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Shell, Nigeria, and the Ogoni: Prospects for Reconciliation and Sustainable Development

“If Nigeria did not exist you could not invent it. Imagine a country that is the sixth-largest oil producer but has to import gasoline and is one of the poorest in the world. A country that provides constant electricity to most of West Africa but suffers from frequent power outages. A country whose scientists, writers, and engineers have won the highest accolades around the world but is largely a byword for corruption and systematic inefficiency. Nigeria is a country that defies logic; it is a country where, as my father once lamented, The only wrongdoers are those who do no wrong.”

Ken Wiwa
Son of Nigerian Environmental and Human
Rights Advocate, Ken Saro-Wiwa¹

Nigeria

Nigeria is Africa’s leading oil and gas producer and the world’s 6th largest oil exporter. Nigeria is also Africa’s most populous country with 133 million people. The first commercial production of oil in Nigeria by Royal Dutch/Shell in 1956 began a profound transformation of Nigeria’s economic and political landscape. Since the 1970s, oil has accounted for 80% of the Nigerian government’s revenue and 95% of the country’s export earnings. All of Nigeria’s oil and gas come from the Niger Delta and the shallow offshore areas along the country’s south-east coast.

Estimates are that the Nigerian government has received \$300 billion in revenues from oil since it was discovered in the 1950s² and approximately \$100 billion over the last 10 years.³ At the same time, over the last decade, Nigeria’s Gross National Income per capita has decreased.⁴ Although military and business elites are wealthy, the majority of Nigeria’s people are among the poorest in the world. At \$300 per year, Nigeria’s per capita Gross National Income is lower than Haiti.⁵ Average life expectancy is 52 years. The poor communities in the oil producing areas of the Niger Delta bear the environmental and social costs of oil exploration and production and feel that they are getting no benefits in return. This imbalance is a major source of tension in the region.

The Niger Delta

In prehistoric times, the 4,000km-long River Niger helped create the deposits that would become Nigeria's oil and gas fields. Today, the River Niger sustains the largest wetland in Africa and one of the largest wetlands in the world.⁶ The Niger Delta consists of approximately 70,000 square kilometres of mangrove forest, freshwater swamp, coastal ridges and fertile dryland forest.

The fertile land and innumerable creeks and streams have, in the past, provided habitat for an abundance of fish and marine wildlife and have set the conditions for the Niger Delta to have one of the highest population densities in the world. Today, the Niger Delta is home to 10 to 12 million people grouped into several distinct ethnic groups.

Niger Delta History

One hundred years before the discovery of oil, the fertile Niger Delta was at the centre of the world's palm oil trade. Controlled by British trading interests and powerful Nigerian kingdoms, palm oil was essential for lubricating the machines of the British industrial revolution in the nineteenth century. Today, the town of Bonny serves as the location for one of two Shell oil export terminals in the Delta. In 1856, Bonny was the largest source of African palm oil bound for Europe, with over 25,000 tons being exported annually.⁷

Control over the lucrative palm oil trade helped foster conflict, wars and the exploitation of the weak by the powerful – both between the kingdoms of the Delta and between British and Nigerian commercial interests.⁸ This pattern had been in place since the 15th and 16th centuries when the Nigerian coast was one of the major centres of the North Atlantic slave trade. Traditional rulers and groups that were reluctant to participate in trade were often overpowered by rulers or merchants who used the system to increase their dominance and income.

It was control over the palm oil trade that led to British colonial rule and the formation of what would become modern Nigeria. The British government annexed the city of Lagos in 1861 and made the Niger Delta a British Protectorate in 1865. By 1914 the boundaries of modern Nigeria were established and Britain ruled Nigeria under a single administration.

Even before the discovery of oil, the British colonial authorities recognized that the Niger Delta's unique geography created special challenges that made development difficult. A British commission led by Sir Henry Willink reported in 1958 that "the Niger Delta region deserves special developmental attention and should, therefore, be made a special area to be developed directly by the Federal Government."⁹

Nigerian Politics

In Nigeria, stark social and economic contrasts exist between the country's political and business elites and the vast majority of the population. Bronwyn Manby, a long-time observer of Nigerian politics, now with the Open Society Institute and formerly with Human Rights Watch, has made this assessment of the state of Nigerian politics:

"As in the case of many other "petro-states," the windfall income from oil has proved in many ways to be a curse rather than a blessing. Instead of turning Nigeria into one of the most prosperous states on the African continent, its natural

resources have enriched a small minority while the vast majority have become increasingly impoverished... The struggle among the elite to gain access to the profits of the oil boom was a factor in sustaining the rule of successive military governments that ran Nigeria for all but ten of the years between independence in 1960 and the inauguration of civilian president Olusegun Obasanjo (himself a former military ruler) in May 1999. Under military rule, power and money became ever more concentrated in the hands of fewer and fewer people. Politics became an exercise in organized corruption – a corruption perhaps most spectacularly demonstrated around the oil industry itself, where large commissions and percentage cuts of contracts enabled individual soldiers and politicians to amass large fortunes, while the majority sank deeper into poverty... Anger among ordinary Nigerians at this poverty in the midst of wealth has been exacerbated by the lack of a cohesive sense of national identity and by southern resentment over northern control of the army, and hence the federal government and oil revenues for most of the years since independence.”¹⁰

Under the Nigerian constitution, natural resources are owned by the federal government. The majority of oil exploration and production is carried out by European and US companies which enter into joint ventures with the Nigerian state-owned oil company, the Nigerian National Petroleum Corporation (NNPC). Today there are five major joint ventures between the NNPC and major international oil companies.¹¹ The joint venture operated by Shell is the oldest and largest, accounting for approximately half of Nigeria’s total oil production.¹²

Shell Nigeria

The Shell-operated joint venture, the Shell Petroleum Development Company of Nigeria (SPDC) or Shell Nigeria, has the following partners; Nigerian National Petroleum Corporation (55%), Royal Dutch/Shell Group (30%), Total (10%) and Agip (5%). The partners fund the operations in proportion to their shareholding and Shell assumes day to day operation and management of the oil operations on the ground.

As a partly British company in a British colony, Shell Nigeria’s parent company, the Royal Dutch/Shell Group, received the first oil concessions in Nigeria. Shell Nigeria discovered oil in the Delta in 1956, four years before Nigeria’s independence. The oil they found was in relatively simple geological structures and was easy to produce. Its light weight and low viscosity also facilitated easy pipeline transportation. Of all the oil companies and joint-venture operations in Nigeria today, Shell Nigeria has the most visibility, due to its long history and extensive land-based operations.

Shell Nigeria's operations are extensive, not only by Nigerian standards, but even by those of the Royal Dutch/Shell Group as a whole. The size of Shell Nigeria’s licence area is 31,000 square kilometers, within which it operates 94 oil fields with an on-the-ground footprint of approximately 400 square kilometers. The oil fields are connected by over 6,000 kilometers of pipelines running through the Delta. The oil is exported through two coastal terminals at Bonny and Forcados (*see Appendix A – Shell Nigeria’s Operations in the Niger Delta*).

By 2004, Shell Nigeria’s production was approximately 1 million barrels per day. Shell Nigeria employs about 5,500 staff directly and an additional 20,000 staff are retained via contracts and other support activities. Approximately 95% of all Shell Nigeria’s direct employees and half of its executive directors are Nigerian. About 57% are drawn from the oil producing states in the Niger Delta.

The Royal Dutch/Shell Group

Shell Nigeria's parent company, the Royal Dutch/Shell Group (the Group), is an Anglo-Dutch international energy and petrochemicals conglomerate which owns investments in over 2,000 entities in 145 countries worldwide. Companies owned by the Group produce an average of 4 million barrels of oil per day and are responsible for producing 3% of the world's gasoline. In 2002, the Group's net income was \$9.4 billion with assets of \$60 billion. In 2004 the Group was ranked 4th on the Global Fortune 500, ahead of General Electric and Toyota but behind two other oil industry competitors, BP (2nd) and Exxon Mobil (3rd).

Traditionally, the Royal Dutch/Shell Group adopted a highly-decentralized approach to managing local operating companies. Managing Directors of individual companies within the Group were given a wide freedom of action and maximum flexibility to adapt to local conditions and respond quickly to opportunities. The large bureaucracy of Shell Nigeria has proved to be an obstacle to quick responsiveness, however and more recently there has been a shift towards centralizing power at head offices in London and The Hague.

Shell Nigeria accounts for about 12% of Royal Dutch/Shell's total world oil production and approximately 8% of net income for The Royal Dutch/Shell Group's Oil Exploration and Production Division.

Nigerian Ethnic Groups

Modern Nigeria was formed from at least 250 distinct ethnic groups, often with few previous historic, cultural or linguistic ties to each other. Three major ethnic groups – the Hausa in the north, the Yoruba in the west and the Ibo in the east – are majority groups within their own regions and together account for 65% of the total Nigerian population. The remaining 35% is comprised of hundreds of minority groups. The people of the Niger Delta include several of these minority groups, including the Ogoni. The Delta minority groups speak a range of languages and dialects from five major language groups.

Environmental Issues

The wetland ecosystem of the Niger Delta is being impacted by the interplay of a complex variety of human and industrial activities, including oil exploration and production, farming, fishing and population pressures. A 1995 World Bank report found significant environmental problems including agricultural land and fisheries habitat degradation, deforestation, loss of biodiversity, water pollution from sewage, oil, and industrial effluents, and air pollution from vehicular emissions and gas flaring.¹³ Although the report assessed the various impacts of oil production, it concluded that the majority of environmental and associated human health problems were the result of overpopulation and poverty combined with poorly enforced environmental standards.

George Frynas, a lecturer of International Business Strategy and Strategic Management at the Birmingham Business School, provides the following illustration:

“Since the physical environment of the Niger Delta is dominated by the presence of water, it is instructive to indicate the sources of water pollution. Apart from oil pollution, water can also be polluted as a result of domestic sewage and other organic waste, infectious disease bacteria, fertiliser residues, pesticides and insecticides, industrial effluents, eroded sediments and other solid waste. Since

there are no effective local pollution controls, sewage and other organic waste are probably the greatest sources of water pollution. The most significant consequence of water pollution is the lack of decent drinking water in many areas, which results in illness and death from water-borne illnesses and diseases such as diarrhoea, cholera and typhoid. Fishing, the main economic activity for many people in the Niger Delta, has been affected by environmental damage and over-fishing, with many fishermen suffering from declining catches.”¹⁴

Although oil operations are only a part of the larger problems in the oil producing areas of the Delta, their environmental impacts are not insignificant. Shell Nigeria’s operations are concentrated in the Niger Delta and the near offshore areas. Shell Nigeria has more than 6,000 kilometers of pipelines and flowlines, 87 flow stations, eight gas plants and more than 1,000 producing wells. Typical impacts from oil exploration and production in the Delta include:

- Oil spills, whether as a result of aging infrastructure, sabotage or theft, cause contamination of drinking water, as well as destruction of crops, trees and fish habitat. According to the US Energy Information Administration, there have been over 4,000 oil spills in the Niger Delta since 1960.¹⁵
- Gas flares are a significant contributor to global warming as well as local nitrous oxide and sulfur dioxide emissions. Gas flares in the Delta have been flaring continuously for the last 40 years and currently burn 1 billion cubic feet of natural gas daily.
- Produced water – which is pumped to the surface with oil – needs to be properly treated and disposed of.
- Hazardous waste, generated by oil production operations, requires disposal.

Oil companies operating in the Delta maintain that they operate within existing environmental laws and regulations. Monitoring and enforcement of these laws is, however, weak or non-existent, with the oil companies being accused of buying off enforcement officials with bribes.

Complaints about the environmental costs of oil exploration and production have accompanied oil operations throughout the years. In 1970 for example, a group of Ogoni chiefs and elders wrote to the local Rivers State military governor:

“May it please Your Excellency to give your fatherly attention and sympathetic consideration to the complaints of your people of Ogoni Division who have suffered in silence as a direct result of the discovery and exploitation of mineral oil and gas in the Division over the past decades.”¹⁶

The chiefs did not receive any positive response from the authorities.

Compensation and Land Use Conflicts

In some cases it is not the negative environmental consequences of oil production per se (as harmful as this can be to individual landholders with little alternative source of livelihood) that results in complaints and conflict between oil companies and groups in the Delta, but the lack of an adequate compensation process related to oil production activities. This is exacerbated by the fact that there is often no effective recourse to a properly functioning justice system. The lack of perceived political representation of many of the minority groups in the Niger Delta further compounds the problem.

Under the Federal Government's *Land Use Act* of 1978, land owners were no longer entitled to acquisition payments, rent and compensation for land expropriated for oil and gas production – only payments for buildings or crops on the land were to be made. Under the *Act*, any compensation payments from oil companies were to be paid to state governments. In effect, this resulted in confiscation of land and deprived families of their livelihoods.¹⁷ Compensation did not make its way back from the state governments to the individual land-owners and little legal recourse was available.

In this context, oil companies often sought to offer compensation to individuals for acquisition of land anyway, but often based on very low Government-imposed compensation rates. In addition, unless oil companies were diligent and thorough with their compensation payments, they could often trigger or exacerbate existing conflicts over land ownership. Ignorance of or ignoring the nuances of local customary land rights and ownership structures could often spark fresh conflicts or inflame old ones.

Nigerian Police and Security Forces

For most of the years since independence, the Nigerian police and security forces have been used by successive military governments as instruments of control. This situation is described by Vincent Del Buono, a Canadian lawyer and former UN advisor who is leading a major international program to improve the security and legal situation in Nigeria. Del Buono states:

“The police were used by the military to repress the population but, at the same time, abused by the military by being starved for resources... On top of that, you have a tradition, which is not unique to Nigeria – it's a policing tradition that extends to many colonial situations – of a police force which is semi-militarized or militarized and which is used specifically to quell public disorder, and that's its primary function rather than public service. The consequences of that is that, in many cases... the police are experienced as brutal and as corrupt and essentially as repressive and not people who are working for the interests of the community as such but for the interests of those in power.”¹⁸

Ogoni

The Ogoni are one of many minority ethnic groups that for hundreds of years had lived by farming, fishing and hunting in the Niger Delta. A relatively small minority ethnic group of about 500,000 people living in 156 communities in an area of 20 by 56 kilometres, the experiences of the Ogoni are similar in many ways to other minority ethnic groups and communities in the oil producing areas of the Niger Delta. Prior to British troops gaining control over the Delta in 1914, the Ogoni, like other ethnic groups in Nigeria, had been politically independent and managed their affairs under a system of governance by traditional chiefs and a council of Ogoni elders.

British colonial rule was only a part of the transformations that were underway in the Delta in the first half of the 20th century. Rapid population growth in Nigeria and in the Delta had increased pressure on the land – both from local communities and from homesteaders moving into the Delta in search of farmland. By the 1950s when the first oil deposits were found in Ogoni,¹⁹ much of the originally forested land had been cleared for agriculture, exposing the soil to increased erosion and degradation.

By the early 1990s there were five major oil fields in production in Ogoni. Each oil field had its own central flow station where oil from a total of 108 individual oil wells was collected, the

gas separated and flared off, and the remaining oil pumped to export terminals at the coast. There were also two refineries, a petrochemical complex, a fertilizer plant and numerous through-ways for pipelines from other oil fields.

In the early 1990s oil fields in Ogoni produced approximately 28,000 barrels of oil per day, roughly 3 % of Shell Nigeria's overall production at the time.²⁰ Estimates of the value of oil pumped from Ogoni since 1958 varied between \$5 and \$30 billion.²¹ Although Ogoni was rich in mineral wealth, the vast majority of the Ogoni people received no benefit from its development. Like other areas in rural Nigeria, the majority of people were very poor, without modern sanitation, water or energy services and with limited health or educational facilities. As described by Karl Maier, a journalist who covered news in Africa and Nigeria through the 1980s and 1990s:

“The oil companies brought pipelines, flow stations, gas flaring, and oil spills which, combined with the deterioration of the soil, proved a poisonous cocktail for the Ogoni's livelihood. The immense wealth that oil represented was there to see but not touch. People felt abandoned by the newly independent government of Nigeria and the companies that remove petroleum from their land but provided scarce educational and health facilities in return. Many locals saw an almost spiritual correlation between the arrival of the oil companies and the declining fertility of the land. The seeds of future conflict had been planted and it was only a matter of time before they bore their explosive fruit.”²²

Ken Saro-Wiwa and MOSOP – The Ogoni Response

Although many other minority ethnic groups in the Niger Delta harboured similar grievances with the government and oil companies, the first successful mass-mobilization of people in the Delta to highlight and protest against issues relating to oil production took place in Ogoni. In 1990, Ogoni leaders founded the Movement for the Survival of the Ogoni People or MOSOP, a coalition of existing student associations, women's groups, chiefs, elders and intellectuals. MOSOP adopted a grassroots mass social movement approach, believing that previous approaches to influencing the government had been elitist and ineffective.

MOSOP's first president was Dr. G.B. Leton. MOSOP's first spokesperson was Ken Saro-Wiwa, a writer, television producer, successful businessman and former government administrator who was a gifted speaker and effective mobilizer of opinion. Ken Saro-Wiwa was well educated, well travelled, knowledgeable about the media and remarkably successful at highlighting the Ogoni struggle to the international community. Ken Saro-Wiwa soon became the person in the eyes of the world who most closely personified the MOSOP struggle.

In August 1990, Ogoni chiefs and MOSOP leaders drafted and signed the “Ogoni Bill of Rights” which detailed their grievances and called on the Nigerian government for “political autonomy to participate in the affairs of the Republic as a distinct and separate unit” within the framework of the Nigerian federation. This autonomy included the “right to the control and use of a fair proportion of Ogoni economic resources” as well as the protection for the natural environment and Ogoni language and culture. The developments in Ogoni reflected new developments internationally, such as the dissolution of the former Soviet Union, the rise of the indigenous peoples movement and increasing recognition of ethnic minorities at the United Nations.

The Ogoni Bill of Rights was sent to Ibrahim Babangida, the leader of the Nigerian military government of the time. With no response in over a year, in December 1992 MOSOP sent their demands to Shell Nigeria and the Nigeria National Petroleum Corporation. Accompanying this, MOSOP also issued a propagandistic “demand notice”, ordering the oil companies to pay \$4 billion to the Ogoni people to compensate for environmental damages and \$6 billion in unpaid oil royalties within 30 days or quit operations in Ogoni.

With no response from the oil companies, on January 4, 1993, a date that would thereafter become known as Ogoni Day, the MOSOP leadership declared Shell *persona non grata* in Ogoni during a mass rally that drew approximately 300,000 people, or about 60% of the Ogoni population. By the end of January, Shell Nigeria had withdrawn its staff from Ogoni, claiming that civil unrest as well as threats and attacks on its staff made conditions unsafe for continued operation.

Ken Saro-Wiwa travelled abroad to publicize the claims of the Ogoni and mobilize support from the international community. A brilliant orator in front of an audience, Saro-Wiwa was successful in gathering support from Greenpeace, the Sierra Club, Human Rights Watch, International PEN and even companies with a social conscience such as the Body Shop. Saro-Wiwa convinced the UN Working Group on Indigenous Peoples to grant the Ogoni official status as a member of the UN’s Unrepresented Nations and Peoples Organization. Western film and TV crews featured Saro-Wiwa in sympathetic documentaries and he was lauded with awards, including the Goldman Environmental Prize and the Human Rights Watch Hellman/Hammett Award.

In June 1993, the military government of Ibrahim Babangida annulled elections that were to have begun a transition to civilian government. Then, in November 1993, a new military coup brought General Sani Abacha to power.

Some commentators claim that for a time, MOSOP represented the most credible and articulate opposition to the military governments in Nigeria. In addition to raising awareness of environmental and human rights issues, Ken Saro-Wiwa raised the question of how the Nigerian military governments could receive billions of dollars in oil revenues while living conditions in the Delta and other areas of Nigeria deteriorated.

Ken Saro-Wiwa, now the president of MOSOP, continued to steer the organization toward an activist – some would say confrontational – strategy against the government and oil companies. Western media, environmental and human rights NGOs and other members of the international community were giving Ken Saro-Wiwa and the Ogoni cause an international profile. Other MOSOP leaders who favoured a less confrontational and more negotiation-oriented approach gradually stepped back from active leadership in the MOSOP campaign.

Unrest in Ogoni

From its founding, MOSOP had always upheld the principles of non-violence in its activities and protests. MOSOP was a very large organization, however, without clear lines of accountability. According to Bronwyn Manby of Human Rights Watch: “MOSOP’s official policy was one of non-violent protest, and most demonstrations were disciplined; however, there were also allegations of harassment of those who did not agree with MOSOP’s views, especially by its youth wing.”²³ These allegations were staunchly denied by the MOSOP leadership, who affirmed that non-violent principles were at the forefront of their movement.

In addition to growing tensions within MOSOP, protests and conflicts between Ogonis and oil companies rose dramatically through the early years of the 1990s. Protests began occurring in other areas of the Delta as well. Shell estimates that, between 1993 and 1995, its facilities in Ogoni sustained \$42 million in damages directly attributable to vandalism and sabotage.²⁴

Military Crackdown

MOSOP's protests against the government and oil companies provoked a heavy-handed military response in Ogoni. Oil production and revenues were the lifeblood of the military government and the Nigerian economy as a whole. Members of the MOSOP leadership were arrested and detained a number of times during 1993. When General Sani Abacha came to power, one of his earliest actions was to create the Rivers State Internal Security Task Force specifically to deal with the situation in Ogoni and suppress the MOSOP campaign.²⁵

The appointed commander of the Task Force, Colonel Paul Okuntimo, was renowned for his brutality and lack of respect for due process or human rights. At a public meeting recorded on video, Okuntimo described the repeated invasion of Ogoni villages by his troops, how unarmed villagers running from the troops were shot from behind and how the homes of suspected MOSOP activists were ransacked and destroyed.²⁶ Ogoni became occupied under a state of military siege. Human rights organizations documented extrajudicial executions of MOSOP activists.²⁷ Several hundred Ogonis were killed in military operations thinly disguised as ethnic clashes.²⁸ Reports indicate that 80,000 Ogonis became internally displaced or fled overseas.²⁹

Shell Nigeria and the Security Forces

The escalation of violence in Ogoni and the damages to their facilities focused attention on Shell Nigeria's relationship with the Nigerian security forces as Shell Nigeria sought to protect its employees and infrastructure.

MOSOP claimed that Shell Nigeria and the military forces were part of the same system of repression and that Shell Nigeria's actions contributed to abuses by the State Internal Security Task Force and other Nigerian police officers. MOSOP pointed to the common practice among all oil companies where Shell Nigeria provided additional wages and training to "supernumerary police" that would be assigned to Shell facilities. Former Ogoni members of the supernumerary police claimed they were involved in intimidating and harassing MOSOP protesters and involved in deliberately stirring up conflict between different groups.³⁰ Other accusations involved the use of Shell Nigeria's boats, buses and helicopters by security forces involved in human rights abuses.

Shell Nigeria's Managing Director at the time, Brian Anderson, repeatedly stated that he preferred dialogue to military intervention as the means to address community conflicts and protests. Anderson's policy was to "never work behind the guns of the military" and this was consistent with Shell Nigeria's withdrawal from Ogoni. The human rights abuses by the security forces made Anderson and the Shell Nigeria leadership reluctant to ask for help when they were faced with difficult security situations where their employees or facilities were in danger. Brian Anderson relates that:

In fact, we don't ask for help, but what happens often is we are forced to take the help [from security forces]. You are forced, and you have no choice, and they say well, you will do this and you have little choice, but we don't want to do it because we found from one or two incidents in the past where we did ask for help it was the wrong thing to do and we learned from that experience.³¹

Anderson relates that in similar ways, although it was against Shell policy to place equipment at the disposal of the security forces, the military would nonetheless try to commandeer means of transportation from Shell.

Spiralling Out of Control

Meanwhile, the rift between MOSOP factions – the populist, activist Saro-Wiwa camp on one hand and the leaders that favoured a more conservative, non-confrontational, traditional approach on the other – had become very deep. This division played into the government's hands as it sought to discredit MOSOP and Ken Saro-Wiwa. Military violence in the Delta was continuing to escalate – some would say it was spiralling out of control.

In May, 1993, four conservative Ogoni leaders that had differed with Saro-Wiwa on MOSOP strategy were brutally murdered by a gang of youths. Seizing the opportunity, the security forces immediately arrested Ken Saro-Wiwa and several other MOSOP leaders and charged them with murder and incitement to murder. There was no credible evidence to link them to the deaths. Sixteen MOSOP leaders were put on trial and nine, including Ken Saro-Wiwa, were convicted and sentenced to death. The tribunal established for the case by the military government blatantly violated international standards of due process and guarantees provided in the Nigerian constitution. Without the right to an appeal, the Ogoni Nine were hanged on November 10, 1995.

Anger At Shell

When Ken Saro-Wiwa and eight other Ogoni activists were executed, the world was outraged at the Nigerian government, which was immediately expelled from the Commonwealth.

A great deal of anger was also directed at the Royal Dutch/Shell Group and Shell Nigeria. Both organizations were generally perceived by international public opinion as having not done enough to secure the release of the Ogoni nine and for generally supporting the Nigerian government and not caring about the social and environmental impacts of their oil exploration and production activities on local communities. Some of the more radical activists argued that the Shell organizations were directly complicit in the killing. As a result, Shell gas stations in Europe were attacked and international campaigns and boycotts were launched by human rights, environmental and shareholder groups. Amnesty International, Greenpeace and The Body Shop International actively campaigned against Shell.

Many commentators saw the Ogoni crisis as the inevitable and tragic outcome of Shell's clumsy approach to dealing with the Ogoni and other Niger Delta communities over the last 40 years.³² The media were happy to report on the boycotts and the anger of the Ogoni communities against Shell. The negative publicity severely tarnished the company's reputation and employee morale was significantly impacted, both in Nigeria and internationally.

Transformation of the Royal Dutch/Shell Group

As Schulich School of Business strategy professor David Wheeler has written, “The Ogoni struggle against Shell is arguably the quintessential case that placed the interconnectedness of business, the natural environment, and human rights on the corporate agenda.”³³ In a series of papers, Wheeler and coauthors have argued that the case of Shell in Nigeria also represents one of the most poignant examples of “unsustainable development” involving a major corporation.³⁴

As a result of the Ogoni crisis, coupled with the Brent Spar controversy in Europe several months earlier,³⁵ the committee of managing directors of the Royal Dutch/Shell Group led a deep and systematic change in Shell’s corporate culture, business principles, reporting practices and relationships with stakeholders. Sir Mark Moody-Stuart, the Chair of the Committee of Managing Directors, framed Shell’s problem as a need for a new mindset that paid greater attention to changing social expectations.

The senior leadership of Shell began by commissioning a comprehensive 18 month study into changing societal expectations and perceptions of multinational corporations. Matthew Bateson, one of Royal Dutch/Shell’s regional advisors for Africa, recalled the findings of the study: “We were seen as being very arrogant, very negative, with a very closed attitude toward stakeholders, as evidenced by events in Nigeria and Brent Spar.”

Shell’s leaders listened to what the public and its stakeholders were saying and updated its Statement of General Business Principles in 1997 to include specific references to “contribute to sustainable development” and support “fundamental human rights in line with the legitimate role of business”.

Shell also committed itself to a high level of stakeholder engagement on its environmental and social performance, including dialogues with Amnesty International and Pax Christi International.³⁶ Shell initiated a series of public reports on the Group’s social, environmental and economic performance, beginning in 1998 with its first report entitled *Profits and Principles: Does there have to be a choice?* Shell also launched Tell Shell, a transparent web-based forum that invited anyone to publicly comment on issues related to Shell’s activities.

Matthew Bateson describes the shift within the Royal Dutch/Shell Group:

“We needed to recognize that our external reputation is driven by stakeholder perception. How we therefore should operate is not always driven by the science and the facts. Being an engineering company that’s quite a difficult mindset to change as the majority of employees are from an engineering background. And we can say ‘But we’ve got the facts’ and we respond as we believe correctly. This process was about bringing in the importance of societal and stakeholder expectations into the way we think and approach things.”

The first opportunity for the Royal Dutch/Shell Group to test its new approach came in 1996-1997 during consideration of the Camisea Gas Project in the Peruvian rainforest. Ultimately, the Camisea project did not proceed for economic reasons, however, the project assessment was seen as a success due to the significant amount of community consultation and extensive consideration of potential social and environmental impacts.

Many commentators cite Shell’s transformation through the late 1990s as the most ambitious effort ever made by a major multinational corporation to define a new relationship between

business and society in a world of rapidly changing public expectations.³⁷ The Royal Dutch/Shell Group senior leadership took responsibility for the aspects of its organizational culture that had blinded it to larger external forces and stakeholder concerns and genuinely set out to become an organization in which financial, social, and environmental performance were equally valued and fully integrated.

Matthew Bateson comments: "There has been a shift. I think it's fair to say that the challenge for Shell is, 'Has that shift permeated through all of our activities? And particularly to existing activities.' And that's probably the bigger challenge and that's where Nigeria comes in."

State of Siege

After the 1995 killing of the four prominent Ogoni chiefs and the hanging of Ken Saro-Wiwa and the eight other Ogoni activists, many Ogonis fled to other parts of Nigeria or to neighbouring countries or became refugees in Europe or North America. Nigerian military leader General Sani Abacha, who had ignored repeated attempts by the international community to persuade him not to use the death penalty, continued the military crackdown in Ogoni, placing it under a virtual state of siege.

With the loss of Ken Saro-Wiwa's leadership, and the military government still bearing down heavily on Ogoni, MOSOP was thrown into a state of shock and disarray.

When General Sani Abacha died of a heart attack in June 1998, which one commentator described as "a coup from heaven", the interim military commander called for general elections and a return to civilian government. In February 1999, Olusegun Obasanjo was inaugurated as Nigeria's civilian president.

MOSOP and Ogoni Representation

By the time civilian rule returned to Nigeria in 1999, a number of voices were contending to speak for MOSOP and the Ogoni. Ken Saro-Wiwa's brother Owens Wiwa had played a leadership role in establishing MOSOP support organizations from exile in the UK and Canada, and was now active in a court case against Shell brought before the New York courts. Ledum Mittee, who was imprisoned with Ken Saro-Wiwa but acquitted, led a significant contingent of MOSOP supporters on the ground in the Niger Delta.

In addition to MOSOP leaders claiming to speak for Ogonis, beginning with the 1999 elections, the office holders from Rivers State, in which Ogoni is situated, also claimed to be legitimately representing the interests of Ogoni. And throughout this time there were groups of influential Ogoni elites that believed that they were acting in the best interests of the Ogoni as well.

Many MOSOP spokespersons note that this struggle for power is normal in any given situation, and are quick to emphasize that the issue of divisions should not be over emphasized or exaggerated. The majority of Ogoni people, they note, are in agreement with the Ogoni Bill of Rights, but differences in opinion exist about implementing it.

Elections

The Nigerian elections in 1999, and subsequently in 2003, were seen as important steps in the country's emergence from military dictatorship. Nigeria was readmitted into the Commonwealth in 1999 and President Obasanjo strove to rehabilitate Nigeria's image in the world after the killing of Ken Saro-Wiwa and the perpetration of human rights abuses against the Ogoni and others.

After monitoring the 2003 elections, the European Union's Election Observation Mission to Nigeria acknowledged the elections as an important step forward, but reported that in a number of states the elections did not comply with Nigerian or international standards. In the Mission's final report, the established parties were identified as being involved in malpractice which served to "seriously undermine the transparency and regularity of the process."³⁸ Rivers State (in which Ogoni is situated) was given as an example of a state where observers witnessed "lack of secrecy of the vote" and "serious irregularities in the collation of results." Human Rights Watch observed that violence and blatant vote rigging were widely used in Rivers State to secure victory at the elections.³⁹ The EU Mission recorded a total of 105 election-related deaths. In a number of instances, the individuals that ended up holding office were not considered as having been fairly elected.

This posed a difficult dilemma for MOSOP. Some members of MOSOP were cynical about the willingness of the existing political structure to allow a MOSOP leader to have a voice within the political system. They were also concerned that if they were successful in being elected, MOSOP leaders would be sidelined and marginalized by the established political machinery. Others believed that without trying to achieve some measure of political power, it would not be possible for MOSOP to address the core issues in Ogoni.

In the 2003 elections, a MOSOP leader was put forward for election to the Nigerian Senate. Ben Nannen was a Professor of History at the University of Port Harcourt and had been Secretary General of MOSOP from 1992 to 1999. Outside observers believed he was a strong candidate that might be able to achieve a political breakthrough. Nannen's candidacy was ultimately unsuccessful, however. Although another Ogoni won the election, Naanen's loss served to increasingly alienate a number of Ogonis and MOSOP supporters who felt that they were not being adequately represented in government under the existing political system.

Oputa Panel

When Nigeria returned to civilian rule in 1999, one of the first steps taken by president Obasanjo was to establish a Human Rights Violations Investigation Commission. The commission, also known as the Oputa Panel, after its chair, Chukwudifu Oputa, was charged with investigating and reporting on the human rights abuses that had occurred over almost three decades of military rule in Nigeria. During this time, the most serious violations took place in Ogoni in the 1990s. As the panel commenced work, Reverend Mathew Kukah, one of its seven members, described that, "as the military officers themselves and civil servants came to testify, a lot of things began to tumble out, and everybody was literally aghast."⁴⁰ It was revealed to Nigerians and the international community that several hundred Ogonis had been killed, women had been raped, and hundreds of others had been tortured, arrested and arbitrarily detained.

During the hearings, the Oputa Panel made arrangements for a meeting between Shell Nigeria Managing Director Ron van den Berg and MOSOP leader Ledum Mittee to discuss the possibility of Shell Nigeria resuming operations in Ogoni and other steps toward reconciliation.

The Oputa Panel also invited representatives from the Nigerian federal government and the Nigerian National Petroleum Corporation to participate. A brief “peace agreement” between Shell and MOSOP was agreed, but broke down within days after MOSOP leaders accused Shell Nigeria of insincerity in their commitment to reconciliation. Ledum Mittee accused Shell of being complicit with the violence and abuses carried out by the Rivers State Internal Security Task Force.

In his appearance at the Oputa Panel hearings and in a written submission, Shell Nigeria Managing Director Ron van den Berg reaffirmed Shell Nigeria’s commitment to the reconciliation process in Ogoni and agreed that, in the past, not enough oil revenue was returned to the oil producing areas for developmental purposes. But he made it clear that Shell cannot dictate how its contribution to the national treasury is spent. For its own part, van den Berg committed Shell Nigeria to expanding its community development efforts in Ogoni. With respect to environmental remediation, van den Berg described that Shell had an extensive environmental rehabilitation plan in place and that it was ready to implement it if allowed access back into Ogoni. Shell Nigeria would clean up any oil spills, he stated, regardless of cause.

Although the Oputa Panel process did not successfully broker a lasting reconciliation between Shell Nigeria and MOSOP, some commentators indicated that the process was successful in bringing various factions of MOSOP closer together.

The crucial question coming out of the Oputa Panel process, according to Bronwen Manby of the Open Society Institute, is whether the recommendations from the Panel will be made public and actually be implemented. According to Manby, “The panel has no power to enforce the recommendations, and one’s fear is that the governing elite in Nigeria will just ignore what happened.”⁴¹ The panel completed its work and submitted a seven volume report to president Obasanjo on May 28, 2002. However, two years later, the panel’s report has not been made public and insiders familiar with the reports recommendations believe that none of them have been put into place.⁴²

Although the Oputa Panel report has not been publicly released, the African Commission on Human and People’s Rights based in the Gambia issued its own independent ruling in May 2002 after several years of investigating accusations of Nigerian government human rights abuses against the Ogoni. The ruling unequivocally found the Nigerian government guilty of “a concerted violation of a wide range of rights guaranteed under the African Charter for Human and Peoples’ Rights.”⁴³

Niger Delta Development Commission

One of the key issues that was front and centre in the Ogoni Bill of Rights was the issue of the allocation and reinvestment of revenues into the oil producing areas of the Delta. Since independence, several Nigerian government commissions and agencies⁴⁴ had been established to address the region’s unique needs and, increasingly, to attempt to address the root causes of communal clashes and conflicts in the oil producing communities. Unfortunately, very few of these efforts resulted in any real improvement of people’s lives.⁴⁵ Beginning in the early 1980s, 1.5% of federal government oil revenues became specifically allocated for the development of the Niger Delta region. This initiative ultimately proved ineffective and in 1992 the allocation was increased to 3%.

Soon after president Obasanjo took office, he announced the formation of the Niger Delta Development Commission (NDDC) to help address some of the root causes of poverty and conflict in the Delta. Obasanjo announced that oil producing states would receive 13% of federal revenues.

There was initially some cautious optimism that the NDDC would be able to make a difference in the Delta. Initial reports indicated that the funding directed towards the Niger Delta states had indeed increased above the levels allocated by the previous military government. Even so, the absolute amount of funding seemed relatively small, and the NDDC has complained that it is under-funded. Over the last three years, the NDDC has acknowledged that it has received only approximately US\$325 million⁴⁶ for the development needs of the entire Niger Delta, less than what the federal government recently spent building a national soccer stadium in the capital. The oil companies have been reported to have met their financial obligations to the NDDC but the government itself, supposedly, has not.

Because oil is no longer produced in Ogoni after Shell was declared *persona non grata*, the NDDC does not feel a necessary obligation to carry out any major projects there. MOSOP observers acknowledge that there has been some marginal activity by NDDC in Ogoni, such as providing new roofs to one or two school buildings, however no important projects have been undertaken that could impact the lives of people in any significant way.

Shell Nigeria and Security in the Niger Delta

Today, Ogoni is no longer occupied by security forces and few conflicts with Shell emerge as Shell Nigeria has not resumed operations in Ogoni. Throughout other areas of the Niger Delta, one of the most significant challenges for Shell and other oil companies is the protection of their staff and infrastructure in the face of considerable amounts of criminal activity and inter-tribal clashes over resources that often erupt into violence. In 2003, Shell Nigeria reported 78 security incidents (most of which were robberies) against staff, and 20 cases of hostage taking.

Organized theft of crude oil is now another significant criminal activity in the Delta, with the theft of approximately 9 million barrels reported by Shell Nigeria in 2003. The oil theft cartels increase the number of guns in the region, which often exacerbates inter-communal violence.

To ensure security, Shell does not maintain their own security forces (other than unarmed personnel), but instead, has a working arrangement with the Nigerian police to deploy police officers to Shell facilities. Shell Nigeria helps train these police and contributes to their allowances and upkeep (for example providing health benefits if they do not already have them). If there is a protest or riot that the ordinary police forces would be unequipped to handle, the so called Mobile Police are called in to deal with riots and major disturbances. Although the Mobile Police receive training, in practice they operate on the principle of using overwhelming force to deal with disturbances.

Although the Niger Delta is a violent and hostile environment for Shell and other companies to work in, the past practices of Shell and other companies contributed to many situations in which local people with real grievances are left few if any non-violent venues to get the attention and redress they believe they deserve. A leaked 2003 report commissioned by Shell Nigeria and authored by WAC Global Services, Nigeria-based specialists in conflict resolution stated that Shell Nigeria “feeds” the violence in the Delta and that this violence in turn kills approximately 1,000 people each year.⁴⁷

Shell Nigeria and the Environment

With the international spotlight on the environmental impacts of oil production on the Niger Delta ecosystem and its inhabitants over the last 10 years, Shell Nigeria has undertaken a number of initiatives to address key issues and concerns.

In response to concerns about gas flaring, Shell Nigeria has committed to eliminate all routine gas flaring in its operations by 2008. Over the last several years, Shell Nigeria has developed a Liquefied Natural Gas (LNG) infrastructure to capture, transport and sell natural gas. By 2005, Shell Nigeria's LNG operation will include the largest liquefied natural gas plant in the Atlantic Basin and will be served by the largest fleet of LNG ships in the world.

In 2003, Shell Nigeria received ISO 14001 environmental standard certification of all its major oil and gas facilities in Nigeria, including their pipeline network. Shell Nigeria has also made improvements to the consultation process of its environmental impact assessments. In addition, Shell has been a founding member of the Nigerian chapter of the World Business Council for Sustainable Development, which was launched in Nigeria in late 2003.

Oil Spills: Negligence vs. Sabotage

One of the contentious and highly politicized issues between Shell Nigeria and oil producing communities across the Delta has been the causes of and compensation for oil spills. In 2003, Shell reported a total of 221 incidents in which 9,900 barrels of oil were spilled, although environmental organizations report that the figure is much higher. Shell attributes about one third of the volume of oil spilled to incidents involving equipment failure, corrosion, human error and engineering faults. Damages to crops and property from these incidents were compensated by Shell.

The remaining oil spills Shell attributes to willful damage of facilities. This includes individuals willfully causing a spill in order to seek compensation, or from oil thieves that tap into pipelines and lose control of the process. In situations where it is determined that the spill was a result of willful damage, Shell's policy, based on Government regulation, is to not pay compensation, even if those affected by the oil spill had nothing to do with the cause. Shell faces serious allegations of "ensuring" that a spill was due to sabotage and not corrosion. Akachukwu Nwankpo, a consultant specializing in community conflict resolution in the Delta, relates the mood of community members to this situation:

"People in the communities say: 'Shell, we as a community do not have a responsibility to guard your facility. You have buried this pipe here, you ought to guard it. You have not given me a contract to guard it and I do not have a responsibility to protect this thing. Now if someone comes and ruptures your pipeline and it flows over my house, and you tell me that because it was ruptured that you can't pay me - you are talking crap.'"

Shell Nigeria has been upgrading its aging flow stations and pipelines over the years and has plans to continue doing so.

Shell Nigeria and Community Development

From the 1960s until 1997, Shell Nigeria's community development efforts in oil producing areas reflected a traditional philanthropic or grant-making approach focused on cash payments, scholarships, agriculture, infrastructure and health care. After Shell Nigeria withdrew from Ogoni in 1993 and oil was no longer being produced there, Shell Nigeria continued community development efforts in Ogoni as in other areas of the Delta. However, by the 1990s, external criticism and Shell Nigeria's internal review process indicated that, in their own words, "although the majority of these projects were functional, some were poorly executed, poorly maintained, and lacked sustainability."⁴⁸

In 1998, Shell Nigeria initiated a transition from a philanthropy approach to a community development approach that sought to introduce a significant degree of structure and planning to the delivery of community development projects. More emphasis was placed on capacity building, partnerships and empowerment. Tens of millions of dollars annually were poured into community projects, peaking at \$67 million in 2002.

However, Shell Nigeria recognized that even these efforts were "less than perfect," citing that the old model of corporate philanthropy "continued to be operated side by side with the community development model in some parts of the company."⁴⁹ A confidential internal assessment of Shell Nigeria's community development efforts prepared by independent consultants in 2001 was leaked to *The Economist* magazine which reported:

"The report finds that the company has still been decreeing too many projects from on high. Although it has tried, it is still essentially buying off the locals with gifts - some of them forced out of it by ransom-demanding kidnappers and protection-merchants - rather than helping people to develop their future."⁵⁰

The Economist reported that less than a third of the Shell Nigeria projects the report reviewed - ranging from the electrification of villages to building schools and hospitals - had been successful. Shell Nigeria itself recognized that the impacts of its approach remained lower than expected and community ownership and sustainability of the projects remained minimal.

This assessment of activities in the wider Niger Delta was echoed by observers of events on the ground in Ogoni who saw few improvements or successful projects despite the significant amounts of money in Shell Nigeria's community development budget. Some observers experienced Shell staff on the ground as arrogant, and questioned how big a culture shift would have to be put in place to affect real change.

In response to its experience and lessons learned, Shell Nigeria launched a Sustainable Community Development Strategy in 2004 to address the shortcomings of its previous initiatives, increase community ownership, improve community interactions, eliminate cash payments, and coordinate efforts internally. The strategy is focused on changing the mindsets of SPDC staff on the ground that interacted with communities on a daily basis.

The new strategy also places greater emphasis on partnerships with government and local and international NGOs and development agencies, including a \$20 million agreement with USAID focusing on agriculture, health, and enterprise development, and a \$4.5 million partnership with Africare focusing on reducing mortality from malaria.

Wiwa Family and the Politics of Bones

The Wiwa Family, including Ken Saro-Wiwa's eldest son Ken Wiwa and his brother Owens Wiwa, is still deeply unhappy about the wrongful accusation and execution of Ken Saro-Wiwa.

The Nigerian government has not cleared the names of Ken Saro-Wiwa and the eight other MOSOP leaders that were hanged, or acknowledged that they were wrongfully convicted and executed. In addition, it took years for Ken Saro-Wiwa's remains to be released for proper burial, although the Wiwa family paid considerable amounts of money to have his remains exhumed and identified.⁵¹

Although the Oputa Panel hearings may have contributed towards some reconciliation between factions in Ogoni, Ken Wiwa describes the hearings as "a typical top-down Nigerian exercise, with no attempt at outreach or engagement. For example, I had to find out for myself when the hearings were taking place." Although the Wiwa family has heard through unofficial channels that the Oputa Panel recommendations included clearing the names of Ken Saro-Wiwa and the other Ogoni leaders that were executed, the government hasn't taken any steps to address the issue.

Court Case

Ken Wiwa, Owens Wiwa and representatives of one of the other executed Ogoni activists have brought a case against the Royal Dutch/Shell Group in the New York courts. The families accuse Shell of providing support for the military government and believe that Shell has a case to answer in the killing of Ken Saro-Wiwa and the other eight activists. The court case specifically alleges that Shell took land without proper compensation, polluted the air, paid for police to suppress local opposition, and bribed witnesses to give false testimony to support murder charges against Ken Saro-Wiwa and the other activists.⁵²

The case is being brought before the US District Court for the Southern District of New York under the *Alien Tort Claims Act* of 1789. The *Act* allows plaintiffs, including non-US citizens, to sue companies in US courts for violations of international law, including human rights abuses.

Through its history, this provision of the *Act* was invoked only rarely. In the 1980s and early 1990s, the *Alien Tort Claims Act* was used to sue a handful of government officials for human rights abuses. The Wiwa family case against Shell launched in 1996 was one of the first cases against multinational companies. Since 1996, over twenty similar cases have been filed against large multinational companies including Unocal in Burma, Coca-Cola in Colombia, and Union Carbide in Bhopal, India.

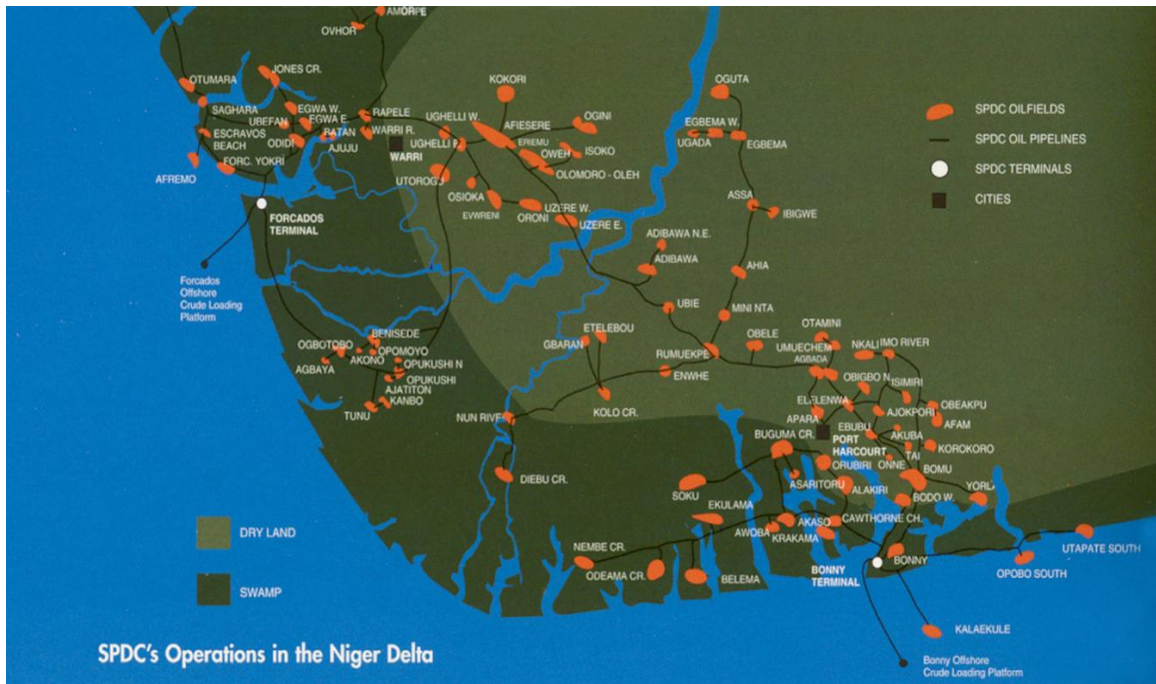
The Wiwa vs. Shell case and others are being watched closely by many observers. To date, there has yet to be a major judgement issued. In the Unocal case, the federal Appeals Court found that a company is not responsible unless it actually "aided and abetted" specific human rights violations which the court defined as "practical assistance or encouragement that has a substantial effect on the perpetration of the crime".⁵³

In March 2001, the US Supreme Court rejected an appeal from Shell that sought to have the jurisdiction changed to London from New York. Following a number of disputes over discovery requests, as of early 2006, a decision is still awaited from the United States District Court of the Southern District of New York as to when the case will proceed.

Writing on the 10th anniversary of his father's death, Ken Wiwa noted: "There have been many stillborn attempts to arrive at a resolution of many of the problems in Ogoni and in the Niger Delta as a whole. My family remains open to any process that is transparent, that insists as a gesture of good faith that my father's dignity is restored and the stain on his reputation as a murderer is erased from the statue books."

Appendix A

Shell Nigeria's Operations in the Niger Delta



Endnotes

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- ⁶ Bronwyn Manby, *Shell in Nigeria: Corporate Social Responsibility and the Ogoni Crisis*, Carnegie Council on Ethics and International Affairs, Georgetown University, Washington, 2000, p. 3.
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- ⁹ Niger Delta Development Commission, *Historical Background* accessed at <http://www.nddconline.org/history.shtml>, March 5, 2004.
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- ¹¹ Shell, ExxonMobil, ChevronTexaco, Total and AGIP.
- ¹² In total, there are approximately 17 oil companies operating in Nigeria, however, the major players are Shell, ExxonMobil, Texaco, Chevron, Agip, Phillips and Elf.
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- ¹⁷ Frynas, "Environmental and Social Impact of Transnational Corporations," p. 7.
- ¹⁸ Vince Del Buono in conversation with David Cayley, CBC radio's Ideas program, February 9, 2004. Vince Del Buono is the Coordinator of the Access to Justice Program in Nigeria.
- ¹⁹ The term "Ogoni" is used to refer to both the Ogoni people and to the Ogoni home land.
- ²⁰ Manby, *Shell in Nigeria*, p. 4.
- ²¹ Further discussion on the debate over estimates of oil wealth produced from Ogoni can be found in Anne Lawrence, *The Case of Shell in Nigeria*, Columbus, Ohio: Council for Ethics in Economics, 1999.
- ²² Cited in Karl Maier, *This House Has Fallen*, London: Penguin Books, 2000, p. 82-83.

- ²³ Manby, *Shell in Nigeria*, p. 4.
- ²⁴ Lawrence, *The Case of Shell in Nigeria*, p. 10.
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- ⁴⁴ The commissions and agencies include the Niger Delta Development Board, in 1960, the River Basin Development Authority in and the Presidential Task Force in the early 1970s, The Belgore Commission in the late 1980s, the Oil Mineral Producing Area Development Commission in 1993 and the Niger Delta Development Commission in 1999. See the NDCC web site for more information www.nddconline.org/history.shtml.
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⁴⁸ Shell Petroleum Development Company of Nigeria, *People and the Environment Report*, 2003, page 15.

⁴⁹ SPDC, *People and the Environment Report*, p. 15.

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