

## Contents

<b>1. INTRODUCTION</b>	<b>1</b>
1.1 <i>Rights still under attack by the state</i>	2
1.2 <i>'They have everything, we have nothing.'</i>	4
1.3 <i>Death and devastation by gunboat</i>	4
1.4 <i>Companies fail to live up to human rights principles</i>	5
<b>2. THE UGBORODO PROTEST AT THE ESCRAVOS TERMINAL</b>	<b>6</b>
2.1 <i>Recent human rights violations</i>	8
2.1.1 <i>Excessive use of force</i>	8
2.1.2 <i>International law and standards on the use of force</i>	10
2.1.3 <i>The responsibilities of Chevron Nigeria</i>	11
2.1.4 <i>Corporate complicity in human rights abuses</i>	12
2.1.5 <i>The Warri crisis over oil</i>	13
2.2 <i>Long-term deprivation in Ugborodo</i>	14
2.2.1 <i>The 2002 Memorandum of Understanding</i>	15
2.2.2 <i>International law and standards on economic and social rights</i>	17
<b>3. THE RAID ON ODIOMA</b>	<b>18</b>
3.1 <i>The internally displaced</i>	19
3.2 <i>The response of the authorities</i>	20
3.3 <i>Communities torn apart by oil</i>	21
3.4 <i>The role of Shell Nigeria</i>	22
3.5 <i>Companies' responsibilities within their sphere of influence</i>	23
<b>4. THE STRUGGLE FOR RIGHTS CONTINUES</b>	<b>24</b>
4.1 <i>The Ogoni campaign</i>	24
4.2 <i>Impunity reigns, 10 years on</i>	26
4.3 <i>Access to justice</i>	29
4.4 <i>Oil: an asset or a liability?</i>	31
4.5 <i>Chronic underdevelopment persists</i>	32
4.6 <i>Oil revenues to Niger Delta states</i>	32
4.7 <i>Failure of corporate initiatives</i>	33
4.8 <i>Oil theft</i>	35
4.9 <i>The proliferation of arms</i>	35
4.10 <i>Human rights defenders still under threat</i>	36
<b>5. RECOMMENDATIONS</b>	<b>38</b>
5.1 <i>Recommendations to Federal Government of Nigeria:</i>	38
5.2 <i>Recommendations to Chevron</i>	40
5.3 <i>Recommendations to Shell</i>	41
5.4 <i>Recommendations to all oil companies operating in Nigeria</i>	41
5.5 <i>Recommendations to the UK and US Governments</i>	42
5.6 <i>Recommendations to the Chair of the Investment Committee of the Organization for Economic Cooperation and Development (OECD)</i>	42



# Nigeria

## *Ten years on:*

### Injustice and violence haunt the oil Delta

*"It is like paradise and hell. They have everything. We have nothing. They throw our petitions in the dustbin. They are the cause of all our problems. If we protest, they send soldiers. They sign agreements with us and then ignore us. We have graduates going hungry, without jobs. And they bring people from Lagos to work here."*

**– Eghare W.O. Ojhogar, Chief of the Ughorodo community, one of whose members died during a protest at Chevron Nigeria's Escravos oil terminal where demonstrators were assaulted and injured by the security forces on 4 February 2005.<sup>1</sup>**

*"At around 10am the soldiers arrived in 15 gunboats. There were about 100 of them. They started pouring petrol on houses. I could not count the number of firebombs used; there were too many. They fired with big guns, but no teargas was used. Two- to three-year-olds and the old ones stayed in their houses, and 12-year-old Lucky was shot dead."*

**– L.D.I. Orumiegha-Bari, Chairman of the Council of Chiefs, following an armed forces raid on the town of Odioma, 19 February 2005, in which at least 17 people died.<sup>2</sup>**

## 1. Introduction

Ten years after the executions of writer and human rights campaigner Ken Saro-Wiwa and eight other members of the Ogoni ethnic community horrified the world, the exploitation of oil in the Niger Delta continues to result in deprivation, injustice and violence. Despite a return to civilian government in 1999 under President Olusegun Obasanjo, those responsible for human rights violations under military governments have not been brought to justice. The security forces continue to kill people and raze communities with impunity. The environmental harm to health and livelihoods that impelled the Ogoni campaign for economic and social rights remains the reality for many inhabitants of the Delta region.

Ken Saro-Wiwa, Baribor Bera, Saturday Doobee, Nordu Eawo, Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix Nuate were hanged on 10 November 1995, raising a storm of outrage across the globe. Their politically motivated prosecution and unfair trial for the killings of four traditional rulers, before a special tribunal appointed by the military government, came to exemplify the authorities' repression of human rights. In 1993 Shell Nigeria had withdrawn personnel from its facilities in Ogoni in the face of local protests. The executions, carried out in defiance of appeals for clemency from heads of state, intergovernmental bodies and human rights groups worldwide, earned Nigeria international sanctions, suspension from the Commonwealth, and unprecedented scrutiny and denunciation. Shell too faced widespread condemnation for its

ambiguous and belated interventions.

Steps undertaken by the Nigerian government to address the long-standing demands of people living in the oil-producing states have been inadequate. Under the 1999 Constitution, the state administrations should receive a higher percentage of national oil revenues – up from 1.5 to 13 per cent – to be used for development purposes. However, in response to a legal challenge by the federal government, in 2002 the Supreme Court ruled that this provision applied to revenues from onshore oil only, slashing payments to states in some cases. In June 2005 delegates from oil-producing states walked out of the National Political Reform Conference after the federal government refused to offer more than 17 per cent. In addition, many federal government payments owed to states, and to the Niger Delta Development Commission (NDDC) established by the government in 2000, are long overdue. Some oil companies expected to contribute to the funding for the NDDC have also withheld their full contributions. Corruption and mismanagement further deprive the Niger Delta people of the benefits of their region's resources.

The Nigerian government has obligations under international law to respect, protect and fulfil human rights, but it has frequently failed to do so. Given the importance of oil in Nigeria's economy, in Amnesty International's view the government has failed to protect communities in oil producing areas, while providing security to the oil industry. Domestic regulation of companies to ensure protection of human rights is clearly inadequate.

This report is part of Amnesty International's worldwide campaign to demonstrate - by showing how companies avoid their responsibilities - the need to establish universally recognised standards applicable to companies. For oil companies operating in the Niger Delta and for governments to take action to ensure that the human rights of the people of the region are not subordinated to the "law and order" agenda that exploration and extraction of oil demands. Amnesty International is calling for urgent and independent inquiries by the Nigerian Federal government into allegations that its security forces killed and injured civilians in incidents involving the Ugborodo community in Delta State and the town of Odioma in Bayelsa State in February 2005. It is urging the parent oil companies Chevron and Shell to investigate their involvement and responsibility of their local subsidiaries – Chevron Nigeria in relation to the Ugborodo protest, and Shell Nigeria in relation to the attack on Odioma – and the UK and US governments to ensure that the parent companies of subsidiaries operating in the Niger Delta respect the human rights of the communities where they operate.

### **1.1 Rights still under attack by the state**

*"The notion that the oil-bearing areas provide the revenue of the country, and yet be denied a proper share of that revenue...is unjust, immoral, unnatural and ungodly. Why should the people on oil-bearing land be tortured?"*

– **Ken Saro-Wiwa**<sup>3</sup>

Niger Delta communities see little of Nigeria's oil revenues. Vast stretches of the region have erratic electricity supplies, poor water quality, and few functioning schools, health care centres, post offices or police stations. The only visible government presence in many parts is a heavily-armed security apparatus. The

government provides very little infrastructure, public works or conditions conducive to employment.

The Delta is criss-crossed with pipelines, and dotted with well-heads and flow stations. At night, often the only light visible for miles is from flares burning unwanted gas which is contaminating the environment.<sup>4</sup> Frequent oil spills have affected fish stocks and polluted water holes.<sup>5</sup> To alleviate the frustrations of communities without development or employment, companies offer "ghost" jobs, paying money to people who are not expected to work. In an environment in which company personnel and assets have increasingly become targets of hostage-taking, sabotage and large-scale theft of oil, companies also sometimes employ community members to protect oil pipelines from sabotage. While some acts of sabotage and the resulting oil spills are aimed at seeking compensation or clean-up contracts, pipelines are often in poor condition and, some international experts say, not replaced as frequently as they would be in industrialized countries.

The Delta's marginalized peoples vigorously pursue the campaign for their rights. Yet their ability to claim their economic and social rights is impeded by continued threats to civil and political freedoms. Human rights defenders and journalists, including foreign reporters and television crews, have been harassed, detained and sometimes beaten for investigating oil spills or violations by the security forces. The inhabitants of communities suspected of obstructing oil production or harbouring criminals are sometimes targeted by the security forces. The federal government has in many cases rejected calls for independent and impartial inquiries into abuses by these forces, which operate under its direct control.

The actions of the security forces have resulted in the death and injury of unarmed civilians and the razing of whole communities. In several instances, the use of force has been excessive. Leading these forces has been a Joint Task Force, an army-led unit that includes officers from the navy, military, paramilitary Mobile Police (MOPOL) and regular police force. The Joint Task Force was formed in 2003, with codename "Operation Restore Hope", to protect major oil installations as strategic national assets and to combat increasing kidnappings of oil company personnel, attacks on police stations and military patrols, interruptions to oil production and oil thefts, as well as communal unrest.<sup>6</sup> Amnesty International believes that in 2003 and 2004, over 1,500 people died, most of them in the area around Warri, the commercial capital of Delta State, in intercommunal conflicts over oil and oil revenues as well as in grievances over political boundaries.

Protests put down with excessive force arise from government failures to respect, protect and fulfil economic and social rights. No effective recourse exists for harm resulting from excessive use of force or from the proximity of pipelines, oil spills and gas flaring to homes, farms and waterways. Few of the region's inhabitants have the resources to seek compensation through protracted, prohibitively expensive and uncertain legal action against powerful oil companies, and through a legal system widely perceived as corrupt. In spite of windfall gains for the Nigerian government as global oil prices have more than doubled in the last two years, the inhabitants of the Niger Delta remain among the most deprived oil communities in the world – 70 per cent live on less than US\$1 a day, the standard economic measure of absolute poverty.

## **1.2 'They have everything, we have nothing.'**

On 4 February 2005, soldiers from the Joint Task Force fired on protesters at the Escravos oil terminal on the Delta State coast. One demonstrator, Bawo Ajeboghuku, was shot and later died from his injuries, and at least 30 others were injured, some of them seriously, by blows from rifle butts and other weapons. Security personnel were said to have fired first tear gas, then live ammunition, to disperse between two and three hundred demonstrators from Ugborodo, a small community of the Itsekiri ethnic group, who had entered the high-security facility at first light.

Chevron Nigeria, which operates the terminal, said that 11 employees and security officers received minor injuries. The industry-strength boundary fence was cut in five places, and windows and helicopter windscreens were smashed. It was several hours before the injured protesters reached a hospital, a lengthy boat journey away. Neither the security forces nor Chevron Nigeria provided adequate medical care or assistance to transport the injured.

The protest was over a Memorandum of Understanding signed by Ugborodo community representatives and Chevron Nigeria in 2002. The Ugborodo protesters said that Chevron Nigeria had not provided the jobs and development projects promised in return for a "non-disruptive operating environment".

Until October 2005, Amnesty International had received no information suggesting that a thorough or independent inquiry – to establish what happened, who was injured and who was responsible – has been carried out by the federal government or by Chevron Nigeria. The company said it could not control the actions of the security forces in any way, and did not indicate taking any immediate steps to avoid a recurrence of such a case.

## **1.3 Death and devastation by gunboat**

At least 17 people were reported to have been killed and two women raped when members of the Joint Task Force raided the community of Odioma on the Bayelsa State coast in gunboats and other vessels. The attack on 19 February 2005 was ostensibly to arrest members of an armed vigilante group suspected of killing four local councillors and eight others earlier that month. The suspects were not captured but, over a period of a few days, 80 per cent of the homes in Odioma were razed, most of them near the waterfront. Two of those killed, Balasanyun Omieh, a woman said to be 105 years old, and two-year-old Inikio Omieye, burned to death. Three people were reportedly shot dead. Many inhabitants fled the violence and did not return. Over 100 of them have not been able to return.

The roots of the violence lay in a dispute between communities, all part of the Ijaw ethnic group, for control of land planned for oil exploration by Shell Nigeria since 1998. Shell Nigeria had identified the landowners as the Obioku and Nembe-Bassambiri communities, but withdrew from the area in January 2005 when it became aware that Odioma disputed its ownership. Members of the vigilante group in Odioma suspected of the killing earlier that month were reported to have been recruited by a subcontractor of Shell Nigeria to be responsible for security in the area, despite their alleged record of criminality. Shell is not known to have expressed concern about the attack on the people of Odioma or their continuing destitution.

A Judicial Commission of Inquiry appointed by the State Governor to investigate

the incidents submitted a report in June 2005 that has not been made public. No action is known to have been taken to investigate the responsibility of the security forces for deaths, injuries or the destruction of homes; or to bring to justice those suspected of human rights violations.

#### **1.4 Companies fail to live up to human rights principles**

International oil companies have operated in the Niger Delta area of Nigeria since 1956, when oil was first discovered in Oloibiri, in what is now Bayelsa State.<sup>7</sup> Over the past half-century, the Nigerian government has earned billions of US dollars from its oil sector. Oil now accounts for over 98 per cent of Nigeria's exports and oil revenues for nearly 80 per cent of the national budget.<sup>8</sup>

As the Nigeria government is failing to respect, protect and fulfil the human rights of its people, communities turn for jobs and essential services to oil companies, the most powerful, visible and functioning entities in the Niger Delta. Local politicians encourage such thinking. The relationship between companies and communities is increasingly governed by agreements, called Memoranda of Understanding (MOUs). Under these agreements, companies provide development projects in return for promises by communities to provide a peaceful operating environment. Some company-funded projects have functioned. Others have been poorly run and accessible to a few communities only, or companies have awarded contracts and benefits in an arbitrary manner that perpetuates discrimination, marginalization and inequities. In many cases, companies do not deliver what they have promised, stoking resentment and community protests.

Some of those employed by companies or their subcontractors to ensure security for oil operations have themselves been involved in illegal activities, according to Amnesty International sources. Criminal groups illegally tap oil from pipelines and sell it on the international market. Such groups recruit and arm local men to protect their operations, and this is one of the reasons for the rise in vigilante groups and small arms proliferation. The wealth from oil production has made oil producing areas attractive, and illegal tapping of oil has resulted in attacks on rival communities.

Oil companies are seen to benefit from the repression of protests by local communities or the razing of communities accused of harbouring criminals. The companies' security arrangements, whether involving government forces or private individuals, have a human rights impact for which they are not held to account. Companies have admitted that some of their activities have contributed to the violence.<sup>9</sup> This significantly raises the risk of companies being complicit in abuses committed by the security forces. International standards on complicity of companies and other non-state actors in human rights abuses are developing, and so are the legal implications of complicity of a company's conduct. However, under standards drawn from domestic and even international human rights law and international criminal law a company's actions or failures to take action may risk complicity with human rights violations, for example, if they are close to, have knowledge of, aid and abet, or benefit from a violation.

Following the Ogoni executions, companies came under greater scrutiny and many companies adopted codes of conduct on corporate social responsibility, however to Amnesty International's knowledge only 91 companies have adopted explicit policies on human rights.

Several companies operating in the Niger Delta are signatories of the **Voluntary Principles for Security and Human Rights** for companies in the extractive sector, including Chevron and Shell. These principles are intended to guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights. They apply wherever the company operates but have no monitoring mechanism, making it difficult to evaluate companies' adherence.

In 2003 the UN Sub-Commission on the promotion and protection of Human Rights adopted the UN **Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, (the UN Norms)**. Amnesty International believes the UN Norms provide the most comprehensive list of the human rights responsibilities of companies, most of the provisions of the Norms are drawn from existing international law and standards.

## 2. The Ugborodo protest at the Escravos terminal

*"A hungry man is an angry man"*

– from a Bob Marley song frequently quoted by Ugborodo activists<sup>10</sup>

Between 6 and 7 am on 4 February 2005, some two to three hundred residents of Ugborodo and their supporters entered the premises of Chevron Nigeria's oil terminal at Escravos on the Delta State coast.<sup>11</sup> Community activists said they entered through the main gate with terminal workers. According to the company and the Joint Task Force, they entered by force, cutting through the heavy-duty fence.<sup>12</sup>

Entry to the premises is severely restricted, workers having to pass through a narrow corridor, where security staff check their identification. At any given time, there may be up to 1,800, and on average 1,500-1,600, people at the terminal: 1,200 workers employed by Chevron Nigeria or its subcontractors and 600 security personnel.<sup>13</sup> Company executives say the high degree of security is necessary because the area contains highly flammable substances.

Following the breach of security on 4 February 2005, standard operating procedures came into force: staff returned to their residential units and the government security forces took charge of the facility.<sup>14</sup> These forces include officers of the army, navy, Mobile Police, regular police and supernumerary police.<sup>15</sup> Officers of these forces who are also members of the Joint Task Force wear special insignia.

Demonstrators, company officials and the Joint Task Force said that, as the group of demonstrators advanced within the terminal, the security forces fired tear gas at them and demonstrators claim that they later used further force by shooting at the protestors. The nature of injuries suffered by some of the demonstrators suggests that batons and rifle butts were used against them, according to statements by victims and also photo evidence seen by Amnesty International. Some demonstrators said they heard shots fired by the security forces. Within two hours, the demonstration was over and the casualties included one dead – Bawo Ajoboghuku, a fisherman in his 30s – and at least 31 injured, some of them seriously. Chevron Nigeria termed these casualties "unfortunate and regrettable."<sup>16</sup>

Among the injured demonstrators was Tony Okode, aged 27, a rigger who lives in Warri but who comes from Ugborodo:

*"When we went to the terminal for a peaceful protest the military men were gathering. We had no sticks, no stones, no bottles, no knives. We were carrying only placards. There was frequent shooting going on. Soldiers seized me and hit me with the butt of their rifle. The soldier who hit me on the head was from the army. I felt an open wound on my head and saw blood all around me. I fainted. My friends rescued me. I was taken to the Warri General Hospital with the open wound. I was in the hospital for a week. If I coughed, blood used to come out. The treatment cost about 100,000 [Nigerian] Naira [US\$770]. But the community paid for it. I am OK now. The wound is not paining me anymore. If I work hard, then it pains. I can see things easily, I can smell things. But when it gets very hot, my head pains a lot. I have received nothing from the company. I want justice. I want the company to respect my needs."<sup>17</sup>*



© AI, Ugborodo victim displaying scar from head butt injuries, Ugborodo, Delta State, April 2005

Describing what he saw, Utieyin Jemeregben, another protester, aged 28, said:

*"On 4 February, we entered the Escravos premises by 6.30am. As soon as we got there, the Chevron people [government forces responsible for Chevron's security] started shooting straight away. They were the JTF, soldiers, navy, MOPOL [paramilitary Mobile Police], and the NPF [Nigerian Police Force]. We were holding a placard saying 'ChevronTexaco give us work, give our women contracts'.<sup>18</sup> The soldiers fired bullets, many rounds and continuously. It lasted for about one hour. They had big guns, but they also used tear gas, and some of the security staff had knives and iron rods too. When soldiers began shooting, I bent down begging to be spared, and that was when I was hit by the bottom of the gun by three men. I fainted. I cannot identify the soldiers if I saw them today. When I woke up one day later I was in the Warri General Hospital, where I remained for one week. I take medication, since then my head is really sore and it hurts. I can't do any hard work anymore because my head then hurts."*

Video shown to Amnesty International shows guards shouting and raining blows on a man whose hands are tied, including on his head, with a rifle butt.<sup>19</sup> The man is

seen crouching, trying to protect his head.

The demonstrators were subdued by about 9am and the security forces detained 221 of them. The detainees' hands were tied behind their backs and they were put in a holding area. A delegation arrived from Warri at about 11am, which included Brigadier-General Elias F. Zamani, Commander of the Joint Task Force, and several community leaders, and had a meeting with senior Chevron Nigeria officials for over an hour. Brigadier-General Zamani spoke to the detainees at around 1pm, told them that they were wrong to have attacked Chevron Nigeria's facilities, and then instructed his officers to release them.

The injured protesters (28 men and three women) received some first aid from Chevron Nigeria and the security forces, but no assistance in making the two-hour journey by motorboat to Warri for medical treatment.<sup>20</sup> The heavy cost of renting sufficient boats and drivers was borne by the community, although some of the costs were subsequently reimbursed by state and federal authorities.

## **2.1 Recent human rights violations**

### **2.1.1 Excessive use of force**

Amnesty International is concerned that the force used against the protesters by the security forces was excessive and disproportionate on 4 February 2005.

Chevron Nigeria officials initially said its staff had not suffered any injuries on 4 February. Later the company said that several employees suffered significant injuries, and subsequently made a list available to Amnesty International that named eight employees and three Joint Task Force officers as injured.<sup>21</sup> However, no detailed information was provided to Amnesty International about the nature of the injuries, although officials were able to produce photographs of damage to helicopters and other property. Four helicopter windscreens and windows were reportedly broken, and the runway of an airstrip obstructed and possibly damaged. The demonstrators would have put themselves at risk by trespassing in a high-security area containing flammable substances and hazardous chemicals. Chevron officials claim that the invasion was violent:

*"The invasion was violent, premeditated and unexpected. It was certainly not a peaceful protest. Some of the invaders were armed, several people were beaten and valuables stolen from rooms. The fence was cut at five different locations, several helicopter windscreens were smashed."<sup>22</sup>*

However, there was no indication of widespread destruction or damage to strategically important oil storage cylinders and tanks, including in video footage or photographs of the demonstration or during Amnesty International's visit in April 2005. The Joint Task Force was unable to provide Amnesty International with details of injuries caused to soldiers by the demonstrators, or of the makes, types, quantity or capability of the weapons allegedly seized. Normal practice in such cases is that the security forces seize weapons and make records on site, and sometimes make photographic evidence available. Also, in other cases where demonstrators are alleged to have been violent or to have posed a threat to peace and security, they have been detained for a period and usually the security forces would be able to provide a record of names, time for detention and location etc. But at Escravos, the

demonstrators were released with a warning, and the JTF has not produced a list or shown any evidence of weapons seized.

The injured protesters were admitted for immediate treatment in the accident and emergency section of Warri General Hospital. The hospital director told Amnesty International that their injuries were not, in his opinion, "grave".<sup>23</sup> However, photographs show male protesters with open head wounds and severe lacerations, and with big wounds from beatings on legs. Several required stitches. Protesters who had been treated at the hospital and an eyewitness on the day the protesters were brought to the hospital told Amnesty International that a number had injuries from shotgun pellets. Some had to remain in hospital for at least a week. Others were referred to orthopaedic clinics in Warri.

Both the Joint Task Force and Chevron Nigeria said that the demonstrators were armed with locally-made weapons and had fired in the air. Brigadier-General Zamani of the Joint Task Force denies giving any order to shoot. He also claimed that the injuries sustained by the demonstrators, including those that led to the death of Bawo Ajoboghuku, were made by their own weapons. Brigadier-General Zamani said that his forces acted with restraint:

*"My officers managed it impressively. Only one life was lost. He was hit in the back, and the bullet did not come from the military. He was probably hit by their own guns, mistakenly."*<sup>24</sup>

However, the opinion that the bullet was not a military one was not based on any forensic examination. Indeed, no autopsy was known to have been carried out or judicial inquiry conducted into the circumstances or cause of death.

He further told Amnesty International he had "no idea" how many demonstrators were injured. He defended the use of force, and if necessary lethal force, where appropriate:

*"The emphasis in our rules of engagement is on the use of minimum force. You don't use more force than is required to solve the problem. When we are guarding a place, our rules allow us to open fire only if our life is in danger, the place is under threat, or if someone shoots at it and we have to defend ourselves. But our first rule is restraint. If they provoke us, then as a last resort we will use weapons. After all, we are dealing with our fellow citizens."*

The restraints described, however, are meaningful only if they comply with international human rights law and standards applicable for law enforcement officials and as such are enforced. There does not appear to be a process for ensuring that all soldiers receive adequate training in these standards.

Under Nigeria's 1999 Constitution, lethal force may be used if:

*"reasonably necessary: (a) for the defence of any person from unlawful violence or the defence of property; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny."*(Section 33)

Neither Chevron Nigeria nor the Joint Task Force has made any public statement clarifying the use of force during the incident. The Delta State government reportedly initiated an investigation to investigate the damage to property and persons in the incident at Escravos, however the results are not known to have been made public. Media reports claiming to have seen a copy of the final report states that the

investigating committee concluded that the protest was peaceful.<sup>25</sup>

### **2.1.2 International law and standards on the use of force**

The government has the obligation to respect, protect and fulfil human rights. It bears direct responsibility for the abuses committed by members of the Joint Task Force on the Ugborodo protesters. Police and other law enforcers are required to base their conduct on international human rights law and standards. The **International Covenant on Civil and Political Rights<sup>26</sup> (ICCPR)** states that no one shall be arbitrarily deprived of their life and that everyone has the right to security of person (Articles 6 and 9).

The UN has developed detailed and specific standards on how to best implement international human rights law, through legislation, regulation and during law enforcement operations. The bedrock of these standards consists of the:

- **Code of Conduct for Law Enforcement Officials<sup>27</sup>**
- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>28</sup>**
- **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions<sup>29</sup>**

They establish that force should be used only when strictly necessary, that the use of force should not be disproportionate to the legitimate objective to be achieved, and that firearms should not be used except as an extreme measure in a restricted range of situations.

The Basic Principles (Principle 5) state:

*"Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
- (b) Minimize damage and injury, and respect and preserve human life;*
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."*

In addition, intentional lethal force must only be used in compliance with Principle 9, that is, "in self-defence or defence of others against the imminent threat of death or serious injury". Forces fulfilling law enforcement duties need to be trained in threat assessment so that they can judge in each different context whether the use of force, including lethal force, will be proportionate, necessary and lawful. They must be able to assess what a direct threat to life is and when it is being posed.

Furthermore, the Code of Conduct (Article 3) provides: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". The commentary adds that "in general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to

restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities”.

### **2.1.3 The responsibilities of Chevron Nigeria**

Chevron Nigeria Ltd is a subsidiary of the US Chevron Corporation.<sup>30</sup> It is therefore committed, under the Voluntary Principles for Security and Human Rights, to take voluntary steps, or to use its influence, to ensure that the government and private security forces which protect its assets do so within the framework of international human rights instruments.

In 2004, Chevron Nigeria invited the leadership of the Joint Task Force at the Escravos site to participate in the training courses on standard operating procedures for security management provided for its security staff and for subcontractors in Escravos, Warri and Port Harcourt. The training covered the Voluntary Principles and their operational implications. Participation by Joint Task Force officers in these programmes was voluntary. Chevron Nigeria officials did not provide the number who participated in the programmes to Amnesty International.

Although training of this type is necessary, a Lagos -based human rights lawyer stated training is not effective without adequate implementation and enforcement:

*“The Police Act of 1964 requires the police to act with restraint. The police are not fully aware of their obligations, and the officers are unaware of the limits of their authority. They [police officers providing security for oil companies] may say they are familiar with the Voluntary Principles for public relations purposes, but in reality they pay no attention to such codes.”*

Amnesty International has found that there was a litany of failures to uphold the Voluntary Principles in Chevron Nigeria’s response to the Ugborodo protest.

- **Failure to record and report.** Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence. Chevron Nigeria officials said they had not reported the incident to relevant authorities, or called for investigation into the incident.
- **Failure to provide medical treatment.** “Where force is used, medical aid should be provided to injured persons, including to offenders.” It appears from the incident of 4 February that Chevron Nigeria did not do this. After initially stating that the company had provided no first aid, Chevron Nigeria later said that 12 individuals were treated for injuries.<sup>31</sup> Video footage shows some victims displaying injuries and signs of pain, and hobbling with bandages. Some victims still had open wounds when they reached Warri General Hospital. Officials from companies participating in the Voluntary Principles have agreed that this provision also extends to providing physical or financial assistance to move injured people, including offenders, to the nearest hospital or clinic where they may be treated by competent professionals. Neither the Joint Task Force nor Chevron Nigeria provided such assistance.
- **Failure to provide adequate training to security forces.** The Voluntary Principles expect the company to provide training to its staff and to security forces guarding its premises. While Chevron Nigeria appears to have

instituted formal training for its staff and subcontractors, such training is voluntary for the Joint Task Force, however Chevron Nigeria was not able to provide records of training carried out and how many members of the JTF had been trained.

- **Failure to adequately scrutinize the record of security forces.** Under the section on Deployment and Conduct, the Voluntary Principles call upon companies to use their influence to ensure that: "(a) individuals credibly implicated in human rights abuses should not provide security services for companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of...peaceful assembly." Many reports, by credible human rights groups and civil society organizations, have shown a consistent pattern of abuses by the Joint Task Force in the Niger Delta.

The legal obligation for training government forces in human rights and for establishing safeguards to ensure that they respect human rights rests with the government. Companies, however, have the responsibility -- and within the Voluntary Principles they have committed to using their influence with the government to ensure that it undertakes all steps at its disposal to ensure that its security forces respect human rights.

#### **2.1.4 Corporate complicity in human rights abuses**

Chevron Nigeria's senior management is in regular contact with government security officers.<sup>32</sup>

The UN Charter of 1945 and the Universal Declaration of Human Rights (1948) have spelled out a number of important human rights obligations. While primarily addressed to states, the Universal Declaration of Human Rights calls on "every organ of society" to respect human rights, thus<sup>33</sup>laying the foundation for responsibilities which apply not only to States but also to non-state actors, including private business.<sup>34</sup> The UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights state that companies should comply with existing laws, and be guided by the applicable human rights framework in their operations and activities.<sup>35</sup> The commentary elaborating General Obligations of the Norms specifically states: "*Transnational corporations and other business enterprises shall inform themselves of the human rights impact of their principal activities and major proposed activities so that they can further avoid complicity in human rights abuses.*"

In Sept 2001, as High Commissioner for Human Rights, Mary Robinson told the UN General Assembly:

*"My Office is also leading efforts to explore different categories to better define the boundaries of corporate complicity in human rights abuses."*<sup>36</sup>

Later in November 2004, the Office of the UN High Commissioner for Human Rights explained the meaning of complicity as follows:

*"Corporate complicity in human rights abuses means that a company is participating in or facilitating human rights abuses committed by others, whether it is a state, a rebel group, another company or an individual. A*

*company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse. The participation of the company need not actually cause the abuse. Rather, the company's assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way.*<sup>37</sup>

On many occasions, a company is one step removed from the perpetrators of the human rights violations, and is likely to have contributed to, or benefited from, that violation. International legal standards of complicity are still developing. Factors that may expose a company to the risk of being complicit in human rights violations include:

- the company's proximity to, knowledge of and the duration of the violation;
- the benefit gained by the company from the violation;
- the nature of the company's relationship with the perpetrator;
- the company's intent with regard to the violation.

In the Ugborodo case, the following is clear. Oil is the largest sector of Nigeria's economy, and Chevron Nigeria is one of the biggest companies operating in that sector. The poor human rights record of the security forces in Nigeria is widely known. In another case, Chevron Nigeria faces a lawsuit from Niger Delta litigants in the USA under the US Alien Tort Claims Act.<sup>38</sup> As the Joint Task Force operates on Chevron Nigeria's premises, and the company has invited its officers to participate in training, the company and its security officials should therefore have a working knowledge of the way its forces operate in a crisis and be able to anticipate the likely human rights impact.

The government pays the salaries and operational expenses of the Joint Task Force, but Chevron Nigeria routinely provides allowances and meals to the troops stationed on their premises, in line with practices in the oil industry. Company officials did not provide specific data, but said that allowances can double the soldiers' daily wage. Chevron Nigeria also provides transport to its remote locations for security personnel. In view of the closeness of the relationship with the security forces, Chevron Nigeria has the responsibility under the Voluntary Principles to ensure that actions of the security forces operating on its premises are consistent with the protection and promotion of human rights. It has failed to live up to that responsibility and may be exposed to the risk of being complicit.

### **2.1.5 The Warri crisis over oil**

Violence in the Warri area has escalated significantly since 1997, and particularly in the last two years. The cosmopolitan town of Warri has grown in significance, size and population since the discovery of oil. Competition for control of local government in the town and attendant royalties from oil companies, jobs and contracts has exacerbated tensions between Ijaw, Itsekiri and Urhobo populations.<sup>39</sup>

Itsekiri dominance of the region goes back to their privileged position with European traders as middlemen in the trade in slaves and later palm oil.<sup>40</sup> The Itsekiris date their claim to Warri from the 15th century and cite court judgments including from the Privy Council, a final Court of Appeal under UK colonial rule.<sup>41</sup> In

1936 they declared the Olu (king) of Itsekiri to be the Olu of Warri, a claim recognized by the colonial government in the 1950s. After the discovery of oil, companies reached agreements with the Olu of Warri, depriving other communities of benefits.

The Ijaws and Urhobos say that some local court judgments in the dispute were obtained fraudulently, and that they have lived in Warri as long as the Itsekiris. In 1996 the local military administration created a new local government area, Warri Southwest, with its headquarters in Ogbe Ijoh, an Ijaw town. The subsequent overturning of this decision by the federal military government, which moved the headquarters to Ogidigben, an Itsekiri town, provoked riots.<sup>42</sup> In 2003, over 500 Itsekiris and several hundred Ijaws died as conflict returned. There have been two attacks on Ugborodo by Ijaw groups since 1999. On both occasions, an 18-bed hospital provided by Chevron Nigeria to offer free treatment was destroyed and had to be rebuilt.

Chevron Nigeria closed down its operations at Escravos in March 2003 for a couple of weeks because of the violence, and resumed operations in early April.<sup>43</sup> It airlifted over 2,000 internally displaced people from Ugborodo and beyond to safe areas in Delta State, and the US State Department gave its parent company, then known as ChevronTexaco, an award for corporate excellence. On 23 April 2004, five Chevron Nigeria employees and two expatriate employees of a subcontractor were killed when their boat, sent to assess damage to company equipment, was ambushed in the creeks. A court case is pending.

Chevron Nigeria says that it has not been able to meet its commitments under the Memorandum of Understanding with the Ugborodo community because of the violence and the financial losses of up to US\$500 million that have affected growth prospects, planned investment and security costs. Some Itsekiris believe that they were seen as having failed to protect Chevron Nigeria from attack by Ijaw groups, and that as a result the company no longer felt responsible for implementing the Memorandum of Understanding.<sup>44</sup>

## **2.2 Long-term deprivation in Ugborodo**

Ugborodo's population of about 1,000 people live in small villages along the creeks within sight of Escravos terminal. Escravos has its own infrastructure, including its own electricity generating capacity. Because of its isolated location, it flies in workers from other parts of the Niger Delta and beyond, rotating them on shifts of between two and four weeks.<sup>45</sup> Jobs with the company are coveted, those at the terminal attracting extra allowances for hardship and the high-risk environment.

Contact between residents of Ugborodo and the company is minimal, and tensions have been rising. Ugborodo presents a picture of poverty and misery. It is dependent on water transport but its jetty is decrepit and unsafe. It has electric power for two hours a day from a generator installed at the villagers' cost. Chevron Nigeria provides water for three hours at a time, twice a day. Its sole school has blackboards and benches, but no other visible classroom equipment. The young unemployed complain that they face discrimination in the award of jobs and contracts to trade with Chevron Nigeria because of ethnicity or poverty, a charge the company denies.



© AI, The jetty at Ugborodo, Delta State, April 2005

As in many other parts of Nigeria, the Nigerian government appears to have abdicated its responsibilities under international law to respect, protect and fulfil the human rights of the people of Ugborodo. It appears that the Nigerian government is unwilling to respect, protect and fulfil the economic, social and cultural rights of the people of the Niger Delta, which has contributed to long-term deprivation in the Ugborodo community. An oil company executive told Amnesty International:

*"You won't find police stations, court houses or primary schools for vast stretches. There are no post offices. There is no presence of the government for miles. No electricity is provided. There is no water supply."*

While some companies supply water and electricity to communities living close to its companies' premises the role of the service supplier must always be regulated and monitored by the government, in compliance with their human rights obligations, in order to ensure equity of services and non-discrimination. Yet the authorities encourage the communities to turn to companies and to negotiate terms directly with them.<sup>46</sup>

This has led community activists to believe that oil companies have the responsibility to create jobs and provide infrastructure. As most oil companies have undertaken some corporate social responsibility projects, expectations in communities are high, and their frustration expressed by periodic protests and demonstrations have often been met with excessive force by security forces.

### **2.2.1 The 2002 Memorandum of Understanding**

In a dramatic confrontation, over 100 women occupied the Escravos terminal between 8 and 18 July 2002, seeking jobs for their sons and husbands. Twelve women occupied the company airstrip. They were peaceful but refused to leave unless Chevron Nigeria promised to provide jobs and improve infrastructure in Ugborodo. Company officials said that the severe business impact of the protests resulted in their agreeing a Memorandum of Understanding with the community.

A five-year Memorandum of Understanding was drawn up between Chevron Nigeria, the Ugborodo community and the Delta State authorities to "guide and regulate the relationship between the company and the community...within the

Escravos area."<sup>47</sup> The company promised to develop infrastructure, provide scholarships and jobs, and undertake development programmes.<sup>48</sup> It gave a commitment to build and sustain a relationship with the community based on mutual respect and trust, maintain a continuous and open dialogue with the accredited representatives of the community, and ensure a "fair and equitable" representation of "qualified indigenes" in its workforce. In return, the community promised to provide a "conducive and trouble free atmosphere for the company", and committed to "dialogue and peaceful persuasion or other lawful means for the resolution of all disputes and commits to eschew violence and acts of trespass as a means of expressing their differences." The Delta State authorities made a commitment to provide housing after the company had completed preparatory work.

Chevron Nigeria says it has partly implemented the Memorandum of Understanding, for example in completing the sand-filling to enable construction in Ugborodo new town, but that progress was halted in 2003 and 2004 when its operations were closed and subcontractors were unwilling to work in the area.<sup>49</sup>

Ugborodo residents and activists highlight the company's failures to meet specific target dates for completion of projects. They also say that Chevron Nigeria has discriminated against them by not recruiting qualified Itsekiri applicants or providing contracts to competent Itsekiri businesses.

*"We don't get the jobs even to cut grass. We don't get contracts even to provide toilet paper. The company is run by Igbos and Yorubas[two of Nigeria's largest ethnic groups]. They look after their own people. The Americans [senior Chevron Nigeria executives who are US nationals] don't know anything. They fly their employees from Lagos. Why can't they hire people locally?"<sup>50</sup>*

Some Itsekiri activists and politicians have compiled figures to show that the company is not recruiting Itsekiris, or hires them mostly for low-paid, lower-level jobs.<sup>51</sup> Other figures from activists show Itsekiris comprising about a third of Chevron Nigeria's workforce, most of them in non-managerial or non-specialist posts. People in Ugborodo alleged that the few senior positions given to Itsekiris at Chevron Nigeria, and contracts awarded to Itsekiri-owned companies, are linked to the Warri-based Itsekiri elite and bring no benefits to Ugborodo.

In order to press for implementation of the Memorandum of Understanding, Ugborodo community representatives held several meetings with Chevron Nigeria. Community leaders told Amnesty International that they were surprised when Chevron Nigeria said in January 2005 that the company was reassessing its commitments in the area. It was planning new development agreements to involve other ethnic communities, civil society and non-governmental organizations (NGOs), government bodies including the Niger Delta Development Commission, and other companies.<sup>52</sup> According to Chevron Nigeria:

*"The needs of the communities in the areas where we operate are many and we are not in a position to provide all of them. While we are committed to partnering with other stakeholders to contribute significantly to the improvement of the conditions in the communities, we cannot and should not be expected to do this alone. The new MOU [Memorandum of Understanding] provides several avenues for seeking third party mediation and resolutions to disagreements other than employing threats and the force of violence."<sup>53</sup>*

Itsekiri leaders felt betrayed, believing their community were the victims of the Warri crisis and that the company had reneged on its commitments. It was against this backdrop that the Ugborodo community decided to demonstrate on 4 February 2005.

### **2.2.2 International law and standards on economic and social rights**

The government has obligations to respect, protect and fulfil all human rights.

International standards on economic, social and cultural rights allow for the fact that full realization of these rights can only be achieved progressively over time, where sufficient human technical and economic resources are available, including through international cooperation and assistance.<sup>54</sup> Revenues from the oil sector provide Nigeria with the resources it needs to progressively achieve full realization of the economic, social and cultural rights of its population. However, because of corruption and misallocation of funds communities in the Niger Delta have not benefited from the resources generated by oil and Nigeria is not taking steps to ensure minimum essential levels of the rights to the highest attainable standards of health, education, water and an adequate standard of living – an obligation that should be met immediately under international human rights law.

Even if the government delegates the responsibility for delivery of essential services to companies or other non-state actors, it is not absolved of its responsibility to regulate the delivery.

International human rights standards do not require that governments own the delivery systems of essential services. However, even if the government delegates the responsibility for delivery to companies or other non-state actors, it is not absolved of its responsibility to regulate the delivery, and to continue to respect, protect and fulfil human rights.

In the Niger Delta, the government is failing to regulate companies' projects. Rather, companies have taken on certain commitments because of the non-performance of the government. In such cases, the government still has obligations to ensure that agreements to provide such services made between companies and communities:

- do not undermine human rights or discriminate against some communities;
- ensure access to all, particularly to marginalized and vulnerable groups;
- are transparent, accountable and made with full, meaningful participation of the people, and
- that the right to seek redress or remedy, in case of a dispute, is respected.<sup>55</sup>

The government generally stays out of negotiations of such agreements between the community and the company, but sometimes acts as witnesses to the signing of the agreements. When it does participate, as in Ugborodo, it absolves itself of any responsibility to provide a mechanism to settle disputes, or arbitrate and fails to monitor performance. The government accepts little responsibility to enforce company commitments, but its security forces use excessive force against communities that breach agreements in order to protect company facilities.

State-level officials have recognized that failure to fulfil such agreements can foment violence.<sup>56</sup>

Many Nigerian lawyers argue that they are unenforceable in law. Many contain no deadlines, and some do not offer any remedies for non-performance. They are often

drafted or negotiated during a crisis, when one party may be at a disadvantage.

Other problems with these agreements that have been brought to Amnesty International's attention are senior company managements distancing themselves from commitments made by negotiating officials on the ground. Negotiations are often not transparent, being conducted without prior informed consultation or the consent of the community, and without human rights, environmental or social impact assessments. Each community has several stakeholders – such as women's groups, youth groups, chiefs and elders – whose interests and priorities may differ. According to Amnesty International sources, whether wilfully or through naivety, companies have often divided communities and played off one group against another, in some cases interfering with the election or selection of community leaders and thereby contributing to conflict and violence. Chiefs, who may be appointed and not elected, have reportedly often been the prime beneficiaries of agreements with companies or of company contracts, including to hire armed groups to protect company operations. There is no guarantee contained in the agreements that the interests of vulnerable and marginalized groups, such as the disabled, children and women, are protected or even represented. In the Ugborodo Memorandum of Understanding, for example, the amount agreed for building and furnishing official residences for traditional chiefs could have been used to build schools, dig more boreholes, or provide uninterrupted electricity to the village.

### 3. The raid on Odioma



© AI, Two months after an attack by the security forces, video footage of the largely deserted town of Odioma reveals few signs of the humanitarian assistance promised by Bayelsa State, April 2005.

*"The soldiers came to my palace and told me to come to the beach and that my palace would be burnt down. It was difficult to pass through the streets due to the fire. I was told to kneel down on the beach with other chiefs and their hands were tied behind their backs. Then the soldiers started beating them with horsewhips, and told us to eat sand."*

– **Cadbury George Omieh, Igno XXI, Amanyanabo (King) of Odioma**<sup>57</sup>

On 19 February 2005 soldiers from the Joint Task Force raided the town of Odioma in gunboats and other vessels. The aim of the raid was to arrest suspected criminals known as Iseinasawo (also the Isein Peace Council or Teme cult group), wanted for allegedly killing 12 people, including four local councillors, earlier in the month. The group, recruited to ensure security in the local waterways, was also alleged to be responsible for attacks on the neighbouring community of Obioku, oil theft, piracy and illegal arms trading, and to have been armed and equipped by political leaders during the 2003 elections.

The Joint Task Force said that the soldiers met armed resistance.<sup>58</sup> They failed to arrest any of the group, but left behind them massive destruction and a town largely burned to the ground. At least 17 people died as a result of the attack, including young children and elderly people. Of these, 14 were reportedly burned to death, including Balasanyun Omieh, a woman said to be 105 years old, and two-year-old Inikio Omieye. Three people were said to have died of gunshot wounds, according to Amnesty International sources. Some people drowned when their canoe capsized as people tried to flee the attack in canoes or by swimming, mostly women and children.

At least two women were allegedly raped and many people were injured. Cadbury George Omieh, Igno XXI, Amanyanabo (King) of Odioma, and other traditional rulers were whipped and forced to eat sand, amounting to torture and cruel, inhuman and degrading treatment, apparently because they were blamed for the presence of the Iseinasawo group in Odioma.<sup>59</sup>

Amnesty International was shown two recent graves, reportedly of people who died in the raid. The Joint Task Force confirmed that three civilians were killed, but said that they had not exhumed the bodies to do an autopsy to determine the cause of death.

Odioma was left in ruins. Most houses along the waterside were burned to the ground, only their foundations remaining, their corrugated iron roofs spread over the ground. Two months later, when Amnesty International visited the scene, shattered glass, scorched clothes and melted metal still lay among the charred remains of buildings. One eyewitness of the raid told Amnesty International that he had seen a soldier pouring inflammable liquid in a house, before setting it on fire. The Joint Task Force denies allegations that it deliberately burned down houses, and says that the petroleum products stored in many homes were set alight during exchanges of fire.

However, the destruction to homes appears to have been targeted. The palace of the Amanyanabo of Odioma was severely damaged, and other property destroyed, including a religious shrine and a hotel belonging to Clever Osei, the Iseinasawo leader, and buildings belonging to chiefs and other leaders. Homes away from the waterfront and a shrine commemorating the founders of the village were untouched. Over two months after the incident, there was no sign of any repairs or rebuilding taking place in the town.

### **3.1 The internally displaced**

*"People fled in panic during the raid. Some tried to cross the water but drowned since they could not swim. People from Odioma now live in Port Harcourt, and some are still in the bush in Bayelsa State."*

– **Philemon Kelly Dickson, Odioma community spokesman**<sup>60</sup>

Of the many people forced to flee their homes, over 100 people from Odioma remain internally displaced, living in other parts of the region. Few people still living in the town have a house that survived the raid. Those people have taken refuge in the old school, where provisional shelter had been set up with mattresses on the floor. Community representatives say that an unspecified number of people are now in neighbouring villages in the creeks. Others have fled as far as Yenagoa, the Bayelsa State capital, and Port Harcourt in Rivers State, each about one-and-a-half hours away by boat from Odioma. An unknown number of people are still said to be missing after fleeing the town.

The authorities have a duty to take steps to ensure the security and protection of internally displaced people within their jurisdiction, in accordance with relevant international standards. These include the UN **Guiding Principles on Internal Displacement**, which sets out the relevant rights of and obligations towards internally displaced people under international human rights law and international humanitarian law. Principle 3 (1) states that "*National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction*".<sup>61</sup>

### **3.2 The response of the authorities**

The Joint Task Force accepts that lives were lost during their operation, which it said was intended to protect people from the activities of Iseinasawo. Brigadier-General Zamani expressly said that he "*regretted the fact that lives may have been lost in the course of the operation*".<sup>62</sup> The security forces are still present in the community, at the request of the community.

Brigadier-General Zamani defended the use of force by the Joint Task Force, on the grounds that it met armed resistance on its arrival in Odioma. He said that houses may have burned down because ammunition ignited petroleum products stored inside them. He could not provide an account of weapons that the Joint Task Force deployed in the operations, but produced a list of weapons seized, which were reportedly loaded with live rounds.<sup>63</sup> He also alleged that Russian-made Kalashnikovs were found at Clever Osei's shrine. He is the alleged leader of the Iseinasawo group.

However, the Amanyababo of Odioma said that the soldiers planted weapons and ammunition in the community, in the bush and by the shrine, in order to justify the raid. The Chairman of the Council of Chiefs of Odioma said the soldiers did not show the community any confiscated weapons.<sup>64</sup>

Brigadier-General Zamani said that his officers were trained in and familiar with relevant international standards, including the UN Code of Conduct and the UN Basic Principles. Unit commanders are reportedly given copies of these international standards, and are expected to use them in the instruction and training of soldiers as and when necessary.

On 24 February 2005 the Bayelsa State Governor was reported as defending the deployment of the security forces in view of the growing communal tension and the need to rid the community of criminals.<sup>65</sup> In a news release, he said "*The operation was not targeted at the people of Odioma. The head of the cult group there, Mr Clever Osei, is the person we are after*".<sup>66</sup> After visiting Odioma on 27 February, he reportedly expressed serious concern about the level of destruction.<sup>67</sup> The same day he announced that a judicial commission of inquiry would investigate the incident.

The members of the Judicial Commission of Inquiry, headed by Justice Moore Adumein, were formally sworn in on 22 March and handed over their final report to the State Governor in June. The findings of the Commission of Inquiry had not been made public by early October 2005.

In March the Bayelsa State Government appointed a committee mandated to supervise the distribution of relief materials and to ensure rehabilitation of people displaced from Odioma.<sup>68</sup> However, during Amnesty International's visit to Odioma, little relief material was visible, and some community members confirmed that only a small amount of medication and food, and some bunk beds, had been provided. The State Government and the Chair of the Commission of Inquiry were unable to meet Amnesty International delegates while they were in the country.

No action is known to have been taken by the federal authorities to fulfil legal requirements to conduct autopsies or judicial or other investigations into the circumstances and causes of deaths involving armed forces under its direct control. There has been no federal government investigation to determine the number or identity of those killed; to order the exhumation of graves; to investigate the responsibility of the security forces for deaths, injuries or the destruction of homes; or to bring to justice those suspected of human rights violations.

### **3.3 Communities torn apart by oil**

As with many violent disputes within communities in the Niger Delta, access to oil resources is at the root of the Odioma incident.

Odioma's population of approximately 15,000 has been involved in a long-running dispute with the communities of Nembe-Bassambiri and Obioku. All are members of the Nembe clan within the Ijaw ethnic group. They are competing for ownership and control of an area called Obioku on the Santa Barbara River where Shell Nigeria has been prospecting for oil since 1998, in expectation of royalties, jobs and contracts. Shell Nigeria identified the landowners as the Obioku and Nembe-Bassambiri communities, and concluded agreements and paid compensation to them. However, the company withdrew from the area on 29 January 2005, after a group of young men came to the drilling site on 24 January, claimed Odioma's ownership of the land and demanded that operations stop. The Odioma community cite customary law and local judgments in support of their claim, and say that Shell Nigeria should have invited them to the negotiations over ownership from the beginning.

On 3 February 2005, an unidentified armed group attacked a speedboat belonging to the Nembe Local Government Area on the Santa Barbara River, not far from Odioma. The boat was carrying four local councillors and eight other passengers. The councillors were carrying the message to Obioku that a meeting the previous day, to settle the dispute between Odioma and Nembe-Bassambiri, had concluded successfully.<sup>69</sup> All 12 people on the boat were killed.

No community claimed responsibility for the killings, but both sides blamed the other.<sup>70</sup> In its submission to the Judicial Commission of Inquiry into the Odioma/Obioku crisis, the Obioku community alleged violent attacks by Iseinasawo since 1995; that Iseinasawo members killed one Mobile Police officer and injured another at Shell Nigeria's drilling site in Obioku; that Odioma representatives threatened Obioku chiefs with the involvement of Iseinasawo in the dispute; and that eight named Iseinasawo members had killed the 12 boat passengers.<sup>71</sup>

The Amanyabo of Odioma received orders from the Bayelsa State Governor to

investigate the murders. He had questioned Clever Osei, who denied responsibility, and he too denied that Odioma people were responsible.<sup>72</sup>

Brigadier-General Zamani said that Iseinasawo was behind the killings, and in view of the group's other criminal activities in the area, it was time to arrest Clever Osei and his followers.

### **3.4 The role of Shell Nigeria**

The responsibility for the killings in Odioma rests with the JTF. Shell Nigeria however failed to exercise due diligence in identifying ownership of the site, which led to the rivalry between communities turn violent. Furthermore, Shell Nigeria failed in its responsibility to ensure that its contractors engage with subcontractors who act lawfully and by the principles that Shell Nigeria requires its contractors to adhere.

Shell Nigeria is a subsidiary of the Shell Corporation.<sup>73</sup> The company said that it was not aware of the dispute between Obioku and Odioma when it signed the land deal with Obioku in 1998, and attempted to mediate when it became aware of the dispute in January 2005. When this failed, it withdrew its survey crew and referred the issue to the state and local authorities to resolve.<sup>74</sup>

Odioma representatives and human rights defenders believe and Amnesty International is concerned that Shell Nigeria's choice of contractors may have contributed to the escalation of the crisis. Shell Nigeria hired a company called Geomatics to secure the site around their operations, which subcontracted the work to a company called Octopus Holdings, which in turn hired members of the Iseinasawo group to provide security and permit safe passage for Shell Nigeria workers through the area. However, under pressure from Odioma, where the involvement of Iseinasawo was seen as an act of betrayal to their community, Clever Osei, leader of Iseinasawo, withdrew from the contract.<sup>75</sup>

As a participant in the Voluntary Principles, Shell Nigeria should have required of its contractors that they do not engage individuals or subcontractors credibly implicated in human rights abuses to provide security and safe passage for Shell Nigeria or its contractors.

Amnesty International is concerned that Shell Nigeria entered into negotiations over drilling in Obioku without exercising adequate corporate due diligence to ensure that it was dealing with the rightful owners, increasing tensions between the communities in the area. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the UN Norms) require companies to act without discrimination and to respect the rights of communities.<sup>76</sup>

The Voluntary Principles for Security and Human Rights, also states, in the section on Risk Assessment:

*"Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability."*

According to two of the Principles:

**"Potential for violence.** Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning... Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive, and preventative purposes..."

**"Conflict analysis.** Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive... Risk assessments should also consider the potential for future conflicts."

Given that land disputes frequently escalate into conflict, and given the volatile nature of pre-existing hostilities between the communities, Shell Nigeria should have undertaken thorough human rights risk assessments to ensure that its activities did not contribute to the conflict.

As a company operating in the Niger Delta for nearly five decades, Shell Nigeria is aware of the levels of violence in the region. Universities and UN agencies have praised the parent corporation's scenario-planning exercises and the assessment tools it deploys to understand the potential for risk in specific activities, however, in spite of possessing the analytical tools and the resources to undertake such studies, and in spite of operational experience and exposure to the human rights situation on the ground, Shell Nigeria did not anticipate the likely impact of its operations in this case.

### **3.5 Companies' responsibilities within their sphere of influence**

The deaths and destruction in Odioma on 19 February 2005 resulted from the actions of the Joint Task Force and are the responsibility of the federal government. They did not occur in an area under Shell Nigeria's control and the company did not ask for the raid on Odioma, but they did occur within its sphere of influence and area of operations. Shell Nigeria should have taken greater care to ensure that it respected human rights within its sphere of influence and acted accordingly.

With its long experience of working in Nigeria, Shell Nigeria knew or should have known that informal security arrangements, such as those arranged with the Iseinasawo group, could divide communities, raise mutual suspicions and potentially lead to violence. In 2004, the company acknowledged the broad conclusions of a report it had commissioned from consultants, which identified, among other findings, the mishandling of relations between communities as a major cause of violence in the Niger Delta.

Shell Nigeria is a participating company in the UN Global Compact, which calls upon companies to support and protect international human rights within their spheres of influence. As the Office of the UN High Commissioner of Human Rights has explained, the concept of "sphere of influence" is not defined in international law, although understanding what it is in relation to complicity with human rights violations is evolving from company practices, national jurisprudence and the work of international organizations, NGOs and academics:

*"[A sphere of influence] will tend to include the individuals to whom the company has a certain political, contractual, economic or geographic proximity. However, the extent of a company's ability to act on its human rights commitment may vary depending on the human rights issues in question, the size of the company, and the proximity between the company and the (potential) victims and (potential) perpetrators of human rights*

*violations.*<sup>77</sup>

The people falling within a company's sphere of influence include workers, communities living near the operations or otherwise dependent on the company, business partners, home and host governments, and armed groups in control of territory where the company operates.

The company has the responsibility to respect human rights within its sphere of influence. But the way it consulted with the affected communities was clearly inadequate, as it increased tensions. Likewise, the company did not sufficiently scrutinise the subcontractors being recruited by its contractors to provide security and safe passage for the company to operate. These failures show disregard to the company's policy to respect human rights within its sphere of influence in this specific incident.

## 4. The struggle for rights continues

*"There's no doubt that my ideas will succeed in time."*

– **Ken Saro-Wiwa, in a letter to the UK writer, William Boyd**<sup>78</sup>

The human rights violations against the Ugborodo protesters and the Odioma community are neither random nor unique. The denial of rights and resources for the peoples of the Niger Delta first gained international attention in the early 1990s through the campaign of the Ogoni people and their leading spokesperson, poet and writer Ken Saro-Wiwa.

Energized by the Ogoni campaign, vibrant campaigns for rights and resources continue to be pursued by human rights defenders and civil society groups, despite the fragmented leadership of Niger Delta communities, the mounting militarization of the Delta and the violence of armed ethnic militias and criminal gangs. Yet oil continues to blight rather than benefit the lives of most Delta populations. The decades of neglect and deprivation, and the few prospects for fundamental change, have resulted in increasing levels of violence between impoverished communities competing for control of the oil riches and against oil company personnel and property.

### 4.1 The Ogoni campaign

Ken Saro-Wiwa, a poet and writer, was one of the most articulate representatives of the Niger Delta communities.<sup>79</sup> As a leading figure in the 500,000-strong Ogoni community in Rivers State, he championed its environmental and human rights cause. He played a key role in drafting the 1990 Ogoni Bill of Rights, which highlighted the lack of political representation, pipe-borne water, electricity, job opportunities or federal development projects.<sup>80</sup> He was a founder and President of the Movement for the Survival of the Ogoni People (MOSOP), which pressed oil companies and the government to clean up the environment and pay adequate compensation and royalties to the oil producing regions.

Speaking at the Nigerian Institute of International Affairs in 1990, Ken Saro-Wiwa said:

*"Oil was at the centre of the [Nigerian civil] war. People from oil-bearing land were the main victims. Twenty years [later], the system of revenue*

*allocation, the development policies of successive Federal Administrations, and the insensitivity of the Nigerian elite have turned the Delta...into an ecological disaster and dehumanized its inhabitants. The notion that the oil-bearing areas provide the revenue...and yet be denied a proper share of that revenue...is unjust. The silence...is deafening. The [affected people] must not be frightened by the enormity of the task, by the immorality of the present. I call upon the Nigerian elite to play fair...<sup>81</sup>*

He gained an international reputation making representations before international fora. In 1992, speaking at the Unrepresented Nations and Peoples Organization in Geneva, he said:

*"Oil exploration has turned Ogoni into a waste land: lands, streams and creeks are totally and continually polluted; the atmosphere has been poisoned, charged as it is with hydrocarbon vapours, methane, carbon monoxide, carbon dioxide and soot emitted by gas which has been flared 24 hours a day for 33 years in very close proximity to human habitation. Acid rain, oil spillages and oil blowouts have devastated Ogoni territory. High-pressure oil pipelines crisscross the surface of Ogoni farmlands and villages dangerously."*

Shell ignored Ogoni concerns, saying that it was up to the government to solve the problems of economic neglect. For nearly two thirds of Nigeria's 45 years since independence from colonial rule in 1960, military governments held power. Mismanagement and corruption; embezzlement of oil revenues; the suppression of activists and communities who sought a cleaner environment, an end to abuses and a fairer distribution of resources – all were particular features of military government. Oil companies were widely seen as complicit in these abuses and even to have fuelled conflict. In 1993 Nigeria was plunged into a political and human rights crisis when the government of General Sani Abacha aborted a seven-year "transition to civilian rule". The winner of the 1993 elections, Moshood Abiola, was imprisoned along with hundreds of politicians, human rights defenders, lawyers and journalists in the years following. Critics and opponents were tortured, killed, detained for months or years in life-threatening conditions, died in prison or "disappeared".

MOSOP leaders had been detained without charge or trial on several occasions since 1993, including Ken Saro-Wiwa for periods in 1993 and 1994. In May 1994, four leading members of the Ogoni community were killed, reportedly by MOSOP supporters. MOSOP leaders, including Ken Saro-Wiwa, were detained, assaulted, and publicly accused by the authorities of responsibility for the murders, an accusation they denied. A military task force detained hundreds of MOSOP supporters and raided Ogoni towns and villages in the weeks following – killing, raping and looting. Thousands fled their homes. Most detainees were severely beaten or tortured. Ken Saro-Wiwa and other detainees were held for at least eight months before being charged.

In February and March 1995, Ken Saro-Wiwa and 14 other accused were brought to trial on murder charges. They had been held in harsh conditions, incommunicado, for long periods in chains and denied medical treatment. Several were alleged to have been tortured while in military detention. Their trial, without right of appeal, was before a special tribunal appointed by General Abacha, whose judgments had no standing until they had been confirmed or disallowed by the government. They were denied the right to prepare a proper defence and to have full and confidential access

to their lawyers, who faced assaults and threats from the military, and who withdrew from the trials in June and July 1995 in protest over the bias of the tribunal in favour of the prosecution. On 30 and 31 October 2005, nine of the accused were convicted and sentenced to death; six others were acquitted. On 10 November 1995, Ken Saro-Wiwa and the eight others convicted – Baribor Bera, Saturday Doobee, Nordu Eawo, Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix Nuate – were hanged.

A storm broke over the heads of Nigeria's rulers, who had ignored an international campaign for fair trial and clemency, including appeals from heads of state and intergovernmental bodies. An international legal observer, who had highlighted serious flaws during the trial, concluded that the judgment of the tribunal was "not merely wrong, illogical or perverse. It is downright dishonest."<sup>82</sup> A group of up to 21 other Ogoni detainees, who were also to have faced trial, were instead kept in detention in harsh conditions in which one of them died, and were not released until after the death of General Abacha in 1998.<sup>83</sup> The real reason for the executions, many believe, was the government's fear that the Ogoni campaign – almost unique in Nigeria at the time as a popular, campaigning political movement – would inspire other Niger Delta communities to demand economic and political justice from the government and the oil companies. There has been no apology or other form of reparation for the families of those executed, tortured or detained in connection with the case to date.

## 4.2 Impunity reigns, 10 years on

Ten years on, many of the human rights abuses in the Niger Delta that impelled the Ogoni campaign have not been resolved. Frequent oil spills blacken the land and pollute the waterways. Gas flaring from hundreds of wells turns the sky sepulchral by day and ablaze at night. Impunity persists for those responsible for killings and other serious human rights violations against the Ogoni and other Delta communities, and solutions offered by the government and the oil companies are insufficient.

In 2001, in response to a complaint brought by two NGOs against Shell Nigeria and the Nigerian government in 1996, the African Commission on Human and Peoples' Rights (the African Commission) recognized some of the claims of the Ogoni community.<sup>84</sup> It found that, *inter alia*:

*"Despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland... [It] has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis."*

The African Commission found that the Nigerian government had violated economic and social rights as well as civil and political rights under the **African Charter on Human and Peoples' Rights (the African Charter)**.<sup>85</sup> These included the rights to housing, shelter and life:

*"The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes."*

The complainants had argued that the company had not paid due regard to the health and environment of local communities when exploiting oil in Ogoniland. They also complained that the government condoned and facilitated violations of international environmental standards by "placing the legal and military powers of the State at the disposal of the oil companies"; withholding information from the communities about the dangers of oil activities; ignoring the concerns of the communities; and responding to protests "with massive violence and execution of Ogoni leaders".

In developing the jurisprudence in relation to the justiciability (enforcement in law) of the African Charter, as well as to the responsibility of the Nigerian government for actions of oil companies operating in the Niger Delta, the African Commission argued that the Nigerian government is bound to ensure that all human rights in the African Charter are guaranteed. Yet, despite this landmark decision by the African Commission, local human rights activists are unanimous that the Nigerian government has paid little serious attention to it. Felix Morka of the Social and Economic Rights Action Centre told Amnesty International that "the decision has influenced the work of human rights activists who have used it in their capacity-building and awareness raising on similar issues. However, since the decision is from outside Nigeria, the government places little emphasis on it".

Without recognition of or remedy for the Ogoni complaints, there has been scant progress in reconciling the Ogoni community to Shell Nigeria, which said it would not go back to Ogoni without the agreement of the community. In 1993 the company had withdrawn personnel from its facilities in Ogoni in the face of MOSOP protests. In 2005, the federal government appointed an independent mediator, the Reverend Father Matthew H. Kukah, to assist reconciliation, without which the company cannot return to Ogoni. Both parties have publicly welcomed the initiative. However, Ledum Mitee, MOSOP President and one of the defendants in the 1995 Ogoni trials, said that transparent and genuine negotiations require recognition of the human rights abuses of the past, including the killing and forced displacement of Ogonis; public apologies and compensation for victims and their families; and measures to address environmental degradation.<sup>66</sup> Previous attempts at negotiations have foundered on these issues and on the impunity enjoyed by those responsible for human rights violations.

The Ogoni situation is not unique. No investigations have been conducted into the vast majority of human rights violations in the Niger Delta. Where inquiries have been instituted, their results are rarely made public. Those responsible are rarely brought to justice. The victims and their families have received no acknowledgement that they have suffered human rights violations or any form of reparation (restitution, compensation, satisfaction, rehabilitation or guarantees of non-repetition).

The government has failed to make public the report of the Human Rights Violations Investigation Commission headed by a former Supreme Court judge, Justice C.A. Oputa, on human rights violations committed between 1966 and 1999. On human rights abuses in the Niger Delta, the Commission received thousands of petitions, most of them about the repression of Ogoni human rights defenders and community representatives. In May 2002 it handed over its final report to President Obasanjo, but the government has not made public its findings or recommendations, or said what action will be taken to follow up its investigations. The majority of victims have not received any form of justice, redress or compensation, or even

public acknowledgement that they were victims of human rights violations.

In many other cases, findings and recommendations of commissions of inquiry have not been made public, nor has there been any evidence that their recommendations have been implemented or action has been taken against those responsible. These cases have included the following:<sup>87</sup>

- the killing of two boys during demonstrations in Ogoniland in January 1996;
- the killing of at least seven youths by the security forces during a protest at an installation of the Nigeria Agip Oil Company (Agip Nigeria) at Ikebiri, Bayelsa State, on 19 April 1999;
- reprisal killings by the military in September 1999 in Yenagoa, Bayelsa State;
- a military attack on the town of Odi near Yenagoa in November 1999 in which the town was razed and large numbers of people were said to have been killed, apparently in reprisal for the murder of 12 police officers. President Obasanjo told Amnesty International that he had no intention of holding an independent and open inquiry into the incident.<sup>88</sup> The Port Harcourt-based NGO, Women's Aid Collectives, has filed a suit on behalf of nine women from Odi who are seeking compensation for rape, torture and arbitrary arrest. The military denies the charges;<sup>89</sup>
- the killing of at least eight youths when troops guarding an Agip Nigeria facility fired on protestors from the nearby town of Olugbobiri, Bayelsa State in October 2000;
- the assault of at least six women, including an 89-year-old lady, by mobile police and armed forces officers on 8 August 2002, when over 3,000 women protested peacefully outside oil company premises in Warri. The government and Chevron Nigeria denied that force had been used, and Shell Nigeria acknowledged that one woman showed evidence of having been beaten only after two inquiries by Amnesty International.

In a more recent case, there has been no independent inquiry into attacks by the security forces in September 2004 in which at least seven people are reported to have been killed. Between 6 and 24 September 2004, the security forces launched at least one rocket attack from helicopter gunships – and according to eyewitnesses, 28 rocket missiles were fired on 15 September 2004 – at or near villages near Port Harcourt.<sup>90</sup> Forces of an armed group, the Niger Delta People's Volunteer Force (NDPVF), were reported to be based in the area. The group's leader, Alhaji Asari Dokubo<sup>91</sup>, a former President of the Ijaw Youth Council, had openly admitted stealing oil and says he is only taking back what belongs to his people. He had a force of 2,000 armed fighters, and when he threatened sabotage, abductions and "all out war" in September 2004, the oil price rose immediately. In August 2004, dozens of people were killed in fighting and Port Harcourt was paralyzed when fighting erupted between the NDPVF and a rival armed group, the Niger Delta Vigilante.<sup>92</sup> A military-police joint task force, sent by the federal government, reportedly targeted communities suspected of harbouring NDPVF members.<sup>93</sup>

The task force did not report casualties. Human rights defenders have said that at least seven people were killed in a raid on a fishing village: three burnt to death in their homes and four at the waterside. Others have put the figures much higher. Large numbers of people have been forced to flee their homes. Other sources reported that up to 240 people were missing in the town of Tombia, about 2km from

Port Harcourt and close to Isaka Island. The town was reportedly shelled by military aircraft on 6 September 2004, according to local news reports.<sup>94</sup> Chiefs from a community on the Degema peninsula, who saw the attack on Tombia from afar, described it as something "they had only seen during the 1967 civil war", adding that "the whole community was very much afraid".<sup>95</sup>

Following a peace agreement in September 2004, reached after talks involving President Obasanjo, Alhaji Asari Dokubo agreed to end fighting in the Niger Delta and was highly paid to surrender arms. However, he has since said that the Niger Delta wants 100 per cent control of its resources and has threatened force if Nigeria does not "pay reparation for what has been stolen".<sup>96</sup>

According to an analysis by a Niger Delta activist, the findings of commissions of inquiry investigating intercommunal violence in the Niger Delta have also never been made public.<sup>97</sup> These failures apply across the country, where the vast majority of human rights abuses have not been investigated and there are few signs that those responsible will be brought to justice. As a result, the perpetrators remain unpunished, there is no justice for the victims and a culture of impunity perpetuates a cycle of reprisal and violence.

### **4.3 Access to justice**

Access to justice is often denied for victims of human rights abuses in Nigeria. As a result, many see other routes, including violence, as their only means to obtain some form of redress. According to a Nigerian lawyer and human rights defender "the lack of remedies for communities is at the heart of the problem in the Niger Delta."<sup>98</sup>

There is a huge disparity of the monetary resources available to oil companies for defence and local communities' resources to bring complaints. Legal costs are high, procedures lengthy, administration and lawyers' fees substantial. This combination prevents communities and individuals from even considering litigation and appeals processes that could financially ruin them. While aggrieved individuals and communities have little, if any, legal aid to pursue their cases, oil companies can afford the best lawyers and can depend on the legal expertise of their parent companies. Widespread allegations of corruption in the judicial system, also serve to deter attempts at legal action.<sup>99</sup>

Nevertheless, there has been a gradual increase in the number of court cases. In the period of 1981-86, Shell Nigeria was involved in 24 legal claims, in 1998 over 500. The equivalent figures for Chevron Nigeria were 50 in 1981-86, and over 200 in 1998. These cases have mainly concerned compensation for damage from oil spills, but also for other damages from oil operations, land acquisition and employment. One reason for the increase in such cases could be the corrosion of the pipeline network, which is often reported to be inadequately maintained.<sup>100</sup> Another could be the milestone case of *Shell v. Farah* in which several families successfully sued Shell Nigeria for damages caused by an oil blow-out in 1970. On appeal the Court of Appeal in 1994 awarded the families the unprecedented sum of N4.6 million (US\$210,000 in 1994).<sup>101</sup>

In other cases, chiefs and other members of the ruling elite may benefit from oil companies' contracts, for example to clean up oil spills, at the expense of victims in their community, and may consequently be reluctant to take legal action. For individuals who do not have financial support within the community, legal aid is therefore necessary.

However, there are insufficient resources in the government and in legal aid programmes to meet these needs. Although the Legal Aid Council has received marginally increased financial assistance for victims of human rights abuses since Nigeria's return to civilian government, it is still inadequately resourced. NGOs such as the Social and Economic Rights Action Center, Environmental Rights Action, Niger Delta-Human and Environmental Rescue Organisation and Socio-Economic Rights Initiative have taken up *pro bono* (free of charge) cases for Niger Delta communities. The chapters of the Nigerian Bar Association in Rivers, Delta and Bayelsa States also run *pro bono* schemes for individuals.

Given these obstacles, some litigants have turned to the US courts for redress under the US Alien Torts Claim Act. For example, some representatives of the communities of the Opia and Ikenyan communities in Delta State are currently seeking compensation in the US courts. The communities claim that the Chevron Corporation is liable for the fact that its Nigerian subsidiary hired government security force which allegedly shot at peaceful protesters at Chevron Nigeria's Parabe offshore platform in late 1998 and allegedly destroyed two villages in early 1999, using Chevron Nigeria's helicopters and boats. These cases are currently sub-judice.<sup>102</sup>

The unclear status of class action (legal action on behalf of a group of people and with a projected benefit to a larger group of people than the actual litigants) in Nigeria also restricts access to justice. Judges have reportedly refused to hear some communities' claims by taking a restricted view of the legal standing (*locus standi*) of the individuals or groups bringing the claim. The UN Special Rapporteur on human rights defenders raised the absence of public interest litigation as an issue hampering the work of human rights defenders after her visit in April 2005.<sup>103</sup> Class action may be necessary where the official representatives of the community – such as the chiefs or king – may be reluctant to proceed against a company.

Current oil-related and environmental protection legislation reduces, even discourages, access to justice and also contributes to violence in the region.<sup>104</sup> It protects the interests of the oil and gas producing companies rather than those of the communities.

- Under the **1978 Land Use Act** (Section 1), all land not expressly "vested" in the Nigerian federal government or its authorities is "vested" in the state governor to be held in trust for the benefit of "all Nigerians".<sup>105</sup> Under the Act, the state governor may expropriate land for mining or oil purposes; communities may not question the entry of an oil company on its communal land and do not receive compensation for its loss; the compensation goes to the state governor.<sup>106</sup>
- There is no statutory provision or mechanism for defining fair and adequate compensation. Government guidelines on compensation rates for damage to land and crops do not require that compensation reflects future income prospects. An association of oil-producing companies therefore regularly produces recommended compensation rates that are in some cases eight times higher than official rates.<sup>107</sup> With almost six cases of oil spills a week in the Niger Delta, only one company, Shell Nigeria, publishes statistics showing number of oil spills involving the company. The Nigerian National Petroleum Corporation (NNPC), the government oil company, estimates the number of oil spills at 300 a year.
- The 1992 Environmental Impact Assessment (EIA) Decree does not make

consultation with the concerned communities mandatory.<sup>108</sup> It therefore in practice discriminates against local communities, because they have no access to the environmental impact assessment documentation, and the time allowed for consultation is usually short. This affects the right to seek, receive and impart information for the communities concerned.<sup>109</sup>

#### **4.4 Oil: an asset or a liability?**

Nigeria had a diversified economy before the discovery of oil in 1956 in Oloibiri, in what is now Bayelsa State. Oil now accounts for over 98 per cent of Nigeria's exports and oil revenues for 80 per cent of the national budget. Nigeria is the fifth-largest producer of oil within the Organisation of Petroleum Exporting Countries (OPEC) and is Africa's biggest oil producer.

Nigeria's daily output of oil varies between 1.8 million barrels per day (mbd) and the recently highest output of 2.4 mbd.<sup>110</sup> Nigeria's official quota, under OPEC, is 2.166 mbd.<sup>111</sup> According to the US Department of Energy's estimates, Nigeria's oil reserves are estimated to be 32 billion barrels.<sup>112</sup> At the current rate of production, Nigeria has enough oil to last another 48 years. In recent years, the government has sought a higher quota for its daily production from its OPEC partners, claiming it has found new reserves.<sup>113</sup> The USA is the largest export market for Nigerian oil, and might import 25 per cent of its future energy needs from West Africa and the Atlantic Ocean.<sup>114</sup>

Despite the doubling of oil prices in the last two years, widespread poverty persists in the Niger Delta. However, even at US\$60 a barrel, the average price in mid-2005, Nigeria's per capita oil income is only US\$420 annually. So although oil is important to the economy, there is not enough oil to pay for most of Nigeria's economic development.<sup>115</sup> It is therefore vital that oil revenue is harnessed properly and transparently, to provide the resources necessary for the government to respect, protect and fulfil all human rights.

However, oil revenues have not been distributed fairly within regions, and have often been diverted for personal gain by officials in successive administrations. According to Transparency International, Nigeria ranks 144th out of 146 countries in its Corruption Perception Index.<sup>116</sup> Widespread corruption has distorted economic priorities and government revenues have not been spent on projects that can fulfil human rights.

Oil's role in the complex cycle of conflict and violence in the Niger Delta is key, and has important human rights implications. As other economic sectors have remained underdeveloped, oil's importance in the Nigerian economy has increased. Continued oil production is regarded as strategically critical, so that the state does not run into further debt. The government is the majority joint venture partner in all oil companies operating in Nigeria.<sup>117</sup> Companies seek returns on investments they have made, and the government needs the revenues to maintain its budget. To maintain uninterrupted oil production, government security forces are deployed with the primary task of ensuring unhindered oil operations. Companies have been seen, by communities and activists, as complicit in the human rights violations committed by those forces in law enforcement operations against community protesters or criminal suspects. Young men in increasingly angry and frustrated communities have resorted to abductions, sabotage and occupation of oil installations in an attempt to secure jobs and services for their communities.

Instead of building effective assets in the Niger Delta, the operational practices of the oil industry and the state have created a cycle of violence which needs to be broken.

#### **4.5 Chronic underdevelopment persists**

Following the return to civilian government in 1999, the government set up the Niger Delta Development Commission (NDDC) in 2000, to address the chronic lack of development in the nine Niger Delta states: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers.<sup>118</sup> Among its functions, the NDDC is to propose and implement a master plan for development projects and programmes approved by the federal government, and advise the federal and state governments – and liaise with oil companies – on “pollution prevention and control”.<sup>119</sup> The head of state appoints the NDDC’s governing board, which includes representatives of the administrations in oil- and non-oil producing states and representatives of oil companies. However, there are no civil society or community representatives on the board, or any independent experts.<sup>120</sup>

The NDDC should receive funds from the federal government (6.5 per cent of oil revenues) and from companies (three per cent of their annual budget). However, the federal government is in arrears going back to 2001; the NDDC says it has received less than 20 per cent of government dues. Companies too have not fully contributed their share, saying the NDDC has failed to prepare a comprehensive development plan. The NDDC addressed that criticism in November 2004, with the release of a master plan for 2005-2008.<sup>121</sup> However, some companies argue that their contribution should be taken from the taxes they already pay, and others that their community development programmes should count as part of their contribution, citing widespread corruption as a reason for exercising control of the money.

#### **4.6 Oil revenues to Niger Delta states**

The government has increased the share of oil revenues allocated to the oil-producing states, to address the wider social and economic issues in the region. The military government of General Ibrahim Babangida (1985-1993) agreed to return 1.5 per cent of oil revenues to the Niger Delta states, however it is impossible for Amnesty International to ascertain if in fact this revenue did reach the states, however we found little evidence of any expenditure on improving social or economic conditions in the region.

Under the 1999 Constitution, the Niger Delta state administrations should receive a higher percentage of national oil revenues – up from 1.5 to 13 per cent – to be used for development purposes. However, as more oil and gas are found offshore in the Gulf of Guinea and as international oil prices have risen, other Nigerian states, mainly in the north, have contested the 13 per cent formula and argued that it should apply to onshore oil production only. In response to a legal challenge by the federal government, in 2002 the Supreme Court ruled that the 13 per cent formula applied to revenues from onshore oil only, and reduced payments to states in some cases.

A National Political Reform Conference, meeting to discuss the future political structure of Nigeria and division of state revenues, which ended in July 2005, recommended to the government that the Niger Delta states should receive 17 per

cent of oil revenues. Delegates from the oil producing states initially demanded 100 per cent resource control, later reduced to 50 then 25 per cent, but withdrew from the conference when their demands were not met. The federal government has yet to say whether it has accepted the recommendation or not.

#### **4.7 Failure of corporate initiatives**

Shell's failure to condemn the human rights violations against the Ogoni and its belated appeals just before the executions brought the company worldwide opprobrium. The Voluntary Principles call upon all companies "to maintain the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms". The host state is under an obligation to act according to those standards, as the Voluntary Principles are derived from international law, companies' commitment to them is not legally binding.

These voluntary approaches to guiding company activities endeavour to ensure that the way they operate reflects industry best practice. Yet the gap between the principles in theory and their concrete effect on the ground is often wide. Companies appear to have made some attempts to integrate the Voluntary Principles in their dialogue with government security forces, but the record of the security forces over the past five years reveals that implementation in the Niger Delta is failing.<sup>122</sup> Negligence in addressing this issue may even expose the company to the risk of complicity in human rights abuses.

Some community development projects, such as the Akassa project in Bayelsa State, run by the NGO Pro-Natura with oil companies Statoil, BP and Chevron Nigeria, have been effective in involving communities meaningfully, identifying priorities and implementing local solutions.<sup>123</sup> However, many projects have failed to meet communities' expectations.<sup>124</sup> Community protests and conflict over such failures and broken promises have been put down with excessive force, and Shell and Chevron have admitted to their role in contributing to such violence.<sup>125</sup>

Representatives of several oil companies have acknowledged to Amnesty International that their projects may not only undermine the legitimacy and capacity of the government, but also foster a "dependency mentality" and raise false expectations in communities. This has led the inhabitants of often isolated Niger Delta communities to turn to the most visibly powerful entity in their area, the oil company.

Given the importance of oil in Nigeria's economy, in Amnesty International's view the government has failed to protect communities in oil producing areas, while providing security to the oil industry. Domestic regulation of companies to ensure protection of human rights is clearly inadequate.

The **Universal Declaration of Human Rights** calls on every organ of society, which includes companies, to respect human rights. There is a clear trend towards applying human rights responsibilities to companies. The **UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the UN Norms)** are the first step in this direction. Companies must respect human rights. The Norms establish the right balance between governments' obligations and companies' responsibilities, and provide the most comprehensive available tool clarifying companies' human rights responsibilities.<sup>126</sup>

Although not binding, *per se*, the Norms can act as a benchmark against which national legislation can be judged. States must draft national legislation that reflects the responsibilities that companies bear under the Norms in order to harmonize companies' responsibilities wherever they operate. Transparent and independent mechanisms and procedures are also needed to assess and ensure corporate compliance with law and international standards. The Norms contemplate external monitoring and verification, for example through existing UN human rights mechanisms. However, despite their adoption by the UN Sub-Commission on the Promotion and Protection of Human Rights, and strong support from NGOs and some companies and governments, the Norms are not to date recognized by most governments. Amnesty International is campaigning to ensure that the Norms form the basis for a universally recognised set of standards applicable to companies.

A voluntary mechanism currently providing some form of weak complaint system are the **Guidelines for Multinational Enterprises**. The Guidelines were prepared by the Organisation for Economic Co-operation and Development (OECD), which includes 30 industrialized countries. The OECD Guidelines relate to key aspects of multinational enterprises' operations: information disclosure, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation. The Guidelines include an important provision specifying that enterprises should: "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."<sup>127</sup> However, this human rights provision is very general and on its terms offers little guidance as to how to resolve issues of human rights. Although the Guidelines are not binding, companies should observe them in whichever country they have operations. The Guidelines are implemented through a dual system of National Contact Points in each adhering country and an Investment Committee which oversees the process.

The complaint mechanism presents a number of weaknesses:

- narrow national economic interests often unduly influence the assessment of companies' behaviour
- there are no investigative powers at the disposal of the OECD, and officers not trained in human rights may reach arbitrary decisions
- it is not possible under the Guidelines to obtain relief or reparations
- the Guidelines only apply to companies that are based in OECD or adhering countries

Despite these drawbacks, the National Contact Points' effectiveness in monitoring company performance under the guidelines should be tested by NGOs and communities, in order to underscore the international need of establishing binding mechanisms to ensure compliance by companies with international human rights standards. Incorporating the relevant provisions of the Voluntary Principles for Security and Human Rights within the OECD Guidelines could provide a first step in offering a platform for monitoring their implementation. The UN Norms should be used as a reference for understanding the scope of the human rights clause in the OECD Guidelines.

#### **4.8 Oil theft**

The failure of the government and the oil industry to ensure that the people of the Niger Delta and Nigeria have benefited from the country's oil wealth has created frustrations and grievances that have built up over decades of neglect. Creating "ghost jobs" in oil facilities in response to community demands for employment – paying young men to do nothing because there are no jobs available or because they lack the necessary skills – fails to address the long-term issues. The oil industry in Nigeria employs 35,000 people, directly and indirectly, out of a rapidly expanding population estimated at 124 million in 2002, and can never create enough jobs to meet demand.

Long-standing injustices felt by communities have resulted not only in peaceful political protests, but increasingly in attacks on oil property and personnel. In an attempt to secure jobs and services, oil companies have been targeted for abductions of staff or subcontractors for ransom, sabotage and occupation of their installations. Communities have resorted to the ecologically damaging, and sometimes fatal, sabotage of oil pipelines, to obtain compensation or the contracts to clean up the oil spills. This is often perceived as the only way to gain from the resources being transported across their land. In a number of instances, hundreds of people have been killed in explosions and massive fires while gathering fuel at leaking pipelines.

In recent years, the number of attacks and killings of oil company personnel appear to have grown.<sup>128</sup> Increasingly, those responsible are well-armed criminal groups. The theft of oil by illegal bunkering is lucrative and widespread. Pipelines are tapped with sophisticated equipment, often in broad daylight, and the oil transported by barge or road tanker to the ports for sale on the international market through refineries in Côte d'Ivoire, Senegal and beyond. Bunkering services and barges were openly available in Port Harcourt, Rivers State, in May 2005. According to Shell Nigeria, average losses have ranged from 20,000 barrels per day (bpd) up to 100,000 bpd during the 2003 elections, when the sale would have fetched the thieves as much as US\$2.67 million daily.<sup>129</sup> It is widely believed that political parties at least tolerate illegal bunkering to raise the funds to fight elections, and an increase in the circulation of arms was observed during the election period.<sup>130</sup>

Illegal oil bunkering is under the control of powerful cartels, well-connected officials and armed groups. Government efforts to combat oil theft can be hampered by the influence of powerful individuals. In one case, the tanker *MT African Pride*, containing stolen oil, "disappeared" from official custody following its seizure by the navy in 2004 and its transfer to the charge of the police. One naval officer was transferred from a senior command after he refused to hand the vessel over to the police, saying that they were not capable of holding a seized ship.<sup>131</sup> Some oil analysts believe that the oil was stolen with the connivance of naval officers, to be refined in other countries, possibly for resale at a higher price to Nigeria.

#### **4.9 The proliferation of arms**

The massive profits from oil thefts have allowed an inflow of weapons into the Niger Delta – from abroad and other parts of Nigeria – that has gone virtually unchecked. Communities are becoming increasingly militarized as young men are hired and armed to guard illegal bunkering operations. The amount they can earn, as much as N10,000 a day (about US\$75), is the equivalent to a police constable's monthly

earnings. Arms proliferation raises the risk of human rights abuses by armed groups and of human rights violations by government security forces in their response to communal disputes. Firearms are also alleged to be used in killings of political opponents on the order of government officials in some cases.

By some accounts, there are tens of thousands of sophisticated weapons circulating in the Niger Delta. According to some estimates, each of the Delta's 1,600 communities may have access to between 20 and 50 sophisticated weapons, some of them up to 100.<sup>132</sup> The weapons, including AK-47s, Beretta pistols and rocket-propelled grenades, are often more sophisticated and powerful than those of the police. They are illegally imported, originating in Eastern Europe and entering through other West African countries, or have been brought back by soldiers returning from serving with Economic Community of West African States (ECOWAS) peacekeeping missions in Sierra Leone and Liberia.<sup>133</sup> Warri is the main port of entry.<sup>134</sup> ECOWAS has estimated that, of eight million illicit weapons in the region, half are used for criminal purposes.<sup>135</sup>

The weapons have been used for criminal activities, for intimidation and violence during elections, and by armed militia in the Niger Delta in clashes with the security forces and in intercommunal disputes. Academic and defence experts have observed an increase in arms proliferation in the Niger Delta during elections.<sup>136</sup>

A Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons agreed by ECOWAS in 1998 calls for the collection and destruction (to prevent re-use) of all illicit small arms.<sup>137</sup> 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 recommendations by the UN General Assembly.<sup>138</sup> In 2004 the government promoted community-policing projects in some states to improve police-community relations, initiated federal government plans for creating employment and intensified gun recovery programmes across the country.<sup>139</sup>

In May 2005 Dr Peter Odili, Governor of Rivers State, told Amnesty International delegates that his administration had recovered over 3,000 weapons in the previous six months, supported by an arms amnesty, and that weapons were destroyed publicly in November and December 2004 and in April 2005. However, the gun recovery programme involved payment for surrendered weapons.<sup>140</sup> International experience and best practice suggests that in a number of cases such programs leads to further arms proliferation as militia groups may turn in old weapons, collect cash, and buy new weapons. The payment for weapons under the disarmament policy, together with poor evidence of actual destruction of all the weapons handed in, point to a failure of political will to combat the problem and a poor enforcement by the police.

#### ***4.10 Human rights defenders still under threat***

Faced with continuing human rights abuses and violence in the Niger Delta, communities have taken up the Ogoni campaign to achieve greater development of their region and to end human rights abuses, pollution and failed initiatives of the government and companies. The number of non-governmental organizations (NGOs) and civil society groups mobilizing on the full range of rights – civil and political rights as well as economic, social and cultural rights – continues to rise. Women's

groups have also emerged, both as peacemakers and as campaigners demanding greater share of resources.

Such groups are at the forefront of the struggle for human rights, and have continued to face repression from the authorities. The return to civilian government in 1999 has restored constitutional human rights and has given substantially more freedom to operate to NGOs, human rights lawyers, journalists and other human rights defenders. After her visit to Nigeria in April 2005, UN Special Rapporteur on Human Rights Defenders concluded:

*"The current environment for the defence of human rights is vastly different from the pre-1999 era and, in particular, efforts are being made to create and strengthen initiatives that contribute to a more positive approach towards the promotion and protection of human rights. The National Human Rights Commission and the Human Rights Committee of the House of Representatives have shown a readiness to raise human rights issues and the appointment of the Special Advisor to the President on Civil Society Organizations is a step towards a fuller recognition of the importance of civil society in the process of democratization... There is a need for government and the oil companies to review their practices and transparency to genuinely engage with defenders in order to hear and respond to the needs of the affected population."*<sup>141</sup>

However, in many respects the return to civilian government has made little difference for human rights defenders, particularly when investigating human rights in the Niger Delta.<sup>142</sup> International activists and journalists, including television crews, have reported being harassed, arbitrarily detained and sometimes beaten for investigating oil spills, violations by the security forces or other alleged human rights abuses. Human rights defenders have continued to be arbitrarily detained, beaten, their access to information restricted, their protests obstructed, often with the use of force, their houses searched, and in some instances threatened with death.<sup>143</sup> Recent cases include:

- On 10 July 2004 the security forces detained **two international activists** visiting Ogoniland for a day and confiscated their film.<sup>144</sup>
- In October 2004 police detained **Bari ara Kpalap**, information officer of the Movement for the Survival of the Ogoni People (MOSOP), and two other activists when they visited a Shell Nigeria oil spill site at Gokana in Ogoni to inspect and ascertain the extent of the damage. The police took away their address books, and later government security services seized their mobile phones. They were released a few hours later and told they should have obtained permission before visiting the site, although there is no legal requirement to do so.<sup>145</sup>
- In October 2004, **three journalists** representing local newspapers *Punch* and *Champion*, and the international news agency, *Associated Press*, also visited Gokana, where the police briefly detained them at a local police station, and seized their cameras, tape recorders and identity cards.<sup>146</sup>
- On 10 January 2005, **Chief Jonathan Wanyanwu** of Rukpokwu, Rivers State, was arrested with his brother Christian and detained at Port Harcourt prison to await trial on charges of murdering a 10-year-old boy. The charges were reduced to "unlawful wounding" and he was released on bail on 17 May. Amnesty International has not seen any credible evidence suggesting that Chief Jonathan Wanyanwu was involved in the attack in which the boy was killed, and is

concerned that his detention and prosecution may be linked to his leadership of protests about oil spillage from a Shell Nigeria pipeline in December 2003 that has repeatedly wrecked crops on his farm.<sup>147</sup>

- In April 2005, two members of an Australian Broadcasting Corporation **television documentary team** were briefly detained while trying to film the demolition of a large slum area in Port Harcourt. Police officers reportedly kicked them and tried to seize their camera equipment.<sup>148</sup>

One journalist who spoke to Amnesty International on condition of anonymity recounted several cases of journalists reporting on the Niger Delta who had been detained by the security forces and beaten up so that they would “learn a lesson”. Journalists have had their offices closed, and their files and computers seized by the authorities, or been threatened with abduction by members of a militia because of their reporting of a conflict over an oil contract. Journalists and editors also dilute messages on human rights and environmental issues involving oil companies because of the threat of loss of advertising revenue from the companies.

The UN Declaration on Human Rights Defenders states that “everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations” for the purpose of promoting and protecting human rights and fundamental freedoms (Article 5).<sup>149</sup>

Political or ethnic activists who are seen to challenge the structure of Nigeria still continue to face harassment and detention. On 11 September 2004, 53 football players and spectators were arrested and subsequently charged with treason for claiming independence for the eastern region of the Niger Delta and for being members of what the Government claims is an illegal organization.<sup>150</sup> They were all members of the Igbo-based organization Movement for the Actualisation of the Sovereign State of Biafra (MASSOB). The treason charges were withdrawn in July 2005, but the court said 28 of the accused should still answer charges of being members of an illegal organization;<sup>151</sup> the remaining detainees were released. Some of the 28 still facing charges remain in prison, while others have been able to meet bail conditions. They are disputing the charges on the grounds that MASSOB has never been banned in law. When Amnesty International delegates visited some of the detainees in April 2005, the male detainees were being held in very poor conditions in Ikoyi prison, Lagos, and two women among the accused were being held in Kiri-kiri women’s prison, also Lagos. Some of the detainees are suffering physical and psychological illnesses because of their prison conditions.

## 5. Recommendations

### 5.1 Recommendations to Federal Government of Nigeria:

#### *Amnesty International calls upon the Nigerian Government to:*

- Ensure that the events of 4 February 2005, at the Escravos terminal, and the events of 19 February 2005, in Odioma, are the subject of prompt, independent, impartial and effective investigations. Each investigation should be carried out by an

independent body with the necessary powers and resources to carry out the investigations. The investigating body should be made up of individuals with the necessary skills and experience. The scope, methods and findings of the investigations should be made public upon its completion. Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals;

- pending the above-mentioned investigations, suspend from active duty those with respect to whom (a) there are reasonable grounds to believe that they were responsible of human rights violations or (b) a complaint of human rights violations has been made;
- if enough evidence is gathered, ensure that those responsible for human rights violations during the incidents at Escravos terminal and in Odioma are prosecuted in trials that meet international law and standards of fairness and without recourse to the death penalty;
- ensure that the right to an effective remedy is guaranteed to victims of violations of civil and political as well as economic, social and cultural rights, including the victims of the Ugborodo and Odioma incidents. Steps should include the establishment and development of judicial, administrative, legislative or other mechanisms of redress, so that the victims claims can be determined by competent authorities and that victims can be granted full reparation (including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition);
- ensure that all members of the security forces receive training in and are held accountable to act in accordance with international human rights law and standards including those on the use of force and firearms, in particular the 1979 UN Code of Conduct for Law Enforcement Officials and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- respect, protect and fulfil the rights to freedom of expression, assembly and association;
- ensure that human rights defenders and others are able to exercise their rights without the risk of arbitrary arrest, and that they are not subjected to human rights violations including intimidation, ill-treatment or attacks on their homes;
- ensure that any agreements between the communities and companies do not in any way undermine human rights; also ensure that mechanisms are in place for peaceful dispute settlement and further ensure that the state acts as a regulator to act as per its obligation to respect, protect and fulfil human rights;
- acting as a regulator, in compliance with its obligation to protect human rights, require oil companies in Nigeria to regularly carry out mandatory assessments of the impact of their activities on human rights, in particular the implications of

environmental degradation for the right to health and to an adequate standard of living, as per Art. 14, commentary c) and d) of the UN Norms for Business;

- devise strategies to progressively achieve full realization of the economic, social and cultural rights of the people of Nigeria, in accordance with the government's obligations as a state party to the International Covenant on Economic, Social and Cultural Rights;
- uphold its commitment to control the illicit proliferation of small arms by developing and improving the ECOWAS Moratorium on the Importation, Exportation and\* Manufacture of Small Arms and Light Weapons signed in 1998, and which is currently undergoing revision;
- support an international Arms Trade Treaty to ensure the effective control of international arms transfers and that they are not used to violate international law, particularly international human rights law and international humanitarian law;
- ensure that adequate resources are allocated to enable it to exercise effective control over the production, export, transit and retransfer of small arms and light weapons within its jurisdiction, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients;
- use 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 and transfer of small 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.

## **5.2 Recommendations to Chevron**

### ***Amnesty International calls upon Chevron to:***

- Commission an independent and impartial investigation into its role, responsibility and conduct during the incidents on 4 February 2005 at Escravos terminal and make public the findings of such investigations;
- pending the above-mentioned investigation, suspend all security arrangements with individuals from its staff or private security forces against whom allegations are advanced of involvement in the human rights abuses during the incidents of 4 February, and to terminate such arrangements with those who are found to having been involved in such human rights abuses;
- urge the government to ensure that its security forces receive training in and that they are held accountable to act in accordance with international human rights

law and standards, including those on the use of force and firearms, while protecting the company's installations;

- ensure that its security arrangements observe international human rights norms as well as the laws and professional standards of the Nigeria, as per Article 4 of the UN Norms for Business;
- consult regularly with the Nigerian government and, where appropriate, NGOs and communities, concerning the impact of the company's security arrangements on the human rights of members of communities living in the area;
- disseminate the company's policies regarding ethical conduct and human rights and express the desire that the security be provided in a manner consistent with those policies by personnel with adequate and effective training, as per Clause 4(e) of the Commentary to the UN Norms for Business.

### **5.3 Recommendations to Shell**

#### ***Amnesty International calls upon Shell to:***

- Investigate allegations of security arrangements between a Shell Nigeria subcontractor and a criminal group in Odioma; make public the findings of such investigations; halt immediately any subcontractual arrangements that are found to benefit criminals either directly or indirectly.

### **5.4 Recommendations to all oil companies operating in Nigeria**

#### ***Amnesty International calls upon oil companies operating in Nigeria to:***

- Develop operating practices based on the UN Norms for Business and its Commentary in their 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 oil companies 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; in particular, ensuring that the security of the company's assets remains the responsibility of legitimate security forces, and not entrusted to any entity as per any formal or informal arrangements with communities;
- regularly carry out mandatory assessments of the impact of their activities on human rights, in particular the implications of environmental degradation for the right to health and to an adequate standard of living, as per Article 14 Commentary c) and d) of the UN Norms for Business;
- ensure and enhance transparency in regards to payment made and contracts awarded, as well as the criteria under which contracts are awarded, payments made,

and employees recruited, according to Article 11 of the UN Norms for Business; in particular, to stop making any cash payment that serves no legitimate business or community development purpose;

- ensure that the consultation with the community is transparent, meaningful and reflects the principles of free, prior informed consent; ensure that all groups are consulted, including the vulnerable and marginalized groups;
- ensure that any agreements that they sign do not undermine human rights;
- urge the government to ensure that its security forces receive training in and act in accordance with international human rights law and standards, including those on the use of force and firearms, while protecting the company's installations;
- conduct background checks on personnel in the private security forces deployed to guard their premises, to ensure that individuals who have committed human rights abuses in the past do not get recruited.

### ***5.5 Recommendations to the UK and US Governments***

***Amnesty International calls upon the UK and US governments (countries in which the oil companies have their headquarters) to:***

- Urgently ensure that companies operating in the Niger Delta comply with the Voluntary Principles for Security and Human Rights.

### ***5.6 Recommendations to the Chair of the Investment Committee of the Organization for Economic Cooperation and Development (OECD)***

***Amnesty International calls upon the Chair of the Investment Committee of the Organization for Economic Cooperation and Development (OECD) to:***

- Urgently advocate the incorporation of the Voluntary Principles for Security and Human Rights into the OECD Guidelines for Multinational Enterprises in order to evaluate their implementation;
- ensure that the UN Norms for Business are to be used as a reference for understanding the scope of the human rights clause in the Guidelines.

<sup>1</sup> Interview, Ugborodo, April 2005.

<sup>2</sup> Interview, Odioma, 1 May 2005.

<sup>3</sup> Saro-Wiwa, Ken, *The Ogoni Nationality Today and Tomorrow*, 1968.

<sup>4</sup> The Shell Petroleum Development Corporation (Shell Nigeria), after declaring it would end gas flaring by 2008, has since said there may be a delay of another year. See Friends of the Earth, *Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity*, June 2005, at <http://www.foei.org/climate/nigeriajustice.html>

<sup>5</sup> A World Bank study estimated the number of oil spills in the Delta and Rivers States of Nigeria between 1991 and 1993 at nearly 300 per year (World Bank, volume II, annex M, 1995). The figure could be as high as 10 times more, see Human Rights Watch, *The Price of Oil*, January 1999, p. 59. In its People and Development report, 2004, the Shell Petroleum Development Company (SPDC) states that the number of oil spills from their network was 236, of which 157 were due to sabotage, and 79 due to "controllable incidents." The corresponding figure for 2003 was 221, of which 141 were due to sabotage. See SPDC, 2004 People and the Environment Annual Report, May 2005, p. 16 and SPDC, 2003 People and the Environment Annual Report, June 2004, pp. 7-8.

<sup>6</sup> Interview with Brigadier-General Elias F. Zamani, Commander, Joint Task Force, Warri, Delta State, 27 April 2005.

<sup>7</sup> The Niger Delta region is approximately the same size as England, and comprises nine oil-producing states: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers. Nigeria is a Federal Republic of 36 states and a Federal Capital Territory (Abuja). The states are further subdivided into 589 local government areas. The federal government defines and monitors national policy, for implementation by state and local governments. In addition, each state has its own government, laws and judiciary.

<sup>8</sup> See *Nigeria at a Glance*, fact-sheet published by World Bank group, Sept 2004. Available at: [http://www.worldbank.org/data/countrydata/aag/nga\\_aag.pdf](http://www.worldbank.org/data/countrydata/aag/nga_aag.pdf)

<sup>9</sup> Shell Nigeria, commenting on a December 2003 survey commissioned from conflict experts, acknowledged that "we sometimes feed conflict by the way we award contracts, gain access to land, and deal with community representatives", and declared an intention to change its operating, security and community development practices with the help of local, national and international experts, stakeholders, and oil industry representatives. Chevron Nigeria made a similar admission in advertisements published in Nigerian newspapers in May 2005: see *Listening, Learning and Evolving*, a public advertisement by Chevron Nigeria Ltd, published in This Day, 4 May 2005, pp. 32-33.

<sup>10</sup> Bob Marley (singer) and L. Cogil and Carlton Barrett (authors), *Them Belly Full (But We Hungry)*, first published in the album *Natty Dread*, 1974. In that song, Bob Marley advised the recently-elected Democratic Socialist government of Michael Manley that the disenfranchised ghetto population was a volatile and potent political force.

<sup>11</sup> The Escravos terminal is Chevron Nigeria's biggest operation in Nigeria, where oil produced in various parts of the Niger Delta is brought through a network of pipelines, stored in tanks, and later supplied to tankers which then carry the oil to international markets. It includes the Escravos Gas Project (EGP) which processes natural gas. Adjacent to the EGP is a proposed synthetic fuel conversion plant (startup date 2009). It is projected as the company's initiative to reduce flaring of natural gas.

<sup>12</sup> According to Paul Barker, regional adviser (West Africa) Chevron Corporation: "The fences are industry-strength and require special type of equipment to cut them. It takes 30 minutes to 45 minutes to cut through the fence."

<sup>13</sup> The Joint Task Force did not comment on the number of security personnel at Escravos, beyond saying that it had "just enough strength" to protect the facility. Amnesty International obtained the number from the record of attendance at Escravos on a representative day.

<sup>14</sup> Interview with E. O. (Supo) Shadiya, operations manager at Escravos, 29 April 2005.

<sup>15</sup> Interview with Brigadier-General Zamani, Warri, 27 April 2005. In some cases, the Joint Task Force operates on company premises at the request of companies. In many others, it operates on a company's premises, whether or not the company has requested its presence, if it considers the area to be strategically important. Of the security personnel on company premises, all are armed except for the supernumerary police and the company's own security staff.

<sup>16</sup> Interview with Chevron Nigeria officials, Escravos, Delta State, 29 April 2005.

<sup>17</sup> Interview with Tony Okode, 25 April 2005.

<sup>18</sup> Until May 2005 the parent company, Chevron Corporation, was known as ChevronTexaco Corporation, reflecting the merger of the two US-based oil companies, Chevron and Texaco.

<sup>19</sup> Two videotapes were made of the demonstration, one by the Centre for Social and Corporate Responsibility, a non-governmental organization in Port Harcourt, Rivers State, another by a confidential

source independent of both the company and demonstrators.

<sup>20</sup> Brigadier-General Zamani told Amnesty International: "Our people were not injured, and we had not fired a single bullet. The JTF did nothing to provide medical aid. Check with the company if they did something."

<sup>21</sup> The names were: Joint Task Force personnel Akeem Adekunle, Ahmed Garuba, and Adebayo Olubiyo; contractors' employees Kennedy Ukpabia, O.A. Okurume, Henry Akpoduado, Lawrence Izoya, Kingsley Eromosele, Dickson Ejuetami, and Paul Onoja; and one Chevron Nigeria employee, O.I. Akubruiro.

<sup>22</sup> Interview with Deji Haastrup, Communications and Corporate Responsibility Manager, Chevron Nigeria, Escravos, 29 April 2005.

<sup>23</sup> Interview on 26 April 2005.

<sup>24</sup> Interview, Warri, April 2005.

<sup>25</sup> Vanguard, 'Committee blames Ugborodo riot on Chevron Texaco', 20 July 2005.

<sup>26</sup> Nigeria ratified the ICCPR on 29 October 1993.

<sup>27</sup> UN General Assembly, *Code of Conduct for Law Enforcement Officials*, adopted by Resolution 34/169 of 17 December 1979.

<sup>28</sup> UN Economic and Social Council, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990.

<sup>29</sup> UN Economic and Social Council, *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, recommended in Resolution 1989/65 of 24 May 1989.

<sup>30</sup> Chevron Nigeria operates a joint venture with the Nigerian National Petroleum Corporation (NNPC), the government oil company, in which NNPC owns 60 per cent and Chevron Nigeria 40 per cent of equity. For further details, see [www.chevron.com/operations/africa/nigeria.asp](http://www.chevron.com/operations/africa/nigeria.asp).

<sup>31</sup> Their names are: Richard Anajule, Jolomi Edorogbologbo, Utiyen Jemiregben, Daniel Ebitea, Ebi Owunmi, Julius Aruga, Moses Ilori, Isaac Popo, Festus Oritsegbami, Tutu Adetunji, Johnny Aserepe, and Sunday Atakere.

<sup>32</sup> Under standard operating procedures, Chevron Nigeria briefs the government security forces about expected behaviour on the premises. This includes a briefing that calls for respect of human rights and the Voluntary Principles for Security and Human Rights.

<sup>33</sup> International Council for Human Rights Police, *Beyond Voluntarism*, Geneva, 2001.

<sup>34</sup> See UN Norms for Business. Also see Amnesty International, *The UN Human Rights Norms For Business: Towards Legal Accountability* (AI Index: IOR 42/002/2004).

<sup>35</sup> See UN Economic and Social Council[or UN Sub-Commission on the Promotion and Protection of Human Rights on 26 August 2003?], Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, adopted 13 August 2003, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, at [www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument). Also see Amnesty International, *The UN Human Rights Norms For Business: Towards Legal Accountability*, (AI Index: IOR 42/002/2004).

<sup>36</sup> See the Statement by Mary Robinson UN High Commissioner for Human Rights to the Informal One-Day Meeting of the Commission on Human Rights to the Third Committee at the UN General Assembly, 56<sup>th</sup> Session, 6<sup>th</sup> Nov, 2001.

<sup>37</sup> See Global Compact, *Embedding Human Rights in Business Practices*, joint publication of the UN Global Compact Office and the Office of the UN High Commissioner for Human Rights, 2004, at [www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf](http://www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf)

<sup>38</sup> The case is *Bowoto v Chevron Texaco*. Details are available at <http://www.earthrights.org/chevron/index.shtml>. In March 2004, the district court of the Northern District of California court denied the company's motion for a summary judgment. See C 99-2506 SI.

<sup>39</sup> See Burdin Asuni Judith, "Academic Associates Peaceworks' Intervention in the Warri Crisis", published in *Conflict and Instability in the Niger Delta*, Spectrum Books, Ibadan, 2002.

<sup>40</sup> Interview with Ohi Unuigbe, a human rights lawyer with the Legal Defence and Assistance Project (LEDAP), Lagos, April 2005.

<sup>41</sup> See A.F.C. Ryder, "Missionary Activity in the Kingdom of Warri in the Early 19th Century", in the *Journal of the Historical Society of Nigeria*, Vol II.

<sup>42</sup> See T.A. Imobighe, "Warri Crisis in Historical and Contemporary Perspectives", in *Conflict and Instability in the Niger Delta*, Spectrum Books, Ibadan, 2002.

<sup>43</sup> See ChevronTexaco press release, "Chevron Nigeria Ltd shuts in all Western Niger Delta production", Lagos, 23 March 2003, at [www.chevron.com/news/press/2003/2003-03-23.asp](http://www.chevron.com/news/press/2003/2003-03-23.asp); ChevronTexaco press release, "Chevron Nigeria Limited Restarts Escravos Terminal Operations", 4 April 2003, at <http://www.chevron.com/news/press/2003/2003-04-04.asp>

<sup>44</sup> Interview with an Itsekiri politician, Warri, 26 April 2005.

<sup>45</sup> Based on interviews with Chevron Nigeria officials, Delta State, April 2005.

<sup>46</sup> According to Brigadier-General Zamani, interviewed Warri, 27 April 2005: "The community felt that the company was not sincere. They complained to us. We asked them to settle the dispute with the company."

<sup>47</sup> Memorandum of Understanding between Chevron Nigeria Limited and Ugborodo Community and the Delta State Government of Nigeria, 17 July 2002.

<sup>48</sup> The company made commitments to: "(1) Re-sandfill Ugborodo New Town; (2) Build works on Civic/Community Centre; (3) Award six contracts before the end of 2002 using open tendering and competitive bidding among community contractors, who would be indigenes. (If the contractor is not from the area, he would be required to give substantial consideration to local community content); (4) Train local manpower to acquire relevant skills; (5) Provide electricity to Ode-Ugborodo for residential and cottage industry use by connecting it with the company's power system; (6) Provide water supply system by extending existing connection from Escravos Terminal; (7) Construct teachers' quarters for four primary schools, and a block of six classrooms and teachers' quarters at Ogidigben Grammar School; (8) Process and pay scholarships for community students; (9) Increase bursaries to community scholars in tertiary institutions to N75,000; (10) Assist in developing aquaculture skills as well as business enterprise; (11) Employ women contractors to supply yam, palm oil, etc; (12) Supply four speedboats powered by two 75 hp engines; (13) Employ 15 indigenes through the testing process, and five more people every year from the community for the next five years; (14) Require its contractors to hire 40 indigenes; and (15) Build official residences of the EghareAja of Ugborodo and the Olaja Orori."

<sup>49</sup> Piling for the civic centre was in progress when the Warri crisis intervened. The company also says that conceptual engineering for a power station in Arunton, near the community, is completed, with a power cable to be installed this year; that design surveys for Ugborodo and Ogidigben schools and teachers' quarters for four schools have been completed, as is the design for two palaces; and that potable water is to reach Ugbegin in 2005.

<sup>50</sup> Interviews with activist and community representatives, Delta State, April 2005.

<sup>51</sup> For example, in a petition provided to Amnesty International by the Delta-Ondo Oil Producing Communities Graduates Employment Coalition.

<sup>52</sup> These new global Memoranda of Understanding are part of Chevron Nigeria's "community engagement" policy, and based on the principles of "participatory partnership, transparency and accountability, capacity building, community empowerment, and sustainable development." See "Listening, Learning and Evolving, a public advertisement by Chevron Nigeria", published in This Day, 4 May 2005, pp. 32-33.

<sup>53</sup> Presentation by Chevron Nigeria to Amnesty International, Escravos, April 2005.

<sup>54</sup> Amnesty International, 'Human rights for human dignity: a primer on economic, social and cultural rights', AI INDEX: POL:34/009/2005.

<sup>55</sup> See Amnesty International, *Human Rights and Privatisation* (AI Index: POL 34/003/2005).

<sup>56</sup> For example Diepreye Alamieyeseigha, Governor of Bayelsa State, said in April 2005:

"Oil has become the reason for which the federal government and transnational corporations exercise their ruthless might, wherever there is a threat to the industry. Excessive use of force by armed security agencies in the course of protecting facilities acknowledges the deliberate refusal of oil companies to honour the obligations to communities as obtained in various [*Memoranda of Understanding*] which they voluntarily signed with host communities. The cost of doing business here will continue to increase unless there is due regard to hosts and stakeholder consultation." He was questioned by the Metropolitan Police in London in September 2005 in London allegedly on charges of money laundering.

<sup>57</sup> Interview, Yenagoa, Bayelsa State, 30 April 2005.

<sup>58</sup> Interview with Brigadier-General Zamani, Warri, 27 April 2005.

<sup>59</sup> Interviews in Odioma, 1 May 2005, and elsewhere in the Niger Delta, April and May 2005. See Amnesty International, "Nigeria: Fears of human rights violations after troops deployed in Bayelsa State, Niger Delta" (AI Index: AFR 44/006/2005).

<sup>60</sup> Interview, 1 March 2005.

<sup>61</sup> Also see also Principle 18(2), which determines the minimal content of the humanitarian assistance to be as follows: "At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food

---

and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation”.

<sup>62</sup> Interview with Brigadier-General Zamani, Warri, Delta State, 29 April 2005.

<sup>63</sup> The seized weapons reportedly included mounted machine guns, tripods for mounting machine guns, binoculars, small grenades, dynamites, seven .62 mm specialized ammunition rounds, 103 live ammunition rounds, .38 mm guns with 46 live rounds, .48 mm guns with three live rounds, single barrel guns, and 47 rifle magazines. There were also live cartridges and stocks of bullets.

<sup>64</sup> Interview with Amnesty International, 1 May 2005.

<sup>65</sup> *Vanguard*, “Alamieyeseigha defends military raid of Odioma”, 24 February 2005.

<sup>66</sup> *Punch*, “Troops reduce Bayelsa community to rubbles”, 1 March 2005.

<sup>67</sup> *Vanguard*, “Alamieyeseigha regrets Odioma raid”, 1 March 2005.

<sup>68</sup> *This Day*, “Odioma: rehabilitation of displaced persons begins”, 2 March 2005.

<sup>69</sup> Submission by the Obioku community to the Judicial Commission of Inquiry into the Odioma/Obioku crisis, first half of 2005. See also *Punch*, “Troops reduce Bayelsa community to rubbles”, 1 March 2005.

<sup>70</sup> Tuodolo, Felix, *Again, genocide in the Niger Delta*, discussion paper, 2005.

<sup>71</sup> Submissions by the Nembe (Bassambiri) Council of Chiefs and the Nembe Local Government Council to the Judicial Commission of Inquiry provided the same eight names.

<sup>72</sup> Interview, Yenagoa, Bayelsa State, 30 April 2005.

<sup>73</sup> There are a number of Shell companies in Nigeria: 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). SPDC has 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, 1,000 wells and eight gas plants; and running a 6,000-kilometre network of pipelines through the Niger Delta.

<sup>74</sup> Michael Peel, “The Niger Delta: A destructive web of relationships”, *Financial Times*, 25 April 2005.

<sup>75</sup> Memorandum by the Odioma Community submitted to the Judicial Commission of Inquiry into the Odioma/Obioku crisis, 4 April 2005.

<sup>76</sup> The section on Right to Equal Opportunity and Non-Discriminatory Treatment (Article 10[c]) says businesses “shall respect the rights of local communities affected by their activities and the rights of indigenous peoples and communities consistent with international human rights standards such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169)...to own, occupy, develop, control, protect and use their lands, other natural resources... [and shall] respect the principle of free, prior and informed consent of the...affected [communities]... [The communities] shall not be deprived of their own means of subsistence... [Companies] shall use particular care in situations in which indigenous lands, resources, or rights thereto have not been adequately demarcated or defined.”

<sup>77</sup> See Global Compact, *Embedding Human Rights in Business Practices*, joint publication of the UN Global Compact Office and the Office of the UN High Commissioner for Human Rights, 2004, at [www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf](http://www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf)

<sup>78</sup> Introduction by William Boyd to Ken Saro-Wiwa, “*A Month and A Day: A Detention Diary*”, Spectrum Books, 27 November 1995.

<sup>79</sup> Kenule Beeson Saro-Wiwa was born in Bori in 1941. He was educated at the Government College, Umuahia, where he was later to teach, and at the University of Ibadan and Lagos. In the 1960s, he was appointed administrator for Bonny, Rivers State. He sided with the federal government during the Nigerian civil war. He turned to writing, and from 1990 focused on the plight of his community, Ogoni.

<sup>80</sup> See the *Ogoni Bill of Rights* at [www.waado.org/NigerDelta/RightsDeclaration/Ogoni.html](http://www.waado.org/NigerDelta/RightsDeclaration/Ogoni.html)

<sup>81</sup> Quoted in Saro-Wiwa, Ken, *A Month and A Day: A Detention Diary*, Spectrum Books, 27 November 1995.

<sup>82</sup> Birnbaum, Michael, QC, “*A Travesty of Law and Justice: An Analysis of the Judgment in the Case of Ken Saro-Wiwa and Others*”, Article 19, December 1995. See also Birnbaum, Michael, QC, “*Nigeria: Fundamental Rights Denied: Report of the Trial of Ken Saro-Wiwa and Others*”, Article 19 in association with the Bar Human Rights Committee of England and Wales and the Law Society of England and Wales, June 1995; Amnesty International, *Nigeria: The Ogoni trials and detentions* (AI Index: AFR 44/020/1995) and “*Nigeria: Amnesty International condemns death sentences imposed on Ken Saro-Wiwa and other Ogoni detainees after blatantly unfair trials*” (AI Index: AFR 44/026/1995); and Human Rights Watch, *The Ogoni Crisis*, July 1995. The Nigerian Nobel Laureate, Wole Soyinka, called it a “kangaroo trial” in his Reith Lectures for the BBC in 2004.

<sup>83</sup> See Amnesty International, "Nigeria: Amnesty International is seriously concerned about the fate of 17 other Ogoni activists" (AI Index: AFR 44/034/1995) and "Nigeria: Death in detention/health concern/legal concern: Clement Tusima, aged 40, mechanic, supporter of the Movement for the Survival of the Ogoni People (MOSOP) and 17 other MOSOP supporters" (AI Index: AFR 44/019/1995).

<sup>84</sup> African Commission on Human and Peoples' Rights, Decision on communication of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria* (155/96), see the decision done at the 30<sup>th</sup> ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available on URL [www.elaw.org/assets/pdf/ng.afr.commission.hrights.pdf](http://www.elaw.org/assets/pdf/ng.afr.commission.hrights.pdf).

<sup>85</sup> These included: the rights to non-discrimination (Article 2), the right to respect for life and the integrity of person (Article 4), the right to property (Article 14), the right to health (Article 16), the right to protection of the family unit (Article 18(1)), the right of peoples to freely dispose of their wealth and natural resources (Article 21), and the right to a generally satisfactory environment favourable to their development (Article 24). Nigeria ratified the African Charter on 22 June 1983.

<sup>86</sup> Interview, 29 July 2005.

<sup>87</sup> Various reported in Amnesty International, *Nigeria: Time to end contempt for human rights* (AI Index: AFR 44/014/1996); *Nigeria: Time for justice and accountability* (AI Index: AFR 44/014/2000); "Nigeria: At least one dead as tensions increase in Ogoniland" (AI Index: AFR 44/004/2000); *Nigeria: Repression of women's protests in oil-producing delta region* (AI Index: AFR 44/008/2003).

<sup>88</sup> Interview, Abuja, Nigeria, June 2000. Also reported in Amnesty International, "Nigeria: reported reprisal killings by government soldiers must be investigated" (AI Index: AFR 44/006/2001).

<sup>89</sup> This Day, "Odi massacre: 9 women seek N19m compensation for rape", 19 July 2002.

<sup>90</sup> See Austin Ekeinde, *Response to: Ijaw Group Condemns Use of Chemical Weapons*, Reuters, 23 September 2004; Human Rights Watch, *Rivers and Blood: Guns, oil and power in Rivers State*, 2005, p. 18.

<sup>91</sup> Asari Dokubo was arrested in Port Harcourt on 20 September, and subsequently on 5 October charged with treasonable felony, punishable with life imprisonment, and also membership of an unlawful organization. See Reuters, 'Nigerian oil rebel charged with treasonable felony', 6 October 2005; also The Guardian (Lagos), *Editorial*, 5 October 2005. As this report goes to print his hearing is scheduled for 10 November 2005. Amnesty International will be following his case.

<sup>92</sup> See Amnesty International, *Nigeria: 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).

<sup>93</sup> On 7 September 2004 State Governor Peter Odili was quoted as stating: "We have therefore given instructions that all necessary steps should be taken to decisively rid our State of these undesirable elements that have constituted themselves into a menace, terrorising and inflicting fatal and grievous harm on innocent citizens".

<sup>94</sup> *BNW News*, "Nigerian troops battle rebels near oil-industry centre", 7 September 2004; *PM News*, "Thousands flee P/H villages as army, rebels fight for control", 10 September 2004; *IRIN news*, "Over 100 killed in month of violence in Port Harcourt", 10 September 2004.

<sup>95</sup> As reported to Amnesty International by human rights defenders, September 2004.

<sup>96</sup> *Saturday Independent* (Lagos), "Ethnic militia groups, threat to Nigerian democracy?", 17 September 2005.

<sup>97</sup> Dimieari Von Kemedi, "Community conflicts in the Niger Delta: Petro-weapon or policy failure?", Berkeley Workshop on environmental politics, WP 03-12, Institute of International Studies, University of California, Berkeley, June 2003.

<sup>98</sup> Interview with Felix Morka, Social and Economic Rights Action Center, Lagos, 23 April 2005.

<sup>99</sup> Social and Economic Rights Action Center, *Perpetuating poverty: consolidating powerlessness: oil and the Niger Delta*, August 2005.

<sup>100</sup> Data from Jędrzej George Frynas, "Legal change in Africa: evidence from oil-related litigation in Nigeria", *Journal of African Law*, vol. 43, no. 2, 1999.

<sup>101</sup> *Nigerian Weekly Law Reports*, 3 NWLR, 1995.

<sup>102</sup> *San Jose Mercury News*, *Chevron paid agents who destroyed villages*, 3 August 2005. See also *Bowoto v. Chevron Texaco* case, available at: [www.earthrights.org/chevron/index.shtml](http://www.earthrights.org/chevron/index.shtml)

<sup>103</sup> She said: "The ability of human rights defenders to promote and protect human rights through the judicial process has been impeded due to the lack of locus standi in petitioning the courts against human rights violations and in pursuing public interest litigation." UN press release, "UN Special Representative of the Secretary General for Human Rights Defenders visits Nigeria", 12 May 2005, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>

<sup>104</sup> See Amnesty International, *Nigeria: Are human rights in the pipeline?* (AI Index: AFR 44/020/2004); and, G. Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*, Lit Verlag, Munster, 2000.

<sup>105</sup> In Nigeria ownership, access to and use of land is mainly regulated by unwritten customary law, which distinguishes between permanent land ownership and possession of land, and between communal, family and individual ownership. Communal and family ownership are most common in rural areas and individual ownership in urban areas. The Chief of a village has to seek the consent of the community before selling communal land, and allocates land for use over a lifetime or other period. Family land can be acquired through a process that permanently transfers ownership to that family.

<sup>106</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>107</sup> The association is a sub-committee of the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce. For analysis of a specific case, see the case of Chief Jonathan Wanyanwu and Shell Nigeria in Amnesty International, *Nigeria: Are human rights in the pipeline?* (AI Index: AFR 44/020/2004).

<sup>108</sup> Decree No. 86 of 1992, promulgated under the military government of General Ibrahim Babangida, 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*" (Section 2). 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>109</sup> See the case of the community of Gbarantoru of Bayelsa State and Shell Nigeria as reported in Amnesty International, *Nigeria: Are human rights in the pipeline?* (AI Index: AFR 44/020/2004), pp. 40-46.

<sup>110</sup> Group Managing Director, Nigerian National Petroleum Corporation, reported in *This Day*, 'Nigeria's Oil Output Hits 2.4m BPD' 19 May 2004.

<sup>111</sup> See <http://www.opec.org/aboutus/member%20countries/nigeria.htm>

<sup>112</sup> US Department of Energy, at [www.eia.doe.gov/emeu/cabs/nigiachron.html](http://www.eia.doe.gov/emeu/cabs/nigiachron.html)

<sup>113</sup> That is a matter of dispute. Shell Petroleum Development Company (SPDC), the biggest operating company in Nigeria, has admitted the reserves may not be very large.

<sup>114</sup> See, for example, Senator Chuck Hagel, R-Neb. Chairman of the Senate International Economic Policy Subcommittee, quoted in the *Dallas Morning News*, 6 October 2004, at [www.energybulletin.net/2416.html](http://www.energybulletin.net/2416.html)

<sup>115</sup> See Keith Myers, *Petroleum, Poverty and Security*, Royal Institute of International Affairs, June 2005, available at [www.riia.org/pdf/research/africa/BPpetroleum.pdf](http://www.riia.org/pdf/research/africa/BPpetroleum.pdf)

<sup>116</sup> See [www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004](http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004)

<sup>117</sup> All transnational corporations operating in Nigeria are required to enter into a joint venture with the Nigerian government, through the Nigerian National Petroleum Corporation (NNPC), which owns the majority of the shares of the joint ventures. Thus, NNPC holds 55 per cent of the Shell Nigeria joint venture and 60 per cent of the Chevron Nigeria joint venture.

<sup>118</sup> See the Niger Delta Development Commission's website: [www.nddconline.org](http://www.nddconline.org)

<sup>119</sup> Niger Delta Development Commission Act, 2000, available at [www.nddconline.org/The\\_NDDC\\_Act.shtml](http://www.nddconline.org/The_NDDC_Act.shtml)

<sup>120</sup> When Amnesty International visited it in 2004, it had 20 senior advisers in an apparently top-heavy organization with little presence on the ground.

<sup>121</sup> Niger Delta Development Commission, "*NDDC's master plan for Niger Delta out, targets even growth*", 25 November 2004, at [www.nddconline.org/Press\\_Release/messages/42.shtml](http://www.nddconline.org/Press_Release/messages/42.shtml)

<sup>122</sup> Oil company officials admitted that they were not in a position to report human rights abuses in their area every time they occur, although some companies have acted out of their own accord to offer protection to victims. Oil company executives have also offered air transport to security officials carrying weapons to their installations. While the Voluntary Principles do not explicitly prohibit such activities, in a conflict-prone region such as the Niger Delta, these actions implicate the company in the subsequent conduct of the security forces. Security consultants have told Amnesty International that the Niger Delta in 2003 and 2004 was virtually a conflict zone, and mechanisms such as the Voluntary Principles are insufficient to address the problems of security in such an environment.

<sup>123</sup> See Kwabena Mate, "Communities, Civil Society Organisations and the Management of Mineral Wealth", International Institute for Environment and Development/World Business Council for Sustainable Development, April 2002, pp. 8-9, available at [www.iied.org/mmsd/mmsd\\_pdfs/communities\\_min\\_wealth.pdf](http://www.iied.org/mmsd/mmsd_pdfs/communities_min_wealth.pdf)

<sup>124</sup> See the film, *The Goat in the Flow Station*, The Centre for Social and Corporate Responsibility, Port Harcourt, Nigeria, 2004. See also Christian Aid, *Behind the Mask: The real face of Corporate Social Responsibility*, 21 January 2004, available at [www.christianaid.org.uk/indepth/0401csr/](http://www.christianaid.org.uk/indepth/0401csr/)

<sup>125</sup> Shell Nigeria, commenting on a December 2003 survey commissioned from conflict experts, acknowledged that "we sometimes feed conflict by the way we award contracts, gain access to land, and deal with community representatives", and declared an intention to change its operating, security and community development practices with the help of local, national and international experts, stakeholders, and oil industry representatives. Chevron Nigeria made a similar admission in advertisements published in Nigerian newspapers in May 2005: see "Listening, Learning and Evolving", a public advertisement by Chevron Nigeria Ltd, published in This Day, 4 May 2005, pp. 32-33.

<sup>126</sup> According to the preamble of the UN Norms: "even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, transnational corporations 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... [T]ransnational corporations and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in UN treaties and other international instruments..."

<sup>127</sup> *Guidelines*, op. cit., II. General Policies, 2.

<sup>128</sup> For example, on 15 April 2004 soldiers reportedly killed at least two gunmen who were trying to launch an attack on Shell Nigeria oil barges in Warri; on 17 April 2004 an attack and a shoot-out at a flow station belonging to the Nigeria Agip Oil Company resulted in the death of five attackers; on 23 April 2004, five Nigerian and two US ChevronTexaco contractors were killed when their boat was ambushed by an armed group on the Benin River.

<sup>129</sup> The average oil price in April 2003 at the New York Mercantile Exchange was US\$26.7 per barrel.

<sup>130</sup> Davis, Steven and Dimieari Von Kemedi, "The current stability and future prospects for peace and security in the Niger Delta", Niger Delta Peace and Security Strategy Working Paper published under the Niger Delta Peace and Security Working Group, August 2005, pp. 2, 5.

<sup>131</sup> See *Guardian (Lagos)*, 21 April 2005, and interviews with Nigeria- and London-based oil industry analysts. The 15 crew members – one Georgian, two Romanian and 12 Russian nationals – were detained in poor conditions in Kiri-Kiri prison, Lagos, reportedly denied access to their lawyers or families, until their release on bail in August 2005.

<sup>132</sup> WAC Global Services, *Peace and Security in the Niger Delta – Conflict Expert Group Baseline Report*, working paper for Shell Petroleum Development Company (SPDC), December 2003, p. 48.

<sup>133</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>; Amnesty International interviews in Nigeria in March 2004 and April and May 2005.

<sup>134</sup> Alex Vines, *Combating light weapons proliferation in West Africa*, International Affairs, Volume 81, Number 2, March 2005, pp. 341-360.

<sup>135</sup> Mohammed Ibn Chambas, Executive Secretary, quoted in IRINnews, "ECOWAS seeks means to recover 8 million illicit arms in the region", 26 March 2004, at [www.irinnews.org](http://www.irinnews.org)

<sup>136</sup> Alex Vines, *Combating light weapons proliferation in West Africa*, International Affairs, Volume 81, Number 2, March 2005, pp. 341-360.

<sup>137</sup> See Article 13 of the Code of Conduct for the Implementation of the Moratorium, approved in Lomé, Togo on 10 December 1999; IRINnews, "Former conflict zone chooses between arms and development", 4 April 2003, available at [www.irinnews.org](http://www.irinnews.org).

<sup>138</sup> Resolution 58/42 on National legislation on transfer of arms, military equipment and dual-use goods and technology, UN Doc. A/RES/58/42.

<sup>139</sup> International Action Network on Small Arms, "Nigeria snapshot: Government initiatives on SALW", *International Action on Small Arms 2005 – Examining implementation of the UN programme of action by biting the bullet*, 2005, pp. 52-53, available at [www.iansa.org/documents/2005/red-book/africa.pdf](http://www.iansa.org/documents/2005/red-book/africa.pdf)

<sup>140</sup> The amount paid for an AK-47 in the disarmament process was reportedly as high as N250,000 (about US\$1,900), sufficient to purchase new weapons when a new AK-47 reportedly cost US\$2,000 on the

---

streets of Rivers State in November 2004, but can in circumstances of oversupply be as low as \$100, and when, in Warri, pistols and automatic rifles could cost from \$200 and \$400. See Alex Vines, *Combating light weapons proliferation in West Africa*, International Affairs, Volume 81, Number 2, March 2005, p. 358; and Babafemi Ojudu, "Gun smuggling in the Niger Delta", World Press Review, 16 November 2004, available at [www.worldpress.org/cover7.htm](http://www.worldpress.org/cover7.htm)

<sup>141</sup> The United Nations Special Representative of the Secretary General for Human Rights Defenders stated: "The ability of human rights defenders to promote and protect human rights through the judicial process has been impeded due to the lack of locus standi in petitioning the courts against human rights violations and in pursuing public interest litigation." United Nations Special Representative of the Secretary General for Human Rights Defenders visits Nigeria, press release 12 May 2005, available on URL <http://www.unhcr.ch/hurricane/hurricane.nsf/0/ABAA1A8298C41EBBC1257012006A4701?opendocument>

<sup>142</sup> Amnesty International interview with Dimieari Von Kemedi, Director of the NGO, Our Niger Delta, London, 16 June 2005, and with other human rights defenders in the Niger Delta during 2004 and 2005.

<sup>143</sup> Mirror, "RIVPA Frowns at Threats to harm local publishers' statement by Rivers State Indigenous Publishers Association", 21-27 September 2004.

<sup>144</sup> Interview and email correspondence with Amnesty International, July and August 2004.

<sup>145</sup> Interview, Port Harcourt, 3 May 2005, and e-mail, 4 July 2005.

<sup>146</sup> Punch (Nigeria), 13 October 2004.

<sup>147</sup> See Amnesty International, *Nigeria: Are human rights in the pipeline?* (AI Index: AFR 44/020/2004), pp. 34-39.

<sup>148</sup> Interview, Lagos, April 2005; *AFP*, "Thousands homeless as Nigerian bulldozers smash shanty town in oil city Port Harcourt", 13 April 2005.

<sup>149</sup> The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the UN Declaration on Human Rights Defenders), UN General Assembly, resolution 53/144, UN Doc. A/RES/53/144, 8 March 1999.

<sup>150</sup> Vanguard (Lagos), "FG Charges 53 suspected MASSOB members to Court for Treason", 16 March 2005.

<sup>151</sup> Telephone interview with defence lawyer, London, September 2005.