriousness of the problem in the West African region, and its Executive Secretary, Mohammed Ibn Chambas, expressed his concern that out of the eight million illicit weapons in West Africa “*half of them are used for criminal purposes*” at an ECOWAS conference in Abuja in late March 2004<sup>44</sup>. The ECOWAS community has through its Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons from 1998 initiated a way to try and combat the problem. It calls for the collection of all illicit small arms in West Africa and their destruction so as to prevent them from being stolen and re-used in wars, violence or crime, according to Article 13 of the Code of Conduct of the moratorium.<sup>45</sup> The President of the Movement for the Survival of Ogoni People (MOSOP), Ledum Mitee, recently expressed his dismay regarding the proliferation of arms in Rivers State stating that “*the level of violence on the streets is frightening*”<sup>46</sup>. He suggested that a surrender arms campaign allowing amnesty could be one solution<sup>47</sup>, whereas Orono Douglas, lawyer and Deputy Director of Environmental Rights Action (ERA) instead suggested talks and discussions<sup>48</sup>. The effect of the proliferation of arms in Rivers State within the context of the increasing violence and insecurity in Rivers State, has recently been highlighted by Amnesty International in its document ‘*The security situation in Rivers State: an open letter from Amnesty International to Peter Odili, State Governor of Rivers State*’, AI Index AFR 44/027/2004, published on 15 September 2004.

However, much is still required on the part of the Federal Government and the Nigerian Police Force to successfully enforce the current legislation, in order to combat the problem in Nigeria in general and in the Niger Delta specifically<sup>49</sup>.

Amnesty International acknowledges that Nigeria is voluntarily supplying information to the UN Secretary-General on its national legislation, regulation and procedures to exercise effective control over the transfer of arms and military equipment, in line with the recommendations of UN General Assembly Resolution 58/42 on National legislation on transfer of arms, military equipment and dual-use goods and technology<sup>50</sup>. The Guardian reported on 19 May 2004 that the Minister of Internal Affairs, Iyorchia Ayu, in discussing the issue of arms proliferation with the United Nations Director of the Regional Centre for Peace and Disarmament in Africa, asked the United Nations for an educational program for the neighbouring countries, since Nigeria had been chosen as one of 10 pilot countries in Africa for checking the spread of arms and light weapons<sup>51</sup>. However, Amnesty International is concerned by the lack of resources for law enforcement of the Nigerian Police Force. An Amnesty International delegation met with the Deputy Police Commander of Police, Mr. Hassan, in Port Harcourt in March 2004 who could confirm that AK47s and Berretta revolvers are the most common weapons in circulation and there are no official reports or figures on the number of arms in circulation but that an estimated 80-100 illegal weapons have recently been confiscated in the Rivers State<sup>52</sup>.

Further, companies enter into memoranda of understanding (MOUs) regarding development project such as the building of health care or educational facilities, with a chief such as Chief Weke (see Appendix C), without undertaking adequate consultation with the community at large. In some cases, these chiefs are appointed, and not elected. In other cases, they have inherited the title without the consent of the community. In a few instances, chiefs have occasionally taken over power by force. And it is also frequently alleged that chiefly titles can be sought for reasons of prestige. All these factors also contributed to the erosion of legitimacy of some of the community leaders and renders dialogue difficult. Amnesty International was told by members of one community that companies supporting one candidate over another can be perceived as a 'divide-and-rule' policy, which causes resentment and sows the seeds of future backlash, if not violence (see Appendix C)<sup>53</sup>. Amnesty International believes companies should not act in a manner that increases risks of human rights abuses or violations in the communities.

A further cause of the violence<sup>54</sup> in the Niger Delta is Nigeria's oil-related and environmental protection legislation which protects the interests of the oil and gas producing companies over the community needs and interests. For example, all land which is not expressly 'vested' in the Nigerian Federal Government or its authorities, is 'vested' in the state governor<sup>55</sup> to be held in trust for the benefit of the citizens<sup>56</sup>. The state governor can decide to expropriate land for mining or oil purposes, whereby compensation for the expropriated land goes to the state governor and not to the community concerned. Furthermore, there is no statutory provision or mechanisms for defining fair and adequate compensation. The environmental impact assessment (EIA) legislation does not make consultation with the concerned communities mandatory and in practice discriminates against local communities due to the inaccessibility of the EIA documents and the short time allowed for consultation (see Appendix C).

Another cause for conflict is the lack of adequate and fair compensation for environmental damage (see Appendix B). This should be put in context with the number of oil spills per year, which according to official estimates of the Nigerian National Petroleum Corporation (NNPC) is around 300 cases, or 2,300 cubic meters of oil, as reported in a publication by an NGO<sup>57</sup>.

The actors, levels and complexities of the conflict are:

- *Federal Government versus Niger Delta States*: Over the years, the Nigerian Federal Government has agreed to increase the allocation of oil revenues to the oil producing states. Currently, this figure is 13% of the average international oil price for that year. This can amount to around US\$2 billion annually, depending on the oil price and the level of production. But the NDDC, which is supposed to receive half of this allocation (approximately US\$1 billion per year) claims to have received less than a fifth of that amount from the Nigerian Federal Government (*Amnesty International interview with NDDC officials, 17 March 2004*).

- *TNCs versus communities:* Communities seek jobs from companies which they are not in a position to provide easily, as the jobs require professional skills and specialized education, which workers in communities often do not have. Communities also seek infrastructure from companies. Other demands include compensation for loss of land (see Appendix A) and for environmental damage to crops and fishing ponds due to oil spills (see Appendix B). Some communities seek contracts from companies. There are also concerns regarding failure to clean up and the lack of consultation when development is being planned (see Appendices A-C). In some cases perceived breaches of these agreements and demands have led to violence, including abductions and sabotage.
- *TNCs versus NDDC:* Companies state that they are reluctant to pay their share of the NDDC's budget due to the NDDC's alleged lack of transparency or efficiency. Under Nigerian regulations, oil companies are required to contribute three per cent of their annual investment plans in the country to the NDDC's budget to fund development activities. In effect this amounts to an expenditure tax on the companies. Many companies have been slow in making these allocations year-on-year, because they cite the NDDC's failure to prepare comprehensive and transparent development plans as a reason for not paying the three per cent contribution. Equally important, the Nigerian State itself has been slow in contributing its share to the NDDC's budget.
- *Communities versus communities:* Violence between communities has ethnic and political causes, but economic issues are also involved, such as perceptions that one community is getting a bigger share of contracts, jobs, benefits such as infrastructure, or compensation, from an oil company over another. Some communities envy other communities which may be closer to a project, and get more infrastructural benefits. This, too, fuels conflict.
- *Communities versus Chiefs:* Chiefs in communities are not always elected. Some inherit their position, others are appointed, and sometimes there are claims that companies interfere with the process of appointing Chiefs. This has affected traditional governance structures, and in some cases, resulted in violent conflict. There are claims that some Chiefs have hired and armed youths to protect the company's operations. Other Chiefs are prime beneficiaries of contracts handed out by the companies.
- *Youth groups versus youth groups:* When companies have been pressured to provide jobs to the youths, and found that the youths in a particular community lack specific skills, some companies create what are known as stand-by jobs, or provide real jobs as subcontractors for contracts for security of pipelines and other oil installations. Hundreds of youth decide to spend the cash injected into the communities on purchasing weapons which causes violence and destabilizes the community. (Stand-by jobs: due to high unemployment, young men turn to oil companies for jobs. But they often do not possess the necessary skills to work in a sophisticated, hi-tech industry like oil exploration and distribution. Oil companies have, therefore, been paying cash amounts to the young men to stay at home, which is often used to buy weapons. Economists call this disguised unemployment.)

## 5. The Niger Delta, environmental degradation and human rights

### 5.1 The interlink between environmental degradation and human rights

Human rights defenders in the Niger Delta have said, in reports, public comments and in interviews with Amnesty International, that environmental degradation and human rights abuses in the Niger Delta are closely interlinked. The conflict in the Niger Delta should be seen in the context of the close relationship between human rights in general and environmental protection in international and Nigerian law.

The African Charter recognizes the right of everyone to have “a general satisfactory environment favorable to their development” (Article 24).

The CESCR, commenting on Article 12.2 (b) of the ICESCR (the right to healthy, natural and workplace environments) states: “The [governmental obligation to ensure] improvement of all aspects of environmental and industrial hygiene... comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”<sup>58</sup> Similarly, on the right to water, the Committee has said: “Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions. For example, states parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, states parties should monitor and combat situations where aquatic ecosystems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.”<sup>59</sup>

International declarations on the environment also support this position. The Rio Declaration on Environment and Development<sup>60</sup>, adopted at the United Nations Conference on Environment and Development in 1992, affirms the importance of the guarantee of certain human rights in order to achieve and maintain a healthy environment. Principle 10 of the Rio Declaration stresses the importance of access to information of the individuals affected:

*“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”*

Principle 10 adds:

*“States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*

This echoes the right of access to information embodied in international standards, which underpins public participation within communities in issues affecting them. Freedom of expression and opinion are recognized in Article 19 of the UDHR of 1948 and Article 19(2) of the ICCPR. Article 19(2) of the ICCPR requires states parties to guarantee every Nigerian citizen the right to freedom of expression, which includes *“freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”*. The African Charter requires in Article 9 that every individual should be guaranteed the *“right to express and disseminate opinions”*. This right is also protected in the Nigerian Constitution which states in Article 38 that *“every citizen is entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”*.

The UN Commission on Human Rights resolution 2003/71, adopted on 25 April 2003, reaffirmed the Rio Declaration on Environment and Development, and welcomed *“the ongoing efforts for the implementation of principle 10 of that Declaration. The resolution, recalled that “environmental damage can have potentially negative effects on the enjoyment of some human rights” especially considering that “protection of the environment and sustainable development can also contribute to human well-being and potentially to the enjoyment of human rights”*. The resolution called upon states *“to take all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development [and encouraged] all efforts towards the implementation of the principles of the Rio Declaration, in particular principle 10, in order to contribute, inter alia, to effective access to judicial and administrative proceedings, including redress and remedy.”*

This has been tested particularly in the Nigerian context. In an important communication by *The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria* (155/96), relating to the operations of SPDC and the communities of Ogoniland in the Niger Delta, the African Commission on Human and Peoples' Rights (ACHPR) stated in its decision of 27 May 2002 that Nigeria had violated this right amongst other rights. The complainants in this case argued that the oil consortium had:

*“exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards...The consortium also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short and long-term health impacts...the Nigerian Government*

*has condoned and facilitated these violations by placing the legal and military powers of the State at the disposal of the oil companies...The Government has withheld from Ogoni communities information on the dangers created by oil activities...Ogoni communities have not been involved in the decisions affecting the development of Ogoniland...The Government has also ignored the concerns of the Ogoni Communities regarding oil development, and has responded to protests with massive violence and execution of Ogoni leaders...The Nigerian Government does not require oil companies to consult communities before beginning operations, even if the operations pose direct threats to community or individual lands*<sup>61</sup>.

The ACHPR found Nigeria in this case to be in violation of the right to non-discrimination (Art 2), “the right to respect for life and the integrity of person” (Art 4), the right to property (Art 14), the right to health (Art 16), the right to protection of the family unit (Art 18(1)), the right of peoples to freely dispose of their wealth and natural resources (Art 21), and the right to a general satisfactory environment favorable to their development (Art 24). The ACHPR held that:

*“despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis.”*

This communication is also important in the context of the oil exploitation by TNCs in Nigeria since it defines not only the state’s responsibility to respect, protect, promote, and fulfill the rights in the African Charter, but also extends the state’s responsibility to include protection of the rights of the population<sup>62</sup> from damaging acts that may be perpetrated by non-states actors<sup>63</sup>. The ACHPR furthermore in its conclusions elaborates on the role of the state and TNCs in protecting and respecting human rights and holds that the “*intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities*”.

As the above Ogoni communication to the ACHPR illustrates, the oil exploration and production in Nigeria has led to communities successfully protesting against the abuse of general human rights and the lack of environmental protection, including the right of indigenous peoples to land<sup>64</sup> and Nigerian citizens rights to information and participation in the decision-making process relating to the environment.

Amnesty International fears that in the context of the Niger Delta oil exploration and production, the right to seek, receive and impart information of communities and individual is not fully respected in the context of environmental impact assessments because the manner in which the documents are disseminated does not afford communities a realistic chance to

express their opinions on planned projects, which may have a detrimental effect on their environment, as required by Section 7 of the EIA Decree.

## **5.2 Nature of state responsibilities concerning civil and political as well as economic, social and cultural rights**

The ICCPR, ratified by Nigeria, includes binding obligations for Nigeria to undertake to “respect and to ensure to all individuals within its territory and subject to the jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art 2(1)).

The ICCPR also includes the obligation to ensure that any person whose rights or freedoms included in the ICCPR have been violated shall have an effective remedy and that anybody claiming the right to remedy shall have his right determined by competent judicial, administrative or legislative authorities (Art 2(3)(a,b)).

The Human Rights Committee, has clarified that “[a]ll branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.”<sup>65</sup>

The ICESCR, ratified by Nigeria, includes binding obligations for Nigeria to respect, protect and fulfil economic, social and cultural rights. This includes obligations of immediate effect (also known as the minimum core content of the rights), and of progressive realization. The African Commission on Human and Peoples’ Rights has added, to this typology, the obligation to promote.

The obligation to *respect* requires states to refrain from interfering directly or indirectly with the enjoyment of a right; the obligation to *protect* requires states to take measures that prevent third parties from interfering with the right in question; and the obligation to fulfil contains obligations to facilitate, provide and promote as well as adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right in question.<sup>66</sup>

Article 2(1) states: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

The CESCR, in its General Comment concerning the nature of states parties’ obligations under the ICESCR, states that although some of the obligations are to be progressively realized, the Covenant also imposes obligations which are of immediate effect.

This includes states parties undertaking to guarantee that relevant rights “will be exercised without discrimination”<sup>67</sup>.

On the responsibility of the state, the African Charter states in Article 1: “The Member States of the Organisation of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them”.

### **5.3 The responsibilities of states for acts by non-state actors**

Under international law there are circumstances in which the state has a clear responsibility for human rights abuses committed by non-state actors<sup>68</sup>. The state is accountable internationally in a number of different ways. It can be deemed responsible for carrying out the human rights violation because of a specific kind of connection with the non-state actors, or it can be responsible for its failure to take reasonable steps to prevent or respond to an abuse. This means that the state can be responsible when it relies on someone or something to carry out an action that falls within the role of a state, when it has ‘participated’ in some way, or supported abuses by others, as well as when it has failed to take sufficient measures to prevent abuse of human rights and where it does not provide effective remedies.

In this context the concept of due diligence is used when assessing the accountability of governments for the acts of non-state actors. This principle describes the degree of effort which a state must undertake to ensure that human rights are respected by all in practice. The state has a duty to put in place sufficient measures to prevent violation (by its officials) and abuses (by non-state actors) of human rights. Where a right has been violated or abused, the state has a duty to redress it as far as possible, and to provide appropriate remedy, including compensation where appropriate.

The Human Rights Committee stresses that “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>69</sup>

The CESCR has clarified, in its General Comments in relation to certain rights, that the obligation to protect “requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right”. In its General Comment on the Right to Water, for example, “third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain, for example, third parties

from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.”<sup>70</sup>

In the specific case of the oil exploration and production in the Niger Delta, all TNCs operating in Nigeria are required to enter into a joint venture with the Nigerian Government. This is done through the Nigerian National Petroleum Corporation (NPPC), the state oil company, which owns the majority of the shares of the joint ventures. Therefore, both as the majority shareholder and as a state on whose territory the activities of the TNCs are carried out, the Nigerian Government is under the obligation to respect and ensure respect of international human rights law by its agents and by the TNCs.

#### **5.4 Responsibility of non-state actors**

Amnesty International believes that governments are primarily responsible for human rights and have legal obligations to respect, protect and fulfil human rights, but also calls on companies to respect them, and be accountable for the impact of their activities on human rights. The UDHR calls upon every individual and every organ of society, which includes companies and business operations in general, to protect, respect and secure the universal and effective recognition and observance of human rights. Companies should protect the interests, health and safety, and human rights of employees and their dependents, of business partners, associates and subcontractors and of the communities in which they operate.

Globalization has sometimes weakened regulation at the national level due to pressures states face from investors. The nature of TNCs in today’s global economy makes it more difficult for individual governments to regulate their activities and hold them to account for human rights abuses. Additionally, in some cases the host country has inadequate legislation, or inadequate means of imposing it.

##### *5.4.1 Voluntary Codes of conduct*

Scrutiny of the activities of global businesses led many companies to adopt codes of conduct during the 1980s and 1990s, and an emerging movement on corporate social responsibility led to numerous voluntary codes. However, voluntary codes of conduct, while a welcome signal of corporate commitment, have proved insufficient. Many codes are vague in regard to human rights commitments. As far as Amnesty International is aware, fewer than 50 companies refer explicitly to human rights in their codes. Whether unique to the company, or adopted sector-wide, voluntary codes too often lack international legitimacy. This has resulted in calls for a more detailed, comprehensive, and effective instrument.

##### *5.4.2 UN Norms for Business<sup>71</sup>*

Human rights organizations have addressed concerns to businesses for a number of years. Recognizing that economic globalization has expanded the reach of corporate power, advocates have struggled to ensure that companies, no less than other significant actors, are brought within the framework of international human rights rules. Using the human rights

framework as a benchmark to measure the impact of companies' activities will help to provide a common and universal standard.

A significant step in this direction was taken in April 2004, when the UN Commission on Human Rights adopted a decision, requesting the Office of the High Commissioner for Human Rights (OHCHR) to compile a report setting out the scope and legal status of existing initiatives and standards on business responsibilities with regard to human rights, including *inter alia* the UN Norms for Business. The decision has also acknowledged the need to strengthen standards for companies.

The UN Norms for Business and its Commentary were welcomed and adopted by the Sub-Commission<sup>72</sup>, after a process of consultation with business, unions and NGOs. The UN Norms for Business and its Commentary set out, in a single, succinct statement, a comprehensive list of the human rights responsibilities of companies. They highlight best practices. In addition to setting a standard that business can measure itself against, the UN Norms for Business is also a useful benchmark against which national legislation can be judged - to determine if governments are living up to their obligations to protect rights by ensuring that appropriate regulatory frameworks are in place. In Amnesty International's view, governments, advocates and companies should support the UN Norms for Business as offering an authoritative and comprehensive statement of the responsibilities of companies in relation to human rights. The UN Norms provide clarity and credibility amidst many competing voluntary codes that too often lack international legitimacy, and provide far less detail on human rights<sup>73</sup>.

According to Article 14 of the UN Norms, TNCs and other business enterprises are responsible for the environmental and human health impact of their activities.

The Commentary to Article 14 states:

*“(a) Transnational corporations and other business enterprises shall respect the right to a clean and healthy environment....*

*(b) Transnational corporations and other business enterprises shall be responsible for the environmental and human health impact of all of their activities....*

*(c) ... “on a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from... the generation, storage, transport and disposal of hazardous and toxic substances. Transnational corporations and other business enterprises shall ensure that the burden of negative environmental consequences shall not fall on vulnerable racial, ethnic and socio-economic groups.*

*(e) Transnational corporations and other business enterprises shall respect the prevention principle...and the precautionary principle...*

(f) *Upon the expiration of the useful life of their products... transnational corporations and other business enterprises shall ensure effective means of collecting or arranging for the collection of the remains...*

(g) *Transnational corporations and other business enterprises shall take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management practices and technologies...and reporting of anticipated or actual releases of hazardous and toxic substances."*

Other provisions of the UN Norms also address situations like that found in the Niger Delta.

Article 18 calls on TNCs and other business enterprises to make reparations for damage done through their failure to meet the standards spelled out in the UN Norms.

*UN Norms Article 18: Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages, in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.*

The situation in the Niger Delta demonstrates the serious effect that the activities of TNCs and the governments responsible for regulating them can have on the respect, protection and fulfilment of human rights.

Moreover, Amnesty International believes that companies should ensure that their own personnel in any security arrangements should be properly trained and committed to respect of international guidelines and standards for the use of force, in particular the United Nations Code of Conduct for Law Enforcement Officials<sup>74</sup> and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>75</sup>. These standards, which are also partially contained and referred to in the UN Norms for Business set strict limitations on when force and firearms can be used, and require a reporting and review process should it ever become necessary to use minimum force. Furthermore, companies such as Shell, Chevron-Texaco, Exxon-Mobil, and Statoil, which are signatories to the Voluntary Principles for Security and Human Rights, are morally obliged to observe those principles, which apply to companies from the United States, the UK, Norway and the Netherlands, and which provide detailed guidelines for security forces in the extractive sector.<sup>76</sup>

## **6. Are human rights in the pipeline?**

In summary, Amnesty International is very concerned that civil and political as well as economic, social and cultural rights are being violated and abused in the process of the oil exploration and production in the Niger Delta.

As stated above, Amnesty International believes that states are primarily responsible to respect, protect, and fulfil the human rights. States can furthermore be deemed to be failing to exercise due diligence in preventing, punishing, redressing or ensuring redress for abuses by non-state actors.

Companies have responsibilities that include respecting human rights and at times their actions lead to human rights abuses. If companies do not take adequate precautions, they can easily be complicit in human rights violations. This can happen when they have directly contributed to the violations by supporting the violators, or derived benefits from the violations. In some cases, non-state actors have abused human rights, through their direct activities, or the effect of their activities (such as an untreated oil spillage), or activities of their staff (such as use of excessive force by security companies or state security defending their assets), subsidiaries, contractors, and associates, which can include individuals and groups such as those of Chief Ekezie and Chief Weke.

Amnesty International believes that companies are responsible for ensuring that the consultation they undertake with communities is transparent and fair; that the consent obtained from the communities is informed; that the representatives the companies deal with are legitimate. Companies should make the utmost effort to ensure that resources which they provide to communities are used for their intended purposes. Companies should ensure that they do not aid or abet violence in any way. Where environmental damage has occurred because of spills, accidental or otherwise, the company should take immediate, effective steps to prevent further deterioration of the environment, and provide fair, appropriate and adequate compensation to the innocent victims of such spills. Finally, companies should ensure that they award all contracts transparently, and make their decisions public.

This report analyzes in the appendices how human rights of individuals and communities have been abused and violated by actions or inactions on the part of the Nigerian Government or the TNCs as a result of non-inclusive consultation processes, policies of 'divide and rule' and failure to clean up after an oil spill. Companies have often failed to clean up after an oil spill. It is the responsibility of the State to ensure that the spill is cleaned up. It is however the responsibility of the company to clean up after an oil spill, particularly when the spill is due to an accident or wear or tear of the pipelines. Amnesty International fears that in all three cases the Nigerian Government has not fulfilled their obligations according to international human rights treaties ratified by Nigeria, and that non-state actors, in the sense of namely the oil companies NAOC and SPDC, have not lived up to their responsibilities according to internationally agreed norms. Issues of inadequate or in some cases non-existing prior informed consent, failure to clean up after oil spills, perceived 'divide and rule' policies (which have been associated with threats of violence as well as incidents of violent assaults) feature in the selected cases. The analysis points to deficiencies in the Nigerian legislation and problems with its application, but they also illustrate weaknesses in the policies and practices of the TNCs in question.

As a result the organization urges the Nigerian Government to ensure that all law enforcement agencies respect human rights in their activities, that the Nigerian Government rigorously enforces the environmental protection legislation in order to enable a fully inclusive consultation process, undertakes to ensure effective enforcement of environmental protection legislation relating to oil spills and guarantees mechanisms of redress of violations of both civil and political as well as economic, social and cultural rights.

Furthermore, the organization urges/recommends that the SPDC and NAOC reform their policies, in so far as they do not already do so, in order to conduct business in Nigeria as it would do in any northern hemisphere region. Therefore, Amnesty International urges SPDC and NAOC to take the following steps:

- act in a transparent manner, by making all policies, rules and procedures regarding compensation and other cash payments public;
- consult with the communities and obtain their free, prior and informed consent before embarking on any projects affecting them;
- refrain from providing resources, particularly fungible resources like cash, unless they are for legitimate business purposes<sup>77</sup>;
- provide prompt, adequate and appropriate compensation to the victims of oil spills;
- cooperate fully with authorities inquiring into causes of oil spills and ensure rapid clean-up after oil spills;
- undertake preventative actions for the future to minimize the risk of oil spills, such as investing in new pipelines, and undertaking regular and adequate maintenance;
- ensure that the security forces guarding the operations of the company act according to international standards and principles mentioned above;
- ensure that consultation with the community is effective, and facilitate the process by making the information (such as an EIA) easily accessible.

The people of the Niger Delta have waited too long for the benefits from the resources in their region to reach their communities. There are some signs of the Nigerian Government and some TNCs taking the problems identified and highlighted in this report seriously, however much remains to be done. Nearly a decade after the Ogoni crisis and the execution of the Ogoni nine, including Ken Saro-Wiwa, the respect for, protection and fulfilment of human rights must not remain “in the pipeline.”

## **7. Recommendations**

### **7.1 General recommendations to all TNCs operating in the Niger Delta**

Amnesty International calls on TNCs, in so far as they do not already do so, to:

- Develop operating practices based on the UN Norms for Business and its Commentary in its business operations and use the UN Norms for Business as a benchmark to ensure their codes of conducts are adequate in order to identify specific areas of business concern in relation to human rights;
- ensure that the TNCs themselves, and any of their subcontractors, refrain from any activities which support, solicit or encourage the authorities or any other entities to abuse human rights, according to Article 11 of the UN Norms for Business, such as for example avoiding to create a situation whereby members of the communities protect the companies interests;
- ensure and enhance transparency in regards to payment made and contracts awarded, according to Article 11 of the UN Norms for Business;
- ensure that its consultation with the community is transparent, free, fair, and reflects the principles of free, prior informed consent;
- publicly declare that cash payments will stop, unless they are for legitimate business purposes, and ensure that this decision is enforced;
- ensure that EIAs are made available in an accessible manner to concerned communities and individuals;
- avoid endangering the environment of communities in the context of projects, according to Article 10 of the UN Norms for Business;
- assume responsibility for the environmental and human health impact of all of their activities in the Niger Delta region, according to Article 14 (paragraph (b) of the commentary) of the UN Norms for Business;

## **7.2 Recommendations to the Nigerian Federal Government**

Amnesty International calls on the Nigerian Federal Government to:

- ensure that all relevant bodies, including its law enforcement agencies, respect human rights in their activities;
- enforce and properly implement environmental protection legislation, in order to ensure consultation of concerned communities in relation to development projects which will have a decisive effect on the livelihood and standard of living of communities, specifically the EIA Decree No. 86 of 1992, in order to ensure that the EIA consultation documents are made accessible to the community;
- ensure proper enforcement of legislation related to clean up of oil spills;
- reform environmental legislation to bring it fully into line with international standards, especially Principle 10 of the Rio Declaration;
- ensure that a mechanism of redress of violations of human rights and the right to an effective remedy by a competent authority for violations of human rights is guaranteed in cases of violations of civil and political as well as economic, social and cultural rights. This should include compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition;

- ensure adequate funding for the monitoring and enforcement agencies, such as the Federal Environmental Protection Agency;
- reminds the Nigerian Government to uphold its commitment under the ECOWAS Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons signed in 1998;
- ensure that adequate resources are allocated in order to enforce legislation and administrative procedures to exercise effective control over the production of small arms and light weapons within their jurisdiction, and over the export, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients;
- recommend that the Nigerian Government uses its political influence in the West African region to lobby other governments in the region to adopt adequate legislation and administrative procedures in order to exercise effective control over the production of small arms and light weapons within Nigeria, and over the export, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.

### **7.3 Recommendations to the oil-producing Niger Delta States**

#### Amnesty International

- calls on any oil-producing states in Nigeria that have not yet set up State Environmental Protection Agencies in accordance with the FEPA Act, to do so and to provide adequate funding for the same.

## APPENDIX A

### **Richard Ogbonna Chukwudi from the community of Aggah Egbema, Rivers State and NAOC**

Richard Ogbonna Chukwudi told Amnesty International how he acquired land in Aggah Egbema village on 1 February 1981 to build a house for his family and for a small scale farming project. It consisted of three plots of land measuring 45.7x30.5m. According to Richard Ogbonna Chukwudi, in January 2002, Cascade Control Ltd, operating on behalf of NAOC, started to erect pilings and other concrete works on his land to install two transformers in the village. NAOC officials informed Amnesty International through their parent company, ENI (Agip), that the two transformers were installed for the Aggah Egbema community as part of NAOC's Community Electrification Development Project embarked upon to assist community development<sup>78</sup>. Typically, the land-space taken up by a transformer substation is 40 to 50 square meters, or 7mx7m.

The Community Electrification Development Project was agreed by NAOC as part of part of a MOU signed with the Aggah Egbema community in 1999. According to ENI (Agip), Cascade Control Ltd., was appointed to carry out the project by the community. This is standard operating practice, where beneficiary communities designate the executing contractor, and provide, at its cost, undisputed, suitable sites for the projects. The community also indemnifies the company against any future claim.

In a letter sent by Richard Ogbonna Chukwudi and seen by Amnesty International, he claims that the transformer was erected on his land without prior consultation or advance warning, as claimed in letters from him to the company and as seen by Amnesty International<sup>79</sup>. In March 2002 a meeting was apparently held between the subcontractor of NAOC, Cascade Control Ltd., on the one hand and Richard Ogbonna Chukwudi and the traditional ruler, Chief Eze Ignatius Ekezie on the other hand, on the use of Richard Ogbonna Chukwudi's land without his consent. At that meeting it was reportedly decided that Richard Ogbonna Chukwudi would be awarded employment as project staff for the electrification project. Almost one and a half years later he claims there were no developments on the awarding of the contract. Hence he wrote to Cascade Control Ltd., on 22 September 2003 reiterating his request for work as project staff and his concerns that the transformer was installed without his prior consent. Richard Ogbonna Chukwudi involved a lawyer who on 6 October 2003 wrote a similar letter to the two companies, communicating his objection to the subcontractors' renegeing on their part of the contract and at this stage also demanding a sum in compensation for what he claimed was trespass of his client's land.

When Amnesty International asked ENI (Agip) about this matter, the company informed Amnesty International: that "The issue of compensation to Richard Ogbonna Chukwudi is an intra-community matter. The responsibility of the company for compensation programmes is limited to the cases of land acquisition for operational activities in the oil and gas field."<sup>80</sup>

*'I don't want the transformer on my land. I was never consulted in advance of the installation.'*

Richard Ogbonna Chukwudi to Amnesty International

According to Richard Ogbonna Chukwudi, Chief Eze Ignatius Ekezie, who has allegedly received cash payments from NAOC, has armed youths in the village to protect his interests. This has apparently worsened the situation of 'divide and rule' within the community. Richard Ogbonna Chukwudi told Amnesty International that these youths have allegedly been ordered to intimidate him as a result of his opposition to the use of his land for the transformer. He added that as a result of the alleged threats and intimidation by the armed group he has had to flee from his village and now lives in a different location. He confirmed that the majority of the villagers have fled as a result of violence and threats of violence leaving only a few dozens villagers behind, most of them belonging to the group around the Chief. Richard Ogbonna Chukwudi could feel secure only after he left his village, away from the reach of the chief<sup>81</sup>.

*'The transformer is now on my land and as I was visiting the community last time, under police escort, 5-6 youths were pointing their guns at me. I don't know the name of the armed people, but the Chief is the head of the group'*, Richard Ogbonna Chukwudi told Amnesty International<sup>82</sup>.

He claims that another other transformer is in place too, but is on swamp land; *'The owner of that land was compensated. However, I have only been offered N20,000 (approximately US\$150) as compensation.'*

ENI (Agip) acknowledged that NAOC had signed a contract with Eze Ignatius Ekezie who is the community's Paramount Chief, for "guarding and bush clearing of catholic protection facilities"<sup>83</sup>. NAOC says that it "neither requested" the use of weapons, nor is such an expectation "existent" in the scope of the contract<sup>84</sup>.

However, the award of the contract to Chief Eze Ignatius Ekezie has given him incentives to implement the contract within the time limit. The chief also stands to benefit financially by ensuring that the project is well-guarded so that it can function without delays or problems. Richard Ogbonna Chukwudi's claims, if allowed to proceed, could delay the project, which would make it difficult for the chief to execute his part of the contract effectively. This has divided the community between those who stand to benefit from the arrangement, and those who do not. It has also reduced interference that could cause delays in the project.

Even if the company has not asked Chief Eze Ignatius Ekezie to provide arms to the guards protecting the project, its contract with the chief has provide the chief with logistical and financial support and created sufficient incentives for the chief to use all the means at his

disposal against those, like Richard Ogbonna Chukwudi, whose actions may delay the project, or increase the financial costs associated with the project. As a company committed to respecting human rights in its operational areas, and “explicitly restating<sup>85</sup>” the commitment to operate within the Universal Declaration of Human Rights (UDHR), the ILO Convention No. 169, the OECD Guidelines for the Multinational Enterprises<sup>86</sup>, and supporting the UN Global Compact,<sup>87</sup> ENI (Agip) should address the human rights abuses allegedly suffered by Richard Ogbonna Chukwudi.

### **The right of security of person**

Richard Ogbonna Chukwudi feared reprisals and intimidation by the armed group allegedly linked to Chief Eze Ignatius Ekezie if he opposed the plans to install the transformer on his land while he was still living in his village. The subsequent threat of violence and fear for his safety forced him to flee his home. The main reason behind the threat of violence and intimidation was his objection to NAOC’s plans to place a transformer on his land.

The right to security of person is a fundamental human right. It is enshrined in Article 3 of the Universal Declaration of Human Rights and provided for in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), as well as Article 6 of the African Charter on Human and Peoples Rights<sup>88</sup>, both of which have been ratified by Nigeria<sup>89</sup>.

The Human Rights Committee, the UN body responsible for reviewing implementation of the ICCPR, established in a decision in 1990 that where the state fails to provide protection against harassment and threats, including by non-state actors, this could be considered a violation of the right to security of person.<sup>90</sup> The Nigerian State thus has an obligation to exercise due diligence in order to protect the security of persons under its jurisdiction, including from the subjection of threats, even when that is inflicted by an individual group as in the case of Richard Ogbonna Chukwudi.

Amnesty International is furthermore concerned that the majority of the community members are living away from their homes due to fear of violence and intimidation of civilians by armed groups in this particular community.

In the case of Richard Ogbonna Chukwudi the Nigerian Government has failed to ensure his right to security of person. The Nigerian Government participated in the actions which have led to the situation whereby Richard Ogbonna Chukwudi’s right to security of person provided in ICCPR (Article 9) and the African Charter (Article 6) being violated. The participation is evidenced in that the Nigerian State is the majority shareholder in NAOC, through the state-owned Nigerian National Petroleum Company (NNPC) which is operating in joint venture with NAOC.<sup>91</sup> Amnesty International fears that the Nigerian Government has failed to exercise due diligence to protect the right in question, both with regard to the individual in the case and the community members who have fled as a result of fear of violence. Amnesty International is also concerned that the relationship that NAOC supposedly has established with Chief Eze Ignatius Ekezie has allowed him to act by allegedly providing

resources to acquire arms for a youth group to intimidate and threaten Richard Ogbonna Chukwudi. This has contributed to the fact that his right to security of person has been abused.

### **The right to seek, receive and impart information and an adequate standard of living**

Amnesty International is additionally concerned about the lack of proper consultation regarding the proposed transformer. Nigerian law, according to the Environmental Impact Assessment (EIA) Decree No. 86 of 1992, Section 2(2), requires that an EIA survey is carried out before any project or activity where *'the extent, nature or location of a proposed project or activity is such that [it] is likely to significantly affect the environment'*.

NAOC, through ENI (Agip), disputes that the provision for an EIA applies to this project. It says in a letter to Amnesty International<sup>92</sup>: "For the companies in the Exploration and Production Sector of the economy, EIA is a prescription that essentially relates to installations and facilities of oil exploration and production (E&P) activities. Our Company, and indeed other E&P companies, have never been required to carry out any special EIA for social community projects such as a block of classroom, installation of transformers, building of Health Centre, [which are] requested by Communities for their benefit. In such circumstances, the EIA is indeed not a requirement. Apart from being of course compliant with EIA requirements when mandatory, actually ENI [(Agip)] complies with the international best practices also in developing on a voluntary basis Social Impact Assessments in the most important O&G [oil and gas] projects."

Unless voluntary projects are accompanied by independently-audited or impartially-monitored reports, Amnesty International's experience from around the world suggests that performance assessments of such projects are often disputed. Even if Nigerian legislation does not require oil companies to perform full-scale environmental impact assessments for non-oil, non-gas projects, and even if building a transformer is not considered such a project, NAOC has a responsibility, under prevailing international practices of good community relations, corporate social responsibility and emerging standards like the UN Norms for Business, which would apply to all companies, to consult with the local community in a transparent, free and fair manner, before commencing a project. It is clear from this case that if consultation was carried out, it was not performed adequately. In many projects in the Niger Delta, companies' consultation with the community has been limited to a non-transparent discussion with the chief of the local community, who may not represent the views of the entire community, and who may not have been elected.

The apparently insufficient involvement of the residents in the decision-making process for the development project relating to the land Richard Ogbonna Chukwudi wanted to use for his family and his cultivation, has also had an effect on the right to an adequate standard of living. According to Article 11(1) of the International Covenant on Social, Economic and Cultural Rights (ICESCR) to which Nigeria is a state party<sup>93</sup>, "*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the*

*continuous improvement of living conditions*". Although some of the obligations under this article are to be realized progressively, the Covenant also imposes obligations with immediate effect. According to the UN Committee on Social, Economic and Cultural Rights (CESCR), the UN body responsible for reviewing the implementation of the ICESCR, among these obligations is, "the provision of judicial or other remedies"<sup>94</sup>. Richard Ogbonna Chukwudi claims that he was not involved in the decision-making process during which it was decided that his land was going to be used as part of an electrification project. He had planned to use the land to build a house for his family, thus exercising his (and their) right to adequate housing under Article 11(1) of the ICESCR. Furthermore, his plans to develop a small-scale farming business which could both provide food for his family and additionally the proceeds from any sales would have contributed to an adequate standard of living for his family, have been disrupted. By either requiring mandatory consultation with persons affected by a development project, or by adequately enforcing the existing environmental protection legislation, the Nigerian Government would have exercised due diligence to protect Richard Ogbonna Chukwudi's right to an adequate standard of living.

According to information from the Centre for Social and Corporate Responsibility in Port Harcourt, the Centre started a capacity-building project around EIAs, initially in 10 communities, precisely for the above reason - the lack of communities' awareness of the EIA process<sup>95</sup>.

The UN Norms for Business, Article 12:

*"TNCs and other business enterprises shall respect economic, social and cultural rights, as well as civil and political rights, and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience and religion, and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights."*

Amnesty International fears that both the Nigerian Government, by being the majority shareholder in the joint venture with NAOC, and NAOC, have through inaction contributed to the violation and abuse of Richard Ogbonna Chukwudi's right to seek, receive and impart information without interference, as guaranteed in the ICCPR (Article 19), the African Charter (Article 19) and the Nigerian Constitution Article 39(1), which would also affect his livelihood. The reason for this is that there was no prior consultation process regarding the installation of the transformers on his land; a project which would have a major effect on Richard Ogbonna Chukwudi's livelihood, land and the environment. The organization also fears that the Nigerian Government is responsible for the failure to exercise due diligence to protect the right to seek, receive and impart information, which would additionally affect his rights to an adequate standard of living, according to the ICESCR (Art 11(1)). A proper enforcement of the Nigerian environmental protection legislation in order to ensure

consultation of concerned communities would enable the respect, protection and fulfillment of these rights.

### **Case-specific recommendations to NAOC**

Amnesty International calls on NAOC to:

- institute an inquiry into the setting up of the transformer by Cascade Control Ltd., NAOC's subcontractor, on the land belonging to Richard Ogbonna Chukwudi. The inquiry should serve to establish whether the subcontractor of NAOC respected the principle of free, prior and informed consent of the communities affected by the company project and make the results of the inquiry public;
- provide Richard Ogbonna Chukwudi with prompt, effective and adequate reparation for any damage done or property taken, where appropriate<sup>96</sup>;
- ensure that the company itself, and any of its subcontractors, refrain from any activities which support, solicits or encourages the authorities or any other entities to abuse human rights<sup>97</sup>, in this case the activities of the community leader that have lead to alleged threats to Richard Ogbonna Chukwudi which lead to him being forced to leave his land.

## **APPENDIX B**

### **The community of Rukpokwu, Rivers State and SPDC**

This case highlights how the failure of SPDC and the Nigerian Government to clean up after an oil spill has affected an individual landowner and his family. The land which was previously used for cultivation and which would both generate income from sales of palm oil and support the family with food from farming has been rendered useless after the oil spill and a resulting fire. Furthermore, a fishing dam used by the community members has been seriously polluted and rendered useless. The state must ensure adequate protection from an oil spill, and to repair or ensure repairs in the event that such spill takes place.

On 3 December 2003 a high-pressure 28” pipe along the SPDC-operated Rukpokwu-Rumueke oil pipeline in Rukpokwu in the Obio/Akpor local government area in Rivers State burst leading to a serious oil spill. The crude oil, which contains highly inflammable chemicals, some of which are toxic<sup>98</sup>, subsequently caught fire which allegedly spread over 5 miles along the stream affected by the spill towards the flowstation Aloo<sup>99</sup>. The fire is alleged to have lasted for one month.

The community reportedly notified SPDC immediately as they discovered the spill on 3 December 2003. SPDC in response to a letter from Amnesty International relating to the failure of clean-up, claims that “following the report of the spill on 3/12/03, SPDC in company of the government regulators mobilized to the site on 4/12/03 for leak investigation and repairs but community refused the team access to the leak site”<sup>100</sup>. Furthermore, SPDC claims that the “cause of the spill was as a result of pipeline failure at the bottom of pipe due to internal corrosion”, and not as sabotage, as is often claimed.<sup>101</sup> According to witnesses who spoke to Amnesty International, SPDC staff allegedly promised to come and clamp the pipe on 22 December. However, in SPDC’s response to Amnesty International’s letter, the company claims that they were denied access by the communities to clamp until they finally managed to access the site for leak repairs on 11 February 2004. The company added that it “mobilized immediately for scoping of spill site in preparation for clean up of impacted area”, but that “the area is being disputed by three communities hence the affected communities instructed SPDC to suspend further action pending resolution of internal issues”, and adds that the company in collaboration with the state Ministry of Environment is engaging the communities on the way forward. Amnesty International has not been able to verify these factual claims. SPDC also claims that unknown people had set the oil on fire in order to “attract local and international attention and sympathy”. In the SPDC People and Environment Report 2003, SPDC also alleges that several discussions between the Rivers State Government, SPDC and the affected communities resulted in access to the site being given in order to carry out repairs to the leak which were finished by February 2004. SPDC further states that it regrets that no clean-up has as yet begun.

The serious negative impact of this on the environment and the daily life of the people living in the area was described by the ruler and community chairman of the Mgbuchi

community, Chief Clifford E. Enyinda, and Azunda Aaron, who told the Nigerian daily newspaper This Day:

*“our only source of drinking water, fishing stream and farmlands covering over 300 hectares... are completely destroyed by the spillage and was made worse by the three separate fires that broke out of the spill site”.*

The Amnesty International delegation confirms that the strong odour emanating from the spill caused discomfort to eyes after only a few minutes in the area. Amnesty International can also confirm that there were no signs of any clean-up activities at the time of the visit in March 2004. There were holes full of crude oil on the ground along the line of the underground pipeline and up to 5m on either side from its course. There were only stumps of burnt trees and ash on the communally owned farmland, which was worst affected by the devastating fire.

One of the victims of the spill, community leader Chief Jonathan Wanyanwu, told the Amnesty International delegation that he had bought land adjacent to the recent oil spill in 1965. He claimed that since then there have been three oil spills originating from the same pipeline. Chief Jonathan Wanyanwu said that his raffia palm trees, which in a normal season would provide him and his family an income of approximately N500,000 (approximately US\$ 3770) per year and on which he is partly dependent, are now useless.



©AI Chief Jonathan Wanyanwu in front of his devastated cassava and raffia palm field in Rukpokwu (March 2004)

He also claimed the compensation for damage and loss of opportunities after the two previous spills was inadequate. According to Chief Wanyanwu, he lost all his 157 palm trees after the first spill in 1996, after which he replanted palms on the same land. After the second

spill, in 2001, when he lost 200 trees he was offered N9,400 (approximately US\$70) which is equivalent to approximately 2% of what he should have gained as income from the trees over their lifetime.<sup>102</sup> He has now suffered yet another loss of trees.

*“I have trees on 6 acres but now they are all destroyed. You can only see small leaves on the trees. My trees are burnt to ashes. The soil is now contaminated and bad. I fear that during the rainy season the oil spill will double and all the trees will be under the mix of oil and water.....it could have been a nice farm.”* Chief Jonathan Wanyanwu to Amnesty International

In SPDC’s response to Amnesty International’s letter inquiring on what basis compensation is calculated and awarded, the company replied “the oil spill compensation is calculated on the Government approved current OPTS (Oil Producing Trade Section) rate of Lagos chamber of commerce and industry, which takes into consideration the effect of items damaged”. The company confirms that “e.g. cassava, yam, fishpond, plot of land etc. [is] measured per square meter or hectare. [An] evaluation [could] as well be made on items not covered by OPTS”.

### **The right to an adequate standard of living**

The case of the community of Rukpokwu and Chief Jonathan Wanyanwu is an example of how an individual and family’s right to an adequate standard of living, including adequate food and water, provided for in Article 11(1) of the ICESCR, has been affected as a result of the environmental damage caused to the fields, fishing dam and source of drinking water by the oil spill from a leaking pipeline. The fields used for cultivation prior to the oil spill would have given the family of Chief Jonathan Wanyanwu an adequate standard of living, by providing income from sales of palm-oil as well as food for the family. The pond used for fishing and collecting drinking water is also polluted and hence the opportunities for sales from fishing and providing food for the family have gone, affecting the right to an adequate standard of living.

### **The right to a general satisfactory environment**

The failure to clean up after the oil spill in the case of Rukpokwu has seriously affected the environment in and around the immediate vicinity of the actual spill. This is partly due to the resulting fire that has destroyed a vast area of communally owned land and partly due to the actual crude oil that leaked and which three months after the incident was still visible on the surface over a wide area around the course of the oil pipeline. This has had a negative effect on the environment for many of the community members, including Chief Jonathan Wanyanwu.

According to the African Charter all peoples have the right to a general satisfactory environment favorable to their development (Article 24). The African Commission has in

communication *The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria* (155/96) concerning SPDC's operations in Ogoniland, Nigeria ruled that the failure of the Nigerian Government to protect citizens from the environmental damage due to the oil spill and its failure to clean-up constitute a violation of Article 24 of the African Charter as well as other provisions of the Charter, notably Article 16, which provides for the right to health.

### **The right to an effective remedy by a competent authority**

When violations of human rights have occurred, “*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or law*” according to Article 8 of the UDHR. Furthermore, Article 2(3) of the ICCPR provides that the states parties must ensure that any person who is “*claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy*”. In addition, in its General Comment on Article 2 of the ICESCR, the CESCR recommends that states provide judicial remedies in respect of rights which may, in accordance with the national legal system, be considered justiciable. The Committee also refers to the right to a remedy under the ICCPR and its relevance to economic, social and cultural rights in relation to equality and non-discrimination<sup>103</sup>. More recently the CESCR has stated, in terms of the domestic application of the ICESCR, that: “The Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”<sup>104</sup> Amnesty International supports the Committee's view that the right to an effective remedy and redress should include compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition<sup>105</sup>.

However, as reported to Amnesty International, the case of Chief Jonathan Wanyanwu points to inadequacies in the system for people whose human rights have been violated or abused.

The main oil-related environmental protection legislation, the Federal Environmental Protection Agency (FEPA) Act of 1988 as amended by Act No. 59 of 1992, defines the liability of spillers to include not only a penalty, but also the cost of removal including any governmental expenditures and reparation, restoration, restitution or compensation to third parties<sup>106</sup>.

The Oil Pipelines Act<sup>107</sup>, refers to compensation specifically relating to the operation of pipelines, and provides for compensation for “any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good”<sup>108</sup>. In Section 20(2) this is specified to include any damage done to buildings, crops, profitable trees and makes allowance for loss of value in

land. Amnesty International believes that effective remedy should be provided for any economically assessable damage resulting from violations or abuses of international human rights. This should be calculated on the basis of level of damage and should be proportionate to the gravity of damage. In the Nigerian case *SPDC v. Farah*, the Court of Appeal ruled that compensation should “restore the person before the *damnum* [harm, or loss] as far as money can do to the position he was before the *damnum* or would have been but for the *damnum*”.<sup>109</sup> The official governmental guidelines on compensation rates for damage to land and crops would seem inadequate in that the guidelines does not require that compensation should provide the affected person with financial compensation reflecting the income that would have been achieved had the loss of income not occurred. An association of oil-producing companies, through a sub-committee<sup>110</sup>, therefore regularly produces a list of recommended compensation rates to the companies, sometimes eight times higher than the official government rates.<sup>111</sup>

However, even these standards do not take into consideration loss of profit or depreciation in the value of land. Rather these rates only include the market value of purchasing a crop or a tree and the cost of transporting it to the village. The case of Chief Jonathan Wanyanwu, who was offered N9,400 (approximately US\$70) in compensation for the loss of his trees, which were a major source of income for him, after the first and second oil spills, is a clear example of this. His trees would normally generate an annual income of N500,000 (approximately US\$3770).

Another problematic aspect of the FEPA Act is the lack of enforcement of the FEPA Act’s provisions due to insufficient resources, which is a practical problem with some of the environmental oil-related legislation in Nigeria. As Amnesty International discovered, in the case of Rivers State, the FEPA agency, empowered with the enforcement of this law, is short of funding, which results in a lack of equipment and trained staff. Hence, the agency appears to have a very limited capacity to enforce and monitor compliance with the Act in order to protect communities and other aggrieved parties. For example, the agency has no access to a boat, which this seriously hampers its ability to monitor a large river delta area where most of the oil is on-shore and from time to time causes environmental damage during transportation from the mangrove swamps to Nigerian terminals or the high seas.

### **Summary concerns**

Amnesty International fears that the Nigerian Government has not ensured effective enforcement of the environmental protection legislation in order to enable a quick clean-up in this case of oil spills. Amnesty International fears that the Nigerian Government’s dereliction in ensuring the clean-up constitutes violations of the right to an adequate standard of living according to ICESCR (Article 11(1)) and the right of all peoples to a general satisfactory environment according to the African Charter (Article 24). It is responsible in ensuring that SPDC cleans up the affected area after the spill, but the company has failed to do so, and by failing to ensure that the company carries out its responsibility, the state has failed in that obligation. The Nigerian Government also has another level of responsibility in this case

because it is the main shareholder in SPDC through NNPC, which is part of the joint venture operation with Shell group of companies in Nigeria.<sup>112</sup> Proper enforcement of the environmental protection legislation would enable respect, protection and fulfillment of the rights in question.

### **Case-specific recommendations to SPDC**

Amnesty International calls on SPDC to:

- immediately ensure the clean-up of the oil spill along the Rukpokwu-Rumueke oil pipeline using the best available clean-up practice according to internationally recognized standards;
- provide prompt, effective and adequate reparations to those communities, in this case Rukpokwu, that have been adversely affected by the recent oil spill through, inter alia, reparations, restitution, compensation and rehabilitation for any damage<sup>113</sup> for which it is responsible.
- take appropriate measures in its activities relating to the cases of Rukpokwu to reduce the risk of accidents and damage to the environment by adopting the best management practices and technology<sup>114</sup>.

## APPENDIX C

### **The community of Gbarantoru, Bayelsa State and SPDC**

Gbarantoru is situated in Ekpetiama Kingdom, near Yenagoa, the capital of Bayelsa State, and is the youngest of the Niger Delta States to be created. Gbarantoru is also close to Odi, the site of the mass killings of up to 250 people allegedly by the army in 1999<sup>115</sup>. The community of Gbarantoru comprises around 2,000 people, and the Nun River runs through Gbarantoru, providing livelihood to many of its inhabitants.

“I hear your lapping call!  
I hear it coming through;  
invoking the ghost of a child  
listening, where river birds hail your silver-surfaced flow.”  
**Gabriel Okara, a local poet, describing the River Nun**  
(© Ethiope Publishing Corporation)

For the Nigerian Government and for SPDC, the area where the Gbarantoru community is located is of utmost economic importance, since it sits on top of some of the most extensive deposits of crude oil and gas to be found in West Africa. SPDC’s largest gas field is found here and the central processing facility for liquefied natural gas is to be placed in this area. SPDC has operated in the area for over 30 years.

There have been disputes between the company and the local community in the past, and some of the Ijaw groups living here have protested against further exploration or modification of existing practices. As a result, several wells in the community are still to be fully explored.

Due to the economic importance of the project being planned at the moment and to past disputes over a road built by SPDC (which resulted in serious environmental damage, lack of, and subsequently inadequate, drainage systems for the seasonally varied water levels) SPDC has had to arrange for a high level of security to protect its facilities and operations in the area<sup>116</sup>. SPDC’s past practice (a practice SPDC says it wishes to discontinue) was to provide cash to unemployed youths near the site of its facilities and promise them jobs as security guards. In the case of Gbarantoru, that pattern was allegedly repeated. The youths did not have weapons, nor money to buy the weapons, when they were promised employment. They were allegedly provided with cash payments, and the youths subsequently purchased arms. Weapons, as noted earlier, are easily accessible in the Niger Delta. While Amnesty

International cannot establish that the money SPDC provided was used to acquire the weapons, media reports from Nigeria, and information from local activists suggest that was indeed the case.<sup>117</sup> Aware of the allegations, the company has said publicly it will not provide cash payments for non-business purposes in future.

At the heart of the dispute in Gbarantoru was SPDC's plan to build a barrier near its terminal on one bank of the Nun River before 2007. The company claims that the barrier is necessary because the company intends to change the flow of the river on the other bank, making the water move more swiftly at a sharper angle, as it intends to build a central processing facility on the other bank. Such engineering would lead to water flowing at a much faster rate, and moving more rapidly towards the Gbarantoru community. The community residents stated to Amnesty International that they would like SPDC to build a barrier protecting the village from the increased flow of water, just as the company is building a similar barrier to protect its own facilities. The company's officials claim that such a barrier to protect the village is not necessary, because they claim that it falls outside the flow of the water. The community is not convinced, and fear flooding in their village as well as massive riverbank erosion, once SPDC has completed its construction. As the two sides have not been able to agree to a solution, the community began a peaceful protest.

In order to secure its project and strengthen its relationship with the community, community activists claim that SPDC allegedly entered into confidential discussions leading to an understanding with Chief Weke in early March 2002. This meeting allegedly resulted in a proposed MOU between the Gbarantoru Community and SPDC concerning various community development projects. Amnesty International was told by representatives of one of the families in Gbarantoru that the MOU document was subsequently signed on 19 March 2002 in the office of the Commissioner for Environment Bayelsa State by the Paramount Ruler of Gbarantoru, Chief Weke on behalf of the community, by Mr M. N. Omoruyi on behalf of SPDC as well as by the Commissioner of Environment Bayelsa State. SPDC agrees it signed an MOU after consultations with what it called "key stakeholders" of the community, which included, among others, the Paramount Ruler, youth and women's groups and government officials. Amnesty International has seen a copy of the MOU. However, a significant part of the community has rejected the MOU. The family representative referred to earlier claims that Chief Weke had not consulted with the concerned community members in advance. Amnesty International understands that consultation with stakeholders, who sizeable parts of the community consider unrepresentative, is a common practice among oil companies in the Niger Delta. In response to Amnesty International's questions, SPDC stated that it is "saddened to discover" that the community had been factionalized. The company says it has attempted to organize reconciliatory meetings within the community but not supported any faction<sup>118</sup>.

### **The right to seek, receive and impart information**

SPDC entered into an MOU with Chief Weke in Gbarantoru although community members are questioning his legitimacy<sup>119</sup>. Amnesty International fears that in this case the alleged

secret signing of a MOU concerning affairs that would affect most people in the community hampers its members' right, provided for in Article 19(2) of the ICCPR, to seek, receive and impart information. Similarly, according to Article 39(1) of the Nigerian Constitution everybody has the right to "to receive and impart ideas and information without interference". By SPDC only liaising and consulting with a disputed section of the community, Amnesty International fears that the alleged signing of the secret MOU points to a practice of a non-inclusive decision-making process.

In 2001, when SPDC returned to the Gbarantoru community in order to discuss community needs as part of a new drilling project concerning locations ULTR 1 & 2, it is alleged that 'loose cash' was given to Chief Weke and a group of boys in the area<sup>120</sup>. Amnesty International fears that these alleged cash payments may have contributed to the increase of illicit arms in the area which in turn feeds a culture of violence and fear, such as reported in this particular case<sup>121</sup>.

Since many people in the community continued to hold grievances against SPDC, they began peaceful protests<sup>122</sup> against the company. A series of threats and armed attacks, mainly by the Uwou Pele Ogbo gang known to be linked to Chief Weke reportedly followed.

Bubaraye Dakolo, Executive Director of the Nun River Keepers community organization in Gbarantoru, told an Amnesty International delegation that he was one of the people identified as opposing SPDC's drilling process in 2001 and he recounted to Amnesty International a series of intimidations and armed attacks<sup>123</sup>, all of which were allegedly perpetrated by the Uwou Pele Ogbo gang, allegedly connected with Chief Weke, as well as acts which points to SPDC's practice of not consulting with all relevant parties of a dispute.

- 2 March 2002: an Nigerian NGO-sponsored community environmental meeting on the state of the environment at the community level and community-participation in Gbarantoru was closed after threats of violence by the armed Uwou Pele Ogbo gang allegedly connected with Chief Weke;
- 4 March 2002: when four SPDC representatives came for a late evening meeting with Chief Weke to sign a proposed MOU between the community and SPDC in order for drilling to go ahead, people who were approaching the house of the chief to protest were threatened at gun-point<sup>124</sup>;
- 9 April 2002: two brothers, Thankgod and Loveday Oyadongha, who had been protesting against the SPDC plans were reportedly attacked by gang members<sup>125</sup>;
- 20 July 2002: Bubaraye Dakolo and others continued protesting against the recently signed MOU. SPDC officials approached him individually without prior announcement and without seemingly wanting to consult with the rest of the people who were representative of the family to which Bubaraye Dakolo belongs and who would be affected by the decision. The alleged aim of the visit was to threaten the community to support SPDC's plans<sup>126</sup>;
- 21 July 2002: two men and one woman opposed to SPDC's drilling plans were subjected to an unprovoked attack by the Uwou Pele Ogbo gang, where one of them

was seriously injured by machete cuts and became unconscious. Bubaraye Dakolo, who was driving the unconscious man to hospital was shot at but escaped unhurt. However, his car was smashed in the process.<sup>127</sup>

Bubaraye Dakolo told Amnesty International that he reported the last incident to the police. Chief Weke and seven members of the Uwou Pele Ogbo gang were arrested and together with Chief Weke arraigned to court and subsequently charged and presented in court in September 2002. However, it is reported that many other alleged perpetrators were not arrested. Chief Weke was released on bail without being charged. After one year of trials, he was acquitted for lack of evidence. The others later reached an out of court settlement with the victims of the community, and the charges were dropped.

Amnesty International is furthermore concerned about the effects of SPDC's practice of cash payments<sup>128</sup>. As part of its strategy to overhaul its community development program, SPDC has resolved to end the practice of giving cash payments unless those are part of legitimate business costs, because the company is aware that such cash is often misused, including for the purchase of weapons, and may fuel violence. The link between cash inflow and weapons has even been alluded to in the recently leaked Shell-commissioned Niger Delta conflict report from December 2003 by the consultancy firm WAC Global Services<sup>129</sup>. The consultants state that according to some of the respondents "funds paid by oil companies for ransom have been used by criminal groups to purchase weapons". However, the authors of the report continue by saying that the role of any oil company in the supply of weapons is "probably insignificant".

Distribution of cash, such as what is or has been the practice of TNCs, into communities where unemployment is rife does not guarantee that the cash will be used for productive purposes. Economically, it can increase local inflation. Sociologically, it can widen the divide between the beneficiaries and others. Politically, it can create power structures that can become detrimental to harmony in the longer run. As such cash is often given to men, and not women, within a household or family, gender-based discrimination is perpetuated. In many societies, such cash is used to buy alcohol, tobacco, and maintain similar habits. The report commissioned by SPDC identifies such unaccounted distribution of cash as one of the means through which weapons are acquired by disaffected youth.

The organization is also concerned about the absence of fair and free consultation with the community, the effect of which is a division of the community between those who support the projects because they have something to gain from it, and those who oppose the project because either they gain nothing from it, or because their property, homes, fields, bear the main cost of the project. This is sometimes referred to as a 'divide and rule' policy.

To avoid creating conflicts within the communities on the basis of lack of proper consultation, Amnesty International urges that companies must make consultation transparent, open, fair, and free of inducements in future, and begin construction only after it has addressed the concerns of the community since it may otherwise result in yet more threats to

human rights. Furthermore, it is the absence of such consultation that sows the seeds of resentment, which breeds violence, some of which contributes to the toll of nearly a thousand deaths in a year.

The community of Gbarantoru has lived with oil and gas exploration and production on its doorstep for a long time. It has been affected by the inefficient and inadequate enforcement of environmental protection and oil-related legislation. Only a few communities and families have received compensation<sup>130</sup> for the use of their land for oil-related purposes but many court cases have been initiated<sup>131</sup>. The Nun River Keepers community organization claims that the most recent environmental impact assessment (EIA) process regarding the Gbaran/Ubie node of the integrated oil and gas development project, which includes altering the course of the river with a change of river flow rate and potential damage to the Gbarantoru shoreline as a result, was not sufficiently transparent and consultative.

The EIA Decree No. 86 of 1992, which together with the FEPA Act aims to protect the environment, provides that all development projects should, from the initial stages, undertake an EIA to determine the possible environmental effects of the proposed project, before the project is commissioned<sup>132</sup>. Petroleum exploration is an activity which requires a full and mandatory EIA for both the public and the private sector.

However, this decree has the same effect as the other oil-related legislation previously mentioned in the paper, i.e. it is biased against communities since in some instances the inadequate implementation has the effect of abusing and violating community members' fundamental human rights. Although the EIA Decree No. 86 of 1992, in Section 7 states that *"before the Agency gives a decision on an activity on which an environmental assessment has been submitted, the Agency shall give opportunity to government agencies, members of the public, experts on any relevant discipline and interested groups to make comment on...the activity"* in line with the UN Declaration on the Right to Development<sup>133</sup>, the case of Gbarantoru highlights how the implementation of the legislation was insufficient.

In the case of Gbarantoru and the recent EIA process, public consultation was chosen. However, the Nun River Keepers claim that the EIA documents were not made adequately accessible. Bubaraye Dakolo confirmed to Amnesty International that only one copy of the EIA document was made available at the Yenagoa Local Government Area Headquarters and another copy in the Ministry of Environment Bayelsa State, both in Yenagoa<sup>134</sup>. For most people of Gbarantoru Yenagoa is virtually inaccessible due to the cost of transport for a trip from where the community is located to where the documents are held. It would cost a person about N400 (equivalent to US\$3) per return journey by road or N1,000 (equivalent to US\$7.50) per return journey by boat and bus. This should be put in relation to the fact, noted above, that 70.2 per cent of Nigerians live on less than US\$1 a day<sup>135</sup>.

Amnesty International believes that the consultation documents of a project that would substantially change the life of the community, were not made available in an accessible manner to the community. For some riverine communities the sheer length of the

journey by river and subsequently by road contributes to the inaccessibility of Yenagoa. In the case of Gbarantoru, the community had to create its own solution of the problem. In this instance, the community sent Bubaraye Dakolo to Yenagoa to photocopy the EIA documents (680pp at a cost of N7,000 (about US\$53) as reported to Amnesty International). That copy was used in a consultation meeting organized by representatives of the community in March when they were informed orally and were able to make comments<sup>136</sup>. The comments were subsequently incorporated in the final commentary regarding the EIA document submitted by the community.

However, the process was inadequate since the communities were only given three weeks to provide comments on the EIA reports. The community of Gbarantoru claims that this is grossly inadequate for a 680pp document to be considered by a community of 2,000 people where a large number of people are not literate<sup>137</sup>. Amnesty International considers that in this specific case the consultation period allocated was too short for a proper consultation to be fair, transparent, and fully open.

The organization fears that SPDC, as well as the Nigerian Government through the majority shareholder NNPC, failed to make EIA documents available in an accessible way to the community. This has contributed to the fact that the communities were not appropriately informed and were not able to adequately make use of their right to freedom to seek, receive and impart information. Thus, Amnesty International fears that the Nigerian Government in this case has failed to exercise due diligence to protect the right to seek, receive and impart information without interference according to the ICCPR (Article 19), the African Charter (Article 19), and the Nigerian Constitution Article 39(1).

Furthermore, the organization believes that SPDC should consult with the community adequately and address the concerns raised by the residents in the Nun River area, who have legitimate concerns about the longer term impact of the diversion of the river and water flow. Amnesty International also believes that SPDC may be partly responsible for Chief Weke's activities in the area, which have resulted in abuses of the human rights of several members of the Gbarantoru community.

SPDC's alleged secret signing of a MOU with Chief Weke, whose legitimacy is questioned by members of the community, concerning affairs that would affect most people in the community points to a non-inclusive decision-making process and a policy of 'divide and rule'. In this case there are further allegations that these practices has led to community members being threatened and in some instances even violently assaulted by an armed youth group, which is claimed to have links to Chief Weke. Amnesty International fears that non-state actors such as SPDC could be responsible for contributing to the volatile situation by supporting officials like Chief Weke, and by allegedly entering into opaque arrangements with him, when he is allegedly responsible for the violence in the community.

### **Case-specific recommendation to SPDC**

Amnesty International calls on SPDC to:

- take appropriate measures in its activities relating to the case of Gbarantoru to reduce the risk of accidents and damage to the environment by adopting the best management practices and technology, according to Art 14 of the UN Norms for Business and its section (g) of its Commentary, especially paragraph g.
- ensure that its officials and security forces representing its interests do not in any way use intimidatory tactics while communicating with communities, and comply with the specific provisions in the Voluntary Principles for Security and Human Rights and the UN Codes of Conduct for Law Enforcement Officials, regarding the appropriate use of force.
- institute an inquiry into the conduct of its officials in the Gbarantoru community during 2002; make the results of the inquiry public; and provide the community with prompt, effective and adequate reparation for any damage done or property affected where appropriate<sup>138</sup>.

**List of abbreviations**

ACHPR	African Commission on Human and Peoples' Rights
African Charter	African Charter on Human and Peoples' Rights
CESCR	Committee on Economic, Social and Cultural Rights
CDC	community development committee
ECOMOG	The Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EIA	environmental impact assessment
ERA	Environmental Rights Action
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MOSOP	Movement for the Survival of Ogoni People
MOU	Memorandum of Understanding
NAOC	Nigeria Agip Oil Company
NDDC	Niger Delta Development Commission
NNPC	Nigerian National Petroleum Corporation
OPEC	Organisation of Petroleum Exporting Countries
SPDC	Shell Petroleum and Development Corporation
TNC	Transnational corporation
UDHR	Universal Declaration of Human Rights
UN	United Nations

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NOTES

<sup>1</sup> OPEC was formed in 1960 to support oil prices. Its members' share of the world's oil export market is 61%. OPEC members produce about 40% of the world's oil and account for two-thirds of the world's reserves. Its 11 members are Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela.

<sup>2</sup> See World Bank statistical data on Nigeria as published on URL <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=NGA&PTYPE=CP>

<sup>3</sup> Many oil companies are active in the Niger Delta, usually in collaboration with the Nigerian Government, in which the State has the majority share. The biggest international company operating in Nigeria is Shell Petroleum Development Corporation. Other major players include Chevron Texaco, Exxon Mobil, Total Fina Elf, ENI (Agip), among others.

<sup>4</sup> Based on several interviews with senior representatives of the companies in Nigeria and at their headquarters, as well as other discussions, over time, with senior representatives of companies, consulting firms, NGO representatives, and academics.

<sup>5</sup> Social licence to operate means a company operates not only under legal authority, such as regulatory permit from the government, or by following relevant laws, or by responding to targets set by shareholders and employees, but in a manner that makes them acceptable to the communities, civil society at large, and stakeholders, whose lives are impacted by their actions and operations.

<sup>6</sup> Amnesty International, 'Nigeria: Repression of women's protests in oil-producing delta region' (AI Index AFR 44/008/2004).

<sup>7</sup> The Environmental Impact Assessment Decree 1992, Section 2 states that: "the public or private sector of the economy shall not undertake or embark on public or authorize projects or activities without prior consideration, at an early stage, of their environmental effects". This applies when "the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Decree".

<sup>8</sup> The Vanguard (Lagos), 'Environmental Ministry Recommends N10m fine for Agip', as reported on URL [www.vanguardngr.com](http://www.vanguardngr.com) on 2 July 2004.

<sup>9</sup> SPDC's official comment, as obtained by Amnesty International, on this report was the following: "The report, which was independently commissioned from conflict experts, has helped us gain a more in-depth understanding of the underlying issues relating to conflict in the Niger Delta. Government and local communities must take the lead in ending conflict. But we are also determined to help. We commissioned the report in 2003 in order to help us better understand how our activities are affected by, and inadvertently contribute to, conflict. For example, the fieldwork highlighted how conflict makes it difficult for us to operate safely and with integrity; how we sometimes feed conflict by the way we award contracts, gain access to land, and deal with community representatives; and how conflict reduces the effect of our community development programme. Our intention now is to support the development of a Peace and Security Strategy to help reduce conflict by changing our operating, security and community development practices. A Peace and Security Strategy working group made up of local, national and international experts, stakeholders, and representatives of the oil industry, will be created to design the strategy, monitor how it is put into practice and report on progress."

<sup>10</sup> Historically, several companies have accepted moral obligation to protect human rights, but resisted any discussion about legal obligations. This was revealed most recently in the run-up to the UN Human Rights Commission's 60th session in Geneva earlier this year, when the Commission discussed the UN Norms for Responsibilities of TNCs and Other Business Enterprises with regard to Human Rights. International human rights law is quite clear in this regard. In fact, see the Committee on Economic,

Social and Cultural Rights, in particular General Comment 12 on Right to Food, para. 20 and General Comment 14 on Right to Health, para. 42. See also the Committee on the Rights of the Child, General Comment 5, para. 56. The General Comments 12 and 14 at the CESCR say, inter alia, that while the State has primary obligation to ensure respect for human rights, all members of society – individuals, families, local communities, intergovernmental organisations, NGOs, and civil society organisations, as well as the private business sector have responsibilities regarding the right to food/right to health. States parties should therefore provide an enabling environment which facilitates the discharge of these responsibilities. CRC general comment 5, para. 56 additionally states that “implementation is an obligation for States parties, but needs to engage all sectors of society...the Committee recognises that responsibilities to respect and ensure the rights of children extend in practice beyond the state.”

<sup>11</sup> The International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR).

<sup>12</sup> Hereinafter the UN Norms for Business. According to the preamble of the UN Norms for Business, “...even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, TNCs and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights... TNCs and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments...”. The UN Norms for Business, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights on 26 August 2003, available on URL [www.business-humanrights.org](http://www.business-humanrights.org).

<sup>13</sup> Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th Session, Geneva, November 1977.

<sup>14</sup> The Responsible Care Programme was initiated in Canada in 1984 and has since spread to dozens of countries worldwide. Its aim is to accelerate environmental improvements in the chemical industry. Responsible Care has been adopted by the International Council of Chemical Associations (ICCA). Its implementation varies from country to country. Thus in Canada, participating companies must submit their plants to regular verification of compliance, which is carried out by an external committee composed both of industry experts and representatives of the community. The results are made public.

<sup>15</sup> See, for example, *Beyond Voluntarism*, International Council for Human Rights Policy, Geneva, 2002. Also see *UN Norms for Business: Towards Legal Accountability* (AI Index IOR 42/001/2004), available online at URL <http://web.amnesty.org/pages/ec-index-eng>

<sup>16</sup> Developed in 2001 by the US and UK governments, in conjunction with several companies. For text see, for instance, <http://www.state.gov/g/drl/rls/2931.htm>.

<sup>17</sup> Countries in which exploration and production programs have already begun include Equatorial Guinea, Sao Tome and Principe, Chad, Cameroon, and Mauritania.

<sup>18</sup> Statement by the Group Managing Director of the Nigerian National Petroleum Corporation (NNPC), as reported in *This Day* on 19 May 2004 (see URL [www.thisdayonline.com](http://www.thisdayonline.com)).

<sup>19</sup> That is a matter of dispute; SPDC, the biggest operating company in Nigeria, has admitted the reserves may not be very large.

<sup>20</sup> In 2004, international oil price has risen considerably higher. At the time of the preparation and publication of the report, the price has ranged between US\$37-41 per barrel.

<sup>21</sup> At \$40 per barrel, Nigeria’s oil export would amount to about \$26.28 billion a year. But the government’s share of this revenue would be \$21.98 billion, under a complex formula to share revenue with the oil companies, who get the rest.

<sup>22</sup> See World Bank statistical data on Nigeria as published on URL <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=NGA&PTYPE=CP>.

<sup>23</sup> Many oil companies operate in Nigeria. All international oil companies are required to form joint ventures with the Nigerian Government, which has majority stake in the venture. The biggest international operator in Nigeria is the Anglo-Dutch group Shell, followed by Chevron (now Chevron-Texaco), Mobil (now Exxon-Mobil), Elf (now part of the Total group), and ENI (Agip).

<sup>24</sup> Shell companies in Nigeria comprise The Shell Petroleum Development Company of Nigeria (SPDC), Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), Shell Nigeria Gas Ltd. (SNG), Shell Nigeria Oil Products Ltd. (SNOP), Nigeria Liquefied Natural Gas Company Ltd. (NLNG). This report is focusing on SPDC.

<sup>25</sup> The revenue-sharing formula is complex; and varies between operators and concessions. In general, as the oil price rises higher, on the incremental rise in price, the share of the operating companies reduces significantly, and that of the State increases disproportionately.

<sup>26</sup> According to the UN Norms for Business, “the term stakeholder includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of TNCs or other business enterprises. The term ‘stakeholder’ shall be interpreted functionally in the light of the objectives of these Norms. And include indirect stakeholders, when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of TNCs and other business enterprises, such as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, NGOs, public and private lending institutions, suppliers, trade associations and others.”

<sup>27</sup> See Christian Aid, *Behind the Mask: The Real Face of Corporate Social Responsibility*, January 2004. URL <http://www.christian-aid.org.uk/indepth/0401csr/>

<sup>28</sup> The Centre for Social and Corporate Responsibility, *The goat in the flowstation: the social license to operate in the Niger Delta*, June 2004.

<sup>29</sup> Based on interviews with Amnesty International, March 2004.

<sup>30</sup> A World Bank study estimated the number of oil spills in the Delta and Rivers States of Nigeria between 1991-1993 to nearly 300 per year (World Bank 1995, volume II, annex M). There are reasons to believe however that the figure could be as high as ten times more, see Human Rights Watch “*The Price of Oil*”, p. 59. SPDC, in its People and Development Report 2003 published in June 2004, admits that the number of oil spills was 221, or 9,900 barrels, in 2003, out of which 141 or 63% were allegedly caused by sabotage (People and the Environment 2003 Report, pp. 7-8). The number of incidents in 2002 was 262, or 20,007 barrels, out of which 61% were allegedly caused by sabotage (People and the Environment 2002 Annual Report, SPDC, p. 42).

<sup>31</sup> The incidents of kidnapping of oil workers, sabotage of oil installations including pipelines, and use of violence against staff of the oil companies which are reported are many. It is beyond the scope of this paper to discuss that in depth. However, three recent incidents in 2004 involved attacks on NAOC, Chevron-Texaco and SPDC. On 17 April a group of armed youths tried to attack the NAOC-owned Tebidada flowstation in Bayelsa State, and the resulting exchange of fire resulted in allegedly five of the attackers being killed. In response to a letter sent to NAOC by Amnesty International regarding this incident, the company has responded saying that “the national security forces placed around the station responded to the fire and the ensuing shoot-out caused the death of five of the attackers.” Furthermore, NAOC responded that “the Company on its own does not have any armed security outfit” (letter sent to Amnesty International by ENI on 19 May 2004). On 23 April a boat carrying seven people, five Nigerians and two Americans all of whom were Chevron-Texaco contractors, was allegedly ambushed

by an armed youth group on Benin River in the Niger Delta. The attack resulted in the death of the seven Chevron-Texaco contractors. The Defence Headquarters is reported to have interrogated around 25 people in relation to this incident. In response to an Amnesty International letter inquiring about the attack, the Communications and Corporate Responsibility Manager of Chevron Nigeria Limited (CNL), Mr D. Hastrup, strongly condemns the attack and confirms that the Nigerian authorities have initiated an investigation regarding this incident. According to CNL the attack was completely unprovoked, and the navy guards neither opened fire on the attackers nor returned the assailants' fire (letter sent to Amnesty International by CNL on 23 June 2004). Amnesty International has not been able to verify if anyone has been arrested or charged for the killings. (For further information see reports on URLs [www.vanguardngr.com](http://www.vanguardngr.com), [www.afp.com](http://www.afp.com), [www.irinnews.org](http://www.irinnews.org), [www.guardiannewsngr.com](http://www.guardiannewsngr.com)) On 15 April Nigerian soldiers reportedly killed at least two gunmen who allegedly were trying to launch an attack on oil barges belonging to SPDC in Warri. Amnesty International has written a letter to SPDC asking for the company's comments on the incident, but had not received a reply at the time of publication of the report. (For more information see reports on URL's [www.irinnews.org](http://www.irinnews.org) and [www.vanguardngr.com](http://www.vanguardngr.com))

<sup>32</sup> According to the Stockholm International Peace Research Institute, a "high intensity conflict" is one in which there are 1,000 deaths a year. Other, similar conflicts are Colombia and Chechnya. Based on comparative data for 2002 from the SIPRI database (see URL <http://www.sipri.se>).

<sup>33</sup> For further information on the latter, see Amnesty International '*Nigeria: The security situation in Rivers State: an open letter from Amnesty International to Peter Odili, State Governor of Rivers State*', 15 September 2004 (AI Index AFR 44/027/2004).

<sup>34</sup> As reported by Daily Independent, '*Group seeks justice in Niger Delta, condemns govt's use of force*', as reported on URL [www.dailyindependentng.com/](http://www.dailyindependentng.com/) on 17 February 2004.

<sup>35</sup> Oil bunkering is the legal bunkering of oil, and the theft of oil is often termed as illegal oil bunkering in Nigeria. SPDC, the company with most on-shore oil production out of the TNCs operating in the Niger Delta, reported in its People and Environment Report 2003 that the estimated number of incidents of oil theft in 2003 was 88, which resulted in an estimated loss of nine million barrels of oil, an increase from an estimated six million barrels in 2002 (People and Environment Report 2003, pp. 2-3).

<sup>36</sup> The Niger Delta is inhabited by the Ijaw which is the largest ethnic group in the area, the Itsekiri, the Ogoni, the Urhobo and many other groups. Clashes between ethnic groups in the Niger Delta are frequently reported, especially between Ijaw and Itsekiri groups, very often with fatalities as a result. Although the conflict has ethnic dimensions it is mainly rooted in access to economic resources and is sometimes spurred on by the effect of practices by TNCs operating in the area. The conflict has been reported by many NGOs for a longer period of time. See for example documentation on the Warri crisis by Human Rights Watch, '*The Price of Oil*', and '*The Warri Crisis: Fueling Violence*'. As a result of an increase in violence in the Niger Delta during the first half of 2003 the Federal Government set up a Joint Task Force (JTF), "Operation Restore Hope" under the control of Brig-Gen. Elias Zamani. The JTF consists of the army, the navy, the air force and the mobile police and is mandated to police the increased violence, provide security for the oil companies operating in the area, and to rid the waterways of sea pirates, kidnappers and illegal oil bunkerers. The US Government has recently offered assistance to Nigeria to patrol its international waters. Many allegations that the JTF has committed human rights violations during its operations have been reported, however Amnesty International has not been able to verify the accuracy of these allegations. On 23 June 2004 leaders of both the Ijaw and Itsekiri ethnic groups officially signed a new peace accord after six months of dialogue and three weeks after an official cease-fire between leaders of the ethnic militias. The peace accord has been officially endorsed by 11 out of the 14 participating Ijaw groups, and according to many of the participants in the peace dialogue it is seen as one step in the right direction to end the

conflict over ownership of Warri. The conflict in Warri is thought to have resulted in the loss of about 60,000 bpd of oil by SPDC and the Federal Government is thought to lose on average approximately US\$10 billion in revenue from the crisis in Warri specifically and other Niger Delta areas generally. See This Day (Lagos), 'Warri: Ijaw, Itsekiri Leaders Join Peace Deal', as reported on URL [www.thisdayonline.com](http://www.thisdayonline.com) on 24 June 2004; This Day (Lagos), 'Warri Peace Deal Collapses', as reported on URL [www.thisdayonline.com](http://www.thisdayonline.com) on 7 July 2004; The Vanguard (Lagos), '11 Ijaw delegates back Warri peace pact', as reported on URL [www.vanguardngr.com](http://www.vanguardngr.com) on 12 July 2004; Vanguard (Lagos), '3 Ijaw Groups Back Warri Peace Accord', as reported on URL [www.vanguardngr.com](http://www.vanguardngr.com) on 19 July 2004.

<sup>37</sup> Nigeria comes high in the index of corrupt countries prepared by Transparency International. It ranks 132<sup>nd</sup> out of 133 countries evaluated in its Corruption Perception Index (2003). See URL [www.transparency.org](http://www.transparency.org).

<sup>38</sup> CIA, "The World Factbook", as published on URL <http://www.cia.gov/cia/publications/factbook/geos/si.html>

<sup>39</sup> Niger Delta Fund Initiative, 'Political definition of N-Delta', 15 September 2003, as published on URL <http://www.earthrights.net/nigeria/news/definition.html>

<sup>40</sup> World Development Indicators Database, August 2002, as published on URL <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=NGA&PTYPE=CP>

<sup>41</sup> See statement by Chuka Udedibia, Minister, from Nigeria of 7 July 2003 to the First Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as published on URL <http://disarmament.un.org:8080/cab/salw-2003/statements/States/Nigeria.pdf>; IRINnews, 'Former conflict zone chooses between arms and development', as published on URL [www.irinnews.org](http://www.irinnews.org) on 4 April 2003.

<sup>42</sup> See statement by Chuka Udedibia, *ibid*.

<sup>43</sup> Amnesty International interview with Mrs I. Barasua, the Public Relations Officer of the Nigerian Police Force in Rivers State, on 16 March 2004.

<sup>44</sup> IRINnews, 'ECOWAS seeks means to recover 8 million illicit arms in the region', as published on URL [www.irinnews.org](http://www.irinnews.org) on 26 March 2004.

<sup>45</sup> The Code of Conduct for the Implementation of the Moratorium was approved in Lomé, Togo on 10 December 1999. IRINnews, 'Former conflict zone chooses between arms and development', as published on URL [www.irinnews.org](http://www.irinnews.org) on 4 April 2003.

<sup>46</sup> Vanguard, 'Mitee laments arms proliferation, insecurity', as published on URL [www.vanguardngr.com](http://www.vanguardngr.com) on 27 February 2004.

<sup>47</sup> Interview with Amnesty International on 13 March 2004.

<sup>48</sup> Interview with Amnesty International on 17 March 2004.

<sup>49</sup> There have been some very recent developments on enforcement of Firearms Act (Nigerian Laws Chapter 146) legislation, which amongst other things requires an approval from the Inspector-General of Police for possession or acquisition of firearms for personal use. The Guardian reported that the Nigerian Police Force had on 30 March 2004 arrested 71 persons in connection with suspected illegal arms manufacture and trade. One arms manufacturer, who was from Gusau, Zamfara State, is alleged to have sold arms to over 70 people nationwide. The Nigerian Police Force confiscated several semi automatic pistols, one Beretta pistol and a variety of ammunition (see URL <http://ngrguardiannews.com> on 31 March 2004). On 30 March 2004 the Deputy Governor of Delta State was held for interrogation regarding an arms find consisting of 12 AK47's and ammunition in one of the vehicles allegedly attached to him, as reported by Vanguard on URL [www.vanguardngr.com](http://www.vanguardngr.com) on 1 April 2004. On 21 April 2004 This Day reported that the Force Public Relations Officer (FPO), Mr. Chris Olakpe on

behalf of Inspector General, Tafa Balogun of the newly inaugurated special task force on the recovery of illegally acquired firearms across the country summarized its recovery so far as about 586 assorted arms and 180,000 ammunition (see This Day, “*Task Force Recovers 586 Firearms*”, as published on URL <http://www.thisdayonline.com> on 21 April 2004. Furthermore, Chuka Udedibia, Minister, informed that from January 2002 until June 2003 the Nigerian authorities recovered 1,902 illicit small arms and 13,271 rounds of live ammunition. (See statement from Nigeria of 7 July 2003 to the First Biennial Meeting of States to consider the implementation of the programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects, as published on URL <http://disarmament.un.org:8080/cab/salw-2003/statements/States/Nigeria.pdf>). On 25 May 2004 Vanguard reported how the destruction on 24 May by the Federal Government of Nigeria of 1,065 firearms and 963 ammunition recovered in 18 of Nigeria’s states was in concert with the various bodies, such as the European Union, the Commonwealth and other stakeholders, with the Minister of Defence, Dr R. Kwankwaso, saying “We are doing all what we can to really stop the proliferation of illegal arms in this country”. This exercise was conducted by the Technical Committee on the Destruction of Recovered Arms and Ammunition, as constituted on 10 May 2004 by the Chairman of the Presidential Panel for the Destruction of Illicit Arms and Ammunition (see article published on URL [www.vanguardngr.com](http://www.vanguardngr.com) 25 May 2004). At the same time customs officials from Apapa and Tin Can Island are being invited for questioning around recent illegal importation of sophisticated arms and ammunition into the country, as reported by P.M. News on 19 May 2004. On 26 May 2004 the Guardian reported that police in Delta State arrested a suspected supplier of guns who was allegedly involved in running a network in Effurun near Warri (see URL [www.guardiannewsngr.com](http://www.guardiannewsngr.com)). Nevertheless, the magnitude of the problem in Nigeria in general and the Niger Delta in particular requires a substantial effort in order to overcome the situation of general insecurity and violence created by the proliferation of illicit arms.

<sup>50</sup> UN Doc. A/RES/58/42

<sup>51</sup> See URL [www.ngrguardiannews.com](http://www.ngrguardiannews.com)

<sup>52</sup> The delegation of Amnesty International interviewed Mr Hassan, the Deputy Police Commander of the Nigerian Police Force in Rivers State, on 17 March 2004.

<sup>53</sup> Inappropriate payments allegedly paid out to a community leader by some companies, have recently been reported to have caused resentment and conflict between members of the community and the Chief in the village of Kegbara Dere in central Gokana of the Ogoni region in Rivers State. See Financial Times, ‘*Shell unable to shake off troubled Ogoni legacy as dispute over pipeline deepens*’, published on 14 September 2004 on URL [www.news.ft.com](http://www.news.ft.com), and This Day (Lagos), ‘*Shell unable to shake off troubled Ogoni legacy as dispute over pipeline deepens*’, published on 16 September 2004 on URL [www.thisdayonline.com](http://www.thisdayonline.com). Amnesty International has not been able to corroborate this information.

<sup>54</sup> See, for example, Jędrzej Georg Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*. Lit Verlag (Munster) 2000.

<sup>55</sup> Section 1 of the Land Use Act (1978, Nigerian Laws Chapter 202), states “...all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act”.

<sup>56</sup> In Nigeria ownership, access to and usufruct of land is regulated by written law as well as mainly unwritten customary law. The latter can differ depending on ethnic group and region, but has some common features. The Western concept of ‘ownership’ was introduced during British colonial rule. Nigerian customary law distinguishes between permanent land ownership and possession of land. In Nigeria one can distinguish between communal, family and individual ownership. The two former forms of ownership are most common in rural areas and the latter in urban areas. Communal land is

held in a kind of quasi trust by the Chief of the village, who has to seek the consent of the community members before the sale of communal land. The land belongs to all members of the community. A community member who wants to acquire the use of a portion of land has to approach the Chief who will decide on the allocation depending on amongst other things the economic needs of the applicant. Land is returned to the community due to for example the death of the occupiers or the expiry of an allocated time. On the next level, land can also be owned by a family, which is generally a smaller unit linked by kinship and who live together. An important distinction between communal land and family land is that family land can be acquired through allotment which permanently transfers ownership to that family. The third form of ownership of land is individual land holdings, which has been on the increase, especially in urban areas. With the Land Use Act 1978 all land in the States was 'vested' in the State governor. Following the coming into force of this legislation communities do not have the right to question the entry of an oil company on its communal land. Secondly, communities do not get compensation for land but this goes to the State governor. Despite these attempts to change the land ownership system, there is little evidence to prove that much has changed with regard to customary law and in rural areas. (This paper does not aim to explain this in detail, however a short explanation is deemed necessary to facilitate understanding for readers who are not familiar with the land ownership system in Nigeria.)

<sup>57</sup> Human Rights Watch, "*The Price of Oil*", p. 59.

<sup>58</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000, para. 15.

<sup>59</sup> Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water UN Doc. E/C.12/2000/4, 26 November 2002, para. 8.

<sup>60</sup> Hereinafter the Rio Declaration.

<sup>61</sup> Paragraphs 2-6 of Communication 155/96. Note that this communication was submitted in 1996, i.e. after that the Environmental Impact Assessment (EIA) Decree No. 86 of 1992 had come into force.

<sup>62</sup> Paras. 44-47 of communication 155/96.

<sup>63</sup> This argument is based on a communication from *Union des Jeunes Avocats/Chad* (74/92) and the important judgement of *Rodríguez v. Honduras* (Inter-American Court of Human Rights, Velásquez Rodríguez Case, judgement of July 19, 1988, Series C, No. 4) from the Inter-American Court of Human Rights. The latter case defined that the violation of a State's obligations to protect the human rights of its citizens could include the fact that a State allows private persons or groups to act freely and with impunity thereby impeding human rights.

<sup>64</sup> In 1989 the International Labour Organisation (ILO) adopted the 1989 Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) of the ILO which includes guarantees of the right of ethnic minority peoples to full representation in political, cultural or economic discussions which might affect their environment. Unfortunately, Nigeria has not ratified this international human rights instrument.

<sup>65</sup> Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 4.

<sup>66</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health, E/C.12/2000/4, para. 33.

<sup>67</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States parties obligations (Art. 2, par.1), 14 December 1990, para. 1.

<sup>68</sup> See for example Draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission, Report of the ILC (1996).

<sup>69</sup> Human Rights Committee, General Comment 31, para. 8.

<sup>70</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15 on the Right to Water, UN Doc. E/C.12/2002/11, 20 January 2003, para. 23.

<sup>71</sup> UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights E/CN.4/Sub.2/2003/12/Rev.2 and Commentary E/CN.4/Sub.2/2003/38/Rev.2. See URL [http://web.amnesty.org/pages/ec-unnorms\\_2-eng](http://web.amnesty.org/pages/ec-unnorms_2-eng)

<sup>72</sup> The Sub-Commission on the Promotion and Protection of Human Rights. Resolution 2003/16, U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003). See URL <http://www1.umn.edu/humanrts/links/res2003-16.html>

<sup>73</sup> For further information on the latter, see Amnesty International 'The UN Human Rights Norms for Business: Towards Legal Accountability' (AI Index AFR 42/002/2004).

<sup>74</sup> Adopted by UN General Assembly resolution 34/169 of 17 December 1979.

<sup>75</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>76</sup> An initiative launched by US and UK Governments involving extractive industries and human rights NGOs, it now includes the Netherlands and Norway. The Principles can be found at <http://www.state.gov/g/drl/rls/2931.htm>

<sup>77</sup> These legitimate purposes could include compensation, and voluntary contributions for other legitimate reasons, such as philanthropy, donations to a community in the face of natural disaster, etc. Under its sustainable community development policy, called Big Rules, Shell group of companies in Nigeria have decided to make cash payments only for legitimate business purposes, but not specifically defined what they are.

<sup>78</sup> Letter from ENI to Amnesty International, 19 May 2004.

<sup>79</sup> Letters sent by Richard Ogbonna Chukwudi to Cascade Control Ltd. on 22 September 2003 and by the lawyer representing Richard Ogbonna Chukwudi to the same company on 6 October 2003. This correspondence was made available to Amnesty International.

<sup>80</sup> Ibid.

<sup>81</sup> Since then, the Chief has been deposed, which gave Richard Ogbonna Chukwudi the confidence to state his concerns openly.

<sup>82</sup> In Nigeria, armed groups often have more sophisticated weaponry than State security forces, including semi-automatic weapons. In some instances, State security forces have fled when armed groups have confronted them.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> In communication from the company to Amnesty International.

<sup>86</sup> These guidelines have been developed at the Organisation of Economic Cooperation and Development (OECD), with a view to ensure that companies domiciled within OECD States operate within these guidelines. The guidelines are meant to protect the environment, operate within the law on labour, human rights, and other social aspects. The guidelines can be found on URL [http://www.oecd.org/departement/0,2688,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/departement/0,2688,en_2649_34889_1_1_1_1_1,00.html)

<sup>87</sup> Furthermore, in its letter to Amnesty International, ENI (Agip) said: "The complexity of socio-economic conditions and the frequent occurrence of local disputes has required ENI (Agip) to take all the necessary measures to ensure the protection of its human resources, reputation, material and non-material assets, by combining the effectiveness of actions undertaken with the full respect of local laws, human rights international standards and customs of the local communities. For all these reasons ENI (Agip)-NAOC has adopted a "Security Policy" with the objective of defining the principles on which NAOC intends to establish a valid security system aimed at safeguarding its business activities through risk prevention and crisis management. The Policy states that in case of actual risk of injury or loss of

life, NAOC shall only promote the restoration of security conditions, in a manner that is respectful of human rights.”

<sup>88</sup> Hereinafter the African Charter.

<sup>89</sup> Nigeria ratified the ICCPR on 29 October 1993, the African Charter on 22 June 1983 and CERD on 4 January 1969.

<sup>90</sup> *William Eduardo Delgado Paez v. Colombia*, Communication No. 195/1985, UN Doc. CCPR/C/39/D/1985, 23 August 1990, see especially paras. 5.5 and 5.6.

<sup>91</sup> NNPC owns 60 per cent of NAOC.

<sup>92</sup> Letter from ENI to Amnesty International in response to letter sent by Amnesty International on 24 April 2004.

<sup>93</sup> Nigeria ratified the ICESCR on 29 October 1993.

<sup>94</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States Parties obligations (Art. 2, par.1), 14 December 1990, para. 5.

<sup>95</sup> Father Kevin O’Hara, Director of the Centre for Social and Corporate Responsibility, told an Amnesty International delegation in March 2004.

<sup>96</sup> See Art. 18 of the UN Norms for Business.

<sup>97</sup> See Art. 11 of the UN Norms for Business.

<sup>98</sup> Amnesty International wrote to SPDC asking if SPDC measure the toxicity of oil regularly, and a spokesperson for SPDC responded that: “oil by nature is not toxic so toxicity testing ‘which is the process of estimating the concentration of waste/chemical that produces an adverse effect on the test organism in a specified period of time’ is not carried out when a spill occur.” SPDC admits that the toxicity test is not done after an oil spill, but that the test which is carried out after each oil spill is “the Total Petroleum Hydrocarbon (TPH mg/kg) in the medium (soil or water)”.

<sup>99</sup> Vanguard, ‘*Oil spill pits Rivers community against Shell*’, 30 December 2003.

<sup>100</sup> Letter from SPDC to Amnesty International, 15 June 2004.

<sup>101</sup> *ibid.* SPDC claims that many oil spills are due to sabotage, often for the reason that community members want to obtain clean up contracts. SPDC claims that 61% of the oil spills in 2002 were due to sabotage. SPDC company policy states that no compensation is paid out if an oil spill is due to sabotage. Amnesty International acknowledges that the Federal Government is trying to combat the problem with oil spills. The Oil Spill Detection Agency Bill was initiated by the executive and has been passed on to the House of Representatives for a second reading, as reported by Vanguard on 29 April 2004. The main aim of the bill is to create an agency which would be able to respond adequately to an oil spillage. However, the question remains as to how different this agency would be as compared to the existing Directorate of Petroleum Resources, which has got the statutory duty to monitor and manage oil spillages. (For more information, see URL [www.vanguardngr.com](http://www.vanguardngr.com)).

<sup>102</sup> A group of raffia palm trees in an area of about 5 sq km could yield an income of N500,000 (approximately US\$4,000) a year, assuming a yield of 50 grams of palm oil per tree in a land-holding with ten trees over a ten-month production cycle.

<sup>103</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States Parties obligations (Art. 2, par.1), 14 December 1990, para. 5.

<sup>104</sup> Committee on Economic, Social and Cultural Rights, General Comment 9: The domestic application of the Covenant, UN Doc. E/C.12/1998/24, 1 December 1998, para. 2.

<sup>105</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000, para. 59.

<sup>106</sup> FEPA Act, Section 21.

<sup>107</sup> The Oil Pipelines Act (Nigerian Laws Chapter 338).

<sup>108</sup> The Oil Pipelines Act, Section 11(5).

<sup>109</sup> *SPDC v. Farah*, [1995] 3 NWLR (Part 382) p.148, p.192. Damnum is defined as “Harm; detriment, either to character or property” in legal dictionary on URL <http://legal-dictionary.thefreedictionary.com>

<sup>110</sup> The Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce.

<sup>111</sup> In contrast to the compensation that is paid out for damage to land and crops, the FEPA Act regulates the fine for any corporate entity which is convicted for the “discharge in such harmful quantities of any hazardous substance . . . upon the land and the waters of Nigeria” to a fine not exceeding N500,000 (approximately US\$3770) and an additional fine of N1,000 (approximately US\$7.50) per subsequent day as the offence continues. FEPA Act, Section 20 (1) states “The discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the joining shorelines is prohibited, except where such discharge is permitted or authorized under any law in force in Nigeria.”

Section 20(3) states “Where an offence under subsection (1) of this section is committed by a body corporate it shall on conviction be liable to a fine not exceeding N500,000 (approximately US\$3770) and an additional fine of N1,000 (approximately US\$7.50) for every day the offence subsists.”

<sup>112</sup> NNPC holds 55 per cent of the SPDC joint venture.

<sup>113</sup> See UN Norms for Business, Art. 18.

<sup>114</sup> See UN Norms for Business, Art. 14, in particular section (g) of its Commentary, especially paragraph g.

<sup>115</sup> Amnesty International Annual Report 2003, p.190; Amnesty International, ‘*Security forces: Serving to protect and respect human rights?*’, AI Index AFR 44/023/2002; Amnesty International press release ‘*Nigeria: Security forces constantly fail to protect and respect human rights*’ AI Index: AFR 44/026/2002; News Service No: 229, 19 December 2002; Amnesty International, ‘*Nigeria: Statement by Amnesty International’s Secretary General, Pierre Sané, on his visit to Nigeria*’, AI Index AFR 44/10/00, 12 July 2000.

<sup>116</sup> A causeway to carry a road to enable access to SPDC’s well heads in the area was built by Willbros West Africa Inc. on behalf of SPDC in the 1990’s. The population protested since the initial causeway did not have a passage for water to pass underneath which resulted in blockage of the drainage channel. Subsequent to the protests poorly designed culverts were constructed, however they were still partly blocking the drainage. This has had negative effects on trees, land and fishing grounds. In some cases trees have died due to waterlogging, and fishing grounds have been destroyed, which have substantially affected the livelihood of the population. The full background and analysis of this case is beyond the scope of this report, however for more information see Human Rights Watch, ‘*The price of oil*’, p. 70, and ‘*The Niger Delta: no democratic dividend*’, pp. 14-16.

<sup>117</sup> See for example Izon-Link on 7 September 2002 which claims that: “firearms were acquired to protect Shell facilities during the drilling process for a fee” and “Firearms bought with “Shell money” came and took the peace out of the community that had been peaceful for decades.” A report by Bubaraye Dakolo, Executive Director of Nun River Keepers, entitled ‘*Shell-induced violence in Gbarantoru: the role of SPDC, the plight of victims and suggestions for the way forward. A report presented to the Niger Delta community initiative on the occasion of preliminary enquiry into the plight of victims and the role of Shell, in the Shell induced violence of July 21<sup>st</sup>, 2002 at Gbarantoru*’ claims that S. Weke, Chief Weke’s nephew, who was collaborating with SPDC, brokered a relationship with the Uwou Pele Ogbo gang, including them offering protection in exchange of monetary compensation from S. Weke. The same report suggests that the gang was promised that they would ‘escort Shell’s Deutag-rig T-25’ and protect other SPDC installations. It continues by claiming that between SPDC, Chief Weke, S. Weke, and the gang, ‘fire arms were acquired’, and adding that ‘the gang received N100,000 (approximately US\$754) from S. Weke and N400,000 (approximately US\$3019) from Shell and its contractors for their fortification’. In its response to Amnesty

International's communication from 4 May 2004 raising questions about cash payments to communities, SPDC in a letter of 15 June 2004 stated: "Monies that get into the hands of communities are difficult to monitor. It might well be that such monies are diverted to areas inimical to the positive intentions of sustainable community development. It is precisely because of these unintended uses of cash that SPDC changed its social intervention strategy last year to Sustainable Community Development which amongst other elements, discourages payment of cash to communities, builds on partnerships with implementing NGOs and focuses more on human capacity development and economic empowerment programmes. "

<sup>118</sup> SPDC's response on 15 June 2004 to Amnesty International's letter.

<sup>119</sup> Chief Weke reportedly won a four-year mandate in a democratic open ballot in 1997 to be community leader, but allegedly without consultation with the council and deputy, dissolved and destroyed the composition of the community development committee (CDC) and the Chiefs Council, which had been democratically elected, in 1999. He reportedly resorted to methods of nepotism in replacing them. The Chief is furthermore alleged to have used other methods of dealing with the community. See Bubaraye Dakolo, '*Shell-induced violence in Gbarantoru: the role of SPDC, the plight of victims and suggestions for the way forward. A report presented to the Niger Delta Community Initiative on the occasion of preliminary enquiry into the plight of victims and the role of Shell, in the Shell induced violence of July 21st, 2002 at Gbarantoru*', The Traditional Rulers Secretariat Yenagoa, Bayelsa State, 20 September 2002 .

<sup>120</sup> Izon-Link, "*How SPDC destroys Gbarantoru*", published on 7 September 2002.

<sup>121</sup> Ibid.

<sup>122</sup> Incidents that were interrupted by violent threats include the Environmental Rights Action (ERA) community parliament organized for 2 March 2002, and the meetings of the Ekpetiama Development Committee in the nearby community of Ekpetiama on the topic of Gbarantoru, Shell and Ekpetiama on 23 June and 7 July 2002, see Bubaraye Dakolo, '*Shell-induced violence in Gbarantoru: the role of SPDC, the plight of victims and suggestions for the way forward. A report presented to the Niger Delta Community Initiative on the occasion of preliminary enquiry into the plight of victims and the role of Shell, in the Shell induced violence of July 21st, 2002 at Gbarantoru*', The Traditional Rulers Secretariat Yenagoa, Bayelsa State, 20 September 2002.

<sup>123</sup> Fidelis Soriwei, "*How SPDC destroys Gbarantoru*", Izo-Link 7 September 2002; Fidelis Soriwei, "*Shell and sorrow: recent oil troubles in Gbarantoru*", a report presented to Bayelsa civil society groups national and international NGOs at Opolo, Yenagoa, Bayelsa State on 31 July 2002; AI interview with Bubaraye Dakolo on 17 March 2004.

<sup>124</sup> Fidelis Soriwei, "*How SPDC destroys Gbarantoru*", Izo-Link 7 September 2002; Fidelis Soriwei, "*Shell and sorrow: recent oil troubles in Gbarantoru*", a report presented to Bayelsa civil society groups national and international NGOs at Opolo, Yenagoa, Bayelsa State on 31 July 2002; Bisi Olaniyi, "*Bayelsa community gives Shell new condition on drilling*", The Punch, 8 October 2002.

<sup>125</sup> Christian Aid, "*Behind the mask: the real face of corporate social responsibility*", p. 32.

<sup>126</sup> Bubaraye Dakolo, "*Shell's aversion to discussions: the ordeal of the Ayainbiri, Gbarantoru delegation to Shell on 16 August 2002*", a report presented to the Ayainbiri, Gbarantoru open session on Sunday 25 August 2002 at Gbarantoru on behalf of the Ayainbiri delegation to Shell on 16 August 2002; Fidelis Soriwei, "*Shell and sorrow: recent oil troubles in Gbarantoru*", a report presented to Bayelsa civil society groups national and international NGOs at Opolo, Yenagoa, Bayelsa State on 31 July 2002; Human Rights Watch, "*The Niger Delta: no democratic dividend*".

<sup>127</sup> Fidelis Soriwei, "*How SPDC destroys Gbarantoru*", Izo-Link 7 September 2002; Fidelis Soriwei, "*Shell and sorrow: recent oil troubles in Gbarantoru*", a report presented to Bayelsa civil society groups national and international NGOs at Opolo, Yenagoa, Bayelsa State on 31 July 2002; also

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reported in Christian Aid, *ibid.*, p. 32; Human Rights Watch, *“The Niger Delta: no democratic dividend”*, p. 16.

<sup>128</sup> This practice may be a practice of the past if SPDC’s newly introduced sustainable community development “Big Rule 8” is adhered to. This states “There shall be no payments to communities other than those specified for legitimate business reasons”. (The Big Rules are published in SPDC’s People and Environment Report 2003, p. 16 and appendix.)

<sup>129</sup> WAC Global Services, *“Peace and Security in the Niger Delta - Conflict Expert Group Baseline Report”*, working paper for SPDC, December 2003, p.48. The link between cash payments and purchase of weapons has also been reported in *“Shell in Nigeria. Oil and gas reserves crisis and political risks: shared concerns for investors and producer-communities, a briefing for Shell stakeholders”*, jointly published by Christian Aid, Friends of the Earth, Platform and Stakeholder Democracy Network, June 2004.

<sup>130</sup> Only one out of three affected landlord families in the area of the Gbaran West ULTR-1 location was compensated by the SPDC subcontractor Okmas Nigeria Ltd. The family of Ayanbiri of Gbarantoru town claims to be dissatisfied in a letter to SPDC from 26 April 1999 made available to Amnesty International.

<sup>131</sup> YHC/35/91, YHC/36/91, YHC/40/91, YHC/41/91, YHC/35/92, YHC/40/92 and YHC/24/97 amongst other. See also Tari Ebimo Dadiowei, *“Niger Delta Fund Initiative: Women, Environmental Impact Assessment (EIA) and Conflict Issues in the Niger Delta: A Case Study of Gbaran Oil Field Communities in Bayelsa State”*, Bayelsa State College of Arts and Sciences, Agudama-Epie, Yenagoa, Bayelsa State, paper presented at the National Workshop on Gender, Politics and Power: Overcoming the Barriers to the Emergence of Women Political Leaders in Nigeria, organized by the Centre for Social Science Research and Development (CSSR&D) at the Lagos Airport Hotel, Ikeja, Lagos, Nigeria 28-30 July 2003.

<sup>132</sup> Section 1 (a) and (c) states: “. . .to establish before a decision is taken by any person, authority, corporate body or unincorporated body including Government of the Federation, state or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account... ”.

<sup>133</sup> Adopted by General Assembly resolution 41/128 of 4 December 1986. Section 8(2) states “States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.”

<sup>134</sup> Amnesty International interview with Bubaraye Dakolo on 21 April 2004.

<sup>135</sup> See World Bank statistical data on Nigeria as published on URL <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=NGA&PTYPE=CP>. The figure of 70.2% is from 1995, the last year for which such data is available. The poorest 20% of the population has access to only 4.4% of the country’s income or consumption. A more recent statistic of Nigerian poverty states that 7% of Nigerians receive less than the minimum level of dietary energy consumption.

<sup>136</sup> A copy of the resulting comments from the Ayanibiri family was made available to Amnesty International.

<sup>137</sup> Nigeria’s total literacy is 66.8%; female literacy is lower, at 59.4% in a country of 132.8 million people, according to the World Bank.

<sup>138</sup> See Article 18, UN Norms for Business.