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NIGERIA

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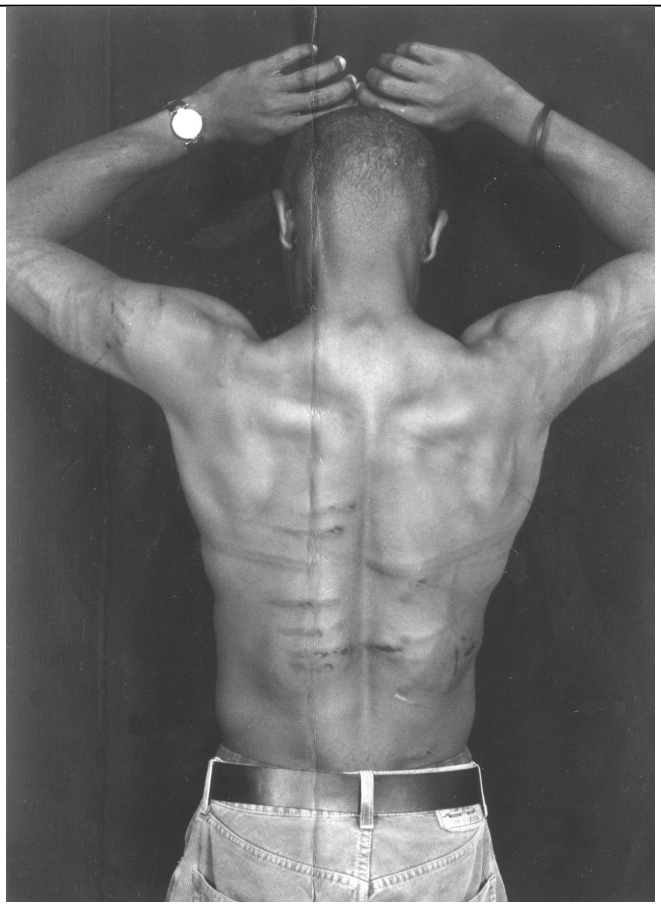

Injuries of a young man beaten by the Mobile Police in Finima, Rivers State, in March 2002.

"The solution to conflict is that there should not be double standards by Shell. What belongs to somebody should be given to him. People impacted by a project should benefit."

Youth leader from Bille (March 22 2002)

THE NIGER DELTA:
No Democratic Dividend

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NIGERIA

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I. SUMMARY

When a civilian government was reinstated in Nigeria in 1999, many of those living in the Niger Delta region, the source of Nigeria's oil wealth, hoped that a "democratic dividend" would end decades of neglect they had suffered under successive military regimes. From the early 1990s a cycle of protest and repression had led to the militarization of large parts of the delta, notably in Ogoniland, a small area of Rivers State where demonstrations leading to the closure of oil production had led to a five-year deployment of a special military taskforce to the area and the 1995 execution of nine minority rights leaders, including author and activist Ken Saro-Wiwa. The situation has eased under the new government, and in particular Ogoniland is no longer occupied. But there is still widespread deployment of army, navy, and paramilitary Mobile Police at oil facilities across the delta. In November 1999, five months after the new government headed by President Olusegun Obasanjo took office, soldiers destroyed the town of Odi, in Bayelsa State, killing hundreds of people. Though the past three years have seen no incident of similar seriousness in the delta area, past human rights violations by the security forces have gone unpunished and new abuses related to oil production continue to be committed. Moreover, though vastly increased sums of money are flowing from the federal government to the delta region, under a new "derivation formula" that requires at least 13 percent of the oil revenue to be returned to the states where it is produced, ordinary people living in the delta see little if any benefit from these funds.

The incidents described in this report illustrate the different sorts of problems and human rights abuses affecting communities in the Niger Delta as a result of oil production and the response of the government and oil companies to community discontent. In 1999, we published a book-length report *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, which outlined the problems of the Niger Delta in detail.[1] This report considers incidents that have taken place in 2001 and 2002. In Liama, the navy responded to the seizure of boats and employees of an oil service company working for Shell, not by arresting those alleged to be responsible and handing them to the police for investigation and prosecution, but by carrying out a reprisal raid on the abductors' village, razing dozens of homes to the ground and killing two people. Two more were killed in what may have been an exchange of fire with a naval patrol, but may also have been an indiscriminate use of firearms. In Finima, where ExxonMobil has a large export terminal, the oil company made a substantial compensation payment which ended up being used by one faction in a community dispute to bring in the security forces to arrest their opponents in the village. In Gbarantoru, Shell may have exacerbated local tensions by the manner in which it has conducted negotiations over a new drilling site. Conflict between the Bille and the Kalabari people, which led to tens of deaths, centered on the "ownership" of oil facilities and the struggle to control the benefits that flow from being designated a "host community" by an oil company.

These incidents are just a small sample of the frequent confrontations between communities and government representatives or oil companies operating in the Niger Delta, and among the oil producing communities themselves. Sometimes these incidents reach the international news—such as the July 2002 ten-day occupation of ChevronTexaco's Escravos export terminal by a group of hundreds of women demanding that ChevronTexaco give greater benefits to their community—sometimes they do not even reach Nigeria's national media. The environment of the Niger Delta, and the difficulties of transport and communication in the mangrove forest areas, where telephones are not accessible to most people, means that often information is late and unreliable. Impunity for abuses—too often the norm in Nigeria—is thus even more likely in the delta. There have not been any attempts to investigate or prosecute those who were responsible for hundreds of deaths and massive property destruction in Ogoniland and Odi.

[1] *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (New York, Human Rights Watch, January 1999). *See* also, "Crackdown In The Niger Delta," *A Human Rights Watch Short Report*, May 1999; "The Destruction of Odi and Rape in Choba," background briefing, December 1999; and "Update on Human Rights Violations in the Niger Delta," background briefing, December 2000. All available at www.hrw.org/africa/nigeria.php.

The federal government has tried to respond to discontent in the delta region by setting up a Niger Delta Development Commission with the mandate to develop the oil producing areas. At the same time, it has successfully challenged in the Supreme Court the right of the coastal states to receive money from offshore revenue under the "derivation formula" thus reducing the amounts that would otherwise be transferred to those states. A proposed bill to reverse this decision is unlikely to become law before the 2003 elections change the political landscape. In any event, the states and local government authorities in the delta region have showed themselves largely unable to spend effectively the increased sums they are receiving. As a result, discontent among the people of the delta remains high, both with the government and with the oil companies. Conflict related to local government, state, and federal elections that will take place during 2002-2003 has already been more bloody in the Niger Delta than elsewhere in Nigeria. Occupations of oil facilities and other protests directed at the oil companies continue unabated. Responding to the threat to oil production, the federal government also appointed a committee to look into security issues in the delta. Despite a mandate that focused on the need to protect oil installations, the committee made recommendations that addressed the broader issues, including the politically sensitive questions of increasing the revenue paid to the oil producing states and repealing laws that give the federal government control over land and mineral resources. The federal government has yet to act on the committee's report, which has not been officially published.

The oil companies work in a difficult environment in Nigeria, both physically and politically. The political environment is one in which the Nigerian government has failed to ensure that the people who live in the oil-producing areas actually benefit from the oil. But the oil companies are also seen by the residents of the delta to have failed to give back anything for what they have taken out and to be complicit in human rights abuses carried out by government security forces that are deployed to protect their facilities. They are thus targeted for protest by the communities in which they work. Responding to these protests—which range from politically motivated occupations of their facilities that close down production to essentially criminal hostage-taking for ransom—the oil companies now have quite extensive programs for community development projects in the "host communities" for oil facilities, make substantial payments for allowing oil work to be carried out both to local government authorities and to other interest groups in the areas they are working, and frequently hire youth as "ghost workers" or for "surveillance contracts" in order to satisfy a demand for employment that cannot be met in this capital- rather than labor-intensive industry. In other cases, they hand out cash payments, sometimes to legitimate representatives of the communities where they operate as compensation, for example for spills, but often to individuals or groups who have gone into hostage-taking or oil facility occupation as a means of earning a living. These payments, even the best intentioned, have themselves generated problems. The companies have in most cases taken insufficient care to monitor the use made of their money; in particular, to ensure that it does not reinforce factional violence within a community or between one village and the next. In addition, they continue to fail to monitor closely security force activity at or near their facilities or where work is being carried out on their behalf, or, in many cases, to intervene with the authorities when abuses are committed.

Given the complex realities of the Niger Delta—community dissatisfaction, weak and unresponsive government, security force abuses, and inter-community violence fueled, in part, by oil company and government resources—a more comprehensive approach to the problems in the oil producing communities is needed. Respect for human rights has hardly improved there since 1999, despite the presence of a civilian government and the public commitment by many of the oil companies working in Nigeria (especially Shell) to improved engagement with issues of corporate social responsibility. Local and state governments should be held fully accountable for their inability or unwillingness to effectively utilize revenues, and the federal government should seek to achieve a negotiated solution to the fundamental demands of the peoples who live in the oil producing areas of Nigeria. In addition, the federal government must ensure proper discipline over the security forces and hold them accountable for abuses. Oil companies should broadly assess their interactions with the communities where they work, including employment policies, relations with the government authorities and security forces, community giving, and community relations generally, in order to ensure that they are not exacerbating problems in the delta. Given multiple failures by the bodies involved to fulfill their obligations adequately, external pressure is needed as well. The role of the international community has not been as forceful as it could, or should be.

II. RECOMMENDATIONS

Human Rights Watch made extensive recommendations for the redress of human rights abuses in the Niger Delta in our 1999 report *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*. In addition to those recommendations, which largely remain relevant, we urge the following:

To the Nigerian government

- Fully investigate and prosecute members of the security forces, and the civilian authorities giving them instructions, who are implicated in human rights violations in the oil producing areas, including those responsible for past abuses in Ogoniland and Odi. Compensate victims for acts constituting violations of international human rights, including those in Ogoniland and Odi.
- Take steps to end the impunity for those responsible for inter- and intra-communal conflict in the Niger Delta by investigating all credible allegations of murder, rape and other violent crime, and prosecuting those responsible. Investigate and prosecute all persons, including leading political or military figures, implicated in incitement or conspiracy to commit communal violence.
- At state government level, take steps to resolve long-standing disputes between communities over claims to benefits from the presence of oil facilities, in particular by facilitating the determination of clear boundaries by appropriate authorities, whether through agreed mediation structures or the courts, and by publishing the reports of commissions of inquiry into communal conflict and acting on their recommendations.
- Repeal or amend laws promulgated under military rule that violate international fair trial standards, including the Petroleum Production and Distribution (Anti-Sabotage) Act and the Criminal Justice (Miscellaneous Provisions) Act.
- Undertake a review of laws affecting the relations of oil companies with the communities in which they operate, including the Land Use Act, the Petroleum Act and its subsidiary legislation, and other laws regulating payment of compensation for damage to livelihoods caused by oil operations, with a view to ensuring that those adversely affected are adequately compensated and protected by due process of law.
- Strengthen the provisions for independent audit of development funds spent in the Niger Delta, including by state and local governments and by the Niger Delta Development Commission; strengthen the work of the Independent Corrupt Practices Commission to enable it to investigate all allegations of corruption, with a particular focus on the delta, and institute prosecutions where appropriate.
- Request the Niger Delta Development Commission to undertake a review of oil company practices in making payments and undertaking development projects in their "host communities" with a view to promoting the equitable distribution of such benefits and reducing the likelihood of their occasioning conflict between communities.
- In line with the international "Publish What You Pay" campaign, require transnational corporations operating in Nigeria to publish all net taxes, fees, royalties and other payments made to the Nigerian state, at any level, or to other community representatives.

To the Oil Companies Operating in Nigeria

- Publicly support the U.S./U.K. Voluntary Principles on Security and Human Rights and bring company policy into line with the principles.
- In accordance with the Voluntary Principles, conduct risk assessments to assess the patterns of violence and of abuse by the law enforcement agencies in the areas where the company operates, in order to take preventive action. Regularly report on implementation of the principles.
- Take care to ensure that the employment of local people for the provision of security at oil facilities does not result in abuses by those hired or in violent conflict between or within communities for the right to control such contracts. Where private security is engaged, whether from local communities or elsewhere, ensure that such security observes ethical conduct and respects human rights, and acts in a lawful manner.

- Monitor the behavior of public law enforcement agencies and private security deployed at or near to oil facilities, and when abuses occur, raise concerns privately or publicly as necessary with the appropriate authorities.
- Negotiate with the Nigerian federal authorities in order to screen and give human rights training to public law officials deployed at or near company premises.
- In line with the international "Publish What You Pay" campaign, publicly disclose, in a disaggregated, regular and timely manner, all net taxes, fees, royalties and other payments made to the Nigerian state, at any level, or to local communities, including compensation payments and community development funding.
- Ensure credible third-party audits of community development assistance, including payments that are given to community representatives in order to disburse or spend on community projects and employment agreements with local communities. The results of such audits should be public and intended to ensure that those funds are ultimately used for their stated and intended purpose.
- Conduct a "human rights impact assessment" for each new project or facility. Such assessments should assess any potential human rights problems related to security arrangements and the potential for creating or exacerbating conflicts that could lead to human rights abuses; and develop plans to mitigate any identified risks. If such an assessment concludes that the human rights risks cannot be adequately mitigated, then the companies should consider whether it is feasible to continue development of those facilities or projects under such circumstances.
- As members of the Oil Producers Trade Section (OPTS) of the Lagos Stock Exchange, jointly undertake a review of the policy of providing development projects and other benefits only to "host communities," with a view to providing development assistance in a way that reaches a larger part of the population and does not exacerbate local tensions.

To the G8 Countries, European Union and Member States, and International Financial Institutions

- Maintain pressure on the Nigerian government to respect human rights, the rule of law and good governance.
- All governments that host oil companies operational in Nigeria—in particular, the U.S., U.K., Netherlands, France, and Italy—should appoint officers within their embassies to monitor the situation in the delta and raise human rights issues with the oil companies and the Nigerian government.
- Monitor companies' compliance with the U.S./U.K. Voluntary Principles on Security and Human Rights and encourage those that have not subscribed to the principles to do so.
- In line with the commitments of the G8 Africa Action Plan, support efforts to improve respect for human rights and the rule of law in the Niger Delta (as elsewhere in Nigeria), including through security sector reform, conflict resolution initiatives, and measures to combat corruption.
- Take steps towards the creation of a binding code of conduct for multinational oil companies headquartered in the G8 countries or member states of the European Union, based on initiatives to develop such codes within the United Nations, the U.S./U.K. Voluntary Principles and appropriate human rights standards.
- Work with the Niger Delta Development Commission and other appropriate authorities to ensure maximum transparency and consultation on the design and implementation of development projects.
- In line with the international "Publish What You Pay" campaign, require transnational corporations to publish all net taxes, fees, royalties and other payments made to the Nigerian state (or other states), at any level.

III. PROTEST AND RESPONSE

Since a civilian government was installed in Nigeria in 1999, the cycle of protest and repression that affected the Niger Delta under military rule has eased somewhat. In particular, the virtual military occupation visited on Ogoniland, in Rivers State, as a result of the protests led by the Movement for the Survival of the Ogoni People (MOSOP) has been ended. Yet in November 1999, the Nigerian army destroyed the town of Odi in Bayelsa State, killing hundreds of people, a more serious single incident than any in the delta under the military regime. Army, navy, and paramilitary Mobile Police personnel are still widely deployed across the delta, mostly at oil facilities: as of May 2002, some twenty-three Shell facilities out of ninety (including gas plants and oil export terminals) had an armed security presence.[2] Security force abuses against civilians continue across the delta on a more-or-less routine basis—as they do elsewhere in Nigeria—and summary executions are commonplace.[3] In addition, the profound discontent felt by many in the "oil producing communities" that they do not benefit from oil production, and the realization that it is only by closing down production that attention has been brought to their grievances, leads to repeated occupations of oil facilities, hostage-taking, seizure of property, and other attempts to disrupt the flow of oil. The five major oil companies operating joint ventures with the Nigerian government (Shell, ExxonMobil, ChevronTexaco, TotalFinaElf, and Agip) and the many oil service companies are targeted for such protests both in their own right, and because they are seen in many respects as representatives of the Nigerian federal government in the areas where they operate.[4]

The occupation of oil facilities or the seizure of boats and other equipment belonging to oil companies and their contractors is a regular occurrence in the delta. Sometimes these are carried out by groups of semi-criminal militants acting on their own account and may involve outsider "mercenaries" brought in by prominent politicians or former military officers seeking direct profit from the oil industry ("hostage-taking" in particular can be very profitable).[5] In other cases, these occupations are carried out by "youth"[6] or others acting to carry out a community decision to bring pressure to bear on the oil companies to provide benefits to the community as a whole; or by people taking part in a wider political protest affecting the whole delta (for example, "Operation Climate Change" called by the Ijaw Youth Council in early 1999). Oil company employees, especially expatriates, involved are rarely hurt; where there are injuries, it is usually in circumstances where they are from the delta themselves and are effectively caught up in an active intercommunal conflict. Nevertheless, there are serious security issues for the oil companies involved who must be concerned to safeguard their staff, especially given the large number of small arms circulating in the delta. Whatever the reasons for hostage-taking, abducting

[2] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

[3] In July 2002, national police spokesman Haz Iwendi told reporters that the police had killed 225 suspected armed robbers—and lost twenty-three officers—in the hundred days since March, when they launched an anti-crime drive known as "Operation Fire-For-Fire." More than 800 armed robbery suspects were arrested during the period, he said: thus, more than one suspect was killed for every four arrested. Wisdom Patrick, "Last 100 Days of Fire-for-Fire – Police Lose 23 Men, 10 Weapons to Robbers," *Daily Trust* (Abuja) July 10, 2002. Human Rights Watch receives frequent accounts of alleged summary executions of criminal suspects carried out at police stations. Vigilante groups also carry out summary executions and other abuses in the name of fighting crime. *See* "The Bakassi Boys: The Legitimization of Murder and Torture," *A Human Rights Watch Short Report*, May 2002.

[4] *See The Price of Oil*, pp. 26-32 for discussion of the structure of the joint venture agreements between the oil majors and the Nigerian government. The structure remains broadly the same, although the revenue split has changed somewhat under a new memorandum of understanding signed in 2001.

[5] One security consultant working for an oil service company cited to Human Rights Watch as an example the figure of ₦40 million (U.S.$308,000) paid for the return of an expatriate worker held for eight days. Interview, Port Harcourt, March 20, 2002. Naira amounts have been converted to U.S. dollars in this report at the rate of 130 naira to the dollar, the parallel market rate prevailing in July 2002, and rounded up.

[6] The word "youth" in Nigeria is used effectively to describe all young men who have not reached the status of "elder" in their communities: it is a flexible term that includes people up to the age of forty, or sometimes older. Most communities will have an organized youth association encompassing all the young men living in the village, that will be formally consulted when community decisions are made. In addition there may be separate youth organizations acting outside formal community structures.

employees of an oil company is a criminal activity that should be investigated so that appropriate action can be taken to prosecute the offenders in accordance with Nigerian law.

Most of the occupations or other disruptions to production are ended peacefully by negotiation between oil companies and protesters. However, in some cases security force action leads to deaths and injuries among the protesters—of whom some are armed but many are not—and among others targeted for collective punishment. Heavy-handed responses by the security forces contribute to a generally repressive atmosphere in which people become afraid to protest peacefully.

Among the more prominent recent incidents reported in the international media are the occupation of the large ChevronTexaco (previously Chevron) terminal at Escravos, on the Atlantic coast in Delta State by several hundred Itsekiri women from the nearby Igborodo community from July 8 to 18, 2002. Initially, more than 700 workers at the terminal were prevented from leaving by the women, who occupied the heliport and dock area; after five days, 300 of the oil workers were allowed to leave. About one hundred police and soldiers were sent to the terminal, but did not harm the women. The siege was eventually ended when ChevronTexaco acceded to some of the women's demands, including to hire local "youth," build schools, and provide electricity, water and other facilities. ChevronTexaco exports around 340,000 barrels per day (bpd) of oil through the terminal. In similar fashion, Ijaw women from Delta State then occupied four ChevronTexaco flowstations for several days, making similar demands and closing down 110,000 bpd of production. Ijaws and Itsekiris have been in conflict in the area for some years, and one of the Itsekiri demands in relation to the Escravos occupation was that the state government intervene in their dispute with the Ijaws. ChevronTexaco was forced to declare *force majeure* on its contracts from July 14 to 31, partly as a result of the various occupations.[7] This is only one of many such confrontations. In April 2002, for example, in another incident involving ChevronTexaco, a group of about twenty unarmed youths took over an off-shore oil platform, demanding that they be given jobs, and held eighty-eight staff from the company and subcontractors for several days, at the end of which they were released unharmed.[8] In August 2001, in a case involving Shell's Nigerian operations, a group of militant youths occupied a drilling rig operating off Nigeria's Atlantic coast, preventing almost one hundred employees of Shell and various service companies from leaving for a couple of days. No one was injured (Shell did not state whether the militants were armed, though commented that "there is no sense of danger") and community elders were called in to negotiate the release of the oil company staff and the departure of the youths.[9] In August 2002, several hundred women from the Itsekiri, Ilaje, and Ijaw ethnic groups protested peacefully outside the Warri, Delta State, premises of Shell and ChevronTexaco. Their protest was broken up with some violence by soldiers from the 7th amphibious battalion based in Warri: the organizers claimed that five women were shot and others went missing (independent eyewitnesses confirmed to Human Rights Watch that at least one woman was shot and badly wounded), and others were badly beaten. The soldiers also fired in the air and used teargas at close quarters. Some of those injured were treated in the Shell medical facilities.[10]

The presence of the oil companies in the Niger Delta exacerbates communal tensions of the type seen across Nigeria. The weakness of conflict resolution structures—whether the courts, responsible elected and appointed state officials, or the law enforcement agencies—means that many disputes in Nigeria are settled violently that could have been resolved through peaceful means. In Nigeria generally, the level of state corruption means that government positions are highly sought after and that competition for party candidacy or electoral victory often leads to violence. In the Niger Delta, the stakes are higher, even at local government level, because of the amount of money that flows to the delta, both through state structures and directly from the oil companies. Conflict related to local government, state, and federal elections that will take place during 2002-2003 has already been more bloody in the Niger Delta than elsewhere in Nigeria. In July 2002, the holding of primaries for candidates

[7] Associated Press stories, July 10 to 29, 2002, and other news media.

[8] Dan Isaacs, "Talks to free Nigerian hostages," news.bbc.co.uk, April 24, 2002; "ChevronTexaco seeks release of hostages in Nigeria," Reuters, April 24, 2002.

[9] "Rig hostages freed in Nigeria," news.bbc.co.uk, August 27, 2001; "Shell says 99 oil workers freed in Nigeria," Reuters, August 27, 2001; Alex Duval Smith, "Britons freed from hijacked Nigerian oil rig," *Independent* (London), August 28, 2001.

[10] Human Rights Watch telephone interviews with Isaac Osuoka of Environmental Rights Action, Port Harcourt, August 16, 2002; Robert Efenakpo, journalist, Warri, August 16, 2002.

for local government chair by the People's Democratic Party (PDP) in Nembe, Bayelsa State, led to violence in which dozens of people were reported to have been killed. Nembe has a history of violence centered on the location of the local government authority and also on control of the funds that come from the oil companies that operate in the area (Shell and Agip).[11] There have been a number of other election-related incidents across the delta, and several hundred people may have been killed overall.

The incidents described below, directly investigated by Human Rights Watch in March 2002, illustrate the different sorts of problems and human rights abuses affecting communities in the Niger Delta as a result of oil production and the response of the government and oil companies to community discontent. In Liama, the navy undertook a reprisal raid following the seizure of boats and crew belonging to an oil service company, razing homes and killing two people in the village from which the abductors came, as well as killing two people involved in the seizure. In Finima, a substantial compensation payment was made to one faction in a chieftaincy dispute, enabling that faction to bring in the security forces to arrest their opponents in the community. In Gbarantoru, negotiations surrounding the carrying out of new drilling did not include all groups with an interest in the process, increasing the risk of violent confrontation. The conflict between the Bille and the Kalabari people, which probably led to more than one hundred deaths, centered on the "ownership" of oil facilities and the benefits that flow from being designated a "host community" by an oil company.

Liama

In January 2002 in Liama, Bayelsa State, navy personnel responded to the seizure by local "youths" of nine oil company employees and four boats by carrying out a reprisal raid on the village from which they came, killing two people and destroying twenty to thirty houses. In addition, the naval patrol that initially responded to the seizures shot and killed two of those involved: Human Rights Watch cannot confirm whether these deaths occurred in an exchange of fire, or whether the navy fired indiscriminately and improperly on those involved.

According to accounts given to Human Rights Watch by residents of Liama and others, the sequence of events appears to be as follows.[12] In August 2001, the Liama community learned that the Chinese National Petroleum Corporation (CNPC), had been contracted by Shell's Nigerian subsidiary, the Shell Petroleum Development Company of Nigeria Limited (SPDC), to carry out seismic exploration activity near Liama and the neighboring community, Egwema, in the Brass Local Government Area (LGA). The Brass local government authority convened a meeting between representatives of Liama and CNPC, attended by representatives of government security forces; and a similar meeting with representatives of Egwema to discuss plans for this work.[13] CNPC personnel also visited Liama to let the community leaders know that they would be doing work in the area, and made promises about how the community could expect to benefit. Further meetings were due to be held at Brass, but representatives of CNPC did not, according to the secretary to the local government, attend these meetings. CNPC nonetheless commenced seismic work late in 2001. When the negotiations produced no result, persons from the neighboring community, Egwema, seized several boats belonging to the company, as a result of which CNPC agreed to some form of benefit, including the employment of Egwema youths. Accordingly, the Liama community resolved to seize company property as a bargaining ploy in a manner similar to the community in Egwema.

Early in the morning of January 21, 2002, following a community meeting at which action was collectively decided upon, fifteen youths from Liama went in their own boat and seized four boats and abducted nine Nigerian employees of CNPC that were working in waters close by the community. As they were in the process of bringing the CNPC personnel and the boats back to the village, a navy patrol of one speedboat fired on the boats, killing

[11] Kelvin Ebiri, "Dozens killed in Nigerian oil fights," Associated Press, July 23, 2002; "More than 70 feared dead in election violence in Bayelsa State," Guardian (Lagos), July 24, 2002; *see* also, Dimieari Von Kemedi, *Oil on Troubled Waters*, Working Paper, Berkeley Workshop on Environmental Politics, University of California, Berkeley, (forthcoming, 2002; *see* http://globetrotter.berkeley.edu/envirpol/).

[12] Human Rights Watch interviews with community members in Liama, and with government representatives in Yenagoa and Brass, Bayelsa State, March 14, 15 and 16, 2002.

[13] "Minutes of meeting of functionaries of Brass Local Government, Security Agents, Liama Community and Chinese National Petroleum Company, Monday 2nd September, 2001."

two youths and injuring three others. The navy personnel were from the large terminal belonging to the joint venture operated by the Italian oil company Agip, in the port town of Brass, where there is a permanent contingent of up to one hundred naval personnel and paramilitary Mobile Police. No CNPC employees were injured, but one naval officer received a minor injury (a minor surface wound to his face). The navy later asserted in a meeting with the Bayelsa State government and to Shell that this injury was caused by a gunshot and that the abductors had fired first. CNPC representatives reportedly confirmed in the meeting that the youths had not used any violence against the CNPC crew, but said that the youth were armed and fired on the navy when the patrol appeared.[14] One of the youth conducting the abduction said to Human Rights Watch that the navy patrol fired first upon arriving at the scene and shot indiscriminately at all of those in the boats, but denied that the youth themselves had been armed. Human Rights Watch was not able to ascertain from independent witnesses whether the youth carried firearms and, if so, what type of weapon or who fired first. According to the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials should use force or firearms only if other means would be ineffective, and should in any event minimize damage and injury and respect and preserve human life.

The navy pursued the youth and the CNPC boats to Liama village and fired onshore into the village with automatic weapons, but did not land. One boat, which was slower than the others because it had only one and not two outboard engines, was recaptured, and it was in this boat that two of the youth were killed. The others reached the village.

Shortly after the abductions, the head of the State Security Service (SSS) in Brass alerted the secretary of the Brass LGA about the situation, and asked him to intervene. The secretary immediately went to the navy base and advised the commanding officer, known as "Oscar One," that the navy should take no further action until he had attempted to secure the release of the crew members and boats. After meeting with the navy, the secretary then went to Liama, during the day on January 21, and the CNPC crew members were released unharmed into his custody; community leaders claimed to Human Rights Watch that their early release had always been intended.

Once the crew members were released, the secretary took them to the naval base. He returned to Liama on January 22, to collect the boats, release of which he had also secured. While he was in the village, he heard shooting and, at some personal risk, came out onto the waterway to find the navy shooting indiscriminately from their boats onshore into the village. The secretary persuaded the navy to leave, and then collected the boats to take to Brass; he was sent back later in the day to collect equipment that had been in the boats, and guns which the navy claimed the youth had been using. The secretary collected several "daneguns" (hunting rifles), which community leaders said were the only firearms in the village, and also told the community leaders that the navy officer wished to see them. Five representatives—Chief Joseph Iba and Chief L.S. Oyafiakumo, Elder Atimidigi Dokubo, François Benjamin, and Moses Brown—went to the navy base at the Agip terminal, and were detained. All were later transferred to the prison at Ahoada, and charged in the magistrates' court with armed robbery.[15] They were still held in Ahoada as of March 16, 2002; one of them is over eighty years old. At the time of going to press, Human Rights Watch had not been able to ascertain what had happened to them.

On January 24, after the release of the CNPC personnel and boats, the navy came to Liama once again, in four boats. This time they landed, firing indiscriminately with automatic weapons. One person was killed on the shore by the river, and four others were seriously injured, of whom one later died of his wounds.[16] Most of the community members had fled into the bush over the previous days, anticipating trouble, and so were not present during this attack. A number of naval personnel entered the community, destroying from twenty to thirty

[14] Human Rights Watch interview with Chief Lionel Jonathan, commissioner for the environment, Bayelsa State, March 16, 2002; "SPDC Response to Human Rights Watch Questions," May 31, 2002.

[15] Armed robbery can only be tried in the High Court; however, Nigerian police persist—despite Supreme Court rulings that it is illegal—in filing "holding (or holden) charges" in the magistrates' court, pending trial in the High Court.

[16] Those killed, both on the water and on land over the four days were: Isaiah Fesbo (on water), Diekumo Joel, and Jack Kingsley; the one who died later was Ingbe Berebo (the community members Human Rights Watch spoke to were not clear as to where the others had been injured).

buildings, most of them homes, but also a small pharmacy, and substantial other property, including boats, outboard engines, fishing nets, and other valuables.

The Bayelsa State government called CNPC and SPDC to meetings in Yenagoa, the state capital, shortly after this incident occurred. The head of the naval unit based at the Agip terminal was also summoned. At the meeting, Shell reportedly agreed to provide development assistance for Liama, including building a primary school.[17]

In a meeting with Human Rights Watch at SPDC's headquarters in Lagos, in March 2002, Shell public relations staff based there stated that they were not aware of this incident, though the company subsequently conducted an investigation and responded to Human Rights Watch's questions. In response to queries as to what steps the company had taken in interactions with the navy to ensure the incident was investigated and appropriate action taken against the naval personnel responsible, SPDC noted that: "As far as can be ascertained, the Navy regards patrols of the waterways as a legitimate activity under the instruction of the Federal authorities. SPDC does not have a supervisory role over government security agencies. However, where SPDC is able to, our operating principles are shared with such agencies."[18] Asked whether it or CNPC had supplied relief materials to Liama or urged the navy to do so, SPDC replied: "CNPC as a corporate organization is responsible for maintaining cordial relations with its host communities and we understand that they are constantly in dialogue with the communities over welfare and employment issues. On the particular case of the Liama issue, the Bayelsa State Government has stepped into the security situation in the area, and is asking the communities to eschew criminality."[19]

It is not clear whether the first use of firearms by the navy against the abductors of the CNPC employees and boats was justified or not, though there is at least an allegation that it was indiscriminate and inappropriate, which should be investigated by the proper authorities. It is possible that the security response by the navy may have put the CNPC crew members at greater risk, by the exchange of live fire at the time the boats were being seized. In addition, the destruction of property and killing of civilians in the Liama community itself was effectively a reprisal raid for the abductions and possibly for the minor injury to a naval officer, and was completely unjustified. Shell's Lagos headquarters' lack of knowledge about the incident, which was reported in the Nigerian media, also suggests that its own oversight mechanisms should be strengthened so that it can adequately implement its own security policies and intervene with Nigerian government authorities in an effort to prevent such abuses, and ensure that they are properly investigated and those responsible brought to account. Human Rights Watch did not speak to CNPC directly about this incident; however, Shell accepts responsibility for ensuring that its subcontractors follow its own business principles and security rules.[20]

Finima

Finima is a sizable village in Bonny LGA, on the Atlantic coast of Rivers State, close by the huge Nigerian Liquid Natural Gas (NLNG) terminal, and the terminals of several oil companies, including ExxonMobil (trading in Nigeria as Mobil Producing Nigeria Unlimited (MPNU), and still known as Mobil, despite the global merger with Exxon). The village used to be on the site of what is now the NLNG terminal, and was relocated more than a decade ago. The surrounding area is dominated by construction related to the oil industry, which has brought in large numbers of migrant workers, both Nigerians and expatriates; though an island at the edge of the mangrove forest, motor vehicles are plentiful and traffic to and from the different oil facilities is heavy.

[17] Human Rights Watch interview with Chief Lionel Jonathan, commissioner for the environment, Bayelsa State, March 16, 2002.

[18] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

[19] Ibid.

[20] Shell states that "We also expect contractors in their work with Shell companies to conform to the [Statement of General Business] Principles in all aspects of that work." In addition, "Shell companies do not work with suppliers and contractors who are not able to meet with Shell standards." Shell, *Profits and Principles—does there have to be a choice?* (London and the Hague: Shell International, 1998), pp. 5 and 13.

There has been a dispute in Finima for some decades now over who should hold the traditional leadership, or paramount chieftaincy, of the community.[21] As in many other communities in the Niger Delta area, the value of recognition as chief lies not only in the prestige that goes with that title, but also in the opportunities it gives for profiting in one way or another from the oil industry because the chief is often the principal negotiator between the companies and community. The dispute in Finima is between I.A. Idamiebi-Brown, a lawyer and former attorney general of Rivers State installed as paramount chief in 1970, and Dr. Yibo Buowari Brown, put forward as a challenger for the title by a group of people disgruntled with Idamiebi-Brown's tenure.[22] The matter has been extensively litigated in the High Court, and a challenge to Chief Idamiebi-Brown's title by Dr. Yibo Brown was eventually withdrawn after a 1996 ruling.[23] The conflict between the two had worsened from 1992: there was violent conflict between the supporters of the two claimants in the community, and as a result for some years the chief's palace in Finima was closed. Dr. Yibo Brown, who reportedly engaged the support of members of the security forces (navy and Mobile Police) to arrest those opposed to his cause, was eventually driven out, and has for some years now been unable to visit the community with any ease. Chief Idamiebi-Brown is recognized as chief by a majority of the elders of the community, and appears to have the support of most of those living in Finima,[24] though his position is not wholly uncontroversial. Certainly, supporters of Idamiebi-Brown also used violence during the conflict of the mid-1990s. While he lives in Port Harcourt, he visits Finima regularly.

In common with other "host communities" in the Niger Delta, many of those who live in Finima believe that they have not benefited sufficiently from the oil production activities that take place on their land. But the case of Finima is particularly pronounced, both because it is one of the few villages that have actually been forced to relocate by oil development and because of the sheer scale of oil industry activity in the area. In June 2001, youth from Finima occupied Mobil's Bonny River Terminal (BRT), demanding that greater benefit come to the community from Mobil's operations there, and asserting that the original compensation paid for the relocation of the village was both inadequate and paid to the wrong people (that is, to members of the faction opposed to Idamiebi-Brown).[25] The occupation lasted three days, and, according to Mobil, several Mobil employees were "badly beaten, property was vandalized, and equipment destroyed." As a result of the occupation, Mobil's production was reduced by over 650,000 bpd and the company was forced to declare *force majeure* on its contracts.[26] The occupation was ended in part through the intervention of Chief Idamiebi-Brown, who came to the terminal at the invitation of Mobil and the Rivers State government and negotiated with the youth leaders occupying the premises. So far as Human Rights Watch is aware, there were no arrests or prosecutions of any of those involved in the occupation of the terminal.

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[21] Chiefs are differently chosen in different parts of the delta, sometimes by inheritance, sometimes for a set term, and sometimes for life. In Finima, the traditional leader of the town, known as the paramount chief, is chosen for life following a process of consultation by elders of the "Brown House" who put forward a consensus candidate to a meeting of the "house" for acceptance. He has various responsibilities, including settling disputes within the town and representing the community at the traditional leaders' council of the Bonny kingdom. Traditional leaders are recognized by the Nigerian government (as by the British colonial authorities) but nowadays operate in parallel with elected local, state, and federal government structures.

[22] Most people from Finima have Brown as their last name and are regarded as being of the same family, even if they do not know their lineal connection; other family names in the town are Tobin and Attoni. The Tobins and Attonis also fall under the paramount chief of Finima.

[23] In 1996, a High Court judge, in an interlocutory hearing in the court case relating to the chieftaincy, rejected an application that the court papers should not refer to Idamiebi-Brown as "chief" on the grounds that, until the substance of the case was finally heard "the defendant is still and he is the chief of Buoye-Omuse (Brown) House and head chief of Finima Town and the plaintiffs know they can not remove the defendant from that capacity of chief of Finima Town in Bonny without due process of law." *Elder Bara Brown and Others v. Israel Idamiebi-Brown*, Rivers State High Court, April 1996. Following this ruling, the case was withdrawn.

[24] There are fourteen "houses" within the Brown "house," of which the elders of all but two or three support Idamiebi-Brown. The Attoni and Tobin families are far less numerous in Finima.

[25] According to community members, ₦20 million had been paid by Mobil in 1992 to Barrister Bara Brown and other members of the group putting forward Dr. Yibo Brown as chief; the worst trouble in the community is dated from that time.

[26] Letter from Peter F. Francis, for General Manager External Affairs, Mobil Producing Nigeria Unlimited, to Human Rights Watch, May 15, 2002.

Following this occupation, Mobil entered into negotiations for benefits to be paid to the Finima community. Initially, the company wished Chief Idamiebi-Brown and Dr. Yibo Brown to sign jointly for any money paid over to the community. Chief Idamiebi-Brown, however, stated, following a decision made in consultation with the elders of the community, that he would not sign with Dr. Yibo Brown, whom he did not recognize and did not believe had any standing to accept money on behalf of Finima. He suggested that the money be paid into an escrow account pending a resolution of the dispute. According to Idamiebi-Brown, a draft agreement promised to him for perusal was never supplied by Mobil. On January 23, 2002, the general counsel for Mobil wrote to Idamiebi-Brown informing him that the company had paid ₦393 million—more than U.S.$3 million—into "an account in the name of the Brown family," under a lease agreement signed by "Chief Yibo Brown, Elder Boma Brown and others … on behalf of the Brown house."[27] In the letter, Mobil stated that the company had "obtained commitment that the funds shall not be disbursed until the community has met and decided how to apply the funds."[28] Mobil also stated to Human Rights Watch that the ₦393 million was paid to the Brown family, not only to Dr. Yibo Brown, and that the company had "insisted that three members of the family sign the agreement as the representatives of each part of the family…. It is our understanding that several meetings have taken place involving the different elements of the Brown family and other families in Finima in order to determine how the funds will be allocated."[29] According to Chief Idamiebi-Brown, the elder who signed for his side of the family was never authorized to do so by him as chief and the other elders-in-council, as required by the governing system in Finima.[30] Whatever the case, it seems that in practice Mobil did not take sufficient measures to ensure that the funds paid over could not be misused. Given the history of conflict in the community, Human Rights Watch believes that the company's actions created a significant risk of heightening tensions between the disputing parties—as indeed has happened.

According to witnesses interviewed by Human Rights Watch, on or around the first weekend in March 2002, approximately twenty members of the Mobile Police—a notoriously brutal paramilitary riot unit within the Nigeria Police Force—came to Finima and broke into the town hall and the offices there of the youth congress and local councilor, with the assistance of supporters of Yibo Brown, who brought mattresses for them to sleep on.[31] The Mobile Police have been camped out there ever since, and have been generally intimidating community members, harassing women, and extorting money from boat drivers and others. Several people have been severely flogged. As one woman from the village said to Human Rights Watch: "Nobody knows why the MoPo are here. But when they come you are afraid." On March 16, the Mobile Police accompanied Yibo Brown as he held a meeting in the community to discuss the money given by Mobil; community members asserted to Human Rights Watch that Yibo Brown would not have been able to hold such a meeting without such protection. It appears from these accounts that the Mobile Police had been effectively "hired" by Yibo Brown to advance his cause in the village and to intimidate members of the Idamiebi-Brown faction.

In addition, the Mobile Police arrested a number of people in Finima at around the same time and over subsequent weeks. According to the divisional crime officer (DCO) at Bonny police station, responsible for the Finima area, those arrested were gang members and were picked up in connection with a fight that had taken place between two youth gangs in February, in which one youth was murdered. The DCO claimed that the arrests had followed investigation by the regular police in the normal way—"no innocent person can be arrested"—and the Mobile Police had been present at the arrests only to provide additional security and were otherwise present in Finima "to protect life and property."[32] However, according to family members present during the arrests, the Mobile Police came alone. Those arrested were pointed out to the Mobile Police by a young man who had been a

[27] Letter dated January 23, 2002, from Dr. Emmanuel I. Kachikwu, general counsel for Mobil Producing Nigeria Unlimited, to Chief I.A. Idamiebi-Brown.
[28] Ibid.
[29] Letter from Peter F. Francis, for General Manager External Affairs, Mobil Producing Nigeria Unlimited, to Human Rights Watch, May 15, 2002.
[30] Letter dated July 26, 2002, from Chief I.A. Idamiebi-Brown to Human Rights Watch.
[31] Human Rights Watch interviews, Finima, March 17 and 18, 2002. Among those accompanying the Mobile Police was former Assistant Commissioner of Police Charles Brown, who had been severely beaten and driven from Finima in 1999, following the last attempt to install Dr. Yibo Brown as chief.
[32] Human Rights Watch interview, Finima, March 17, 2002.

leader of the youth who occupied the Mobil BRT and is now known to associate with supporters of Dr. Yibo Brown. Those arrested had, according to other community members, nothing to do with the gangs or the fight, and seem to have been targeted rather because they are associated with the group in Finima opposed to the chieftaincy claims of Yibo Brown. One of them is an elder in the community (that is, a person with status as the head of a group of families or "house" and member of the chief's cabinet). Several had regular jobs with contractors to the oil industry, which they lost as a result of the arrests.[33] On March 17, 2002, two people arrested on March 15 were still held in Bonny police station. The blackboard in the reception area of the station recording the names of those in detention did not record their names. Human Rights Watch requested but was not allowed to visit the detainees.

In April and May 2002, the ordinary police at Bonny police station also arrested a number of other people associated with the Yibo Brown faction in the town following community complaints that they had been extorting money from motorbike taxi ("okada") drivers and others and had assaulted a number of people. By contrast with those arrested by the Mobile Police, all were released after one week.[34] They have returned to Finima and have resumed their activities. The Mobile Police remained in Finima Town as of early October 2002, and were continuing to harass local people, extorting money and also handing out "instant justice" in the form of fines and beatings when alleged criminal suspects were brought to them. Several dozen youths had fled the town for fear of arrest and harassment, many losing their jobs; some identified with the Idamiebi-Brown faction had also been arrested in Port Harcourt.

Mobile Police are permanently stationed by the government at Mobil's BRT, as at many other oil facilities in the delta regarded by the Nigerian government as of national importance. In accordance with the usual procedure, Mobil pays for the upkeep of these police. Witnesses said to Human Rights Watch that some members of the Mobile Police based at the town hall in Finima—a short distance from the BRT—had occasionally been transported by a Mobil vehicle: for example, it was alleged that extra police had come from the terminal in a Mobil bus to Finima town for the meeting of March 16. The head of security at Mobil's BRT stated to Human Rights Watch that the Mobile Police in Finima town had nothing to do with Mobil. Human Rights Watch unsuccessfully sought a meeting with Mobil's public affairs representatives in Lagos to discuss these matters. However, responding to a letter from Human Rights Watch, Mobil's General Manager, External Affairs wrote: "I can state categorically that Mobil was neither informed nor consulted about the plan to bring in the Mobile Police team who were based at the town hall…. Mobil is neither contributing to their upkeep nor providing any other assistance to this group, nor are we in any position to closely monitor any arrests that they might make during their stay."[35] The second-in-command of the Mobile Police posted to Finima would not make any comment to Human Rights Watch about the role of the Mobile Police in the town when approached in person, referring all queries to the Rivers State commissioner of police. Human Rights Watch unsuccessfully attempted to meet with the commissioner in Port Harcourt, and wrote to him in April 2002 concerning the situation in Finima (and other matters), but received no reply.

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[33] Among those arrested were the following: (a) Tonye Brown, Dagogo Benjamin Brown, Solomon Abbey, Diepreye Kalio and Dagogo Stowe, all arrested on March 13. They were charged with murder and were held in Port Harcourt prison until August 6, when they were released after the Rivers State director of public prosecutions decided there was no case to answer. (b) Dagogo Philip Brown and Victor Abelamaye Brown, arrested on March 13; and Abesa Israel Brown; Elder Inima Brown, arrested on March 15. These have been charged with offenses including assault, murder and armed robbery, and were released on bail on April 11. All four lost their jobs. The murder charge has been dropped but the other charges are outstanding. (c) Samuel I. Brown (arrested May 6), Fred Kalada Brown and Gabriel A. Brown (arrested on June 2), charged with murder. These were still in custody as of early October. Human Rights Watch interviews and telephone interviews, and emails from local sources, Port Harcourt, March to October, 2002.

[34] Among those arrested in this group were, according to local informants: Igoni Attoni, Karios A. Brown, Kalatau O. Brown, Diepre Y. Brown, Soeriala Brown, Ayabobo Brown, Ala K. Brown, Sokubu Attoni, Awo F. Tobin, Kalada Allwell Brown and Leton Attoni. They were charged with armed robbery, which is not a bailable offence. Unlike the others arrested, however, they were released without waiting for the determination of the director of public prosecutions as to whether there was a case to answer.

[35] Letter from Peter F. Francis, General Manager External Affairs, Mobil Producing Nigeria Unlimited, to Human Rights Watch, May 15, 2002.

The situation in Finima illustrates the problems caused by the manner in which the oil companies relate to the communities where they work. ExxonMobil is following what appears to be a common industry practice in Nigeria. It is standard practice for companies to negotiate for large sums of cash to be paid to community representatives on the understanding that those representatives are accountable to their constituency and will spend the money responsibly and transparently for the benefit of the whole community.[36] However, taking on trust assurances that individuals are genuinely representative can directly contribute to local conflict and resultant human rights abuses. Human Rights Watch takes no view as to who is the lawful chief in Finima, but we are concerned that very substantial sums of money are handed over to local figures without adequate precautions being taken to ensure that the people it is given to are accountable and representative and that structures are in place to minimize its misuse. In particular, we believe that, because of the complex relationships of dependency on and maintenance of the security forces (explained in more detail below), oil companies in Nigeria have a responsibility to monitor security force activity in the communities where they operate—and not only at their own facilities—in order to avoid complicity in human rights abuses. Where security forces engage in unlawful activities, such as the excessive use of force or arbitrary detention, oil companies should bring such matters to the attention of the appropriate authorities. Such actions would be particularly important in Finima since it is a community with close links to Mobil's terminal, and there are credible allegations of abuse there by the Mobile Police.

Gbarantoru

Gbarantoru, in the Gbaran oil field near Yenagoa, Bayelsa State, is one of the communities still suffering environmental damage caused by a road built in the early 1990s to Shell's facilities in the area. The Gbaran oil field is in a seasonally flooded freshwater swamp area, but the causeway for the road initially had no passages for water to pass underneath as the level rises and falls, blocking the drainage channel. Although, following protests from community members and environmental groups, culverts were eventually constructed, they were poorly designed, and the drainage of the area is still disturbed. Trees and other vegetation over a wide area have died from waterlogging, and seasonal fishing grounds have been destroyed, causing substantial economic damage to those whose land was affected.[37] Although compensation has been paid to some in the community, since Human Rights Watch reported on this situation in its 1999 report *The Price of Oil*, there is still no remediation of the damage done. According to SPDC, "while the road is beneficial, post construction damages are being addressed. Affected people are being compensated and remediation efforts are taking place. A number of communities … have accepted the negotiated compensation and the matter had been closed out. However, negotiations with some other groups, due to their higher expectations, have been deadlocked and have remained so over the years. SPDC is still making efforts to ensure that the matter is resolved."[38]

SPDC has carried out an environmental impact assessment for the drilling of two new wells near Gbarantoru, which will raise production in the Gbaran field from 17,000 bpd to 40,000 bpd.[39] Local people with knowledge of environmental impact assessment (EIA) procedures are concerned that the EIA was not carried out in a properly consultative way, according to new procedures established by SPDC. In particular, they said that no copy of the EIA was on display in Yenagoa, the state capital of Bayelsa State, or at Okolobiri, headquarters of the local government area. In addition, they stated to Human Rights Watch that they believe that the EIA does not accurately reflect the risks created by the new drilling, that it excluded from consideration one community (Tombia) that might be affected, and that it does not consider the potential social and health impacts.[40]

In early 2002, according to members of the community, a community liaison officer from SPDC and other Shell staff held at least two meetings with the chief of the community, BNS Weke. They said these meetings

[36] *See The Price of Oil*, pp. 107-114.
[37] *See The Price of Oil*, p. 71.
[38] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[39] SPDC, "Environmental Impact Assessment: Gbaran Phase I Field Development Plan (Well Drilling Campaign)."
[40] Human Rights Watch interviews, Gbarantoru, March 15 and 16, 2002; Tari Dadiowei, Gbaran Deep Landlords Association, "Gbaran Oil Field: An environment in dire need of redress," paper presented at Bayelsa Civil Society Assembly, Yenagoa, July 17, 2002.

were held after dark, and the chief excluded other members of his cabinet who are not his immediate family from these discussions, including the deputy chief.[41] The landowners of the area where the rig will be located had also not been involved in these meetings. Responding to questions from Human Rights Watch, SPDC stated that two meetings had been held, of which one took place in the evening because people from the community were not available during the day, and the other took place at 2 pm, and that "issues of concern to the entire community were discussed."[42]

At around the same time, community members told Human Rights Watch, a gang of thirty or so young men in the town known to be involved in criminal activities acquired firearms (locally made pistols) that they had not previously had. They are associated with the chief, and have been intimidating other people, including by firing shots into the air at night. On March 2, these youths prevented from going ahead a meeting to discuss environmental issues organized by the NGO Environmental Rights Action, with speakers from Benin City and Lagos as well as Port Harcourt scheduled to attend. The chief had been informed of the meeting, in accordance with the usual protocol, a few days in advance; he held a meeting with the youths the day before.

Two days after this meeting was to have been held, on March 4, there was a meeting at the chief's compound in the village. One member of the chief's council was called to the meeting and then told that he was not welcome, because he had not supported the chief's position that the Shell rig should come. He told Human Rights Watch:

> Around 8 or 9 in the night someone came to my house and called me to a meeting of the chief's council, saying that there were strangers who had come to the community. I went there and saw the boys [the youths who had been causing trouble] and others from the chief's council, and two others who were not from the council. I was told they were from Shell. I was asking the chief why the other council members were not there—the class who were there were only those who are supporting the chief. The youths started discussing with Shell, promising the Shell people that if they go to Port Harcourt they will escort the Shell rig…. Finally, the chief himself told the Shell people, "no problem, these boys will escort the rig and guide everything." But is that the Gbarantoru chief's duty, to give Shell security? The Shell people started promising money if the youth were escorting the rig, no problem. I was about to tell the chief that what you are doing is not the will of the Gbarantoru community, but I was told to leave…. The following day the boy who came to call me came back and said he was beaten for trying to call me to the meeting. Those in charge of the meeting don't stay here [in Gbarantoru]; they stay in Yenagoa [the capital of Bayelsa State] where they have contact with Shell. No landlords [of the drilling site] were represented at the meeting.[43]

The chief's position is that the rig should come to the community; others are not opposed, but believe that all those affected should be consulted, and in particular that the damage done by the road should be remediated before new negotiations go ahead. The chief has reportedly told the youth gang on other occasions that they will be paid if they assist in ensuring that the drilling rig can operate freely.[44]

In relation to the use of local youth as security guards, SPDC stated to Human Rights Watch that: "Employment of untrained labour (locals) on a rig is discouraged by SPDC for safety reasons. However, where it becomes necessary for the rig contractor to employ locals in any capacity, the prevailing daily wage obtainable in the locality is applied. Should security risk become a problem, the local police force will be contacted."[45] Human Rights Watch believes that if such employment is considered, it should include an assessment of the potential risks involved in hiring any particular group when there is a possibility that they have engaged in the intimidation of local residents.

[41] In Gbarantoru, the chieftaincy is an elected position, with a five-year term.
[42] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[43] Human Rights Watch interview, Gbarantoru, March 15, 2002.
[44] Emails to Human Rights Watch from Gbarantoru residents, July 24 and August 24, 2002.
[45] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

By July 2002, drilling had not yet started in Gbarantoru, though it had gone ahead in the nearby village of Opolo (on the outskirts of Yenagoa). According to community residents, the youths who had been causing trouble kept people in Gbarantoru awake for several nights in early July by shooting. On Sunday July 21, the youths badly beat and machete'd three people, all of whom were hospitalized, as well as firing generally into the air to intimidate people. Those injured were: Loveday Oyadongha, the Community Development Committee secretary, who signed letters stating the landlord families' position and rejecting Shell's proposed memorandum of understanding; Ebidou Feinfa, also a critic of SPDC in the community; and Silikibina Fiwaripamogha, who tried to prevent the attack on Feinfa. Oyadongha was the most seriously injured, spending a week in hospital after being beaten with sticks and broken bottles, and threatened with being shot dead before going into a coma from loss of blood; Feinfa and Fiwaripamogha were also badly assaulted with broken bottles and machetes. The youths also vandalized a car belonging to Bubaraye Dakolo, an engineer and spokesperson for one of the landlord families affected by the drilling, when he tried to help take Oyadongha to hospital, and shot at him (though they missed). All these cases were reported to the police, who shortly after arrested Chief Weke and held him in custody for three days. He was then released on police bail without being charged. After his release, seven of the youth gang carrying out the attacks were arrested. They were charged in the magistrates' court with relatively minor offenses, such as conduct likely to breach the peace and ordinary assault, and released on bail.[46]

The situation in Gbarantoru is typical of many communities across the oil producing areas, where arranging for oil drilling and other projects invariably involve the oil companies in complex local politics.[47] Without government institutions or a legal system that can ensure compliance with relevant laws and regulations, there accrues to oil companies a greater responsibility to ensure that their actions do not foster local conflict and the abuse of human rights. In this case, it appears that Shell has not taken sufficient steps to fulfill this responsibility.

Kalabari/Bille Conflict

A conflict that took place in late 2000 and early 2001 in the Cawthorne Channel area, in the mangrove forest in Rivers State, where SPDC has several flow stations, illustrates the way in which the presence of oil operations in the delta generates conflict among those who live there, and the complexity of such conflicts. All the oil companies operating in the delta use the concept of "host community" in making payments to those who own land or fishing grounds where oil facilities will be located, or where drilling and other activities will take place (many of these payments are by custom and practice and are in addition to payments made by law to the government); in deciding where they will locate their development projects; or in hiring casual labor to work on temporary projects. Being designated a "host community" thus brings many benefits to the village concerned; and especially to those who directly collect money from the oil companies for one purpose or another.

The conflict pitted the Bille people against their Kalabari neighbors, in particular two villages known as Ke and Elem-Krakrama that are regarded as affiliated with the Kalabaris. All of the communities involved are members of the large Ijaw ethnic group that dominates the riverine areas of the Niger Delta, but belong to different clans. Central to the conflict was a dispute over "ownership" of two Shell flow stations in the Cawthorne Channel, known by SPDC as Krakama (Bille) and Awoba flowstations, and payment of royalties for other Shell and LNG facilities passing through the area. Since SPDC found oil in the area in the 1950s, Bille, Ke, and Krakrama have contested their rights to claim "ownership" of the land where the two flowstations are situated, petitioning Shell for name changes and going to court for boundaries to be determined.[48] The flow stations have also been occupied at different times by youth from either side, and SPDC staff and others taken hostage, in order to highlight demands for "ownership" to be acknowledged and attendant benefits handed out.

[46] Fidelis Soriwei, Director, Izon Council for Human Rights, "Shell and Sorrow: Recent oil troubles in Gbarantoru," paper presented to Bayelsa civil society groups, national and international NGOs at Opolo, Yenagoa, July 31, 2002; emails to Human Rights Watch from Gbarantoru residents, July 24 and August 24, 2002.

[47] *See*, for example, *The Price of Oil*, pp.134-156.

[48] There has been extended debate about the naming of the flowstations, in particular the Krakama (Bille) flowstation (which is without a second "r", while Elem-Krakrama has two "r"s), as about the naming of many other flowstations in the delta, always a touchy subject. Since late 1999, following the four-month occupation of Krakama flowstation by youths from Bille, its name was changed, with the agreement of the Rivers State government (which is required), from Krakama to Krakama (Bille). The Bille people continue to demand that the two flow stations be known as "Bille 1" and "Bille 2."

SPDC states that no royalties are paid to the communities, since such payments are made to the federal government; however, Shell has given out various payments and development projects both to Bille and to Ke and other Kalabari communities, including scholarships, building projects, donating boats, generators, diesel, and so on.[49]

The only thing on which both sides in the fighting that broke out in late 2000 are agreed is that it was the dispute over the rights to claim "ownership" of the oil and, since the flowstations are operated by Shell, SPDC's failure to recognize the rights of whichever side is speaking, that was at the root of the problem:

> "We have become aware that it is what you own that ends up killing you. Between ourselves and the Bille people there has been friendship for many years. When there is a celebration in Bille we go there; when there is a death we go there to mourn. But then we come to the point where Shell brought activities to our area…. The only reason that Bille attacked us and burnt our homes and killed people is because of this claim over the oil location that Ke knows is ours." Spokesperson for Ke elders (March 21, 2002)
>
> "All these problems started from the disagreement which Shell put into our middle." Spokesperson for Bille elders (March 22, 2002)
>
> "Everything lies on Shell because they know the rightful owner. If Shell can give the flowstation back to the rightful owners then there will be no problem." Youth leader from Ke (March 21, 2002)
>
> "The solution to conflict is that there should not be double standards by Shell. What belongs to somebody should be given to him. People impacted by a project should benefit." Youth leader from Bille (March 22, 2002)

As elsewhere in the delta, the government's failure to adjudicate boundary disputes and to ensure that oil wealth is equitably shared has left the oil companies as the effective arbiters of "ownership" claims, a role for which they are not well suited.

According to a police report submitted to a subsequent state government inquiry and accounts given to Human Rights Watch, the immediate cause of the conflict was the apprehension of a man from Bille on December 29, 2000, by people from the village of Elem-Krakrama. The man was wanted for murder in connection with an attack on Elem-Krakrama in 1998, which followed similar clashes between members of the same communities.[50] According to the submission from the Bille kingdom to the commission of inquiry, the man was assaulted and paraded around several villages.[51] The man was ultimately taken to the Buguma police station and handed over to the police.[52] Over the following days, boats and fishing settlements belonging to Bille, Ke and Krakrama were attacked, and properties destroyed.[53] The waterways were made impassable, blocked by armed youths from both communities, some reportedly wearing military uniform. A number of people were seized on both sides; some were later handed over to the police; others escaped or were released; an unknown number were killed, or are missing and presumed dead. On January 14, 2001, the town of Ke was sacked by youth believed to come from

[49] "SPDC Response to Human Rights Watch Questions," May 31, 2002; Human Rights Watch interviews in Ke and Bille, March 2002.

[50] A criminal case against other suspects connected with this attack is still outstanding in the Rivers State High Court.

[51] "Memorandum Submitted by the Amanyanabo, Chiefs and People of Bille Kingdom to the Judicial Commission of Enquiry into the Conflict between Bille and Ke in Degema Local Government Area of Rivers State," February 2001, section 2.1.

[52] "Memorandum Submitted by the Commissioner of Police, Rivers State Police Command, to the Judicial Commission of Inquiry into the Communal Conflicts between Bille and Ke Communities in Degema Local Government Area of Rivers State," April 2001, section 2; Human Rights Watch interviews, Ke and Bille, March 22 and 23, 2002.

[53] Fishing settlements are temporary residences, used by fishermen and women when at distant fishing grounds. The houses built there are relatively flimsy, of wattle and daub, rather than the brick or concrete-built structures those who can afford it build for their main houses in their home village (such as those in Ke or Bille itself).

Bille. Several substantial properties in the town were destroyed, some by petrol bombs and at least one by dynamite. A large number of people were killed, including old people and children trapped in the burning houses. Each side claimed to Human Rights Watch that hundreds of people were killed and many more injured in the conflict overall—though these figures are by now difficult to verify and are likely to be an exaggeration, it is probable that dozens of lives were lost. In its submission to a government commission of inquiry, the Bille kingdom listed ten people known to have been killed, or kidnapped and believed dead.[54]

After the first attack on several Kalabari villages, on December 30, 2000, representatives from the Kalabari side went to the local government authority in Degema, to the commissioner of police in Port Harcourt, and to the governor of Rivers State. The divisional police officer in Degema sent police to visit Ke, but when Ke was attacked on January 14, the policeman in the town simply ran away with everyone else, being unable to help in any way. The governor promised to send the navy to the area to pre-empt further conflict. Representatives of the Bille community also petitioned the police several times.[55]

Only after the January 14 incident in which Ke was sacked was the navy finally deployed. Naval posts were established at both Ke and Bille in March, and naval boats patrolled the waterways. People from both Ke and Bille reported to Human Rights Watch in early 2002 that the navy was doing a good job keeping the peace and was not causing problems or harassing those who were going about their daily business. As elsewhere in Nigeria, in some cases the armed forces can fulfill the difficult and essential task of acting as an internal peacekeeper with credit. Nonetheless, in February 2002 there was a clash between two groups of youth that led to loss of life, making some people afraid to go to their usual fishing grounds.

Although the question of SPDC's flow stations and who should benefit from them was central to this conflict, Shell had no direct involvement in it — beyond assisting on some occasions to transport people to safety and providing relief materials through the Nigerian Red Cross. Nonetheless, in a broader sense, the manner in which Shell—and the other oil companies—relate to the communities in which they operate is at the root of the conflicts. In Kalabari/Bille, one of the main grievances with Shell from the Ke perspective was the reported award of a surveillance contract by SPDC to youth from Bille—interpreted in Ke as Shell arming the Bille youth to fight them. A youth leader from Bille explained to Human Rights Watch what had happened:

> I was secretary of the Bille youth federation. It is not true that the surveillance contract was given to Bille to buy arms. When SPDC was very insensitive to Bille youth need for employment, the youth seized SPDC boats and closed down Awoba and Krakama flow stations for three months, in 1999.… The production manager from Shell then called the youths and said since he could not employ all of us they would give a surveillance contract — to the whole community, not to individuals, so all could benefit. The contract was used to empower the youths, elders, chiefs, etc., because no person owns those oil fields, not even the paramount chief. The duties for the surveillance contract were to use speedboats to ensure security throughout the oil fields and see there was no vandalization. SPDC has paid a stipend of ₦168,000 [U.S.$1,290] each month since seven months ago [August 2001] to each company in Bille — there are ten companies in the community. Each compound [group of families tracing their ancestry to one founder member] forms a security company registered with corporate affairs [a government agency] and with SPDC. Each compound then does a roster for who is to benefit. ₦5,000 [$38] is paid monthly to chiefs, ₦2,500 to men [$19], and ₦2,000 [$15] to women, and it rotates every month — not everyone gets paid every month. Each company sends five staff that go daily to the field — the people working are paid by the supervisor for the company. If those people find that pipelines have been vandalized, they report to the police at the oil facility or to SPDC. We put them on oath that they will not vandalize any facility themselves. They do not carry arms. SPDC gives the company a "certificate of work done."

[54] Memorandum submitted by the Bille Kingdom, appendix XXXV.
[55] Human Rights Watch interviews, March 22 and 23, 2002; submissions to the commission of inquiry.

> When Bille people first knew that money was coming for the surveillance contract, a group of boys tried to monopolize it, like they did in Nembe. Shell paid them for about five months, I don't know how much. These youth were trying to bribe the police to arrest other people, but the community resisted and said the money should go to all. So the security companies were formed and those youth were removed. The new system is better because all benefit, even those smaller villages affiliated to Bille.[56]

Shell confirmed to Human Rights Watch that SPDC engaged the Bille community on "permanent surveillance contract," paying ₦4.4 million [U.S.$34,000] over the one-year period to December 2001.[57] SPDC's award of surveillance contracts at its facilities in Nembe, in Bayelsa State, resulted in a series of conflicts between different groups of youth who fought each other for the right to fulfill the contract.[58] Human Rights Watch believes that SPDC did not apply sufficient due diligence to determine the impact of providing material support to only one group for surveillance.

From the Bille side, the perception was that the Rivers State government — rather than Shell — was to blame for arming youth: "The Kalabari chapter of the IYC … was sponsored by Government to maintain surveillance over oil installations in Kalabari territory."[59] This is a serious allegation which also needs investigation and appropriate action by the Rivers State and federal governments.

The Rivers State government appointed a commission of inquiry into the Bille/Kalabari conflict on January 8, 2001 (before the sacking of Ke, though it included this incident in its mandate). The commission heard extensive submissions from both sides, focusing on determining the boundaries of community and the ownership of the Awoba and Krakama flowstations. Like many other similar investigations in Nigeria the commission's report has not been published, nor has the Rivers State government made any public announcements about action that will be taken to avoid the conflict recurring in future. Meantime, most of those who were involved in the conflict remain free and have faced no attempt to bring them to account. Only eight people were handed over to police custody during the fighting, and none were arrested by police themselves.[60]

In the Ke/Bille conflict as in so many similar intercommunal conflicts across Nigeria, the government has failed to fulfill its responsibilities—not only to use the oil money for the benefit of the people, but more particularly to prevent or mitigate conflict and to end the impunity that allows a cycle of violence to continue throughout the delta. The concept of "host community" is also problematic, by placing a price on being designated the village that is "host" to an oil company. There is a case that those people who are most likely to suffer damage because of oil spills and other problems caused by oil exploration and production should receive additional benefits from the oil, but the current system both fails to ensure a fair distribution of benefits, and promotes conflict. It would be difficult for the oil companies to end this concept unilaterally—there would be widespread discontent from those who benefit from the current system—but clearly the oil companies generally need to move away from this system to one in which the entire Niger Delta equitably benefits. The oil, after all, is not directly under the flowstations that pump it out of the ground but spread out over a wide area.[61]

Ogoniland

It was the crisis in Ogoniland that first brought international attention to the Niger Delta, through the mobilization of the Movement for the Survival of the Ogoni People (MOSOP) that led to the closure of Shell's production in Ogoniland in 1993 (at that time 3 percent of its total production in Nigeria) and ultimately to the

[56] Human Rights Watch interview, Port Harcourt, March 23, 2002.
[57] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[58] *See* Kemedi, *Oil on Troubled Waters*.
[59] Memorandum submitted by the Bille Kingdom, section 2.3.
[60] Memorandum Submitted by the Commissioner of Police, section 5.
[61] The Ijaw Youth Council (IYC) takes the position that all Ijaw communities are "oil producing communities," according to a position adopted by the IYC in February 1999 at Miniama, Rivers State.

hanging of Ken Saro-Wiwa and eight other MOSOP activists in 1995.[62] In response to MOSOP's protests, the government created a special security force, the Rivers State Internal Security Task Force, which was responsible for the deaths of hundreds of Ogonis during the period it occupied Ogoniland, from 1993 to 1998.

There has been no official inquiry, as called for by MOSOP, Human Rights Watch, and many other groups, into the abuses suffered by the Ogoni people under the military regime of General Abacha, nor have there been prosecutions of members of the security forces alleged to be responsible for those abuses. However, in January 2001, the Human Rights Violations Investigation Commission, headed by Justice Chukwudifu Oputa (commonly referred to as the Oputa Commission), held hearings in Port Harcourt, in which the abuses in Ogoniland were discussed. The Oputa Commission was appointed by President Obasanjo shortly after coming into office in 1999 to investigate "mysterious deaths" and assassinations and other human rights abuses during the period January 1966 to June 1998. More than 10,000 cases from Ogoniland were submitted to the commission. The commission's report was presented to President Obasanjo in June 2002, but has not yet been made public.

SPDC appeared before the Oputa panel when it sat in Port Harcourt, and again at further hearings in Abuja in July 2001. SPDC Managing Director Ron van den Berg deplored abuses in Ogoniland under the military government, and stated that Shell sought lasting peace and reconciliation with the Ogoni people and that "SPDC is more concerned about protecting the environment than it is with resuming production" in Ogoniland.[63] Among other outcomes, Justice Oputa arranged meetings between Shell, MOSOP and the Rivers State and federal governments, in an attempt to reconcile the different parties. These meetings were unsuccessful. SPDC's production in Ogoniland remains closed.

In October 2001, the intergovernmental African Commission on Human and Peoples' Rights ruled on a communication submitted to it in 1996 by the Lagos-based Social and Economic Rights Action Centre (SERAC) and the Center for Economic and Social Rights (New York) concerning the Nigerian government's actions in Ogoniland. The commission found the Nigerian government in violation of the articles of the African Charter concerning the rights to nondiscrimination (art. 2), life (art. 4), property (art. 14), health (art. 16), a family (art. 18(1), and the environment (art. 24), as well as the rights of peoples to "freely dispose of their wealth and natural resources" (art. 21), for the period 1993-96. The commission also noted that, "in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis."[64] The commission appealed to the Nigerian government to investigate allegations of human rights abuse, prosecute those responsible, and award compensation to the victims, as well as to ensure environmental clean-up. This decision was made public in May 2002.

Although the human rights situation in Ogoni greatly improved following the death of military head of state General Sani Abacha in 1998 and the transition to civilian rule in 1999, problems still remain. On April 29, 2001, there was a major spill from a Shell "Christmas tree" wellhead in Ogoni, at Yorla — though production in Ogoniland remains closed, the wellheads were never properly secured (the reasons for which are in dispute), and active pipelines still cross the region, transporting oil to Shell's Bonny terminal. Oil sprayed up in a fountain over a very wide area, damaging farmland. The situation was sufficiently bad for SPDC to have to bring in a company from Texas, Boots and Coots, to bring the spill under control and cap the well — an operation that took five days from their arrival on May 2. Shell stated that there was clear evidence that the wellhead had been vandalized.

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[62] *See* "The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria," *A Human Rights Watch Short Report*, July 1995; "Permanent Transition: Current Violations of Human Rights in Nigeria," *A Human Rights Watch Short Report*, September 1996; and *The Price of Oil*, pp.124-128.

[63] "Shell oil director, Ogoni representative appear before Abuja panel," *Guardian* (Lagos), July 25, 2001. Shell's submission to the Oputa commission is available at www.shellnigeria.com.

[64] African Commission on Human and Peoples' Rights, Communication No. 155/96, *The Social and Economic Rights Action Centre and the Center for Economic and Social Rights / Nigeria*, paragraph 58. *See* www.cesr.org/ESCR/africancommission.htm (cited on June 15, 2002).

MOSOP disputed this account, pointing to other spills in previous years caused by corrosion. The cleanup operation at the site had not been completed almost one year later when Human Rights Watch visited: according to Shell, clean up was delayed "due to the issue of compensation demand raised by the communities."[65] Fires continue to break out at intervals in Ogoniland and elsewhere, due to vandalization, line-tapping in order to steal oil, or theft of the pipes themselves. There is a profitable market in selling used pipes, as well as illegally-tapped crude oil.[66] SPDC (and the other oil companies) do not pay compensation where spills are caused by vandalization; however, the damage to the pipes or wellheads is rarely if ever caused by those who suffer the damage from the spill, who can thus face serious economic hardship.

In June 2001, Friday Nwiido, an Ogoni who had been working for Shell as a security guard at the Yorla spill, was fatally shot by police at Baen in Khana local government area in Ogoniland. Nwiido and others were allegedly having a dispute with Shell over providing security during the cleanup of the spill, and had seized a Shell vehicle in order to press their claim. According to reports from MOSOP, Environmental Rights Action, and others, Mobile Police came to the community, shot teargas canisters and demanded that Nwiido be produced, and then shot him as he gave himself up. He was taken to the nearby Shell clinic, but died there.[67] SPDC stated that it conducted a full investigation into the death, but "refrained from disclosing our findings, in order not to be seen to influence the police investigation of the matter, which remains outstanding."[68]

In July 2002, the body of Ken Saro-Wiwa and the eight others hanged in 1995 were exhumed from the cemetery where they were buried by the government, with the assistance of U.S. Physicians for Human Rights, with the aim of giving them a dignified reburial.

No Accountability for Odi

The town of Odi, in Bayelsa State, was destroyed in a military operation in November 1999, in which hundreds of people were likely killed, following the killing of twelve policemen by a gang of youths.[69] Following the killings of the policemen, President Olusegun Obasanjo wrote to the governor of Bayelsa, Diepreye Alamieyeseigha, threatening to declare a state of emergency if those responsible for the murders were not apprehended within two weeks—though the police force is a federally controlled body in Nigeria. Before the deadline could expire, soldiers from the Nigerian army moved into Odi, a community of 15,000 people or more, engaged in an exchange of fire with the young men alleged to be responsible for the deaths of the policemen, and proceeded to raze the town. The troops occupied the town for around ten days, and demolished every single building, barring the bank, the Anglican church and the health clinic, and left graffiti that included ethnic slurs and reflected views that the town and the whole Ijaw ethnic group must be punished for the crimes committed by their sons. There has been no thorough investigation of the destruction of Odi by government authorities, no prosecutions of any soldiers involved in the abuses committed, no government effort to compensate the victims or rebuild the town. The officer in charge of the operation has reportedly been promoted.[70]

In March 2001, President Obasanjo visited Odi. As commander-in-chief the Nigerian president has ultimate responsibility for decisions to deploy the armed forces, whether internally or externally. Addressing people gathered to meet him, the president said that the soldiers had gone "beyond their brief," but refused to make any commitments to the demands of the community for compensation or make any direct apology for what had

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[65] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

[66] *See*, for example, Sarah Moore, "Nigeria Pipeline Vandals Widen Rift Between Shell, Ogoni," Dow Jones Newswires, January 9, 2002; also, SPDC, *People and the Environment: Annual Report 2001* (Lagos: SPDC, May 2002), pp.27-28.

[67] "Killing of Ogoni Man Unjustified," MOSOP Press Release, June 19, 2001; Nick Ashton-Jones, "ERA Field Report – July 2001," Environmental Rights Action (London and Port Harcourt), July 2001.

[68] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

[69] *See* Human Rights Watch, *The Destruction of Odi and Rape in Choba*, Background Briefing Paper, December 1999, and *Update on Human Rights Violations in the Niger Delta*, Background Briefing Paper, December 2000. Human Rights Watch has been shown a list of close to 2,000 people recorded killed; though we cannot verify this number, a figure of this size is entirely plausible given the level of destruction and similar tallies of dead that have followed similar army actions.

[70] Jide Ajani, "FG promotes officers who stormed Odi, says Alamieyeseigha," *Vanguard* (Lagos), October 5, 2000.

happened.[71] In an interview on Nigerian state television, President Obasanjo again refused to apologise: "Apologise for what?… I've no apology to make. What do you expect me… Everybody is saying that one of our problems is security. There is a difference between doing what is wrong and doing what you have to do."[72] The National Human Rights Commission, a state funded body set up by military decree in 1996, recommended in August 2001 following a visit to Odi that the government reconstruct the town, deploring the failure of the federal government to deliver on a promised 500 housing units.[73]

In June 2002, the Nigerian magazine *Newswatch* interviewed General Victor Malu, who was chief of army staff at the time of the destruction of Odi. Responding to questions about the incident, Malu denied all allegations of wrongdoing, stating that the operation was approved by the president and carried out in a professional manner:

> I still stand by what I said and I will still repeat it. When I tell the press this, they only choose what they want, not what I say. The operation in Odi was done very professionally.… It was when the troops got to Odi, we witnessed sustained fire from the village. And this is what I say and people don't like. And whether they like it or not, I will say it as far as I have the knowledge of the army, as I know. If we go for internal security operation like the Odi case, you are supposed to perform when you are alive, not as a dead man. If somebody is firing at you, you try to take his head. That is the training I had and that is what I have done in these 33 years. If you fire at me I will fire back and might kill you or other people. The amount of fire that was coming from the village the troops had to return fire. In any case, if you are inside a building firing, we first of all fire to bring down the building. In the process, we will also take you. That was exactly what happened. They didn't go on a massacre spree…. [A]fter the operation, at the end, I went to the president and briefed him on the operation we conducted.… If the president or minister didn't like it, that is when they would have removed me or order for my court-martial.… This was something that was approved by the president himself. Who am I to leave Abuja and go on operation in Port Harcourt or Bayelsa on my own. What status do I have?[74]

Despite the assertion by General Malu that those killed in Odi were either firing on the army or caught in crossfire, it is clear from the nature and level of destruction in the town that the soldiers were under orders to raze it to the ground. Human Rights Watch obtained numerous testimonies from individuals indicating indiscriminate firing on and targeting of civilians.

In September 2002, responding to charges made against him in the context of impeachment proceedings brought in the National Assembly, President Obasanjo revisited the Odi incident. The impeachment papers charged that he "authorised the deployment of military troops to massacre innocent citizens" in Odi, "without recourse to the National Assembly contrary to Section 217(2)(c) of the 1999 Constitution which requires firstly for some conditions to be prescribed by an Act of the National Assembly for the use of the Military in that regard." Obasanjo responded in writing that "I decided to deploy the Army to assist the Nigerian Police in restoring order and law as not only were property being destroyed on a large scale, civilians and law enforcement agents were also being killed. In the case of Odi, four policemen and a total of seven soldiers deployed there on law enforcement and peacekeeping duties were killed." He also cited constitutional provisions allowing the president as commander-in-chief to determine the operational use of the armed forces, and finished by stating that: "The deployment of soldiers to Odi … was done within my constitutional powers and in absolute good faith with the aim of containing the worsening situation in the areas in the interest of security and to maintain law and

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[71] "President in Odi, says 'soldiers went beyond their brief,'" *This Day* (Lagos), March 16, 2001; Barnaby Phillips, "Obasanjo 'regrets' army rampage," news.bbc.co.uk, March 16, 2001.

[72] As quoted in Kola Ologbondiyan, "No apology over Odi," *This Day* (Lagos), March 30, 2001. The president's response is similar to his later response to criticisms of the army reprisal killings carried out in Benue State in October 2001. *See* Human Rights Watch, "Military Revenge in Benue: A Population Under Attack," *Human Rights Watch Short Report*, April 2002, and "Nigeria: President Ignoring Gravity of Military Massacre," press release, April 19, 2002.

[73] Sam Ogbeifun, " Rights commission wants FG to reconstruct Odi," *Vanguard* (Lagos), August 21, 2001.

[74] Tobs Agbaegbu, Chris Ajaero, Salif Atojoko and Mathias Oko, "Coup is still possible in Nigeria," *Newswatch* (Lagos), as distributed by *Nigeria Today* email news service, June 10, 2002.

order and save lives and property."[75] Once again, he declined to offer any acknowledgment or investigation of the abuses committed in Odi, prosecution of those alleged to be responsible, or compensation for the families of the dead and injured or those who lost property.

In the face of government denial that any abuses took place and failure to undertake any criminal or other investigation with a view to bringing those responsible to account, private individuals have brought civil suits against the government. In February 2000, an application to enforce fundamental rights was lodged in the Federal High Court, Port Harcourt, on behalf of the Odi community, seeking ₦1 billion (U.S.$7.7 million) damages and other relief. The government has failed to file any defense to the application or to appear in court to respond to the various applications made on behalf of the plaintiffs as the case has proceeded.[76] In July 2002, nine women from Odi filed a suit in the Federal High Court, Port Harcourt, seeking ₦19 million (U.S.$146,000) compensation from the federal government for rape, torture, and emotional trauma suffered during the invasion. The government filed a defense denying all the allegations.[77]

IV. GOVERNMENT RESPONSES

The Nigerian federal government has announced on several occasions the priority it gives to development in the Niger Delta, including by establishing a Niger Delta Development Commission. But the announcements have not led to significant improvements on the ground. In particular, little of the money paid by the federal government to state and local governments from the oil revenue is actually spent on genuine development projects: there appears to be virtually no control or proper audit over spending by state and local authorities—despite the federal government's creation of an Independent Corrupt Practices Commission (ICPC) with the mandate to investigate such wrongdoing.[78]

Resource Control

The percentage of revenue paid to the oil-producing states from the oil that is produced from their areas has been a matter of contention since oil was first discovered in Nigeria.[79] The 1999 constitution provides that at least 13 percent of the revenue derived from natural resources should be paid to the states where it is produced,[80] though there have been substantial delays in calculating and paying these sums. The federal government only began making payments in accordance with the increased allocation in January 2000, although they fell due from June 1999, and in practice has never paid the 13 percent minimum.[81] Nonetheless, allocations from the federal government to the oil-producing states have increased markedly since 1999, rising to 25 percent of the amount paid out to states from the "federation account" in 2001 (the equivalent of just over U.S.$1 billion), from 12

[75] Text of written response to impeachment charges distributed by *Nigeria Today* email news service, September 12, 2002.

[76] Mustapha Ogunsakin, "Odi sues government, demands ₦1 billion damages," *Guardian* (Lagos), February 29 2000; Human Rights Watch telephone interview with Okey Ilofunwa, Olisa Agbakoba's chambers, Lagos, August 12, 2002.

[77] George Oji, "Odi Massacre: 9 women seek ₦19 m compensation for rape," *This Day*, July 19, 2002.

[78] The commission was created by the Independent Corrupt Practices and Other Related Offences Act of 2000, and has a mandate to receive and investigate reports of a wide range of offenses of corruption as created by the act. It was formally inaugurated in September 2001, and in June 2002, the Supreme Court confirmed the constitutionality of the act. Responsibility for prosecution of offenses under the act rests with the attorney-general of the federation.

[79] For the history of revenue allocation in Nigeria, see *The Price of Oil*, pp. 39-52.

[80] Section 162(2) of the 1999 constitution provides that: "The President, upon the receipt of the advice from the National Revenue Mobilisation, Allocation and Fiscal Commission, shall table before the National Assembly proposals for Revenue Allocation from the Federation Account, and, in determining the formula, the National Assembly shall take into account allocation principles especially those of Population, Equality of States, Internal Revenue Generation, Land Mass, Terrain, as well as Population Density: provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than 13 percent of the revenue accruing to the Federation Account directly from any natural resources."

[81] Some payments began to be made from the first quarter of 2000, but the amounts are still in dispute, and the allocations have never been backdated to June 1999, when the constitution came into force. In early 2002, a federal government-appointed committee reported that the states were only being paid 7.8 percent on a derivation basis. "Report of the Special Security Committee on Oil Producing Areas," submitted to President Obasanjo, February 19, 2002, paragraph 31.

percent in the second half of 1999 (or approximately $120 million).[82] The main oil producing states—Akwa Ibom, Bayelsa, Delta, and Rivers—have about 10 percent of the population of Nigeria. These payments have not satisfied residents of oil-producing areas who feel they still do not receive adequate benefits from the oil. Individuals and groups from across the political spectrum in what is known as the "south-south" zone of Nigeria have demanded that the oil producing states assume "full control" over their natural resources, and pay tax from those revenues to the federal government. They also demand the repeal of a number of laws that give control over land and mineral resources to the federal government.[83]

In addition to the general debates surrounding the issue of resource control, the federal government has consistently asserted that it is not obliged to pay to the coastal states revenue derived from offshore oilfields. Accordingly, in 2001, the federal government filed a suit seeking the interpretation of the Supreme Court on the issue of offshore revenue. In April 2002, the Supreme Court ruled in favor of the federal government, deciding that the seaward boundary of the coastal states ran along the low-water mark, rather than extending to the edge of Nigeria's territorial waters. About 40 percent of Nigeria's oil is produced offshore.

South-south leaders protested the judgment. For the oil producing states, the Supreme Court decision implied a sharp drop in the revenue they could expect to receive from the revenue allocation formula. Akwa Ibom State would be particularly badly affected: since a high proportion of the revenues paid to it had derived from offshore production, the state would theoretically be obliged to refund the federal government for funds paid out in contravention of the decision since 1999. In addition, the court ruled that the federal government must cease direct deductions from federally collected oil and gas revenues to pay for "first line items" before sharing revenues with states and local authorities. Among the first line items affected were the contributions of the Nigerian National Petroleum Corporation (NNPC), the government agency with which the oil majors operating in Nigeria are in joint ventures, to the budgets of its operating partners.[84] The ruling thus generated a funding crisis, as the federal government ceased making any payments to the Niger Delta states under the derivation principle, holding the money in an escrow account pending a resolution of the issue.[85] The government announced in July 2002 that it would make loans to the oil producing states while a task force determined the seaward boundaries of the littoral states in order to decide the percentage of oil production that would be counted for derivation payments.[86] In September 2002, President Obasanjo put to the National Assembly a bill proposing an end to the onshore/offshore dichotomy, apparently motivated by the desire to win the support of representatives from the Niger Delta states against an attempt to impeach him.[87]

In August 1999, as required by the constitution, the federal government established the thirty-eight-member Revenue Mobilization, Allocation and Fiscal Commission, to negotiate a new formula for revenue sharing between the three tiers of government (that is, after the constitutional requirement of a minimum 13 percent of funds accruing from natural resources is paid out on a derivation basis). The rule in place since 1992 allocates

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[82] SPDC, *People and the Environment: Annual Report 2002*, p.10. Nigeria is a member of the Organization of Petroleum Exporting Countries (OPEC) and its current (since November 2001) production quota set by OPEC is 1.787 million bpd. However, production is frequently reported to be closer to 2 million bpd. The government has stated that it aims to achieve 4 million bpd production by 2010.

[83] These laws include the Land Use Act and the Petroleum Act. *See The Price of Oil*, pp.54-56 and 75-78.

[84] In order to enable it to pay its "cash call" obligations to the joint ventures, the government announced the commercialization of NNPC, and that these obligations would be treated as expenses rather than revenue allocation. *See* Jacinta Moran, "Nigeria's NNPC to take greater role in JVs: to assume responsibility for cash-call payments," *Platts Oilgram News*, May 20, 2002. Cash calls were partially paid in June even though this arrangement had yet to be finalized. "Nigeria pays oil JV cash calls despite court ruling," Reuters, June 4, 2002.

[85] In July 2002, violence broke out in Ilaje, Ondo State, when youths protested because the Ondo State Oil Producing Area Development Commission had not disbursed a promised ₦150 million for youth empowerment following communal conflict in the area. The state government explained that the money had not been paid to the commission because of the resource control suit.

[86] Emma Ujah, "Thirteen % derivation – oil states know fate soon," *Vanguard*, June 26, 2002; Emma Ujah, "Government gives reasons for loans to oil states," *Vanguard*, July 12, 2002.

[87] "Resource Control Bill—Beyond the Euphoria," *This Day*, September 10, 2002.

48.5 percent to the federal government, 24 percent to states, 20 percent to local governments, and 7.5 percent to special funds.[88] A bill proposing a new formula (41.3 percent to the federal government, 31 percent to states, 16 percent to local governments, and 11.7 percent for special funds, including the ecological fund) was submitted to the National Assembly in 2001, but withdrawn following the Supreme Court ruling of April 2002.[89] The government set up a new committee, the Federal Account Allocation Committee, to find a political solution to the resource control issue. In July 2002, Obasanjo signed an executive order providing for the federal government to take 56 percent of revenue, and state and local governments to take 24 and 20 percent, respectively: according to press reports, the formula meant that the federal government received ₦68.4 billion (U.S.$526 million), the states ₦45.1 billion ($347 million), and local governments ₦29 billion ($223 million) for the month of July.[90] Monthly grants were also made to Akwa Ibom and Ondo States, those worst affected by the Supreme Court judgment, pending resolution of the onshore-offshore dispute.

The issue will remain a controversial one, and can be guaranteed to form a key point of debate during the lead up to the 2003 elections.

The Niger Delta Development Commission

In response to local demands for greater resource ownership and benefits, and in an attempt to defuse the demands for "resource control," President Obasanjo introduced to the National Assembly soon after his inauguration a bill to establish a Niger Delta Development Commission (NDDC). Many from the Niger Delta, however, rejected the bill since it did not address their concerns surrounding revenue allocation and resource control, and appeared likely to duplicate similar corruption-ridden bodies created by previous administrations.[91] The law had a stormy passage through the National Assembly, but was eventually passed in July 2000.[92]

The NDDC Act establishes a governing board for the commission, appointed by the president, and consisting of a chairman, representatives of each of nine "oil producing" states,[93] representatives of three other states, a representative of the oil companies, and representatives of various federal government departments. The commission is run on a day-to-day basis by a managing director. The commission is charged with a wide range of tasks, in particular, to:

> conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger Delta area in the field of transportation, including roads, jetties and waterways, health, education, employment, industrialization,

[88] The balance of 4 percent was originally allocated 3 percent to OMPADEC (see below, footnote 91) and 1 percent to oil producing areas through derivation, but was reallocated after the creation of the Niger Delta Development Commission to the three tiers of government. *See* "Nigeria: Selected Issues and Statistical Appendix," IMF, August 2001.

[89] Bature Umar, "On-Shore, Off-Shore—Obasanjo Withdraws Revenue Allocation Bill," *This Day*, May 15, 2002; Chuks Okocha, "House—New Revenue Formula Unconstitutional," *This Day*, July 19, 2002.

[90] Nneoma Ukeje-Eloagu and Kunle Ademokun, "Revenue Allocation—FAAC meets today, may implement new formula," *This Day*, July 25, 2002; Kunle Ademokun, "Government, states, LGs share ₦280 bn in July, August," *This Day*, August 29, 2002.

[91] Among the bodies preceding the NDDC were the Niger Delta Development Board, established on the recommendation of the pre-independence Willink Commission, and the Oil Mineral Producing Areas Development Commission (OMPADEC), established by General Ibrahim Babangida in 1992. *See The Price of Oil*, p. 46.

[92] In particular, opponents to the draft bill objected to the initial proposal that 50 percent of the financing for the commission should come from the 13 percent of revenue that the 1999 constitution provides shall be allocated on a "derivation principle." In effect, they argued, the commission would actually take away money that should already go to the oil producing states under the new constitution. The National Assembly amended the draft bill to reflect some of these concerns, including reducing the percentage of funds to come from the federation account to 15 percent and increasing a proposed levy on the oil companies from 0.5 to 3 percent of their budget. President Obasanjo vetoed these amendments in March 2000, but in May both houses of the National Assembly passed the bill again by a two-thirds majority, overriding the president's veto. After further argument and requests to agree amendments, the president finally accepted this version of the bill.

[93] Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers. The selection of these states is itself controversial, since several are not within the Niger Delta, properly speaking—that is, they do not share in the particular development and environmental problems of those states with extensive mangrove and fresh water swamp—though they do produce some oil.

agriculture and fisheries, housing, and urban development, water supply, electricity and telecommunications.[94]

The commission is funded by a combination of contributions from the federal government and oil companies: 15 percent of the allocations due to the member states of the commission under the "derivation principle" of revenue allocation; 3 percent of the total annual budget of any oil company operating in the Niger Delta; and 50 percent of funds due to the member states from the ecological fund, a separate federal fund set up for the remedy of ecological problems caused by oil production.[95] The commission has repeatedly complained, however, that these funds are not in fact paid to it—challenging both the government and the oil companies to pay up in full. Under the legislation establishing it, the NDDC must "have regard to the varied and specific contributions of each Member State of the Commission to the total national production of oil and gas." The commission has developed its own formula for the allocation of projects, with 60 percent of funds to be spent on the basis of oil production from each state.[96]

The NDDC began operations early in 2001. The budget for 2001 submitted by President Obasanjo to the National Assembly in October proposed a ₦15.77 billion (U.S.$121 million) allocation for its work. The NDDC proposed a budget of about ₦40 billion ($307 million) for development projects during 2002—though by March 2002 only ₦17 billion ($130 million) of this had been approved by the National Assembly—and announced 641 projects spread across the nine states.[97] These projects cover different sectors, including infrastructure, electrification, water schemes, health, education, environmental protection, industrialization. The NDDC is working with the German development agency Gesellschaft für Technische Zusammenarbeit (GTZ) to develop a "master plan" for development in the Niger Delta region. The NDDC has also taken over projects that belonged to its predecessor, the Oil Mineral Producing Areas Development Commission (OMPADEC), and initiated an "interim action plan" for immediate projects.[98]

The World Bank is preparing to make a U.S.$40 million loan to the NDDC for institutional support, strengthening the commission's internal and external communications, and strengthening the capacity of nongovernmental and community-based organizations working in the Niger Delta to engage with the NDDC and other development agencies.[99] The U.N. Development Programme (UNDP) is also providing technical and advisory support to the commission, among other things joining in the organization of a three-day conference on development issues in the Niger Delta in December 2001.[100]

Recently, the Nigerian government, through the National Petroleum Investment and Management Service (NAPIMS), set up an oil industry development committee to monitor and rationalize oil company development projects.[101]

Security in the Oil Producing Areas

As documented in this report, Mobile Police, army and navy are widely deployed throughout the oil producing areas. In addition, the government has taken steps to create special units dedicated to security for the oil industry. In April 2000, the Nigeria Police Force, in collaboration with the NNPC, established a "task force" on pipeline vandalization. From April 2000 to December 2001, the police investigated 101 reported cases of vandalization of oil pipelines, and arrested a total of 589 people; 490 of these were charged with various offenses.

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[94] NDDC Act, section 7(1)(b).
[95] Ibid., section 14.
[96] "Niger Delta decides on formula to execute developmental projects," *Guardian* (Lagos), December 16, 2001.
[97] OPECNA Bulletin, May 2, 2002; *Upstream*, April 12, 2002.
[98] Godwin E. Omene, "Interim Action Plan and Framework for Development of the Niger Delta Region," paper presented to the International Conference on the Development of the Niger Delta, held in Port Harcourt, December 10-12, 2001.
[99] Human Rights Watch telephone interview with World Bank official, Abuja, August 30, 2002; project documents available on the World Bank website, www.worldbank.org.
[100] *See* "Nigerian commission charts improvements for Niger Delta," UNDP press release, January 18, 2002. The papers from the conference are available at www.nddconline.org.
[101] "SPDC Response to Human Rights Watch Questions," May 31, 2002.

None of these cases had reached trial by the end of 2001.[102] Similar task forces were set up in several states of the Niger Delta, including not only police but also the navy, army, and SSS. In Delta State, the government passed a law in August 2001 banning militant groups blamed for disruption of oil activities in the state. According to press reports, membership of one of the groups is punishable by seven years' imprisonment.[103] Despite these efforts at patrolling pipelines and arresting culprits, pipeline ruptures for the purposes of illegal bunkering of crude oil or tapping petroleum products continue to be a serious problem, sometimes with fatal results for those involved. Often, those involved are people with high-level contacts in government and the security forces, enabling them to escape efforts at prevention and punishments.[104]

In theory, acts of vandalization against oil facilities can still be prosecuted under military government laws that were apparently overlooked when a number of repressive decrees were repealed immediately before the transition to civilian government in May 1999. These laws on their face violate international human rights standards and should be repealed. The Petroleum Production and Distribution (Anti-Sabotage) Act of 1975 provides for the head of state to constitute a military tribunal to try persons charged with offenses under the act, and states that those convicted may be sentenced either to death or imprisonment for up to twenty-one years.[105] Sabotage is given a very wide definition, relating to various acts that might interrupt the production or distribution of petroleum products.[106] The Criminal Justice (Miscellaneous Provisions) Act of 1975 also makes damage of oil pipelines and installations triable before the High Court.[107] The act also provides that an "armed patrol" may arrest without warrant persons reasonably suspected of committing an offense under the act. In practice, however, it seems that these laws are not being used.

In November 2001, the federal government set up a Special Security Committee on Oil Producing Areas, "to address the prevailing situation in the oil producing areas which have, in recent past, witnessed unprecedented vandalisation of oil pipelines, disruptions, kidnappings, extortion and a general state of insecurity."[108] The committee was made up of the chiefs of army, navy, and air staff; the inspector general of police; the head of the State Security Service; a representative of the national security adviser; the managing director of the NNPC and the director of the Department of Petroleum Resouces; the secretaries to the governments of the nine oil producing states; and the managing directors of the five biggest multinational oil companies operating in Nigeria. The committee's terms of reference were, among other things, to "identify lapses in the protection of oil installations including causes and sources of facility vandalisation and sabotage and recommend appropriate measures to enhance oil installations' security" and to "appraise the negative impact of youth and community agitations and recommend measures to reduce youth restiveness, communal agitations, and other incidents of sabotage of pipelines in oil communities."[109]

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[102] Report of the Special Security Committee, paragraph 47.

[103] Jaiyeola Andrew, "7-year jail term for members of illegal youth associations in Delta," *This Day*, August 24, 2001.

[104] This was confirmed by the government's own investigation into security in the oil producing areas. *See* Report of the Special Security Committee, paragraph 40.

[105] Section 1, Petroleum Production and Distribution (Anti-Sabotage) Decree no.35 of 1975 (Cap. 353, *Laws of the Federation of Nigeria*).

[106] The act provides that: "Any person who does any of the following things, that is to say—

(a) wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or

(b) wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or

(c) wilfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products,

shall, if by doing that thing he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act."

And that "Any person who aids, incites, counsels or procures any other person to do any of these things is equally guilty of sabotage."

[107] The Criminal Justice (Miscellaneous Provisions) Decree no.30 of 1975 (Cap. 78, *Laws of the Federation of Nigeria*), Section 3(1) and (2).

[108] Report of the Special Security Committee, executive summary.

[109] Ibid., terms of reference.

The committee submitted its report to President Obasanjo in early 2002. Though it remains unpublished, Human Rights Watch obtained a copy. The committee noted that disruption of oil operations by community disturbances, pipeline vandalization, and illegal bunkering has reduced production by as much as 15 to 20 percent on an ongoing basis; that is, by 300,000 to 400,000 bpd.[110] "Most threats," the committee stated, "originate from host communities," where youth are often armed; however, "Another major threat to the oil industry … arises from the activities of a 'cartel or mafia', composed of highly placed and powerful individuals within the society, who run a network of agents to steal crude oil and finished produced from pipelines in the Niger Delta region."[111] The committee indicated that many of the militant youth groups "could be enjoying the patronage of some retired or serving military and security personnel."[112]

Despite its relatively limited mandate, the committee chose in its report to the president to focus on the deeper causes of unrest in the delta and not only consider the short-term application of force to quell it. The committee concluded that: "While the primary assignment of the Committee is to look at the ways and means of instituting effective security of oil operations and installations, it became quite obvious during its deliberations that the root causes of insecurity in the areas had to do with the neglect, frustration and the sense of abandonment shared by the people." Thus, "[e]nduring peace anywhere, particularly in the oil producing areas, can not be achieved by militarisation or the security approach." The committee therefore recommended two ways to tackle the problems it had considered: "The first approach is the development of infrastructure, such as roads, housing, electricity, water, employment generation and economic empowerment of the people of the area. This approach, once initiated and recognised by all the stakeholders, would make it easy for the implementation of the second one, which is effective enforcement of law and order."[113]

The committee recommended the upward review of the derivation component of the payments to states to "not less than 50%," as well as laws to make it mandatory for oil producing companies to increase local content in their operations, and other measures related to infrastructure construction and employment generation. The committee also recommended the repeal of the Land Use Act, Petroleum Act, "and other laws which dispossess oil producing areas of their land"—a longstanding demand of politicians and most other spokespeople from the Niger Delta. It also recommended that the federal government pass a law prohibiting the oil companies from hiring "ghost workers" who are paid to do nothing—a frequent practice when youth demand employment, but no jobs are available, which generates conflict between those so favored and others who would also like to be paid for no work. With regard to the specific security strategy, the committee recommended the creation of an "integrated oil producing areas security and safety system" with an operations center to coordinate all the law enforcement agencies, including the navy, army, police, SSS, and other relevant authorities. The committee recommended new training and new equipment, including communications equipment, "fast assault craft," and other vehicles.

[110] Ibid., paragraph 35.
[111] Ibid., paragraph 40.
[112] Ibid., paragraph 51.
[113] Ibid., executive summary.

V. THE OIL COMPANIES

Corporate Responsibility

International human rights law establishes standards that states are required to uphold. Corporations, however, are not directly regulated by international human rights law. Nonetheless, as reflected in the United Nations Global Compact[114] and in efforts to draft principles on the human rights responsibilities of companies,[115] there is an emerging international consensus that corporations have a duty to abide by certain minimum standards in order to avoid complicity in human rights violations.

When states such as Nigeria do not adequately respect and uphold the human rights standards to which they have committed themselves, the government fails to fulfill its duties under international law. These governmental acts of commission and omission in turn may enable companies to benefit from an environment in which repression or conflict is created or tolerated and community members are unable to challenge corporate behavior through democratic or peaceful means. Human Rights Watch believes that, in such cases, corporations have a fundamental responsibility to take all reasonable steps to ensure that their activities do not lead to human rights abuses—whether in the immediate environs of their facilities or in nearby communities—and become complicit in human rights violations when they fail to do so.

The oil companies work in a difficult environment in Nigeria, both physically and politically. In particular, the political environment is one in which the Nigerian government has failed to ensure that the people who live in the oil-producing areas actually benefit from the oil. But the oil companies are also seen to have failed to give back anything to the delta for what they have taken out and are often a more accessible—and responsive—target for protest than the government. Following years of employee abductions and hostage taking, repeated protests, including occupations of their facilities that close down production, the oil companies now have quite extensive programs for community development projects in the "host communities" for oil facilities, make substantial payments for allowing oil work to be carried out both to local government authorities and to other interest groups in the areas where they are working, and frequently hire youth as "ghost workers" or for "surveillance contracts" in order to satisfy a demand for employment that cannot be met in this capital- rather than labor-intensive industry. In other cases, they hand out cash payments, sometimes to legitimate representatives of the communities where they operate, as compensation for spills, for example; but often to individuals or groups who have gone into hostage-taking or oil facility occupation as a means of earning a living. But these payments, even the best intentioned, have themselves generated problems, as noted in this report and elsewhere.

In addition, the cash economy created by oil undermines those trying to work for longer-term and more sustainable development initiatives. As one development expert noted: "Anything that does not deliver instant cash, people are not interested. Someone paid ₦30,000 [U.S.$230] a month does not want to do anything. We try to set up small scale enterprises, or other projects, they ask how much they earn, and then they're not interested. So they all depend on the oil companies. If we run a workshop nobody will come if they're not paid; when Shell pays a 'seating allowance' they want to know why we don't."[116]

The companies have an ambivalent relationship with the Nigerian security forces. Mobile Police and army or navy detachments are posted to oil facilities by the Nigerian government, which can do so without the oil

[114] The Global Compact, United Nations (January 31, 1999). Available at www.unglobalcompact.org. The Global Compact is not a regulatory instrument nor a code of conduct. Instead, it identifies nine "universal principles" and asks companies to act on these principles in their own corporate domains, become public advocates for the principles, and participate in the activities of the Global Compact, including thematic dialogues. Participating companies are asked to post, at least once a year, on the Global Compact website concrete steps they have taken to act on any of the nine principles and the lessons they learned from doing so.

[115] The U.N. Subcommission on Human Rights has established a working group on the working methods and activities of transnational companies which has produced a draft document setting out "Principles relating to the human rights conduct of companies." *See* U.N. document number E/CN.4/Sub.2/2000/WG.2/WP.1 available at www.unhchr.org.

[116] Human Rights Watch interview with head of development NGO, Port Harcourt, March 20, 2002.

companies' consent. The oil companies are then expected to be responsible for the upkeep of the police or soldiers deployed at their property. In theory, the companies do not have any command control over these security forces, but in practice they do at least often exercise significant influence, even if armed force may also be deployed by the government against oil company wishes on some occasions. For example, the security forces may ask to use oil company boats or helicopters for transportation to remote areas, in which case the companies can—and do, though not always successfully—impose conditions on that use; or oil company staff may choose—or not—to request security force intervention in any particular case, thus influencing the outcome of negotiations. In these circumstances, the companies can deny that they are responsible for abuses carried out by the security forces while at the same time benefiting if those abuses mean that protests are dispersed or do not occur—but equally, they are blamed for abuses against community members even if they had no part in ordering or condoning them. The oil companies are thus both beneficiaries and victims of the government's attitude to law enforcement.

The oil companies operating in Nigeria must make greater efforts to monitor the human rights environment in which they are operating and actively intervene with all relevant authorities to prevent or curtail human rights abuses. The incident at Liama and the ongoing situation in Finima, in particular, show this need. If the companies do not know that there is a problem, that abuses have occurred, they cannot possibly fulfill the obligations they undertake under their own policies, or under international guidelines such as the U.S. / U.K. Voluntary Principles on Security and Human Rights (see below). Without doing so, they become complicit in current violations and risk future complicity in human rights abuse. There are minimum guidelines in place that can be assessed, and there is a pressing need to implement them. In addition, the companies need to take much greater care that the money and other benefits that they give to local communities and their representatives does not simply generate more conflict, rather than—as is presumably the intention—satisfying the demand for the oil companies to alleviate local poverty. Shell and Mobil are the companies affected by the incidents described in this report, and are thus considered at greater length below; however, all the oil companies operating in Nigeria face similar challenges.

Shell

SPDC is the operating company of a joint venture owned 55 percent by the Nigerian National Petroleum Corporation, 30 percent by Shell, 10 percent by TotalFinaElf, and 5 percent by Agip. SPDC is the largest private sector oil and gas company in Nigeria, and in 2001 produced 837,000 bpd, accounting for around 39 percent of Nigeria's crude oil production.[117] Since the international focus on its Nigerian holdings that followed the Ogoni crisis and execution of Ken Saro-Wiwa in 1995, the Dutch-British Royal Dutch/Shell group of companies has undertaken a major review of its attitude toward communities and issues of human rights and sustainable development. Royal Dutch/Shell adopted in March 1997 a new Statement of General Business Principles, which recognized five "areas of responsibility": to shareholders, to customers, to employees, to those with whom they do business, and to society. As regards their responsibilities to society, Shell companies are now committed: "To conduct business as responsible corporate members of society, to observe the laws of the countries in which they operate, to express support for fundamental human rights in line with the legitimate role of business and to give proper regard to health, safety and the environment consistent with their commitment to contribute to sustainable development."[118]

Since 1998 Shell International has published an annual report on the Royal Dutch/Shell group of companies' economic, environmental, and social performance, *People, planet and profits*, which "describes how we, the people, companies and businesses that make up the Royal Dutch/Shell Group, are striving to live up to our responsibilities—financial, social and environmental."[119] SPDC has also published annual reports on operations in Nigeria since 1996, titled *People and the Environment*. These reports have improved in quality over the years, containing more information and being more inclined to report negative as well as positive results. SPDC's 2001

[117] *People and the Environment Annual Report 2001* (Lagos: SPDC, 2002), p. 6.
[118] Royal Dutch/Shell Group of Companies, *Statement of General Business Principles*, 1997.
[119] Shell, *Profits and Principles—does there have to be a choice?* (London and the Hague: Shell International, 1998), p. 2. The name of the report changed after the first one to *People, planet and profits*.

report, for example, noted the number of community disturbances (245 in 2001; against 244 in 2000) and incidents of hostage taking (forty-five; most of short duration and all peacefully resolved); as well as the amount of production lost through such disturbances (35 million bpd in 2001; 45 million bpd in 2000).[120] Increasing efforts have also been made to ensure independent verification of the information presented; though much is still based only on Shell's own assertions. Among the oil companies, Shell has consistently supplied Human Rights Watch with the most comprehensive responses to our queries about human rights issues in the Niger Delta, and has been most open to meetings at which these issues can be discussed.

Shell in Nigeria has increased its spending on community development projects greatly over the last decade and has created an entire community development unit within SPDC to administer this money and attempt to redirect community relations from handing out cash to proper development schemes. In 2001, SPDC spent approximately U.S.$52 million on community development in the Niger Delta.[121] While this development spending has undoubtedly brought benefits to the delta, much of the money has not been effectively used. According to an evaluation of Shell Nigeria's development projects carried out in 2001 by outside consultants paid for by Shell, less than a third of 408 projects were considered fully successful.[122] In addition, SPDC paid U.S.$2.1 million in 2001 as compensation in respect of third-party claims resulting from oil spills and construction damage (none of the oil companies pay compensation if, for example, an oil spill is the result of vandalization of pipelines or wellheads).[123]

SPDC has also held a number of "stakeholders' workshops" on its operations, attended in the last two years by several hundred individuals from nongovernmental organizations, various levels of government, journalists, academics, and community representatives. Although the format of the workshops, in particular their large size, means that little in the way of concrete results can be expected from them, they do provide a forum at which some people who would not otherwise be able to do so have an opportunity to express frustrations and criticisms to the company, and some company employees can be exposed to and learn from those frustrations. Shell has also taken steps to improve environmental practice, for example through the ISO 14001 certification process, and by initiatives to improve the quality of the environmental impact assessments carried out before new oil exploration or production can take place. While much remains to be done, these efforts have reportedly had some positive results.[124]

In our 1999 report, *The Price of Oil*, Human Rights Watch concluded that: "the test of [the reforms'] effectiveness in changing Shell's practice can only be gauged by its performance on the ground in countries like Nigeria. It is too soon to tell whether this performance will be changed." Almost four years on, it seems that Shell has made serious efforts to improve its performance in Nigeria but that these efforts have in too many areas yet to yield meaningful results on the ground. The effects are largely visible only to those who have access to information about Shell's operations at quite a high level. For the villager living near Shell's facilities in the Niger Delta, little if anything has changed: too often, oil spills still destroy farming land or fishing grounds and remediation is poor[125]; state security forces deployed to Shell's facilities continue to harass people indiscriminately; and the benefits of the oil industry are still channeled to a small elite.

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[120] *People and the Environment Annual Report 2001*, pp. 10-11.
[121] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[122] "Helping but not developing: Shell's Nigerian development projects," *The Economist*, May 12, 2001.
[123] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[124] *See*, for example, *"When the Pressure Drops": An assessment of Shell's progress in the Niger Delta*, (Oxford: Ecumenical Centre for Corporate Responsibility, April 2002), p. 7; also the documents on the engagement of Business Partners for Development with SPDC on the EIA process available at: www.bpd-naturalresources.org/html/focus_spdc.html. For information on the ISO 14001 standard see the website of the International Organization for Standardization, www.iso.ch. Human Rights Watch does not itself have the expertise to evaluate the significance of these environmental improvements.
[125] *See "When the Pressure Drops,"* appendix 3, on a June 2001 spill at Ogbodo, caused by corrosion of old pipes, on which cleanup did not start until August.

From the point of view of government officials, of course, it is easier to blame the oil companies for problems than to take responsibility themselves. State-level officials from the oil producing states tend to see the problems of the delta as a conspiracy between the oil companies and the federal government, without examining their own duty to spend the money they are allocated appropriately, and without acknowledging the difficulties the companies themselves face. On being asked if Shell had changed its behavior in recent years, the commissioner for the environment in Bayelsa State responded:

> No, no, no. The situation of Shell is abysmal. It has not changed and we do not believe there is a possibility of change. We see Shell as an active collaborator in the mindless assault on the minority tribes by the majority tribes. If the company had taken trouble to advise the federal government on the proper procedures, the system could have seen changes. As far as relations with communities are concerned we have not seen any changes at all. The flow stations are protected by armed soldiers, they don't give any employment to the youth. As commissioner of the environment I have not seen any changes in corporate philosophy.[126]

Across the delta, there is a similar tendency among government officials to assign blame for the lack of development in the oil producing communities to the oil companies rather than local or state authorities. Fundamentally, it is the failure of government to take up its responsibilities, including responsibilities to regulate corporate behavior, that has placed the oil companies in a position where they effectively substitute for government, with all the negative consequences that this report and others have illustrated.

A development expert gave a view more focused on matters within Shell:

> The Shell rethink has made no fundamental difference, though there has been some movement. Internally there is not 100 percent agreement on corporate responsibility issues. The structure for community development is not efficient. There are people within Shell who have benefited from the cash economy, infrastructure projects, and so on. They won't let that go and put the communities in the driving seat — some of those guys are trying to sabotage the efforts to change. So the results don't match resources spent; how much the communities get is small. But the other oil companies are no better — they spend huge sums of money for no results.[127]

Many others working in the oil sector note that corruption is a key problem facing Shell and the other companies, and that corrupt handling of community development and compensation payments generates conflict in the delta. The oil companies admit that corruption is a problem for them in Nigeria, and state that they are doing all they can to combat it. By its nature much corruption is never exposed, though occasionally allegations surface in the media or in court. In March 2002, for example, a former employee of Baker Hughes, an oil service company headquartered in Texas, alleged that he was unfairly dismissed from the company in Nigeria in 2001 for refusing to participate in arranging a kickback on a drilling contract with SPDC.[128]

ExxonMobil

Mobil Producing Nigeria Unlimited operates a joint venture owned 60 percent by NNPC and 40 percent by ExxonMobil, and produces around 600,000 bpd. The U.S. company Exxon—now ExxonMobil—has traditionally taken a hard line on issues of corporate social responsibility (for example, Exxon has opposed all initiatives to

[126] Human Rights Watch interview with Chief Lionel Jonathan, commissioner for the environment, Bayelsa State, March 16, 2002. Jonathan has since left his position as commissioner, amid allegations of his involvement in violence in Nembe, Bayelsa State, surrounding the primaries for local government candidates for the People's Democratic Party (PDP), the party of President Obasanjo as well as Governor Alamiyeseigha of Bayelsa State.

[127] Human Rights Watch interview with head of development NGO, Port Harcourt, March 20, 2002.

[128] He claimed that there was to be a kickback equal to 4 to 5 percent of a U.S.$70 million drilling contract with SPDC on which bidding took place in 1999 and that a senior official with SPDC promised to award the contract to Baker Hughes if he were to receive a share of the gross revenue. The U.S. Justice Department and the Securities and Exchange Commission both instituted investigations into Baker Hughes' operations in Nigeria. L.M. Sixel, "Internal inquiry by Baker Hughes challenged," *Houston Chronicle*, April 2, 2002; "SEC, Justice Department open investigation of Baker Hughes," AP, March 31, 2002; L.M. Sixel, "Suit claims Baker Hughes firing result of refusing bribery," *Houston Chronicle*, March 26, 2002; Neela Banerjee, "Ex-executive Sues Baker Hughes; Kickbacks Cited," *New York Times*, March 26, 2002. Baker Hughes has filed papers denying all charges of corrupt activities.

reduce the contribution of fossil fuels to climate change, and has taken a high profile stance in opposition to sanctions against countries such as Burma, or Nigeria under military rule). Mobil was historically less opposed to accepting such responsibility, but has been subsumed into the larger company. However, ExxonMobil has recently begun to make statements aligning it with the international trend for large corporations in the extractive industry to commit to making a positive contribution to the places where they work beyond those that flow from their business operations.[129] ExxonMobil contributes to an initiative to combat malaria—a major killer in Nigeria—run out of Harvard medical school. In Chad, ExxonMobil (partnered with ChevronTexaco and Petronas) has worked with the World Bank to build in at least some guarantees that a U.S.$3.4 billion oil field development program will result in revenues being spent on social programs, and has made efforts to minimize the negative impacts of the project. While acknowledging these efforts, environmental and human rights groups say they have had limited effect.[130] In Nigeria, Mobil contributed about U.S.$12 million to development and other social programs in 2001.[131]

Mobil's Nigerian headquarters is in Lagos, but the company's main operations are in Akwa Ibom State, at Eket, and at its Atlantic terminal at Qua Iboe. Most of its production is offshore, and so the company has not faced community relations problems to the same extent as Shell, whose Nigerian operations are scattered across the delta. Nevertheless, the company has faced demands from the Akwa Ibom government that it relocate its headquarters to Eket (in October 2001, the governor threatened to expel Mobil unless it relocated its headquarters to the state), and youth demonstrations supporting this demand and also calling for increased employment of Akwa Ibom indigenes in key positions in the company. Several times over the last few years, Mobil has been forced to suspend operations when youth have invaded or besieged the Qua Iboe terminal or its Eket premises and held workers hostage. As noted above, Mobil's Bonny River Terminal was occupied for several days in June 2001. In May 2002, the Nigerian government deployed hundreds of Mobile Police in defense of the Qua Iboe terminal.[132]

VI. THE INTERNATIONAL COMMUNITY

The United States and United Kingdom: Voluntary Principles on Security and Human Rights

In December 2000, the American and British governments announced that a set of "voluntary principles on security and human rights," had been adopted by the two governments, companies in the extractive and energy sectors, and nongovernmental organizations (including Human Rights Watch), following a dialogue over the previous year. The principles, an initiative of the Clinton administration, set out a set of "best practices" for companies in the fields of risk assessment, relations with state security forces, and private security agencies.[133] In November 2001, American and British officials traveled to Nigeria to discuss the principles with oil companies subscribing to them and others that were interested, as well as with the Nigerian government. The U.S. State

[129] *See*, for example, Ken P. Cohen, Vice President, Public Affairs, "Corporate Social Responsibility Challenges," remarks at Gitelson Symposium, Columbia University, January 26, 2001; Frank B. Sprow, Vice President, Safety, Health and Environment, "Community Involvement: Essential to Long Term Business Success," remarks at Society of Petroleum Engineers International Conference on Health Safety and the Environment, Kuala Lumpur, March 21, 2002; Rene Dahan, ExxonMobil Executive Vice President, "Business in a World of Conflict," remarks to Denver, Colorado, International Chamber of Commerce, May 7, 2002, available at www.exxonmobil.com (cited July 21, 2002).

[130] *See*, for example, Peter Rosenblum, testimony to the U.S. House of Representatives Committee on International Relations Subcommittee on Africa, April 18, 2002; *Broken Promises: The Chad-Cameroon Oil and Pipeline Project, Profit at Any Cost?* (Centre for Environment and Development, Yaoundé, and Friends of the Earth International, Amsterdam, June 2001).

[131] Letter from Peter F. Francis, for General Manager External Affairs, Mobil Producing Nigeria Unlimited, to Human Rights Watch, May 15, 2002.

[132] Anietie Ben-Akpan and Aniekan Bassey, "Mobil suspends operations in Eket as youth invade terminal," *Guardian* (Lagos), February 19, 2000; "ExxonMobil aims to reopen Nigerian oil terminal," Reuters, July 24, 2000; "Youths stage protest at Mobil plant in Akwa Ibom State," *Guardian* (Lagos), April 20, 2001; Jacinta Moran, Ross McCracken, "Nigerian crude output reduced by Unrest," *Platts Oilgram* News, May 11, 2001; Ani Akpan, "Nigeria deploys police near Exxon Mobil terminal," Reuters, May 16, 2002.

[133] The principles are available at www.state.gov.

Department also plans to post an officer in the embassy in Abuja with responsibility for following issues of corporate responsibility in Nigeria.

In line with its international profile as a leader on these issues, Shell was among the founder members of the group developing the voluntary principles. SPDC reviewed its security policy in 2001, to ensure that it was in line with the principles.[134] Shell also states that "All SPDC contractors are informed about the company's security policy and business principles and are expected to be guided by them."[135] In a surprise move, ExxonMobil announced in June 2002 that it would also subscribe to the principles. Given the situation in Finima, near MPNU's Bonny River Terminal, this would be a good starting point to begin monitoring the behavior of the Mobile Police and urging the authorities to ensure that they abide by human rights principles.

It is still too soon to assess the effect of these principles. Much of their success is dependent on the willingness of the companies to respect them fully and of the governments to monitor and press for their implementation. While the U.S. has devoted resources to this effort in Nigeria, it is not clear whether that will be enough unless the governments involved also exert pressure on the companies and most importantly, perhaps, on the Nigerian government to ensure that its security forces respect human rights and hold those that are alleged to have committed abuses accountable.

U.S. interest in Nigeria has increased as the government has sought to diversify its oil supplies from the Middle East: Nigeria is the fifth largest supplier of oil to the United States, selling about 885,000 bpd. This interest has not, however, included a focus on human rights issues. In May 2001, Human Rights Watch expressed its concern at the implications for protection of human rights in energy-producing nations of a new U.S. government energy strategy. The report of the National Energy Policy Development Group analyzed the impact of energy development on the environment, but failed completely to acknowledge the impact energy development may have on human rights. On the contrary, the report suggested making energy security an even greater priority in U.S. relations with some of the worst violators of human rights around the world, while proposing no strategy to keep necessary oil investment from perpetuating dictatorships or fueling conflicts, as it has in countries such as Angola, Sudan, Iraq—and Nigeria. Although the energy strategy recognized the need for "more transparent, accountable, and responsible use of oil resources" in Africa, the recognition was only in the context of enhancing "the security and stability of investment."[136] American Assistant Secretary of State for Africa Walter Kansteiner visited Nigeria and Angola in July 2002, on a trip dedicated to "counter-terrorism, economic cooperation, democratization, counter-narcotics, and regional issues."[137] Kansteiner asserted that African oil was of "national strategic importance" to the U.S., and urged Nigeria to increase production—prompting a denial from the Nigerian government that it intended to leave OPEC, the Organization of Petroleum Exporting Countries.[138] But no public mention was made of human rights or community issues in respect of oil production, nor of corporate social responsibility in developing countries.

The British Foreign and Commonwealth Office (FCO) has devoted scant resources to ensure implementation of the voluntary principles by British companies. Although a political officer in the Abuja High Commission monitors the Niger Delta, there are no dedicated personnel to address these issues. British Prime Minister Tony Blair visited Nigeria in February 2002: he did not publicly raise human rights issues, in the Niger Delta or elsewhere in the country. In a useful initiative, however, the FCO paid for twenty-five individuals working on environmental issues for government, private sector, and nongovernmental organizations from the Niger Delta to participate in a training program in environmental management developed by the University of Bradford. The

[134] "SPDC Response to Human Rights Watch Questions," May 31, 2002.
[135] Ibid.
[136] *See* Human Rights Watch letter to Vice President Richard Cheney, May 30, 2001, available at www.hrw.org/press/2001/05/energy-ltr-0530.htm.
[137] Dave Clark, "US envoy in Nigeria as America looks to African oil," AFP, July 25, 2002.
[138] Jim Lobe, "US Lawmakers, Israelis, push for more W African oil," *InterPress Service*, July 26, 2002; Carl Mortished, "US presses Africa to turn on the tap of crude oil," *Times* (London), July 29, 2002. Nigeria is already producing well over its nominal OPEC quota of 1.7 million bpd.

program consisted of a three-week course in Nigeria in June 2001 and a five-week course in the U.K. in 2002, and supervised individual study projects in the intervening period.[139]

The European Union

The European Union (E.U.) has a €84 million (roughly the same in U.S. dollars) plan for the period 2001 to 2007 covering 5,000 "micro-projects" in the Niger Delta (Bayelsa, Delta, and Rivers States). The projects focus on water supply, the health system, education, rural transport, and income generating schemes, as well as microfinance.[140]

The Cotonou Agreement governing relations between the African, Caribbean and Pacific (ACP) countries and the E.U. includes provisions relating to human rights, democracy, good governance, and the rule of law. Article 96 of the treaty provides that if there is a dispute over human rights issues the parties may request "consultations" about the issue, though this provision has rarely been invoked. There have been discussions within the E.U. institutions about issues of corporate social responsibility, but no binding or even voluntary standards have been adopted for European corporations at E.U. level.

World Bank

In addition to the support for the NDDC mentioned above, the World Bank has also made loans to the Nigerian government which may benefit the Niger Delta. In March 2002, the World Bank approved two loans to the Nigerian government, totaling U.S.$237 million, for the development of the health system and for a community-based urban development project. Akwa Ibom was one of the states selected to benefit from the urban development project.[141]

In June 2001, the International Finance Corporation (IFC), the World Bank's private sector lending arm, approved the establishment of a U.S.$30 million revolving credit facility by the IFC, SPDC and a local bank, despite protests from Nigerian environmental groups focused on a lack of consultation with civil society and on inappropriateness of working with Shell, given its history in Nigeria. The facility would provide access to credit for Nigerian oil service companies to assist them compete with international contractors. While the IFC did undertake some consultation, this was cursory, and the project is poorly designed in other respects: for example, there are no explicit provisions to ensure that the entrepreneurs benefiting come from the delta area itself nor that the IFC will monitor compliance with environmental and other standards.[142] In March 2002, the IFC announced a partnership with Nigeria's Fate Foundation, a nonprofit organization, in a project to develop entrepreneurship and small business development in the delta area.[143]

The World Bank has established a website on "Best Practices in Dealing with the Social Impacts of Hydrocarbon Operations," in collaboration with a group of oil companies and nongovernmental organizations committed to the protection of the environment and mitigation or elimination of any adverse social impacts from oil and gas operations.[144] The website remains a work in progress, however, and there are no mechanisms for monitoring company compliance with the recommendations. The Bank also conducted a review of its role in the extractive industries, which gives it the potential to take on stronger governance, transparency, and human rights roles.[145] But this review will not be completed until 2003 and it is not clear whether the Bank will take on its recommendations; even if it does, they will take several years to implement.

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[139] "Niger Delta Environmental Training Programme," Brief on Programme, FCO, 2001.

[140] *Nigeria-European Union Country Support Strategy and Indicative Programme for the period 2001-2007* (Brussels: European Union, 2001).

[141] "World Bank approves $237m loan for Abuja," *This Day*, June 8, 2002.

[142] "World Bank Delays Vote on Shell's Nigeria Fund After Criticism," Bloomberg, New York, June 15, 2001; Matthew Jones, "IFC postpones funding for Niger Delta," *Financial Times* (London), June 14, 2001; "IFC and Nigeria," IFC, August 2001. The IFC also approved a $2.5 million loan to construct a new hotel in Port Harcourt.

[143] "IFC Partners with Nigerian Entrepreneurship Program to Promote Small Business Development in Niger Delta," IFC press release, March 14, 2002.

[144] *See* www.worldbank.org/html/fpd/energy/oil&gas/BestPractices.

[145] *See* www.eireview.org.

International Monetary Fund (IMF)

Proper management of the oil revenues at all levels of government—federal, state, and local—is key to solving the problems that beset the Niger Delta, but the civilian government has shown little more commitment to transparency and fiscal good governance than the military. Since civilian government was restored, the IMF has supplied Nigeria with policy advice, technical assistance, and training, as well as financial support "for policies that will help achieve the country's economic and social objectives."[146] In August 2000, it supported a government economic program with a U.S.$1 billion "stand-by arrangement." The objectives of the program were not met, and in October 2001, the IMF and the government agreed on an informal framework for the IMF to monitor economic policies over a six-month period. Such a program carried the potential to provide a transparent accounting of oil revenues, a necessary first step in allowing the Nigerian public to determine the scale of its resources in order to plan for social spending and hold government accountable. In March 2002, however, an IMF review concluded that "key targets relating to the implementation of macroeconomic policies were missed."[147] The level of government spending already risked exceeding resources, and spending in 2002 could be even higher, which "could compromise the quality of government spending, reducing the social benefits."[148] The IMF's Staff Monitored Program (SMP), an informal monitoring of government policies, was thus discontinued after the government withdrew from the SMP and indicated it would devise a "home-grown" program, taking account of Nigerian realities. However, it had little success in doing so: the executive and National Assembly deadlocked over competing proposals, and by September 2002 the executive's disregard for the National Assembly with regard to setting budgetary limits formed the basis of several charges in impeachment proceedings brought against President Obasanjo.[149]

The G8

In June 2002, the G8 industrialized countries adopted an "Africa Action Plan," by which they agreed to support African leaders' own efforts to overcome obstacles to development in Africa through the New Partnership for Africa's Development (NEPAD).[150] Among the commitments made are many relevant to improving the situation in the Niger Delta, including promoting participatory decision making, supporting the reform of the security sector, combating corruption, and helping Africa attract investment. It is important that the aim of greater international investment in Nigeria is not at the cost of the other aims, including respect for human rights.

Publish What You Pay

In June 2002, a coalition of nongovernmental organizations (including Human Rights Watch) launched a call to governments across the globe to insist that transnational resource extraction companies "Publish What You Pay."[151] The coalition called for governments to ensure that oil, gas and mining companies publish net taxes, fees, royalties and other payments as a condition for being listed on international stock exchanges and financial markets. The Publish What You Pay campaign aims to help citizens hold their governments accountable for how these resource-related funds are managed and distributed. Mining, gas, and oil companies cannot control how governments spend taxes, royalties and fees. But they do have a responsibility to disclose the payments they make so citizens can hold their governments accountable. The coalition holds that companies that fail to do so are complicit in the disempowerment of the people of the countries to which the resources belong.

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[146] Gary G. Moser, IMF resident representative in Nigeria, "The IMF and Nigeria, an Enduring Relationship," *This Day*, April 15, 2002.

[147] IMF, "Nigeria—Concluding Statement," March 6, 2002.

[148] Ibid.

[149] President Obasanjo proposed a budget of ₦840 billion (U.S.$6.5 billion), which lawmakers increased to ₦1.06 trillion ($7.73 billion).

[150] *See* www.g8.gc.ca and www.nepad.org.

[151] *See* www.publishwhatyoupay.org.

VII. CONCLUSION

Given the complex realities of the Niger Delta—community dissatisfaction, weak and unresponsive government, security force abuses, and inter-community violence fueled, in part, by resources—a more comprehensive approach to the problems in the oil producing communities is necessary. Given increasing tensions related to upcoming local, state, and federal elections and the violence that has already occurred in the delta, urgent action is needed to avoid further conflict and the attendant human rights abuses. Local and state governments should be held fully accountable for their inability or unwillingness to effectively utilize revenues, and the federal government should seek to achieve a negotiated solution to the fundamental demands of the peoples who live in the oil producing areas of Nigeria. In addition, the federal government must ensure proper discipline over the security forces and hold them accountable for abuses. Oil companies should broadly assess their interactions with the communities where they work, including employment, community giving, relations with the government authorities and security forces, and community relations generally. They must ensure at minimum that they are not exacerbating the problems in the Delta, but also take steps to ensure that their actions contribute positively to the human rights environment in which they work. Given multiple failures by all of the institutions involved to adequately fulfill their obligations, external pressure is needed as well. The role of the international community has not been as forceful as it could, or should be.

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