

PETROLEUM, POLLUTION AND POVERTY IN THE NIGER DELTA

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Cover photo: The impact of oil pollution in Ikot Ada Udo, Akwa Ibom State, Niger Delta, Nigeria, 30 June 2008 © Kadir van Lohuizen

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KEN SARO-WIWA AND THE Ogoni STRUGGLE FOR JUSTICE

Writer and human rights campaigner Ken Saro-Wiwa was executed, along with eight other members of the Ogoni people, by the Nigerian State in 1995. The executions alerted the world to the devastating impact of the oil industry in the Niger Delta, including how the environmental damage caused by the oil industry was damaging the health and livelihoods of the Ogoni people.

Ken Saro-Wiwa was a leading figure in the 500,000-strong Ogoni community in Rivers State and played a key role in drafting the 1990 Ogoni Bill of Rights, which highlighted the lack of political representation, pipe-borne water, electricity, job opportunities and federal development projects for communities in the area. He was a founder and president of the Movement for the Survival of the Ogoni People (MOSOP), which demanded that oil companies and the government clean up the environment and pay adequate compensation and royalties to the oil-producing regions.

The oil company operating in Ogoniland was the Shell Petroleum Development Company. In 1993 Shell withdrew from Ogoniland in the face of local protests. The company has never been able to resume operations in the area.

In February and March 1995, Ken Saro-Wiwa and 14 others were brought to trial on murder charges. On 30 and 31 October 1995, nine of the accused were convicted and sentenced to death following a politically motivated prosecution and unfair trial; six others were acquitted. On 10 November 1995, Ken Saro-Wiwa, Baribor Bera, Saturday Doobee, Nordu Eawo, Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix Nuate were hanged.

Beginning in 1996 lawyers in the United States (US) working with some of the relatives of the executed men, and victims of violence in Ogoniland, brought a number of cases to court in the US to try to hold Shell accountable for involvement in human rights violations in Ogoniland.¹

On 8 June 2009 Shell and the plaintiffs reached a settlement. Shell agreed to pay the plaintiffs US\$15.5m (£9.7m). The company did not admit any liability. Shell described the settlement as a humanitarian gesture stating it was "a compassionate payment to the plaintiffs and the estates they represent in recognition of the tragic turn of events in Ogoni land, even though Shell had no part in the violence that took place."²

Judith Chomsky, one of the attorneys who initiated the lawsuit, stated, "The fortitude shown by our clients in the 13-year struggle to hold Shell accountable has helped establish a principle that goes beyond Shell and Nigeria—that corporations, no matter how powerful, will be held to universal human rights standards."³

The lawyers and plaintiffs made clear that: "The Ogoni people have many outstanding issues with Shell, and it is Shell's responsibility to resolve those issues with the Ogoni people themselves. The Plaintiffs do not speak for the Ogoni people, nor have they attempted to resolve those issues."⁴

Part of the financial settlement is being used by the plaintiffs – who include Ken Saro Wiwa's son – to establish a trust to fund development and other initiatives in Ogoniland.

GLOSSARY

African Commission	African Commission on Human and Peoples Rights
African Charter	African Charter on Human and People's Rights
CEHRD	Centre for Environment, Human Rights and Development
CESR	Centre for Economic and Social Rights
CSCR	Center for Social and Corporate Responsibility
DPR	Department of Petroleum Resources
EGASPIN	Environmental Guidelines and Standards for the Petroleum Industry in Nigeria
EIA	Environmental Impact Assessment
EPNL	Elf Petroleum Nigeria Ltd
FAO	UN Food and Agricultural Organization
FEPa	Federal Environmental Protection Agency Act
HCA	High Consequence Area
HSE	Health, Safety and Environment
IUCN	International Union for Conservation
JIT	Joint Investigation Team
MEND	Movement for the Emancipation of the Niger Delta
MOSOP	Movement for the Survival of the Ogoni People
NAOC	Nigerian Agip Oil Co Ltd
NDBDA	Niger Delta Basin Development Authority
NDDC	Niger Delta Development Commission
NDES	Niger Delta Environment Survey
NESREA	National Environmental Standards and Regulations Enforcement Agency
NGO	Non-Governmental Organization
NNPC	Nigerian National Petroleum Corporation
NOSDRA	National Oil Spill Detection and Response Agency
OMPADEC	Oil Mineral Producing Areas Development Commission
OPTS	Oil Producers' Trade Section
PIMS	Pipeline Integrity Management System
SERAC	Social and Economic Rights Centre
SPDC	Shell Petroleum Development Company
The Covenant	International Covenant on Economic, Social and Cultural Rights
The Committee	United Nations Committee on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN SRSG	UN Special Representative of the Secretary-General
UN	United Nations
UNDP	United Nations Development Program
SERAC	Social and Economic Rights Centre
SPDC	Shell Petroleum Development Company
The Covenant	International Covenant on Economic, Social and Cultural Rights
The Committee	United Nations Committee on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN SRSG	UN Special Representative of the Secretary-General
UN	United Nations
UNDP	United Nations Development Program

RESEARCH FOR THIS REPORT

This report is based on fieldwork carried out in the Niger Delta in March and April 2008, as well as desk research and follow-up research from London between May 2008 and May 2009 by a multi-disciplinary research team, including experts in the oil industry and environment. Amnesty International research teams visited eight sites in Rivers and Bayelsa States, and interviewed members of the communities affected by oil pollution and by the human rights violations associated with pollution.

The research team met with and interviewed representatives of a number of civil society organizations in the Niger Delta, as well as academics at Rivers State University of Science and Technology. Researchers also conducted interviews with members of the Federal Government of Nigeria and representatives of the government of Rivers State, as well as presenting preliminary findings in writing to the Federal Government. Representatives of the organization held meetings with Shell Petroleum Development Company (SPDC) in Port Harcourt, Rivers State, Nigeria, on 1 April 2008, as well as with Shell at its headquarters in The Hague, Netherlands, on 15 September 2008. Representatives of Amnesty International also interviewed representatives of ENI in Milan on 7 January 2009 and Total in Paris on 20 February 2009.

SECTION I

1. INTRODUCTION

CASE STUDY: THE OIL SPILL AT BODO⁵, 2008

*If you want to go fishing, you have to paddle for about four hours through several rivers before you can get to where you can catch fish and the spill is lesser ... some of the fishes we catch, when you open the stomach, it smells of crude oil.*⁶

On 28 August 2008 a fault in the Trans-Niger pipeline resulted in a significant oil spill into Bodo Creek in Ogoniland.⁷ The oil poured into the swamp and creek for weeks, covering the area in a thick slick of oil and killing the fish that people depend on for food and for their livelihood. A local NGO, the Center for Environment, Human Rights and Development (CEHRD), which investigated the case (including by taking video footage of the leak), reported that the oil spill has resulted in death or damage to a number of species of fish that provide the protein needs of the local community. Video footage of the site shows widespread damage, including to mangroves which are an important fish breeding ground.

The pipe that burst is the responsibility of the Shell Petroleum Development Company (SPDC). The community claim that the spill began on 28 August 2008. SPDC has reportedly stated that the spill was only reported to them on 5 October of that year.⁸ Rivers State Ministry of Environment was informed of the leak and its devastating consequences on 12 October by CEHRD. A Ministry official is reported to have visited the site on 15 October.⁹ However, the leak was not stopped until 7 November.

In October 2008, members of the community said they were desperate for action to stop the leak that was destroying their food source and environment. A community representative stated:

We want the Federal Ministry of Environment and SPDC in particular to come and put a stop to this... My people... don't go to fishing any longer – you can see the devastating effects – and this is our main source of livelihood.

Representative of the Bodo community¹⁰

It is not clear why SPDC failed to stop the leak and contain the spill swiftly, as required by

Nigerian oil industry regulations.¹¹ Nor is it clear why the federal regulators did not take action. The failure to stop the leak swiftly significantly increased the damage. “[T]he creek is dead” CEHRD concluded, finding that as a result, “there is real food insecurity in the area....”.¹² Local community representatives claim that people suffered skin problems through contact with the oil – a common complaint of communities affected by oil spills.¹³

Nigerian government regulations also require the swift and effective clean-up of oil spills. As of May 2009, the site of the spill had still not been cleaned up, and there was controversy over the clean-up contract (oil companies usually hire contractors to clean up spills). Moreover, a second oil spill was reported to have occurred in the same area on 2 February 2009 further damaging the environment on which people depend for their food and livelihood.

Although the oil spill has seriously undermined the local community’s right to food, at the time of writing (May 2009) no adequate action had yet been taken to address the food insecurity. On 2 May 2009, eight months after the spill, SPDC staff reportedly brought food relief to the community, which they rejected as wholly inadequate. According to Nenibarini Zabbey of CEHRD, “SPDC officials arrived at the palace of the paramount ruler of Bodo on Saturday 2 May, 2009, and presented as relief materials 50 bags of rice, 50 bags of beans, 50 bags of garri, 50 cartons of sugar, 50 cartons of dry peak milk, 50 cartons of milo tea, 50 cartons of tomatoes and 50 tins of groundnut oil. The Bodo population is little above 69,000. Given the population figure, the Bodo people consider the offer by SPDC as insulting, provocative and beggarly, and unanimously rejected the items.”¹⁴

Amnesty International asked SPDC to comment on the case, but the company did not do so.

Frequent oil spills are a serious problem in the Niger Delta. The failure of the oil companies and regulators to deal with them swiftly and the lack of effective clean-up greatly exacerbates the human rights and environmental impacts of such spills.

This report focuses on the impact of pollution and environmental damage caused by the oil industry on the human rights of the people living in the Niger Delta. While there are other sources of pollution in the Niger Delta, the oil industry is a major contributor, and moreover, has been for more than half a century. The Niger Delta is a complex operating environment, characterized by conflict – conflict within and between communities (often related to access to the benefits of oil operations), conflict between the communities and the oil companies and conflict between armed groups and the oil companies and Nigerian security forces.

While acknowledging the complexities that oil companies face in operating in the Niger Delta, this report underlines that much of the pollution and damage that has contributed to serious abuses of human rights is foreseeable and avoidable. Where problems do occur, timely and effective action can mitigate the consequences. The complexity of the Niger Delta is too frequently used as an excuse for failure to take action in line with international good practice and standards to prevent and address pollution and environmental damage and protect the human rights of communities affected by oil operations.

1.1. BACKGROUND

The Niger Delta is one of the 10 most important wetland and coastal marine ecosystems in the world and is home to some 31 million people.¹⁵ The Niger Delta is also the location of massive oil deposits, which have been extracted for decades by the government of Nigeria and by multinational oil companies. Oil has generated an estimated \$600 billion since the 1960s.¹⁶

Despite this, the majority of the Niger Delta's population lives in poverty. The United Nations Development Programme (UNDP) describes the region as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict."¹⁷ The majority of the people of the Niger Delta do not have adequate access to clean water or health-care.¹⁸ Their poverty, and its contrast with the wealth generated by oil, has become one of the world's starkest and most disturbing examples of the "resource curse".

Under Nigerian law, local communities have no legal rights to oil and gas reserves in their territory.¹⁹ The Federal Government allocates permits, licences and leases to survey, prospect for and extract oil to the oil companies, who are then automatically granted access to the land covered by their permit, lease or licence.²⁰ The fact that the people of the Niger Delta have not benefited from oil wealth is only part of the story. Widespread and unchecked human rights violations related to the oil industry have pushed many people deeper into poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration. The multi-dimensional crisis is driven by the actions of the security forces and militant groups, extensive pollution of land and water, corruption, corporate failures and bad practice and serious government neglect.

This report focuses on one dimension of the crisis: the impact of pollution and environmental damage caused by the oil industry on the human rights of the people living in the oil producing areas of Niger Delta. Much of the population in the oil producing areas of the delta relies on fisheries, subsistence agriculture and associated processing industries for their livelihood. Amnesty International has documented the impact of oil pollution on human rights on several occasions. In 2008 Amnesty International researchers visited the Niger Delta to conduct further investigations. They visited a number of oil pollution sites and met with communities who have suffered from the pollution. They also talked with the human rights defenders and environmental activists who have been working for years, sometimes decades, for an end to oil industry bad practice in the region, and who have been campaigning for justice for those affected by pollution.

Oil spills, waste dumping and gas flaring (gas is separated from oil and, in Nigeria, most of it is burnt as waste) are endemic in the Niger Delta. This pollution, which has affected the area for decades, has damaged the soil, water and air quality. Hundreds of thousands of people are affected, particularly the poorest and those who rely on traditional livelihoods such as fishing and agriculture. The human rights implications are serious, under-reported and have received little attention from the government of Nigeria or the oil companies. This is despite the fact that the communities themselves and local NGOs, as well as the African Commission

on Human and Peoples' Rights (African Commission) and the UN Human Rights Committee have all expressed serious concern about pollution and called on the government of Nigeria to take urgent action to deal with the human rights impacts of oil industry pollution and environmental degradation.

The main human rights issues raised in this report are:

- Violations of the right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agriculture and fisheries, which are the main sources of food for many people in the Niger Delta.
- Violations of the right to gain a living through work – also as a consequence of widespread damage to agriculture and fisheries, because these are also the main sources of livelihood for many people in the Niger Delta.
- Violations of the right to water – which occur when oil spills and waste materials pollute water used for drinking and other domestic purposes.
- Violations of the right to health – which arise from failure to secure the underlying determinants of health, including a healthy environment, and failure to enforce laws to protect the environment and prevent pollution.
- The absence of any adequate monitoring of the human impacts of oil-related pollution – despite the fact that the oil industry in the Niger Delta is operating in a relatively densely populated area characterized by high levels of poverty and vulnerability.
- Failure to provide affected communities with adequate information or ensure consultation on the impacts of oil operations on their human rights.
- Failure to ensure access to effective remedy for people whose human rights have been violated.

The report also examines who is responsible for this situation in a context where multinational oil companies have been operating for decades. It highlights how companies can take advantage of the weak regulatory systems that characterize many poor countries, which frequently results in the poorest people being the most vulnerable to exploitation by corporate actors. The people of the Niger Delta have seen their human rights undermined by oil companies that their government cannot or will not hold to account. They have been systematically denied access to information about how oil exploration and production will affect them, and are repeatedly denied access to justice.²¹ The Niger Delta provides a stark case study of the lack of accountability of a government to its people, and of multinational companies' almost total lack of accountability when it comes to the impact of their operations on human rights.

BOX 1: THE NATIONAL AND INTERNATIONAL FRAMEWORK IN BRIEF

Nigeria is a State Party to the International Covenant on Economic, Social and Cultural Rights (the Covenant) and the African Charter on Human and Peoples' Rights (African Charter). Both of these international legal instruments require the protection of economic, social and cultural rights. However, although the African Charter has been domesticated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1990, full protection of economic, social and cultural rights is not yet reflected in the domestic laws of Nigeria. The lack of enabling legislation does not, however, absolve the Nigerian government from meeting its obligations under international treaties that it has ratified.

The 1999 Constitution of the Federal Republic of Nigeria recognizes a number of fundamental rights, but these do not include economic, social and cultural rights. However, the Constitution does recognize, within its fundamental objectives, that the State "shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria"²² and that "the State shall direct its policy towards ensuring ... that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens."²³ The Constitution also provides that "exploitation of ... natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented".²⁴

Nigeria operates as a federation of 36 states. Each state has its own government, led by a State Governor and State House of Assembly. At the federal level, the executive and legislative branches are composed of the President and the National Assembly respectively. Legislative powers between the State and Federal Governments are established under the Constitution. The National Assembly has the power to make laws in relation to a range of areas and issues, including any issue that is on the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. The oil and gas industry is on the Exclusive List, which means that all laws in relation to this industry are made at the federal level.

The oil industry is subject to a number of specific federal laws, including the Oil Pipelines Act and the Petroleum Act (discussed in detail in chapter 4) and to certain federal laws and regulations on environmental protection (also discussed in chapter 4).

1.2. THE OIL INDUSTRY IN THE NIGER DELTA

The oil industry in the Niger Delta started commercial production in 1958 following the discovery of crude oil at Oloibiri by Shell British Petroleum (now Royal Dutch Shell), in 1956. Today, the oil industry is highly visible in the Niger Delta and has control over a large amount of land. SPDC alone operates over 31,000 square kilometres.²⁵ The area is criss-crossed by thousands of kilometres of pipeline,²⁶ punctuated by wells and flow stations.²⁷ Much of the oil infrastructure is located close to the homes, farms and water sources of communities. At night often the only light visible for miles is from flares burning unwanted gas.

The oil and gas sector represents 97 per cent of Nigeria's foreign exchange revenues and contributes 79.5 per cent of government revenues.²⁸

The oil industry in the Niger Delta comprises both the government of Nigeria and subsidiaries of multinational companies such as Shell, Eni, Chevron, Total and ExxonMobil, as well as some Nigerian companies. Oil exploration and production is undertaken in what are known as

"joint ventures", involving the state-owned Nigerian National Petroleum Corporation (NNPC)²⁹ and one or more oil companies or within production sharing contracts. NNPC is the majority stakeholder in all joint ventures. One of the non-state companies is usually the operator, which means it is responsible for activity on the ground. SPDC, a subsidiary of Royal Dutch Shell, is the main operator on land.³⁰ The SPDC joint venture involves NNPC, which holds 55 per cent, Shell 30 per cent, Elf Petroleum Nigeria Ltd., 10 per cent and Agip, 5 per cent.³¹ This report's main findings relate to the joint venture operated by SPDC.

1.3. POLLUTION AND HUMAN RIGHTS

The links between human rights and pollution of the environment have long been recognized. The 1972 United Nations (UN) Conference on the Human Environment declared that "man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself."³²

Human rights monitoring bodies, and international, regional and national courts, are increasingly recognizing poor environmental quality as a causal factor in violations of human rights. The most common examples include pollution of water, soil and air, resulting in violations variously of rights to an adequate standard of living, to adequate food, to water, to adequate housing, to health and to life.

Judge Weeramantry of the International Court of Justice, the principal judicial organ of the UN, stated in an opinion, "The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate this, as damage to the environment can impair all the human rights spoken of in the Universal Declaration and other human rights instruments."³³

The African Charter on Human and Peoples' Rights (African Charter), to which Nigeria is a party, also recognizes, in Article 24, the right of all peoples to a "general satisfactory environment favourable to their development". This right is more widely known as the right to a healthy environment.³⁴ The African Commission on Human and Peoples' Rights (African Commission) stated that Article 24 of the African Charter imposes clear obligations upon a government: "It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources."³⁵

The UN Committee on Economic, Social and Cultural Rights has also clarified that the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including "a healthy environment".³⁶ Nigeria is a party to the Covenant. The Committee has also clarified that a state's obligation under Article 12.2(b) extends to "the prevention and reduction of the population's exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health".³⁷ A government's failure to take necessary measures to prevent third parties from polluting or contaminating food, water supplies and air, including by the failure to enact or enforce laws, can constitute violations of the rights to health (Article 12), to water and to adequate food (Article 11) of the Covenant.

BOX 2: OIL AND CONFLICT IN THE NIGER DELTA

Oil exploration in the Niger Delta has long been marked by protests by local communities about the negative impact of the oil industry, corruption and the failure of oil wealth to be translated into better living conditions. More recently, armed groups and criminal gangs have explicitly sought resource control on behalf of the oil producing areas, and have engaged in theft of oil and in acts of violence which are sometimes claimed as retribution for the treatment of the people of the Niger Delta by the oil industry.

The people of the oil producing areas of the Niger Delta have watched for more than half a century while oil companies, politicians and government officials get rich from the 'black gold' extracted from their land. Meanwhile they have seen few if any benefits. Even basic services, such as water and sanitation, are lacking in many areas. Many of the development initiatives that have been established have been marred by corruption and bad planning, leaving behind a trail of half-finished or non-functioning projects.

Discontent and anger at the lack of benefits from oil extraction is exacerbated by the damage that the oil industry has done in many communities. Widespread environmental damage associated with oil extraction has destroyed livelihoods, polluted water and undermined health. The same oil extraction that is generating wealth for the few is deepening the poverty of many.

The way in which some oil companies engage with communities is a central part of the problem. A lack of transparency in the award of compensation and clean-up contracts has fed inter- and intra- community tensions and conflict. Communities are often seen and treated as a 'risk' to be pacified, rather than as stakeholders with critical concerns about the impact of oil operations. The risk-based approach to communities underpins several damaging strategies in the Niger Delta. Some companies have effectively paid communities and youths off, hoping to prevent protests. This has underlined that threats, protests and violence are ways to access oil money.

Another strategy has been the deployment, by government, of heavily armed security forces. Protests by local communities about the oil industry (including peaceful protests) and attacks on oil installations by armed groups are frequently met with reprisals characterized by excessive use of force and serious human rights violations. Action has rarely been taken to bring to justice members of the security forces who are suspected of being responsible for grave human rights violations in the region. For many communities the contrast between the government's actions to protect the oil industry and the almost total lack of action to protect their human rights reinforces the perception that the government is on the side of the oil companies regardless of the damage they may do.

While poverty and the unchecked actions of the security forces are two of the factors that contribute to making the Niger Delta one of the most unsafe oil production areas in the world, armed groups have emerged in recent years as a serious threat. Since the end of 2005 armed groups and gangs have increasingly engaged in kidnapping of oil workers and their relatives, including children, and attacks on oil installations.

Armed groups increasingly engage in battles with the Nigerian security forces. In response the security forces have used excessive force without regard to the impact on the local population. The delta's armed groups and criminal gangs have emerged from and feed on local frustrations. They have also emerged as a result of political encouragement of armed 'youth' gangs in the run up to elections, and a context where they can engage in organized criminal activities such as illegal oil bunkering. The organized theft of oil by illegal bunkering or hot tapping is lucrative and widespread. There are persistent reports that current and former employees of some oil companies, as well as state officials and politicians, may be involved in illegal bunkering. The stolen oil is transported by barge or road tanker to the ports for sale on the international market, reportedly through refineries in West African countries such as Côte d'Ivoire and beyond.

2. POLLUTION AND ENVIRONMENTAL DAMAGE IN THE NIGER DELTA

For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall wellbeing and development. According to UNDP, more than 60 per cent of the people in the region depend on the natural environment for their livelihood.³⁸ For many, the environmental resource base, which they use for agriculture, fishing and the collection of forest products, is their principal or sole source of food. Pollution and environmental damage, therefore, pose significant risks to human rights.

According to a study carried out by a team of Nigerian and international environmental experts in 2006,³⁹ the Niger Delta is “one of the world’s most severely petroleum-impacted ecosystems”. They stated: “The damage from oil operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a severely impaired coastal ecosystem and compromised the livelihoods and health of the region’s impoverished residents.”

The Niger Delta has an enormously rich natural endowment in the form of land, water, forests and fauna. These assets, however, have been subjected to extreme degradation due to oil prospecting. For many people, this loss has been a direct route into poverty, as natural resources have traditionally been primary sources of sustenance.

UNDP, Niger Delta Human Development Report, 2006

While oil spills and gas flaring are the most frequently referenced forms of oil-related pollution in the Niger Delta, there are in fact several other ways in which the oil industry is harming the environment.

2.1. OIL SPILLS

The Niger Delta has suffered for decades from oil spills, which occur both on land and offshore. Oil spills on land destroy crops and damage the quality and productivity of soil that communities use for farming. Oil in water damages fisheries and contaminates water that people use for drinking and other domestic purposes.⁴⁰

There are a number of reasons why oil spills happen so frequently in the Niger Delta. Spills result from corrosion of oil pipes, poor maintenance of infrastructure, spills or leaks during processing at refineries,⁴¹ human error and as a consequence of deliberate vandalism or theft of oil.⁴²

In the 1990s corrosion was acknowledged as a major problem with oil infrastructure in the Niger Delta. Infrastructure was old, and many pipes were above ground. In 1995 SPCD

admitted that its infrastructure needed work and that corrosion was responsible for 50 per cent of oil spills. The company began a program of upgrading oil pipes and infrastructure (see page 59 for further discussion on SPDC's action to address oil pollution).

However, today companies increasingly maintain that the majority of oil spills are caused by sabotage and not by their poor infrastructure or operational problems. Communities, and many NGOs, strongly disagree over the number of spills that are attributed to sabotage, and accuse companies of designating controllable spills as sabotage in order to avoid liability for compensation.⁴³

There is no doubt that sabotage, vandalism of oil infrastructure and theft of oil are serious problems in the Niger Delta, although the scale of the problem is unclear. Sabotage ranges from vandalism by community members to theft of oil and deliberate attacks by criminal groups. Some people damage pipes while trying to steal small quantities of oil for sale at local markets or for personal use. Others damage pipes and installations to extort compensation payments or clean-up contracts from companies. The increase in community sabotage activities (as opposed to organised theft, described above) is a reflection of wider problems that exist in oil-affected areas of the Niger Delta. For some people, causing an oil spill and getting a clean-up contract or compensation⁴⁴ is the only way they can access any benefit from the oil operations.

ESTABLISHING THE SCALE OF OIL SPILLAGES

The amount of oil spilled since oil production began in 1958 is not known with any certainty. As far as Amnesty International could ascertain, there has been no published study that looks specifically at the scale of oil spills in the Niger Delta.⁴⁵ The scale of the problem can, however, be inferred from three pieces of data:

- Figures that *are* available for oil discharged on land and at sea.
- Figures on the number of sites needing remediation (these are sites that have been affected by oil pollution in the past and which are considered to need rehabilitation of some sort).⁴⁶
- Expert testimony of environmental and oil experts who have lived and/or worked in the Niger Delta.

AVAILABLE FIGURES FOR OIL SPILLS

Oil spill figures vary considerably depending on sources, and figures are contested. Only SPDC reports publicly, from year to year, on the number of spills in its operations.⁴⁷ Between 1989 and 1994 the company reported an average of 221 spills per year involving some 7,350 barrels of oil per year.⁴⁸ The Department of Petroleum Resources (DPR) has reported that 4,835 oil spill incidents were recorded between 1976 and 1996, with a loss of 1.8 million barrels of oil to the environment.⁴⁹ These data are based mainly on what companies report to the DPR. According to UNDP, more than 6,800 spills were recorded between 1976 and 2001, with a loss of approximately 3 million barrels of oil.⁵⁰ Both local and international environmental experts claim that the system for reporting of oil spills in the Niger Delta has been completely dysfunctional for decades, and that the figures provided by the companies and reported by DPR do not reflect the full scale of oil spillage.⁵¹

Drawing on available data, a group of independent environmental and oil experts visiting the Niger Delta in 2006 put the figure for oil spilt, onshore and offshore, at 9 to 13 million barrels of oil over the past 50 years.⁵² The experts took into consideration all sources of oil discharged into the environment, including oil in process water, oil discharges from tanker washing, oil in gas flares, oil spills from vehicle and road tanker accidents and used oil dumped in the Delta, as well as spills during the Biafran war, when many oil installations were either bombed or sabotaged. To put this into perspective, people living in the Niger Delta have experienced oil spills on par with the Exxon Valdez every year over the last 50 years. Despite this, the government and the companies have not taken effective measures over these 50 years to prevent oil spills from recurring, or to properly address the impacts of oil spills.

POLLUTION-AFFECTED SITES NEEDING REHABILITATION

Under Nigerian oil industry regulations, oil spill sites should be rehabilitated. This means that the soil and/or water at those sites should be treated to deal with the impacts of pollution and restore them as far as possible to their normal state.⁵³ The National Oil Spill Detection and Response Agency (NOSDRA) - which was established in 2006 - has tried to identify all sites needing remediation in the Niger Delta. As of April 2008 it had identified approximately 2,000 sites. The majority of these sites were apparently SPDC sites.⁵⁴

Although neither NOSDRA nor the oil companies would provide any information on the size or location of the sites, or the level of pollution, the fact that some 2,000 sites needed rehabilitation in 2008 gives an indication of the widespread nature of the problem. NOSDRA told Amnesty International that some of these sites had been polluted more than once.⁵⁵

EXPERT TESTIMONY

Expert testimony gathered by Amnesty International from local and international experts concurred in the view that oil spills have been widespread, under-reported (particularly in the early years of operation and in cases of small-scale spills) and a cause of serious environmental damage.⁵⁶ According to the Head of the Port Harcourt Institute of Pollution Studies (IPS), "there is virtually no week when the Niger Delta does not have an oil spill...".

BOX 3: HOW MUCH IS SABOTAGE?

The exact proportion of oil spills in the Niger Delta caused by sabotage, as opposed to equipment failure or human error, cannot be determined because data on the causes of oil spills in the Niger Delta has never been subject to any independent or effective monitoring or verification. While the proportion of current oil spills that are caused by sabotage is disputed, it is generally acknowledged that the majority of the oil spills prior to 1990s were due to infrastructure problems and human error. For example, most of the oil spilt by SPDC (the major operator on land) between 1989 and 1994 was, by their own admission, due to corrosion or operational problems. Of the volume spilt, 28 per cent was attributed to sabotage.⁵⁷ Since the mid-1990s, SPDC has claimed that sabotage now accounts for as much as 70 per cent of all oil spills.⁵⁸ The Nigerian Agip Oil Company has reported that 68 per cent of spills are attributable to sabotage.

There is evidence to support the fact that an increasing number of oil spills in recent years are caused by vandalism or sabotage.⁵⁹ However, Amnesty International also found evidence to substantiate community claims that equipment or operational failures are sometimes wrongly designated as sabotage.⁶⁰ Court actions in Nigeria such as *Shell v Isaiah* (1997) have reached similar conclusions. In this case, the plaintiffs went to court seeking compensation because, during a repair operation on a Shell pipe, which was dented when a tree fell on it, oil leaked on to farmland and in to fishponds. Shell claimed the leak was caused by sabotage. The Appeal Court stated:

The issue of sabotage raised by the defendant is neither here nor there ... I am, having regard to the facts and circumstances of this case, convinced that the defence of sabotage was an afterthought. The three defence witnesses were agreed on one thing, that is that an old tree fell on and dented the shell pipe ... How could this have metamorphosed into an act of cutting the pipe by an unknown person? What is more, there is no evidence whatsoever in proof that the pipeline was 'cut by hacksaw'.⁶¹

According to G.J. Frynas, who has studied and written extensively on oil litigation in Nigeria, "There are indeed strong indications that oil companies in Nigeria have used false claims of sabotage to avoid compensation payments..."⁶²

2.2. DISPOSAL OF WASTE

The activities involved in petroleum exploration and production produce wastes of varying chemical compositions, which are generated at each phase of the operation. The disposal of these wastes in the Niger Delta has polluted land and water, damaging fisheries and agriculture, undermining the human right to an adequate standard of living. According to a senior official from the Rivers State Ministry of Environment, "Effluent and waste from the oil industry which should be treated is dumped and finds its way into the surface water of the Delta..."⁶³

Wastewater is one of the major sources of waste material. When oil is pumped out of the ground, a mixture of oil, gas and water emerges. Following treatment – and in some cases without any treatment – much of this wastewater (known as "produced water" or "formation water") is discharged into rivers and the sea.⁶⁴ Experts have queried the quality of the treatment in some cases.⁶⁵ Only some of the oil can be removed from the water before it is discharged, and along with oil, produced water may also contain heavy metals and other potentially dangerous substances.⁶⁶ Hundreds of tonnes of oil together with other potentially toxic substances are released into the Niger Delta in wastewater, but Amnesty International

found little evidence that either the companies or the government were monitoring the impact on water quality, fisheries or human health.

Nonetheless, some companies appear to be aware that the discharge of produced water is not a good practice. Total, for example, told Amnesty International that it is trying to stop all wastewater discharge. SPDC, which discharges wastewater into the Bonny River estuary and the Warri River, has stated that it is trying to improve the management of this “major waste product”.⁶⁷ However, figures from SPDC for 2002-2005 show a significant rise in oil discharged to surface waters as a consequence of produced water – from 226 tonnes in 2002 to 481 tonnes in 2005, although the volume of produced water discharged reduced from a high of 42,994'000m³ in 2005 to 16,885'000 m³ in 2006.⁶⁸

Another major source of waste is drilling, which produces large amounts of mud and dry cuttings. Drilling waste has frequently been disposed of indiscriminately, often into drainage channels and waterways, which affects water quality, or on to land used for agriculture.⁶⁹

SPDC has in the past acknowledged the impacts of other sources of environmental damage related to its operations. In a 1995 publication on the environment in the Niger Delta, it said: SPDC’s environmental programme aims to progressively reduce emissions and effluents and discharges of waste materials that have a negative impact on the environment.” Specifically, the company said that it was working towards a system that would mean: “no harmful drilling waste will be discharged into the environment (after 1996)”⁷⁰ – the inference being that drilling waste had been discharged into the environment for years.

2.3. GAS FLARING

When oil is pumped out of the ground, the gas produced is separated and, in Nigeria, most of it is burnt as waste in massive flares. This practice has been going on for almost five decades. The burning of this “associated gas” has long been acknowledged as extremely wasteful and environmentally damaging.⁷¹ More recently, communities and NGOs have raised concerns about the impact of gas flaring on human health.

Nigeria has prohibited gas flaring since 1984, unless a ministerial consent has been issued.⁷² Although the government has announced various deadlines for the cessation of flaring, each deadline has passed and flaring continues (this issue is taken up in chapter 4; the right to health and the right to a healthy environment, page 35).

2.4. SEISMIC SURVEYS AND THE CONSTRUCTION OF ROADS AND PIPELINES

Activities associated with oil extraction, including laying pipes, building infrastructure and making the area accessible by road and water, have done considerable damage to the Niger Delta environment. Companies that have the requisite oil exploration and production licences and leases are entitled to build infrastructure and conduct surveys across large areas of the delta, including land used for farming and fisheries. Communities have no means of preventing these activities, regardless of the damage they can cause to livelihoods and food sources – although they should receive compensation. Compensation, however, is frequently inadequate (see chapter 5).

The construction of access roads has resulted in deforestation and has frequently involved

cutting through the Niger Delta's mangrove forests, which are an important fish breeding ground. In some cases, access roads have been constructed in such a way as to block the natural flow of water. When this happens, one side of the road may become flooded or waterlogged, while plant life on the opposite side is starved of water. On the flooded side forests die of asphyxiation, while on the other side, vegetation dies of desiccation. Experts believe that the entire hydrology of the Delta ecosystem has been significantly altered by oil development.⁷³

The construction of access channels through waterways and swamps is both damaging in itself, and in some cases has caused salt water to flow into freshwater systems, destroying freshwater ecosystems.⁷⁴ The incursion of salt water into freshwater is highly damaging to fisheries, and once saltwater enters freshwater, it is no longer usable for drinking or other domestic purposes.

2.5. DREDGING

Oil companies also dredge rivers to facilitate navigation and obtain sand for construction. Dredging causes serious environmental damage, with direct repercussions for human rights, since it harms fisheries and can significantly degrade water quality.⁷⁵ During dredging, sediment, soil, creek banks and vegetation along the way are removed and deposited as dredge spoils.⁷⁶ Sediment introduced into the water system as a result of dredging and other related activities can destroy fish habitats. Toxic substances attached to sediment particles can enter aquatic food chains, cause fish toxicity problems and make the water unfit for drinking.⁷⁷ The waste material from dredging has often been dumped on the river banks, which disrupts the environment.⁷⁸ Moreover, the waste is often acidic and if it leaches into the water, is a further source of contamination.⁷⁹ While oil companies are responsible for significant dredging activities, dredging of rivers is also done by other local businesses.

2.6. INADEQUATE CLEAN-UP PROLONGS PROBLEMS

While the priority is to prevent pollution that damages human rights, swift and effective clean-up and rehabilitation of pollution and environmental damage, once these have occurred, is critical to protection of human rights. If pollution and environmental damage persist, then so, frequently, does the associated violation of human rights, driving people deeper into poverty through long-term damage to livelihoods and health.

As the cases in this report demonstrate, clean-up of oil pollution in the Niger Delta is frequently both slow and inadequate, leaving people to cope with the ongoing impacts of the pollution on their livelihoods and health. For example, at Ogbodo, where a massive oil spill occurred in 2001 (see case study, page 21), clean-up of the site was delayed for months, and even then was inadequate. When Amnesty International visited in October 2003, oil residue clearly remained on the water and the land, and many people claimed that they could no longer fish or hunt. Similarly, the oil spill at Bodo, described at the beginning of this report, was not stopped for more than two months. Eight months after the spill, no proper clean-up had been completed. Fisheries have been devastated and the long-term impacts are probably incalculable.

Failure to swiftly contain, clean up and remediate oil spills can increase the danger of fires breaking out and causing damage to life and property. Fires may be started deliberately or

accidentally but can be devastating. One of the worst incidents on record is the Jesse explosion and fire of 1998, when more than 1,000 people reportedly lost their lives.

2.7. CUMULATIVE IMPACT

Not much consideration has been given to the cumulative impact of multiple sources of oil pollution that have been inflicted on the Niger Delta for decades.⁸⁰ However, there is a significant difference between a one-off incident of pollution or environmental damage, and continual or repeated incidents in the same area over time. The people of the Niger Delta have been living with ongoing pollution and environmental damage.

The Niger Delta Environment Survey, a massive multi-year environmental assessment exercise conducted in the 1990s, but never published, underlined the impact, finding that:

[A]nalysis done in this study has shown the significant impact of oil production activities on the landscape of the Niger Delta. Many land use categories that were not there in 1960 increasingly gained prominence ... e.g., dredged canals, flare sites, burrow pits, pipelines... The significant environmental impact of oil production activities is also highlighted by the emergence on the landscape of such land use categories as saltwater impacted forest, submerged mangrove, dredge spoil and open bare surfaces.⁸¹

Jonathan Amakiri, Executive Director, Niger Delta Environment Survey

SECTION II

3. THE HUMAN RIGHTS IMPACTS OF OIL POLLUTION

In 2001 the African Commission on Human and Peoples' Rights (African Commission) stated, "pollution and environmental degradation to a level humanly unacceptable has made living in Ogoni land a nightmare."⁸² Similar pollution and environmental degradation is experienced across much of the oil producing areas of the Niger Delta.

It is important that the impact of the oil industry on the environment in the Niger Delta is understood as occurring in a context where the livelihoods, health and access to food and clean water of hundreds of thousands of people are closely linked to the land and environmental quality. As the cases and data presented in this report will make clear, the environmental damage that has been done, and continues to be done, as a consequence of oil production in the Niger Delta, has led to serious violations of human rights.

People living in the Niger Delta have to drink, cook with, and wash in polluted water; they eat fish contaminated with oil and other toxins - if they are lucky enough to still be able to find fish; the land they use for farming is being destroyed because of the lack of respect for the ecosystem necessary for their survival; after oil spills the air they breathe reeks of oil and gas and other pollutants; they complain of breathing problems, skin lesions and other health problems, but their concern are not taken seriously and they have almost no information on the impacts of pollution.

CASE STUDY: THE OGBODO SPILL⁸³

On 25 June 2001 residents of Ogbodo in Rivers State heard a loud noise, which sounded like an explosion. The sound came from a pipeline, which had ruptured. Crude oil from the pipe spilled over the surrounding land and waterways. The community notified Shell Petroleum Development Company (SPDC) the following day; however, it was not until several days later that a contractor working for SPDC came to the site to deal with the oil spill. The oil subsequently caught fire (there are conflicting reports about the cause of the fire; it is not clear if the community or the SPDC contractor set the oil alight).

Some 42 communities were affected by the Ogbodo spill as the oil moved through the water system.⁸⁴ The communities' water supply, which came from the local waterway, was contaminated. SPDC brought ten 500-litre plastic tanks of water to Ogbodo, but only after several days. Although SPDC refilled the tanks every two to three days, the community claimed that 10 tanks were insufficient for their needs, and emptied within hours of refilling. Local NGOs that visited the site confirmed that the community did not have enough water for drinking, cooking and washing.

Petrol fumes in the spill area were described as "intense", even days after the spill and fire, making breathing difficult.⁸⁵ People in the area complained of numerous symptoms, including respiratory problems. SPDC deployed a team of health workers to the area to treat those affected. The situation was so dire that some families reportedly evacuated the area, but most had no means of leaving. The government did not evacuate people, and the company carried out most of the emergency response work.

At least 26,500 barrels of oil were spilled at Ogbodo.⁸⁶ The cause of the spill is not clear. According to Father Kevin O'Hara of the Center for Social and Corporate Responsibility, an NGO based in Rivers State, SPDC accepted that the spill was caused by equipment failure. SPDC's annual report for 2001 appears to acknowledge equipment failure but also states that: "An unknown person closed in a valve on a major delivery trunkline..."⁸⁷

The impact of the spill and the fire on local livelihoods was extensive. Crops and fishing areas were badly damaged. The riverbank was described as "littered with dead fish and animals". Other economic activities were also affected. Amnesty International researchers visited the area in 2003, and found the community still suffering the impacts of the oil spill. One man reported that his breeding rabbits died in the fire that followed the spill; another, who earned money from collecting and selling sand for brickmaking, told Amnesty International that the quality of sand deteriorated following the oil spill, reducing his income. Community members stated that children would dive with buckets to collect sand and find the bottom of the river covered with oil. Their attempts to collect sand would stir up the oil, which then floated to the surface. Two boys showed Amnesty International researchers lesions on their bodies, which they believed were the result of diving in the polluted water. The children also complained of sore eyes.

The devastating impact of the Ogbodo oil spill was exacerbated and prolonged because of failure to contain the spill swiftly and because clean-up of the site was both slow and inadequate. Initial delays were created by SPDC not sending a contractor to carry out the clean-up, but the process was further delayed when intra-community conflict broke out over which company should be awarded the contract and when some members of the community feared that the spill would be cleaned up without assessing damages. In the Niger Delta, access to clean-up contracts is often seen as one way of gaining access to at least a little oil wealth, and the awarding of clean-up contracts is regularly associated with community conflict. A partial clean-up was eventually begun in February 2002, some eight months after the spill took place.⁸⁸

However, CSCR visited the site on several occasions following the spill, and reported that the clean-up was inadequate and that the contractor had focused only on the immediate vicinity of the leak, not the wider damage. The extensive spill area was reportedly divided into five

impacted zones, but the clean-up only covered two zones.⁸⁹

In February 2003, a representative of Shell from London came to Nigeria. He and SPDC staff visited the site and promised that a post-impact assessment would be done, and that the site would be remediated. However, no post-impact assessment appears to have been carried out. When an Amnesty International representative visited the area on 4 October 2003, the site had still not been adequately cleaned up. Researchers saw oil covering the surface of the water. Some remediation work was reportedly done in the period March-June 2005.

SPDC is reported to have agreed some form of compensation with the people of Ogbodo, which appears to have included involving them in future development projects, but was not based on any proper evaluation of the damage to their livelihoods and health. Some individuals and families received payments but these were reported by members of the community to be less than the market value of losses, while community claims in relation to the destruction of the water system have never been settled.⁹⁰

Amnesty International asked SPDC to comment on this case but the company did not do so.

The impact of oil operations in Nigeria was taken up by the African Commission in 1996 in response to a complaint filed by the Social and Economic Rights Action Center and the Center for Economic and Social Rights, on behalf of the Ogoni people. The complaint stated that the government of Nigeria had allowed the exploitation of oil reserves in Ogoniland “with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways”. It claimed that Shell and the Nigerian National Petroleum Corporation (NNPC) had “failed to maintain its facilities causing numerous avoidable spills in the proximity of villages and that the resulting contamination of water, soil and air had serious short and long-term health impacts”⁹¹ It also alleged that the government had failed “to protect the Ogoni population from the harm caused by the NNPC Shell Consortium.”⁹²

In a landmark decision in 2002, the African Commission found Nigeria to be in violation of a number of rights guaranteed under the African Charter,⁹³ and stated that:

[D]espite 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.

African Commission on Human and People's Rights⁹⁴

The decision of the African Commission clearly recognized the link between environmental destruction and human rights, and the responsibility of the government to protect people from such damage by non-state actors such as companies. The Commission called on the government, amongst other things, to protect the environment, health and livelihood of the people of Ogoniland, ensure adequate compensation to victims of the human rights violations, undertake a comprehensive clean-up of lands and rivers damaged by oil

operations, and to provide information on health and environmental risks as well as meaningful access to regulatory and decision-making bodies for communities likely to be affected by oil operations.

The African Commission's decision has never been implemented in Nigeria. Ogoniland remains polluted and the human rights violations detailed by the African Commission persist. Many of the problems outlined in the Ogoni complaint to the African Commission are found right across oil producing areas of the Niger Delta today, affecting hundreds of communities.

BOX 4: LAND AND OIL LAWS LAY FOUNDATIONS FOR HUMAN RIGHTS VIOLATIONS

Under Nigerian law, local communities have no legal rights to oil and gas reserves in their territory.⁹⁵ Moreover, their security of tenure and the protection of the right to an adequate standard of living, including housing, food and water, have been compromised by both Constitutional provisions and a number of laws that give precedence to oil operations in terms of access to land. Clause 44 of the 1999 Constitution states that "the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly." Under the 1978 Land Use Act, all land is vested in the Governor of the State and it is lawful for the Governor "to revoke a right of occupancy for overriding public interest". Overriding public interest includes "the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith."⁹⁶ Communities living on the land cannot prevent this from occurring, and there is no provision in the law for consultation.

Provisions within the Petroleum Act and the Oil Pipelines Act empower the Federal government to grant access and use rights in relation to land for the purposes of oil prospecting and mining. Once a company has been given a permit, licence or lease the state government has to give access to the land.⁹⁷ The communities are compensated according to a formula that primarily assesses value based on "surface goods" lost.⁹⁸ These are buildings, crops, economic trees and access to fishing grounds. The compensation calculations do not appear to consider the long-term implications of loss of access to critical livelihood resources. Moreover, the Land Use Act bars courts from addressing any concerns about the amount or adequacy of compensation paid to people who lose access to their land under the terms of the Act.⁹⁹

The combination of the Constitutional Provisions on oil and gas, the Land Use Act and aspects of the oil laws of Nigeria has given sweeping powers to the government to expropriate land for use by the oil industry without due process or adequate compensation, in contravention of its international human rights obligations, in particular the right to an adequate standard of living.¹⁰⁰ The provisions of these laws, which significantly undermine communities' security of tenure, also create the legal foundations for oil companies to operate without due regard for the impacts of their operations on human rights. For example, holders of leases and licences and permits to survey under the Petroleum Act, Oil Pipelines Act and subsidiary legislation are entitled to engage in a range of activities - from cutting down trees and other vegetation, to dredging - without any adequate safeguards in terms of the impact of these activities on the environment and associated livelihoods of the communities.¹⁰¹

The result is conflict between the communities and the oil companies over land. Companies depend on land because the oil is beneath it, while communities depend on land for farming and fishing.¹⁰² However, in almost every respect the human rights of the people of the Niger Delta have been undermined by the laws enacted to allow oil and gas extraction to occur.

3.1. POLLUTION OF WATER BODIES

The Niger Delta is wetland, and the health of the environment and the lives of people are intertwined with the health of the water system. The food, water, and cultural identity of many local peoples are closely related to the delta ecosystem. The rivers and streams are used for drinking, bathing, fishing, harvesting, and fermenting cassava. The Niger Delta ecosystem, as SPDC has noted, is “particularly sensitive to changes in water quality such as salinity or pollution...”.¹⁰³ In the light of this, one of the most disturbing findings of Amnesty International’s research was that the water system – the rivers, streams and ponds – have, for decades, been the receiving bodies for oil spills and waste discharge, including waste water and dumped drilling waste. Rivers and creeks have also been subjected to dredging and canalization. The combined and cumulative impact of these practices by oil companies has significantly impaired the Niger Delta’s waterways. Although some oil spills are the result of sabotage activities, none of the other sources of water pollution are related to sabotage.

The majority of the Niger Delta’s population has no access to potable water. Many communities depend on untreated surface water and wells for drinking water, which leads to health problems from waterborne diseases.¹⁰⁴ Three-quarters of all rural communities in the Niger Delta do not have access to safe water sources. Despite the widespread pollution of the rivers and creeks of the Niger Delta by oil spills and waste, Amnesty International could not find any study that considered the implications for humans of oil pollution in water that is used for drinking, bathing and other domestic purposes. The information that is available comes directly from the communities, such as the people affected by the Ogbodo spill of 2001, where thousands of people lost access to their main source of drinking water after an oil spill, and children reported skin and eye problems after diving in the oil-contaminated river.

As a party to the International Covenant on Economic Social and Cultural Rights (the Covenant), Nigeria is under an obligation to ensure the availability of sufficient, safe, acceptable water for personal and domestic uses.¹⁰⁵ The human right to water is part of the right to an adequate standard of living guaranteed under Article 11 of the Covenant, and is also closely linked to the rights to health (Article 12) and food (Article 11.1).¹⁰⁶ The right to water includes the right to maintain access to existing water supplies necessary for the enjoyment of the right, and the right to be free from contamination of water supplies.¹⁰⁷

Under international law, states must take steps to protect people’s economic, social and cultural rights from actions of non-state actors that would undermine enjoyment of those rights. The obligation to protect requires the Government of Nigeria to prevent third parties, including companies, from interfering in any way with the enjoyment of the right to water. The obligation includes; “adopting the necessary and effective legislative and other measures to restrain, for example, third parties from... polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.”¹⁰⁸

Although the government of Nigeria has some regulatory systems in place (discussed further in chapter 4), the evidence from the Niger Delta is that these do not work. For example, at Ogbodo, the oil spill undermined access to water for thousands of people, not only because of the spill itself but because of the failure to contain it and clean up the site effectively.

In cases such as Ogbodo, the pollution of drinking water is highly visible but in other cases people may not be able to detect what pollutants are in their water. There has been no effective monitoring by the government of the volumes of oil-related pollutants entering the water system, or of their impacts on water quality, fisheries or health. Monitoring and disclosing contamination levels is important as it can demonstrate if levels are above internationally recognized limits. This is particularly important for water sources that may be used for drinking, washing and bathing.

Where the water system on which people rely is contaminated, the government must act to ensure that an alternative source of clean water is provided. In the Niger Delta, the government does not provide alternatives. Communities told Amnesty International that companies sometimes provide alternatives (such as water tanks or bottled water) when a water source is contaminated but, in most cases, only people in the immediate vicinity of an oil spill have access to such alternative water supplies. People whose water is contaminated by waste materials, or who live downstream of oil spills, often do not have access to alternative sources of clean water. Moreover, when companies provide water supplies after an oil spill, they usually only do so for a short period of time. As far as Amnesty International could ascertain, the withdrawal of emergency alternative water supplies is not based on any scientific assessment as to whether the polluted water is fit for human consumption. Companies have also engaged in development projects to help communities construct water and sanitation facilities. However, some of these development projects have been criticized by local and international organizations as inadequate and poorly executed.¹⁰⁹

3.2. DAMAGE TO FISHERIES

Tens of thousands of families in the Niger Delta rely on fishing – in inland rivers as well as offshore – for both income and food. Damage to fisheries is widely acknowledged by governmental and non-governmental sources as one of the major impacts of the oil industry.¹¹⁰ According to UN Food and Agriculture Organization (FAO): “For brackish-water resources, the state of the resources is deplorable. Fishing pressure is very high, arising from the lack of alternative employment for estuarine communities. Oil pollution further complicates the scenario, with the devastation of aquatic life in the area.”¹¹¹

Because of oil exploration there are no more fisheries ... We experience the hell of hunger and poverty. Plants and animals do not grow well, the fish have died...
Jonah Gbemre from Iwerhekan Community, Ughelli South Local Government Area of Delta State, speaking to Amnesty International, April 2008

Pollution kills fish, their food sources and fish larvae, and damages the ability of fish to reproduce, causing both immediate damage and long-term, cumulative harm to fish stocks.¹¹² When oil and wastes are discharged into an enclosed body of water, fish are directly exposed to pollutants and can die. In a moving body of water, such as a river, fish may be able to move away from the immediate vicinity of oil pollution but fish eggs and larvae cannot escape and frequently die. This has caused a major decline in overall stocks, according to fisheries and environment pollution experts. Oil spills and other oil-related pollution have also seriously damaged the Niger Delta's mangroves, which are an important fish breeding area and are very hard to clean once polluted.¹¹³

In several of the major oil spills documented in this report local fisheries were badly damaged. At Batan, where a major spill occurred from an underwater pipe in 2002 (see page 47), local women openly lamented at the sight of piles of dead fish, killed as a result of the pollution.¹¹⁴ At Bodo, fishermen described how far they have to travel from the spill site to be able to fish. In each case one or more communities had its livelihood severely damaged in the short to medium term. The extent of long-term damage to fisheries is not known, and in many cases sites suffer from repeated oil spills. At Batan, oil leaks were reported in the same location in 2000 and 2001¹¹⁵ while at Bodo, where a major spill began in August 2008, a second spill was reported at the site on 2 February 2009.¹¹⁶

Oil pollution has also affected the shellfish population. The collection of shellfish - unlike traditional fishing - is often done by women, who gather oysters and periwinkles from the streams and mangroves. Because shellfish are sedentary, they are easily destroyed by oil pollution. In K-Dere in Ogoniland, which has been affected by several oil spills, women reported to Amnesty International that the shellfish which had been common in the mangroves and on which they relied, both to sell and for food, are disappearing because of the pollution. They report that reduction in the number of shellfish has undermined access to protein for the community.¹¹⁷

The direct effects of oil on inshore shellfish beds, and fish and shellfish in aquaculture units are of particular concern. There is evidence that wild fish are able to detect and avoid oil-contaminated waters, but captive fish and shellfish are unable to swim away into unpolluted areas. There are documented instances of oil spills in which shellfish have been killed in significant numbers ...

International Petroleum Industry Environmental Conservation Association (IPIECA)¹¹⁸

BOX 5: NO COCKLE HARVEST

Nenibarini Zabbey is Head of the Environment and Conservation Program at the Center for Environment, Human Rights and Development in Rivers State. He grew up in the Niger Delta and has direct experience of how oil pollution damages livelihoods and undermines food sources. "When I was in school we used to collect cockles during holidays, and use the money we got from selling them to buy books. After oil spills the cockle population decreased so much that people could no longer make money with harvesting cockles. People were not compensated for this loss."¹¹⁹

As well as traditional fisheries, many people also engage in aquaculture, usually in small ponds, where fish are harvested for food and for sale. When oil spills into a pond, frequently all the fish will die, destroying a key source of livelihood. In June 2005, a pipeline surveillance company, contracted by Shell, discovered an oil spill from a high-pressure pipeline operated by Shell, in Oruma, Bayelsa State. The oil reportedly spread into many fish ponds and killed fish and shellfish on which the community relied for livelihood and food. One of those affected, Alali Efanga, whose fishponds were rendered useless after the spill, said: "I inherited the fishponds from my late father. Since the spill I have lost most of my income. Now we live from hand to mouth: sometimes I go into the bush, sometimes a company gives me a day's work for 500 Naira (approximately US\$4)."¹²⁰ Alali Efanga is one of four Nigerians being supported by Friends of the Earth Netherlands to bring a court action against Shell in the Netherlands, seeking damages for the loss of his fishponds and livelihood.

[T]here is no evidence so far that any oil spill has killed sufficient numbers of fish in open ocean situations to significantly affect adult populations. Potential damage is greater in inshore shallow water areas, particularly for species with restricted spawning grounds. At greatest risk of direct effects (death or tainting) are inshore shellfish beds, and fish and shellfish in aquaculture units where there is a greater potential for direct contamination by oil.

International Petroleum Industry Environmental Conservation Association (IPIECA)¹²¹

Many other forms of oil industry pollution damage fisheries in the Niger Delta. The volume of oil and other chemicals in produced water contributes to pollution, and is discharged into rivers and estuaries as well as offshore. A study by Nigerian scientists in 2003 found that “the continuous discharge of wastewaters into a freshwater environment could cause major damage to aquatic and agricultural resources.”¹²² Other environmental and marine experts have raised concerns that ongoing discharge of produced water is likely to have a negative impact on water quality, fisheries and coastal ecosystems.¹²³

Communities, local NGOs and scientists also reported that dredging¹²⁴ and the construction of canals have all had a negative effect on fish grounds.¹²⁵ Moreover, damage to the Niger Delta’s mangroves by oil spills, seismic operations and the dumping of waste have undermined long-term recovery potential for the Niger Delta.

Seismic operations have a devastating effect on ... farmland and fish grounds. The company gave chips to the people and 5,000 naira. [approximately US\$40].

Victor Egbe from Akala-Olu Community in Rivers State Nigeria, interviewed by Amnesty International, April 2008, Port Harcourt, Rivers State, Nigeria

Road construction has also affected fisheries. The Gbarain (sometimes spelt ‘Gbaraun’) link road is one of the most frequently cited examples of bad road construction in the Niger Delta. The road was built in 1990 for SPDC. According to environmental experts it was built without adequate bridges or culverts. As a consequence the road blocked the local water system, destroying forests, including trees of economic value to the local community and damaging local fisheries, seriously undermining local livelihoods. In March 2008, Amnesty International visited Gbarain with Tari Dadiwei of Biosphere Resources Monitors in Bayelsa State, who has worked with the affected communities for many years. Amnesty International researchers saw first-hand the continuing impact of flooding and blocked water systems on local vegetation and the blocking of fishing access. Before the road construction, according to Tari Dadiwei, “fishermen and women from the Gbarain field communities engaged in catching a lot of fishes, shrimps and lobsters during the flood season to enhance their economic base... but the livelihoods of several local communities have been destroyed beyond recovery. The impact has been ongoing since 1990.”

Almost every community visited by Amnesty International recounted that creeks, ponds or rivers had been damaged by oil spills or other oil-related pollution – frequently more than once. These accounts were consistent with each other and are supported by the testimony of academics and NGOs. Although the story is common across the oil producing areas, the government carries out no effective monitoring.

Given the importance of fisheries as a source of income and food, the failure to monitor the impact of oil pollution on them is difficult to explain. While government fisheries experts said that fishermen “cried out about oil pollution”, they did not have the resources to document the effects beyond their own interaction with fishermen and visual evidence. Nor did they appear to have any means of effective communication with the companies on the issue.¹²⁶

Some of Nigeria’s biggest oil spills have occurred offshore. However, apart from major spills, the impact of oil pollution on offshore fisheries is even less well-documented than the impact on inland fisheries. This is partly because of lack of witnesses as well as the difficulty of monitoring (which would require boats and helicopters to which regulatory bodies rarely have independent access). Although there are numerous oil operations off Nigeria’s shore, there is almost no independent monitoring or reporting on either oil pollution or its impact on fisheries. Some fishing communities on the coastline have reported oil slicks which appear to come from offshore operations, but there do not appear to be any data available on these spills.

Moreover, the way in which some oil companies deal with oil spills offshore – where they do so – causes further pollution problems. They sometimes use chemical dispersants. These chemicals break up the oil on the surface, dispersing it in the water. Both government and non-government fisheries experts expressed concern about the use of chemical dispersants in the relatively shallow waters of the Niger Delta. Dispersants do not clean the water; the oil is simply broken up and falls to the bottom where it can kill fish food, further damaging fish stocks.¹²⁷ In an interview with Amnesty International, the Nigerian Agip Oil Company (NAOC)¹²⁸ agreed with this concern, stating that all chemical dispersants have a strong toxic component, and the use of such chemicals risks further contamination of the water. NAOC stated that they “hardly ever” use chemical dispersants in the Niger Delta. Total claimed that they only used government-approved dispersants and only in water that is deeper than 30m, while SPDC was not willing to provide any information on their use of dispersants.

Oil pollution not only damages fish stocks, but also damages fishing equipment. According to the Department of Fisheries in Port Harcourt, damage to equipment, such as nets of artisanal fishers, often means an end to their livelihoods as fishermen, since both the cost and lack of availability of some equipment means that it cannot be replaced.

Oil pollution also raises concerns about food safety in an area where so many people depend on fish as a main source of protein. Some academic studies have shown elevated levels of dangerous chemicals in fish exposed to oil pollution. For example, a study carried out for Friends of the Earth in Ikot Ada Udo in Akwa Ibom State in 2008, following an oil spill, stated that “the fish tissue has contents of heavy metals ... higher than what is found in uncontaminated fish tissues. These high values must have come from the oil pollution.”¹²⁹ Communities complain that fish eaten from ponds or streams after an oil spill cause stomach upsets. In Ebocha, people complained of fish “tasting like kerosene” after oil had entered the water.¹³⁰

The ingestion of hydrocarbon directly or indirectly through contaminated food can lead to negative health effects. Although there are few studies internationally that have explored this problem, where evidence does exist, communities report gastric disturbances and skin complaints related both to exposure to oil through food and to direct contact with

contaminated water, soil and food.¹³¹ Communities in the Niger Delta reported gastric disturbances and skin complaints to Amnesty International at many of the sites we visited and said these problems were associated with exposure to oil. Local health workers in some areas also said they believed some skin problems and gastric problems were related to oil exposure.

3.3. DAMAGE TO FARMS AND NATURAL RESOURCES

Many people in the Niger Delta rely on agriculture for food and for their livelihood. The main crops grown include yam, cassava, cocoa, pumpkin and various fruits. Oil pipelines run close by – or sometimes right through – farmland, and other oil infrastructure, such as well heads and flow stations, are often close to agricultural land. Even without oil spills, the existence of such infrastructure within a relatively densely populated rural setting can cause difficulties for farmers. Communities in Ohaji/Egbema local government area in Imo State, for example, pointed out to Amnesty International that pipelines associated with three oil companies cover a great deal of farmland in the area, which has reduced farming activity.¹³²

When oil spills occur on agricultural land, they are usually devastating. Crops in the ground rarely survive. The immediate effect is the destruction of any crops that come into contact with the oil. Fires associated with oil spills often increase the spread of the damage. Amnesty researchers visited eight sites affected by oil pollution in March and April 2008. At each site communities complained of damage to agricultural land and showed Amnesty International where oil pollution damage to crops or agricultural land was visible.

An oil spill need not be devastating. A swift and effective process of clean-up, remediation and compensation should minimize damage to livelihoods. However, Amnesty International found serious flaws in these processes, which are discussed in chapter 4. Many people described the loss of crops as a result of oil spills and associated fires, for which they received inadequate compensation or none at all.

A significant problem for the rights of farmers in the Niger Delta is the failure to address the long-term impacts on soil fertility and agricultural productivity of oil pollution. Experts said that in some cases soils recover in a reasonably short time, while in others the impact can last for decades. One problem is that some sites have been affected by repeated spills.

CASE STUDY: EBUBU – THE LONG-TERM IMPACTS

Ebubu provides one example of how longstanding the effects of oil spill pollution can be in the Niger Delta. The exact date and cause of this spill are a matter of controversy, but it took place some time between 1967 and 1970. A scientific study of the site published in 1992 found that it had still not recovered, some 20 years later.¹³³ At the time of the 1992 study, the oil was still seeping into the nearby river where the people sourced water for drinking and other domestic activities. A crust of burnt oil was found on the surface of the soil, and the vegetation has still not fully recovered.

Today – some 40 years after the original spill – the site has still not been adequately cleaned up. SPDC has described Ebubu as a “high-risk” site. In 1995 SPDC claimed that it had undertaken periodic clean-up of the site as oil seeped to the surface.¹³⁴ However, the

company subsequently reported that it could not gain access to the site to do a proper remediation.

In numerous cases, the long-term effects of oil spills on soil have resulted in undermining a family's only source of livelihood. Communities report long-term effects that include delayed germination of plants, stunted growth in trees and smaller fruit, and, in some cases, land is rendered unusable for years or even decades. These longer-term impacts are rarely considered in compensation deals; rather, people are compensated for the loss of the crop in the ground and not the long-term reduction in agricultural productivity. There have been some prominent cases – such as the Bomu Well II blowout – where an oil spill rendered agricultural land unusable for almost two decades, but where compensation was paid only for the loss of the crops and economic trees on the land at the time of the incident (later rectified in court – see page 77 of this report).¹³⁵

The impacts of oil spills on farmland in the Niger Delta have been studied at different sites in what are known as post impact assessments (studies required by Nigerian regulators)¹³⁶ conducted by environmental scientists, usually working for the companies. Analysis of these studies could provide valuable data on overall damage to soil productivity in the Niger Delta. However, they are not made public.

CASE STUDY: THE OIL SPILL AT KIRA TAI

On 27 March 2008, Amnesty International visited Kira Tai in Ogoniland, where an oil spill occurred on 12 May 2007. Oil seeped out of the Trans-Niger pipeline. The oil spill affected agricultural land and a local water pond. Crops were destroyed and fish in the pond died. Chief Kabri Kabri reported the incident to SPCD, who sent some people to the site. They found three holes in the underside of the pipe and – according to the Chief – confirmed corrosion as the cause of the leak. The joint investigation team report, which Amnesty International later obtained, confirms the information given by Chief Kabri Kabri (oil spills are supposed to be investigated by a team including the company, government representatives and community representatives – although this does not always happen).

SPDC clamped the pipeline and sent a team, which mechanically removed much of the spilt oil. At the time of Amnesty International's visit, no further action had been taken by Shell to clean up the site or to compensate the affected people, who lost crops. Amnesty International raised the issue of the Kira Tai spill with SPDC in a meeting in Port Harcourt on 1 April 2008. SPDC stated that the cause of the spill was the closure of a valve by unknown persons, causing a build-up of pressure, and was therefore sabotage.

The joint investigation team report, however, states that the cause was corrosion. It also states "readings taken at leak points and within de-coated pipeline sections shows appreciable loss in pipe thickness." Five SPDC representatives, seven members of the community and one representative from the National Oil Spill Detection and Response Agency signed the report.

SPDC also stated that the community had initially blocked access to the site, but did not

explain why so little follow-up action to clean up the site had been taken more than nine months after the spill. According to SPDC, containment and recovery of the free phase oil was done but, 10 months after the spill, the site “has been assessed for clean-up”.¹³⁷

A lack of data makes it difficult to assess the scale of the impact of oil spills on agriculture. However, as noted earlier, one major indication of the impact on soils is the number of sites that need to be remediated (this is a site that has been affected by an oil pollution, which the government authorities and companies accept requires some action to rehabilitate the soil and/or water). In 2008 there were at least 2,000 such sites in the Niger Delta. However, neither the companies nor the government agency responsible for the remediation process could or would confirm the size of these sites, whether they were agricultural land, nor the impact on ability to grow crops. Environment experts and NGOs, however, claim that many of the sites would be close to communities and likely to affect agricultural land.

As with fisheries, oil spills are not the only problem confronting farmers. Environmental experts told Amnesty International that, particularly in the past, some companies dumped drilling waste on farmland.¹³⁸ Although the situation is believed to have been worse in the past, when there was less scrutiny, reports of waste dumping continue.¹³⁹

CASE STUDY: THE OIL SPILL AT RUKPOKWU¹⁴⁰

On 3 December 2003, part of an oil pipeline in Rukpokwu in Rivers State burst, devastating the once fertile land around it. The resulting oil spill destroyed farmlands, fishponds and water wells, and deprived farming families of vital income. The pipeline is operated by SPDC. A joint investigation team confirmed the cause of the spill to be a tear at the bottom of pipe, most likely due to internal corrosion.

When Amnesty International visited the site in March 2004, the delegates met one of those affected, Chief Jonathan Wanyanwu, who bought his land near the site in 1965. Since then, three oil spills have originated from the same pipeline. Before the oil spill, the fields yielded palm oil for sale and food for the family. Speaking to Amnesty International after the 2003 spill, Chief Jonathan Wanyanwu said: “I have trees on six acres but now they are all destroyed. You can only see small leaves on the trees. My trees are burnt to ashes. The soil is now contaminated and bad. I fear that during the rainy season the oil spill will double and all the trees will be under the mix of oil and water ... it could have been a nice farm.”

3.4. THE RIGHT TO FOOD

Article 11 of the International Covenant on Economic Social and Cultural Rights establishes “the right of everyone to an adequate standard of living ... including adequate food”. The right to adequate food requires States to ensure the availability and accessibility of food.¹⁴¹ Availability includes being able to feed oneself directly from productive land or other natural resources.¹⁴² As part of their obligation to protect people’s resource base for food, the UN Committee on Economic, Social and Cultural Rights has made clear that States Parties should “take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.”¹⁴³

The African Commission has also identified government obligations in the context of the right to food, stating:

The African Charter and international law require and bind [states] to protect and improve existing food sources and to ensure access to adequate food for all citizens. ... the right to food requires that the [government] should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' effort to feed themselves.

African Charter on Human and People's Rights¹⁴⁴

The government has clearly failed to protect the natural resource base upon which people depend for food in the Niger Delta, and has contravened its obligation to ensure the availability of food. Thousands of oil spills and other environmental damage to fisheries, farmland and crops have occurred over decades. The lack of adequate clean-up and remediation of the land, as well as the failure to assess and address the possible longer-term effects on agricultural land, crop productivity and food safety, have made food security even more precarious.

The UN Committee on Economic, Social and Cultural Rights has clarified that the obligation that food be "free from adverse substances"¹⁴⁵ sets requirements for a range of protective measures by both public and private means to prevent contamination of foodstuffs.

In the landmark Ogoni decision, referred to earlier, the African Commission held that Nigeria had violated the right to food, including by allowing private oil companies to destroy food sources.¹⁴⁶ Almost seven years after this decision, the government of Nigeria has continued to violate its obligations under the Covenant and the African Charter by failing to take effective measures and to enforce laws to prevent contamination and pollution of the food sources (both crops and fish) by private oil companies in the Niger Delta.

As noted earlier both studies and the anecdotal testimony of communities have pointed to potentially serious food safety problems in the Niger Delta related to oil pollution. Referring to an impact assessment of the 1983 Oshika oil spill in Rivers State,¹⁴⁷ the United Nations Development Programme (UNDP) stated: "the implication of these findings is frightening, given that human health is tied to the web of food. Udoette (1997) reported, for example, that ingestion of hydrocarbon directly or indirectly through contaminated food leads to poisoning. Some researchers, such as Kanoh et al. 1990, and Snyder and Hedlim 1996, have documented the toxic and carcinogenic effects of exposures to high concentrations of hydrocarbons."

A study carried out for Friends of the Earth Netherlands found, "High contents of some heavy metals above the normal levels are also detected in the soils and water bodies, and also in the tissues of fish and plant samples. This would clearly affect the qualities of crops and aquatic animals. Heavy metals are known to accumulate in the food-chain and could get into the drinking water."¹⁴⁸ Even if food safety is not an issue, the acceptability of food tainted by oil is a concern. As noted earlier, exposure to oil can cause unpleasant odours and taste in fish.

3.5. THE RIGHTS TO WORK AND TO AN ADEQUATE STANDARD OF LIVING

I want them to come and see what we are experiencing. There is no food for us. We need rehabilitation because all these things are different types of fish and we depend on these ones for our lives and today we are dying of hunger – there is pollution in the air, in the water and everywhere.

Member of the Bodo community describing the damage that oil pollution has caused to fisheries in his community

Article 6 of the Covenant obliges States Parties to recognize the right of everyone to the opportunity to gain their living by work which they freely choose or accept, and to take appropriate steps to safeguard this right. The Government of Nigeria is obligated to take all necessary measures to prevent infringements of the right to a gain a living through work by third parties.

Article 11 of the Covenant also establishes "the right of everyone to an adequate standard of living ... and to the continuous improvement of living conditions". This Article reflects Article 25 of the Universal Declaration of Human Rights (UDHR) which states that: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." This right is closely linked with the rights to food and housing, which form a part of the right to an adequate standard of living, but also to the right to gain a living by work and to the right to health.¹⁴⁹

Both the government and the oil companies recognize that the majority of the people of the Niger Delta rely on fisheries, subsistence agriculture and associated processing industries for their livelihood.¹⁵⁰ Despite this, pollution of the environment by the oil industry has damaged the vital resource base on which people depend to gain a living and has also, therefore, reduced their standard of living.

As described above, fisheries and agriculture have been damaged as a result of oil spills and waste dumping and other harmful environmental practices. In the case of damage to fisheries and farming land, the compensation that is paid often fails to take into account the longer-term impacts of the pollution on livelihood activities. With few alternative sources of livelihood and few social safety nets, people cannot find alternatives for the lost income. Despite the oil wealth the Niger Delta is under-developed. While companies have undertaken development projects, including in agriculture and aquaculture, these have had variable results. Some have provided important benefits, while many have proved unsustainable and ineffective.¹⁵¹

3.6. THE RIGHT TO HEALTH AND THE RIGHT TO A HEALTHY ENVIRONMENT

Article 12.1 of the Covenant guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health..." The UN Committee on Economic, Social and Cultural Rights (the Committee), the expert body which monitors the implementation of the Covenant, has clarified that:

*the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as ... a healthy environment.*¹⁵²

Article 12.2 of the Covenant further provides that, "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include ... (b) The improvement of all aspects of environmental and industrial hygiene."

The Committee has clarified that a state's obligation under Article 12.2(b) extends to "the prevention and reduction of the population's exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health".¹⁵³ The African Charter also guarantees the right to health (Article 16) and to a general satisfactory environment (Article 24). The African Commission found the Government of Nigeria to be in violation of these rights, and stated that pollution and environmental degradation in Ogoniland in the Niger Delta were at a level that was "humanly unacceptable and has made living in the Ogoniland a nightmare".¹⁵⁴ The level of pollution and environmental degradation found in Ogoniland, which the African Commission considered to be a breach of human rights, is found in most parts of the Niger Delta today.

The water system is widely polluted and many people still rely on the rivers and creeks for drinking water. Despite community concerns about the health implications of drinking contaminated water, no systematic monitoring of water quality is done. While companies provide emergency water supplies to communities when an oil spill occurs, the supply of water is temporary and often does not meet the needs of those beyond the immediate spill vicinity. Moreover, it appears that emergency water supplies are terminated in some – if not most - cases without any adequate independent assessment of the pollution affected water to determine if it is fit for consumption.

The rivers and creeks are widely used for bathing and other domestic purposes. Concern has been expressed about the impacts of regular exposure to polluted water (for example, many people complain of skin problems). Once again, however, no studies are known to have been carried out to ascertain the health and safety implications for people regularly in physical contact with oil polluted water in the Niger Delta.

General exposure to oil spills may also lead to health problems, as noted above. Individuals in communities that have experienced oil spills report that the spill causes skin rashes and breathing difficulties. Amnesty International could not find any medical data in the Niger Delta on the issue. However, a report in the medical journal, *The Lancet*, noted some similar effects reported following the clean-up of a Spanish oil spill. Referencing a report by the Spanish Higher Research Council released on 2 January 2003, *The Lancet* noted: "Direct contact with the oil or its vapours can cause skin rash and eye redness while prolonged and repeated exposure at low concentrations can cause nausea, dizziness, headache and somnolence."¹⁵⁵ The report noted that similar symptoms have been recorded elsewhere.

For many years, residents of the Niger Delta have complained that gas flares seriously damages their quality of life and pose a risk to their health. Flares, which continue for 24 hours a day in many areas, cause serious problems and discomfort for people living near the sites where flaring occurs. Flaring creates noise pollution and local communities live with

permanent light. Flares also produce considerable heat in the immediate area. When gas is flared, the combustion is often incomplete, so oil droplets fall on waterways, crops, houses and people. Smokey flares have been a persistent problem in some areas.

During interviews with Amnesty International in Ebocha in Rivers State, community members complained of black oil dust collecting in people's homes and on clothes and food. They also claim that the roofs of houses are subject to accelerated rusting because of acid rain associated with the flares. Similar reports of the impact of gas flaring have been made by other communities.¹⁵⁶

At Ebocha pregnant women have reportedly had to leave the area because of exhaustion they relate to the gas flares. Amnesty International consulted a medical expert about the likely impacts of flaring. According to Dr Carolyn Stephens, Reader in International Environmental Health at the London School of Hygiene & Tropical Medicine, "While there is no direct evidence of impacts of gas flares on pregnant women, they are more likely to be vulnerable to any airborne contaminants during this period and exposures to oil-related contamination have been shown to be linked to maternal outcomes such as spontaneous abortion in other settings."¹⁵⁷

The impact of gas flaring on human health in the Niger Delta has not been assessed or monitored. However, the combustion products of petroleum are known to have negative health effects, which include carcinogenesis. A number of factors, including proximity to the flares, would be likely to influence their effect on health. Despite repeated expressions of concern by both communities and health professionals, neither the government nor the oil companies have carried out any specific study to look at health and flaring, that Amnesty International could discover. SPDC told Amnesty International in a meeting on 15 September in The Hague that they did have some data on gas flaring and health. However, they were not clear what it showed and Amnesty International was not given these data. According to one SPDC official at the meeting, their data showed "no huge overriding concerns" related to gas flaring. It was unclear what "huge overriding concerns" meant. None of the communities or medical professionals to whom Amnesty International spoke in the Niger Delta was aware of any such study. The Nigerian Agip Oil Company (NAOC) stated that claims of negative health impacts were "not supported by any medical statistics." The company also said that health screening of workers living in the vicinity of flares "did not disclose any abnormal results to support the claim."¹⁵⁸ It is not clear what standard health screening might show, or how many employees living close to flares are subjected to screening.

Referring to the situation at Ebocha, where NAOC flares gas, the company went on to say that, "At present we have no evidence about the reported health problem related to flaring. This is the first complaint we receive on this subject and it has not been recorded from other communities living where there is gas flaring." Amnesty International found this comment somewhat surprising given the level of coverage in Nigerian and international media on concerns at Ebocha, as well as other high profile campaigning on the gas flaring and its impacts in Nigeria.¹⁵⁹ In response to the concerns raised by Amnesty International NOAC said that the company was "going to conduct an air quality monitoring in the flaring area."¹⁶⁰

Some studies have found a link between gas flaring and acid rain and acid deposition, though the quantity of acid deposition as a result of gas flaring in the Niger Delta is not

clear.¹⁶¹ According to a medical expert consulted by Amnesty International, this requires further research. Some international studies have highlighted concerns that drinking water may be affected by acid deposition.¹⁶² Studies on the subject are scarce and the health impacts are not well understood.¹⁶³ However, given the fact that, in the Niger Delta, people frequently have to drink water from exposed sources such as creeks, an investigation into the health impacts of acid deposition on water sources should be undertaken.

The noise pollution, the discomfort generated by the light from flaring, the black dust and soot that settles in people's homes and on food and clothes, undermine the quality of life and the right of people to live in a healthy environment. The government's obligation to protect the right to health requires it to investigate and monitor the possible health impacts of gas flaring, considering the communities' concerns about the risks that it poses for their physical and mental health. The failure of the government and the companies to take the concerns of the communities seriously and take steps to ensure independent investigation into the health impacts of flaring, and to consider that the community has reliable information, is inexplicable. It is all the more difficult to understand it in light of the fact that the courts in Nigeria have addressed the impact of gas flaring on human rights.

On 14 November 2005 the Federal High Court of Nigeria ruled that gas flaring in the Iwerekhan community in Delta State was a violation of the constitutionally guaranteed rights to life and dignity, which include the right to a "clean, poison-free, pollution-free, healthy environment".¹⁶⁴ The view of the court echoed the findings of the African Commission in the Ogoni case, holding that the right to a life with dignity cannot be upheld when people are forced to live in a polluted environment. The court ordered an immediate end to flaring, declared the gas flaring laws to be "unconstitutional, null and void". SPDC and NNPC, the companies responsible for the flares, obtained a stay of the court order and, as of May 2009, flaring continued at Iwerekhan.

Although the government has announced deadlines for the cessation of gas flaring in the Niger Delta, these commitments have not been backed up by the required legislative changes. According to lawyers, the deadlines have not been incorporated via an amendment to existing law, which means the publicized deadlines do not have the force of law.¹⁶⁵

The contamination of food – noted above – also raises serious health concerns. Several sources have expressed concern about the potential for people to ingest harmful substances through the food chain. Communities report that after oil spills fish often smell and taste of petrol. Again no studies appear to have been done to ascertain the health risks which the population faces as a consequence of soil and water pollution, although people are highly dependent on agriculture and fisheries for food.

However some studies have clearly pointed to oil pollution-related problems. For example, a World Bank report in 1995 noted that: "A study of metal concentrations near the Warri refinery found elevated level in both soils and plants. The combination of metals and other air pollutants from the refinery complex may mean air pollution, as well as wastewater, is impacting human and ecosystem health (Ndiokwere and Ezihe, 1990)."¹⁶⁶

The oil industry is only one factor in the very poor health situation in the Niger Delta – other sources of pollution exist, and the government's failure to develop health services and

effective water and sanitation facilities are also major factors. However, oil industry pollution has, for decades, compromised the basic underlying determinants of health in the area.

It is clear that the government of Nigeria has failed to promote conditions in which people can lead a healthy life. The environment is a critical underlying determinant of health. The government's failure to prevent widespread pollution as a consequence of the oil industry has directly led to the deterioration of the living situation for affected communities in the oil producing areas of the Niger Delta. The UN Committee on Economic, Social and Cultural Rights has stated that violations of the right to health can follow from the failure of a state to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This includes such omissions as the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.¹⁶⁷ As chapter 4 will demonstrate, the government has persistently failed to enforce environmental regulation in the context of the oil industry in the Niger Delta.

4. EVADING RESPONSIBILITY

The oil companies, particularly Shell Petroleum, have operated for over 30 years without appreciable control or environmental regulation to guide their activities.

UNDP Niger Delta Human Development Report, 2006

The preceding sections describe the widespread oil pollution problems of the Niger Delta and the impacts on the human rights of the people of the Delta – insofar as these are known. This section addresses the question of why such pollution has gone relatively unchecked, and who is responsible. As noted at the start of this report, the oil industry in the Niger Delta comprises the government and multinational companies. The multinational companies, however, are the operators. Amnesty International's research demonstrates that the government of Nigeria is failing in its obligation to respect and protect the rights of people in the Niger Delta. Some of the oil companies have exploited a weak regulatory system, and their operations are characterized by failure to take appropriate preventive and remedial action in relation to pollution and environmental damage.

This chapter examines the role of both the government and the companies.

4.1. THE STATE'S DUTY TO PROTECT

Under international law, the government of Nigeria has an obligation to respect, protect and fulfil human rights. The obligation to respect rights means states should refrain from any measures that would result in preventing or undermining the enjoyment of rights. The obligation to protect requires measures by states to ensure that other actors (such as companies) do not undermine or violate human rights. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of human rights. While there is evidence that the government of Nigeria is failing on all three levels in the Niger Delta, this report focuses primarily on the duty to protect.

The African Commission, in the Ogoni decision, dealt specifically with the government of Nigeria's duty to protect people's human rights from damaging acts that may be perpetrated by private parties. The Ogoni decision was specific to the situation in the Niger Delta and the government's duty to protect rights in the context of oil company operations. As the Ogoni case made clear, the failure of the government to control the oil companies effectively had devastating consequences for human rights.

The duty to protect human rights against abuses or harm by business requires that the state take all necessary measures to prevent such abuses. In the context of the oil industry, effective prevention involves establishing an appropriate regulatory system based on international best practice and the effective enforcement of regulations. This point is clearly reflected in the recommendation of the African Commission in the Ogoni case, to: “Ensure that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry”.¹⁶⁸

Effective protection of human rights in the context of an industry which involves dangerous substances and a heightened risk to human life and health should also include measures for dealing with accidents and emergencies, such as oil spills and fires.

While action to prevent oil operations from harming human rights and effective systems to deal with accidents and emergencies should be the priority, the UN Special Representative of the Secretary-General on Business and Human Rights underlined in a 2008 report to the Human Rights Council, that: “State regulation proscribing certain corporate conduct will have little impact without accompanying mechanisms to investigate, punish, and redress abuses.”¹⁶⁹

Protecting human rights in the Niger Delta requires that the government has adequate means in place for dealing with companies’ failures to comply with laws and regulations.

4.2. THE ABSENTEE GOVERNMENT: FAILURE TO PROTECT RIGHTS

For decades the oil industry in the Niger Delta has operated with little or no effective regulation or monitoring.¹⁷⁰ This has not been for want of laws or statutes on the books. Nigerian law prohibits pollution of land and water, requires oil companies to ensure “good oil field practice” and to comply with internationally recognized American Petroleum Institute (API) and American Society of Mechanical Engineering (ASME) standards. For example, Section 6 (3) of the Oil Pipelines Act requires that the holder of a permit to survey “take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon...”. The Petroleum (Drilling and Production) Regulations (1969) require that licensees or lessees “adopt all practicable precautions ... to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.”¹⁷¹

BOX 6: MAIN OIL INDUSTRY LEGISLATION AND REGULATIONS**Petroleum Act (1969)**

Under this Act, the Minister may grant oil exploration licences, to explore for petroleum; oil prospecting licence, to prospect for petroleum; and oil mining leases, to search for, win, work, carry away and dispose of petroleum. The Act defines the terms of licenses and leases. Subsidiary legislation includes the Mineral Oils (Safety) Regulations and the Petroleum (Drilling and Production) Regulations.

Oil Pipeline Act (1956)

Under this Act the Minister can grant permits to survey routes for oil pipelines and licences to construct, maintain and operate oil pipelines.

Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) (revised 2002)

This is a key reference text for oil companies in relation to translating Nigerian law into operational practice. At over 300 pages, EGASPIN covers the handling of wastes, including wastewater and drilling waste, oil spillage, and dealing with effluents.

Alongside the oil industry laws are the country's environmental laws. Most were only developed several decades after oil operations began. The Federal Environmental Protection Agency, which subsequently became the Federal Ministry of Environment, was only established in 1988. In 2007 the Federal Environment Protection Agency Act was repealed and replaced by legislation that significantly restricted the ability of the Ministry of Environment to enforce environmental law in relation to the oil and gas industry (see *Weakening the regulatory oversight of oil companies*, page 43).

The content of Nigeria's laws on oil operations is considered minimally sufficient by environmental and oil experts, in terms of compliance with international standards in relation to oil operations.¹⁷² However, these laws are also considered to have significant flaws, particularly as they relate to the impact of the oil industry on the environment and the affected population. Moreover, because the laws are so poorly enforced, in reality the oil industry remains largely self-regulated or, frequently, unregulated. The failure to enforce laws and regulations is related to three factors:

- The fact that the regulator is a partner in, and major financial beneficiary of, the oil projects.
- Confusion and lack of capacity within the regulatory system.
- Under-resourcing of the regulatory bodies dealing with environmental issues.

CONFUSION AND CONFLICTS WITHIN THE REGULATORY SYSTEM

Amnesty International has been unable to clearly delineate governmental responsibilities with regard to regulation of the oil industry and its impact on the environment and human rights. Several departments appear to have statutory authority, but these authorities are sometimes overlapping and even contradictory. Environmental experts describe the regulatory system as "chaotic".¹⁷³

Oil operations in Nigeria are under federal jurisdiction.¹⁷⁴ The Federal Government is both a partner in the oil industry and required by federal law to enforce environmental laws and

standards. It is not uncommon for a government to be a partner in a business that it regulates. However, unless robust, independent regulatory and oversight mechanisms are in place, conflicts of interest can result in violations of human rights. Independent oversight of the petroleum industry was one of the main recommendations of the African Commission in 2002.

BOX 7: MAIN GOVERNMENTAL AGENCIES INVOLVED IN OIL INDUSTRY REGULATION AND MONITORING

Department of Petroleum Resources

The Department of Petroleum Resources supervises all petroleum industry operations, including enforcing safety and environmental regulations.

Federal Ministry of Environment

The Ministry is involved in the Environmental Impact Assessment process and in investigating oil spills and certification of clean-up of spills. This latter function has more recently been taken up by the National Oil Spill Detection and Response Agency (NOSDRA) - a specialist agency within the Federal Ministry of Environment, established in 2006.

State Ministries of Environment

State ministries of environment are involved in some aspects of monitoring pollution. State officials may also participate in joint investigation teams and joint certification visits to sites. However, the practice is variable.

The National Oil Spill Detection and Response Agency

NOSDRA was established in 2006 to address oil spill issues, including implementation of a national oil spill contingency plan, prevention of future oil spills and remediation of past oil spill damage.

However, the Government of Nigeria has failed to ensure independent regulation of the oil industry; instead, it has left significant regulatory powers in the hands of the Department of Petroleum Resources (DPR), a department aligned with the Ministry of Energy (Petroleum Resources). The Ministry's role is to develop Nigeria's energy resources. Many non-governmental and academic sources point to the nature of the relationship between the DPR and the companies as one of partnership, which fundamentally conflicts with the concept of an independent body regulating the industry.¹⁷⁵ According to the World Bank, "this situation has resulted in the government inadequately regulating oil pollution while at the same time, being party to much of the oil-related environmental problems of the Niger Delta."¹⁷⁶

The role and authority of the Federal and State Ministries of Environment in relation to the environmental impact of the oil industry are both limited. The evidence gathered by Amnesty International suggests that both Federal and State Ministries of Environment are sidelined and have little influence, authority or capacity in relation to the oil companies.

The Federal Ministry of Environment's role in relation to oil operations seems limited to dealing with oil spills and Environmental Impact Assessments. However, in both cases, the DPR is also involved, and lines of reporting and authority are unclear.¹⁷⁷ Moreover, although Federal Ministry of Environment officials are supposed to be involved in the investigation of oil spills and in certification of spill clean-up, the Ministry has almost no role in the

enforcement of regulations that would prevent pollution or sanction bad practice and thus, perhaps, address root causes. The government has recently attempted to strengthen how oil spills are dealt with through the establishment in 2006 of the National Oil Spill Detection and Response Agency (NOSDRA) under the Federal Ministry of Environment. The Agency now certifies clean-up and remediation of oil spills.

State Ministries of Environment have very limited power in relation to the oil industry. Because the oil industry falls under federal jurisdiction, state regulatory bodies are unable to enforce state level regulations. A senior representative of a state government pointed out that the states can be placed in a very difficult position: they are frequently required to deal with protests by communities about the impacts of the oil industry but have no power to address the oil spills and pollution problems which often give rise to community protests, even when they can clearly see that these problems exist. The state official told Amnesty International: "The state could try to make more local laws on environmental protection to regulate the oil and gas industry. But they would have problems with the Federal level if they tried to enforce anything – then a lot of powerful people would weigh in to try to stop it."¹⁷⁸

WEAKENING THE REGULATORY OVERSIGHT OF OIL COMPANIES

In 2007 the Federal Government of Nigeria further weakened any independent oversight of the oil and gas industry by significantly curtailing the authority of the Ministry of Environment in regulating the environmental impacts of the industry. The National Assembly passed a law repealing the Federal Environmental Protection Agency Act (FEPA) and establishing the National Environmental Standards and Regulations Enforcement Agency (NESREA).¹⁷⁹ The agency is supposed to ensure enforcement of all policies, laws, standards and regulations relating to the environment, including international agreements. However, the Act establishing NESREA repeatedly bars the Agency from enforcing compliance in the oil and gas sector, including:

- Compliance with regulations on hazardous waste.
- Regulation on noise, air, seas, oceans and other water bodies.
- Control measures such as registration, licensing and permitting systems.
- Conducting environmental audits.

Although the Agency is barred by law from carrying out almost all its major functions in relation to the oil and gas sector, the governing council of the Agency is obliged by law to include a representative of the Oil Exploratory and Production Companies of Nigeria. FEPA did not exclude the oil and gas industry. The National Oil Spill Detection and Response Agency, established in 2006, claims to have some responsibility for enforcing environmental regulations in the oil and gas sector.¹⁸⁰ However, the provision on enforcement within the NOSDRA Act is weak, and Agency staff do not appear to have the capacity to undertake environmental monitoring beyond oil spill related activities.¹⁸¹

The repeal of FEPA, and its replacement with a law that specifically excludes the Ministry of Environment from enforcing compliance in the oil and gas industry, is a deeply questionable move and further entrenches government failures to ensure effective oversight of the oil industry and to protect the environment and human rights.

LACK OF RESOURCES AND CAPACITY

Questions as to which agency or ministry has responsibility for ensuring that oil companies comply with environmental and safety regulations become somewhat irrelevant when the issue of enforcement is considered. Amnesty International examined the capacity of both the DPR and the State and Federal Ministries of Environment to enforce environmental laws and standards, and address pollution, which would help to protect people's human rights. They were all found to be seriously constrained by lack of capacity and resources.¹⁸² This seems inexcusable given the hundreds of billions of dollars in oil revenues that have been collected by the Nigerian government.

Amnesty International researchers interviewed several representatives of the Federal Ministry of Environment and Rivers State Ministry of Environment. In each case Ministry employees pointed to a lack of basic resources, including vehicles to travel to sites to investigate pollution, and laboratories to analyze samples of water and soil.¹⁸³ At one Port Harcourt office of the Ministry of Environment, Amnesty researchers were shown an old, disused and dust-covered laboratory, which had not been operational for years. Staff, speaking on condition of anonymity for fear of losing their jobs, confirmed that they often had to call oil companies to obtain a vehicle to visit a reported spill site, and they regularly had to rely on oil companies for analysis of soil and water samples and for other data.¹⁸⁴ A senior Ministry of Environment officer summed up the problem: "We have people to do the work. We have enabling laws. But we have no resources."¹⁸⁵

The recently established NOSDRA has somewhat better capacity, but an official of the Agency in Port Harcourt speaking to Amnesty International in March 2008 said that they still have to depend on the oil companies for analysis of spills and for transport.¹⁸⁶ The Agency still has neither a boat nor a helicopter – both vital for monitoring oil spills in a delta with both onshore and offshore oil operations. Funding for a boat may be made available in 2009.

There are signals that NOSDRA intends to take a more proactive role than the Federal Ministry of Environment has previously. In May 2009 the Agency wrote to companies "reminding them of their responsibilities". According to Dr. Ajakaiye, Director General of the Agency, "the letters were a wake up call [to the companies] from NOSDRA". In an interview with Amnesty International Dr. Ajakaiye stated that NOSDRA was intending to be very proactive in pursuing its mandate. He also underlined that the Agency was relatively new and only effectively beginning to address the problems surrounding oil spills. "There has been some progress, oil companies have got better, but there is still a lot to do," according to Dr. Ajakaiye. While the more robust approach of NOSDRA is welcome, when asked about the oil industry's performance before NOSDRA was established, its Director said: "let me put it this way... if an organisation can get away with doing nothing then they are less than rigorous in clean-up."

The DPR environmental monitoring and enforcement capacity was found to be equally weak. DPR staff in the Niger Delta often lack the technical, financial, and material resources to carry out their required functions effectively.¹⁸⁷ According to the UN, "Even though the Department appears to have more clout with the industry, its effectiveness has been seriously hampered by inadequate personnel, funding, equipment and logistics support."¹⁸⁸ A similar assessment was made in a 1995 World Bank report, which stated that the DPR: "has federal responsibility for minimizing the environmental impact of oil activities. Lacking monitoring

and basic office equipment, the Department is currently not able to perform its duties and is limited to obtaining oil company spill reports.”¹⁸⁹

LAW AND ENFORCEMENT OF LAW

In light of the significant impacts of oil pollution on health, agriculture and fisheries, Amnesty International investigated whether the laws and regulations in Nigeria adequately address the major pollution issues described in sections I and II of this report. Specifically Amnesty International research looked at oil spills, gas flaring, discharge of wastewater and other effluents, and environmental damage related to making areas accessible by road and water for the oil industry.

As noted earlier, under Nigerian law, many of the activities that cause pollution and environmental damage should be prohibited or controlled. The Petroleum Act and Oil Pipelines Act make certain provisions in relation to interference with waterways and land use rights, but also allow for potentially damaging actions by oil operators if compensation is provided or Ministerial permission is granted.¹⁹⁰ Similarly the Gas Rejection Act prohibits gas flaring unless Ministerial approval is given.¹⁹¹ Amnesty International was not able to confirm whether Ministerial approval was always sought and granted for actions for which it is required. However, actions requiring Ministerial approval occur regularly in the Niger Delta.

Moreover, some provisions in oil industry legislation appear to facilitate environmental damage and associated human rights violations. Under both the Petroleum Act and the Oil Pipelines Act, holders of licences and leases are granted authority to conduct invasive and potentially damaging activity on any land covered by their permit, licence or lease. For example: section 5 (1) of the Oil Pipelines Act allows the holder of a ‘permit to survey’ to “to dig and bore into the soil and subsoil... to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection... and to do all other acts necessary to ascertain the suitability of establishment of an oil pipeline or ancillary installations, and shall entitle the holder ... to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified.” Under section 11 (4) of the Oil Pipelines Act, “The holder of a licence shall have power to dig and get free of charge any gravel, sand, clay, stone or other similar substance ... within any land included within the area covered by the licence to the extent that such gravel, sand, clay, stone or other substance, will facilitate the construction or maintenance of a pipeline or any ancillary installation.”

The restrictions placed on holders of permits, leases and licenses are limited and appear to be inadequate to protect the rights of affected communities. For example, under section 6 of the Oil Pipelines Act the holder of a permit to survey can enter any building, enclosed court or garden attached to any building, or any cultivated land provided notice of 14 days is given to the owners or occupiers. Under section 9 of the Oil Pipelines Act any “person whose land or interest in land may be injuriously affected by the grant of a licence may ... lodge verbally or in writing ... notice of objection stating the interest of the objector and the grounds of objection.” However, consideration of objections appears to be based on ministerial discretion and in reality the system does not appear to function effectively.

The law also states that, “The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land

entered upon and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good.”¹⁹²

The requirements to “take all reasonable steps” and pay compensation are insufficient to protect human rights, particularly in a context where the government regulatory capacity is so weak, and the population largely poor, highly dependent on the environment and with few resources to challenge the companies. Moreover, the fact that communities do not appear to have any rights to be consulted (only notified) and limitations within the process to raise objections to oil operations on land used for livelihood, exposes communities in the oil producing areas to systemic and sustained human rights violations.

Under the Petroleum Act, which empowers the Minister to allocate oil exploration licences, oil prospecting licences and oil mining leases, there are no provisions for communities in the licence or lease areas to be consulted, no provision on objections and only limited provisions within subsidiary legislation to prohibit or restrict activities that would harm livelihoods.

CORPORATE INVOLVEMENT IN THE REGULATORY SYSTEM

Companies do much of their own monitoring of waste disposal and pollution control, which they report to the authorities, in line with the requirements of DPR Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN). However, their data do not appear to be subject to any regular, independent checking to verify accuracy.

There is also evidence of a conflict of interest in the manner in which some companies appear to be involved in their own regulation. In particular, companies appear to exert significant influence over the investigation into oil spills. When an oil spill is reported, a joint investigation team (JIT), comprising the company, the regulators and the community, should investigate and document the cause. In reality, it is often the company that designates causality, and there is no means to challenge their assessment. This system is clearly inadequate and open to abuse. In some cases investigated by Amnesty International SPDC staff conducted a joint investigation with the regulator and the community but would not specify the cause of the spill in the field, stating that they had to complete that part of the process at their offices. At the oil spill in Bodo described earlier in this report, SPDC reportedly refused to sign the report in the field and, despite promising to send the community a copy of the report, did not do so. At Batan where an oil spill occurred in 2002, SPDC rejected the findings of a joint investigation its staff signed, stating the spill was due to sabotage, claiming its staff were intimidated although video footage of the investigation contradicts SPDC’s account.¹⁹³

Other critical processes, including assessment of oil impacted sites and certification of clean-up, also involve joint monitoring teams. A Rapid Country Environmental Analysis conducted in 2006 pointed to the limitations and conflicts that may occur in the process, stating: “The government inspectors are middle cadre employees, national youth service corps or undergraduate interns. The multi-national oil companies pay public sector supervising officers high per diem or feeding allowances for their participation in the JITs. This makes participation in such teams sought after and potentially compromises the neutrality of the monitoring process.”¹⁹⁴

Oil companies also appear to be involved in establishing some elements of the regulatory framework for their own industry. For example, in order to determine an acceptable quality of produced water (a source of water pollution, as noted above) that is discharged into the environment, a study is being conducted by Chevron Nigeria Limited on behalf of the oil industry. According to SPDC the results of this study will form the basis for a review of the requirements for disposal of produced water.¹⁹⁵ Although Amnesty International asked the oil companies, including Chevron, and the DPR, about the study, and questioned the concept of a company carrying out a study that was supposed to be the basis for setting regulatory standards, none of them responded.¹⁹⁶

CASE STUDY: THE BATAN OIL SPILL

On 20 October 2002 an oil spill from an underground pipe occurred at Batan in Delta State. On 23 October, SPDC wrote to the Governor of Delta State informing him that the oil spill was caused by sabotage. This letter was dated two days *before* the joint investigation took place. Moreover, it named seven people as the likely culprits. On 25 October - five days after the spill began - a joint investigation team arrived at the site. The team include armed police and army officers, representatives of the DPR and of SPDC, as well as members of the community. The team also included a professional diver, as the pipe was 12 feet under water. A member of the community captured the investigation on video. Although the diver found that bolts and nuts of the pipeline were loose, and the cause of the spill, in the video, the SPDC representative (apparently leader of the investigation team) is heard trying to persuade the other members of the investigation team not to write the cause of the spill on the investigation form. This position appears to be supported by the representative of the DPR. However, eventually the spill was recorded as "equipment failure" and the joint investigation team members signed the investigation report.

The following day, 26 October 2002, the Batan community received a message from SPDC stating:

Our representatives have narrated to us the gruesome ordeal, duress and manhandling to which they were subjected by people of your community, including some members of its executive committee, in the process of carrying out the Joint Investigation and writing the Joint Investigation Report...Consequently, Shell hereby repudiates the purported Joint Investigation Report ... in which our representatives were coerced into taking the cause of the incident as being production equipment failure, instead of an act of third party interference, sabotage, which it clearly was. The inspection report of the diver who inspected the leak point leaves no reasonable person in doubt that the leakage occurred due to unauthorized tampering, by unknown persons, with two nuts and bolts on the flange of the manifold. In fact, we have reasonable ground to suspect that some members of your community might be the culprits, and this suspicion has been reported to the appropriate authorities for the necessary action. We trust that you will prevail on the members of your community to respect the rule of law in order to prevent further strains on our usually cordial relationship.

Letter from SPDC to Batan Community¹⁹⁷

The allegations made by SPDC in this letter are contrary to the video evidence of the event, which includes footage of the armed public security personnel guarding the SPDC representatives.

The community passed the video of the oil spill investigation to a local organisation, the Centre for Social and Corporate Responsibility (CSCR) which took up the case with SPDC. CSCR's investigation and follow-up on the Batan case highlights the level of control that SPDC has over the joint investigation process. Even though the community was able to insist on the cause of the spill being designated as production equipment failure, SPDC later denied this. In subsequent meetings with CSCR, SPDC staff provided confusing and sometimes contradictory information on the equipment and the nature of the problem, but continued to insist that the nuts and bolts had been tampered with, proving no evidence other than their own interpretation of the investigation. Even when a CSCR expert pointed out that a faulty gasket could cause the nuts and bolts to come loose, and that the gasket was indeed faulty at the point of the Batan leak (according to a work order the gasket was replaced), SPDC continued to maintain the spill was caused by sabotage.

Shell subsequently offered the community a development package worth approximately of US\$100,000, without conceding that the spill was due to production equipment failure. The community accepted this deal.¹⁹⁸

Amnesty International passed the video footage of the Batan oil spill to Shell to ask for their comments on the events recorded. Shell declined to provide any comment.

Amnesty International also asked Shell to comment on the naming of seven individuals, and on what evidence they based the allegations in the letter. The organization did not receive a respond. As far as Amnesty International could discover, the men were never arrested.

FAILURE TO DEAL WITH THE HUMAN IMPLICATIONS OF THE OIL INDUSTRY

While there are some areas where regulation is in place but where lack of enforcement is the problem, there are also significant regulatory gaps. The regulatory framework in Nigeria focuses on technical and environmental issues related to the oil sector, but has little to say about socio-economic issues. As noted above, effective enforcement of existing regulations and laws would benefit human rights. Given the high population density and the vulnerability of the population as a consequence of widespread poverty, as well as the fact that the Niger Delta is a water system where health, lives and livelihoods are all intertwined, the government should have in place adequate systems to address the human impacts of the oil industry. This was one of the main recommendations of the 2002 African Commission decision in the Ogoni case, which the government of Nigeria has never implemented.

Hundreds of thousands of women, men and children in the oil producing areas of the Niger Delta have been abandoned by their government. They have seen their livelihoods undermined - and in some cases irreparably damaged. They drink water and eat food that is polluted - often having no alternatives. They fear for their health but there is little data to confirm or refute their concerns, because neither the government nor the companies monitor the human health implications of pollution (or if they do this information is not published or disseminated). The communities of the Niger Delta confront powerful business actors whose word appears to be law in some cases, and rarely see any governmental authority act to protect their rights.

The current impact assessment tool used by the oil industry is Environmental Impact Assessment (EIA). EIA experts (including those who have done EIAs for the oil industry) confirmed that the socio-economic dimension of most EIAs is superficial and inadequate.¹⁹⁹ The Nigerian Agip Oil Company (NAOC), agreed that this was the case, stating that the environmental assessment process “mainly focused on assessing the quality of the environment rather than on the measurement of social or economic impacts.”²⁰⁰ NAOC claims that since 2008 it “has prepared a new procedure providing for more detailed assessment of social, health and human rights impact of activities....”²⁰¹

In light of research findings on the impact of oil pollution on agriculture and fisheries, Amnesty International also approached the Rivers State Ministries of Health and Agriculture (which also covers fisheries). Although these Ministries expressed concern about the negative impacts of oil industry pollution on agriculture, fisheries and human health, they had no mechanism to monitor or address any of the problems. For example, Ministry of Agriculture officials confirmed that the oil industry has had a negative impact on agriculture. However, the Ministry also felt that it had no role to play in addressing the problem and had no data on the impact. When farmers or communities report an oil spill to them, they do not follow it up but pass it to the Ministry of Environment. Neither do they follow up the issue with the Ministry of Environment though they do not believe the Ministry of Environment actually acts on the information.

The lack of involvement of these key Ministries appears to contribute to the dearth of reliable data and the failure to address the negative impacts of the oil industry on the people who live in the Niger Delta.

The failure to put in place and enforce adequate regulations that would protect the environment and human rights, described in this section, constitutes a clear violation by the government of Nigeria of its obligations under international law.

LACK OF INFORMATION AND CONSULTATION

Oil-related pollution and environmental damage have clearly undermined the human rights of the people of the Niger Delta. The problems have been exacerbated by a lack of information. The collection, analysis and publication of information are critical to ensuring that human rights are protected in many contexts. The UN Committee on Economic, Social and Cultural Rights has recognized the importance of information in relation to the rights to health and water, amongst others.²⁰² The Committee has affirmed that access to health-related education and information is an important component of the right to health. The Committee's General Comment on the Right to Water goes further:

The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

UN Committee on Economic, Social and Cultural Rights²⁰³

In the Ogoni case, the African Commission held that to comply with Articles 16 and 24 of the African Charter (the rights to health and a healthy environment):

Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

African Commission on Human and Peoples' Rights²⁰⁴

Access to adequate information is vital to enable individuals and communities to claim, defend and protect their rights. Poor communities are frequently denied information on a whole range of subjects that affect their human rights. They are also excluded for participation in decisions that affect them.

The right of people to participate in decisions that may affect their rights is grounded in international human rights law and standards.²⁰⁵ Access to comprehensive, accurate and timely information is a necessary requirement for genuine and meaningful consultation.

In the context of the Niger Delta the failure to ensure people have access to adequate information is a consequence of both a lack of data gathering by the government and the oil industry, and failure to make what much of the information that *does* exist accessible.

FAILURE TO MONITOR THE IMPACTS OF THE OIL INDUSTRY

Given the long history and a clear and extensive record of spills and other problems, both the companies and the government have more than adequate notice of the need for vigorous monitoring systems – both to monitor operations and impacts on the population and environment.

Failure to ensure rigorous monitoring of operations means that the probability of bad practice and accidents can increase, and that operational problems may become more acute than would have been the case if they were caught earlier. However, government regulators, as noted above, do not have any such monitoring capacity. Also, as noted above, monitoring of compliance with environmental laws is left mainly to the companies, since government regulators have little capacity to conduct independent monitoring and rarely undertake independent verification of data supplied to them by the companies.

The government has also failed to monitor the human impacts of the oil industry. Amnesty International found a consistent lack of information on the impact of oil pollution on communities. Despite the fact that pollution and concern about its harmful impacts on human wellbeing are referenced in multiple official reports on the Niger Delta, and concern has been expressed by local and international experts, Amnesty International could find no government data on the human impacts of any aspect of oil pollution in the Niger Delta. Failure to capture and monitor data can contribute to serious human rights violations. For example, failure to monitor levels of toxicity or the health implications of pollution may mean a government fails to deal with the risks posed to the population, leaving people exposed to

significant harm. Even after oil spills, as far as Amnesty International could discover, the government does not take steps to monitor health or drinking water quality or food safety to ensure that communities have adequate information and are protected.

Given the multiple risks to which the communities are exposed, the failure of the government of Nigeria to monitor these issues and provide information publicly constitutes a violation of its obligation to protect human rights.

INACCESSIBLE INFORMATION

What little information does exist is often not accessible. Few communities are made aware of the impacts of oil extraction, even when they are directly affected by it. The 1992 Environmental Impact Assessment Decree does not make consultation with the concerned communities mandatory. Although the Decree requires the publication of EIAs, this is done in such a manner as to exclude most communities from access to them. EIAs, which are generally long, technical documents, are displayed for 21 days in the local government offices. Few people are aware of this, and fewer still have the resources to visit local government offices to read these documents.

Amnesty International asked both government agencies and companies for information that was known to exist on environmental impact, including EIAs, post-impact assessments and investigations into oil spills. Although some information was provided, much of what was requested was not forthcoming, with little or no explanation as to the reasons.²⁰⁶ Neither State nor Federal Government staff in Port Harcourt would allow Amnesty International to see EIAs because they did not think they were allowed to, and advised us to ask the companies or the DPR. In fact, EIAs are supposed to be public documents.²⁰⁷

Post-impact assessments (which are carried out following oil spills) are submitted to the DPR. No compilation of post-impact assessments is known to exist, although such a compilation would be very likely to enable some assessment of the overall and cumulative impact of oil pollution. Post-impact assessments are not made public, and no action is believed to be taken in relation to their findings.

Lack of access to information can also increase the risk of - or exacerbate - conflicts within and between communities, companies and the state. Lack of information and transparency can breed distrust and suspicion, and can be a catalyst for wider human rights problems, particularly when community tensions are met with forcible responses by public and private security forces. In the Niger Delta lack of information and failure to ensure meaningful participation in decision-making are factors that contribute to conflict.

Moreover lack of information has a significant impact on the ability of communities to seek redress for harm caused by extractive projects (see chapter 5 for further discussion on access to remedy).

LACK OF EFFECTIVE SANCTIONS AND PENALTIES

Appropriate punishment of both state and non-state actors who abuse human rights is an important part of a government's obligations under international law. Impunity for past acts can and does fuel future violations and abuses of human rights. Relatively light penalties undermine both environmental protection and human rights in the Niger Delta. By failing to

deal adequately with corporate actions that harm human rights and the environment, the government of Nigeria has compounded the problem. A culture of impunity has been reinforced for oil companies in the Niger Delta because of a lack of any adequate sanctions for bad practice that damages human rights.

The Petroleum Act and the Oil Pipelines Act both require operators to take all practicable precautions to prevent damage to land and water pollution. However, neither Act provides for meaningful sanctions for failure to take such precautions; nor does the legislation appear to deal with persistent poor performance. Under the Petroleum Act, the Minister of Petroleum Resources has general supervisory powers over oil company activities and may revoke “any oil prospecting licence or oil mining lease if in his opinion the licensee or lessee is not conducting operations in accordance with good oil field practice.”²⁰⁸ While some oil licences and leases have been revoked, as far as Amnesty International could discern revocation has never been done on the grounds of environmental damage.

The penalties for pollution and environmental damage are frequently financial and relatively low. For example, the fine for failing to report an oil spill to NOSDRA is 500,000 naira (approximately US\$3,500).²⁰⁹ The fine for failure to clean up the impacted site “to all practical extent, including remediation” incurs a fine of one million naira (approximately US\$7,000). These fines are inadequate to ensure compliance with the law and to prevent damaging practices. In particular, the fine for failure to clean up and remediate oil impacted sites is a cause for concern, given that such failure prolongs serious human rights violations.

The amount paid by oil companies in fines is unknown, but many civil society organizations in the Niger Delta are concerned that low fines reflect the fact that the government is the major partner in the joint venture operations, and so liable for the bulk of any fine imposed.

THE PETROLEUM BILL

A Petroleum Bill that would repeal much of the current oil industry legislation, including the Oil Pipelines Act, the Petroleum Act and the Associated Gas Reinjection Act, has been tabled in Nigeria. At some 234 pages, the Bill provides for the establishment some five agencies – including a Petroleum Inspectorate - as well as several other bodies or funds to deal with the petroleum industry, all of which are under the auspices of the Ministry of Petroleum Resources.

A comprehensive review of the legal framework for the oil and gas sector is a welcome move, and should offer the potential to address past gaps in and problems with regulation. However, from the perspective of the protection of human rights and the environment, the Petroleum Bill contains very few measures that would address the issues faced by communities that have been outlined in this report. In fact, the Bill offers less protection in respect of some aspects of environmental damage and human rights than the legislation it would repeal. Moreover, the Bill does not take up any of the recommendations of the African Commission and, as such, is a significant missed opportunity.

Clauses on the prevention of harm to the property and livelihood resources of affected communities and individuals appear to be more limited than in the existing legislation. The Bill states that: “In the course of exploration and production activities in respect of petroleum, no person shall injure or destroy any tree or object which is (a) of commercial

value; (b) the object of veneration, to the people resident within the petroleum prospecting licence or petroleum mining lease area, as the case may be.” The Bill contains no reference to water resources, farmland or fishing rights.

Other references to the environment contained in the Bill are effectively repetitions of existing requirements to comply with the law and regulations. Under the Bill, licensees or lessees engaged in petroleum operations would have to “comply with all environmental health and safety laws, regulations, guidelines, directives as may be issued by the Ministry of Environment, the Minister, or the Inspectorate...” The efficacy of this provision is hard to judge, given the existing exclusion provided for under the National Environmental Standards and Regulations Enforcement Agency Act (see page 43 of this report).

Companies would be required to submit an environmental management plan. The Bill contains no provision for checking that the information in the plan is accurate or any mechanism for affected communities to request an inspection of sites or areas they deem to be polluted or at risk from pollution.

Compensation provisions are similar to those contained in the current legislation (see box 12, page 70). A licensee or lease holder is liable to pay: “fair and adequate compensation for the disturbance of surface or any other rights to any person who owns or is in lawful occupation of the licenced or leased lands” and for: “damage or injury to a tree or object of commercial value or which is the object of veneration...” The term “fair and adequate” is not defined. Moreover, the Bill effectively repeats all the limitations of the current legislation in that it focuses on surface goods, while “any other rights” are not defined.

The Bill appears to provide for some sanctions for failure to pay compensation. Specifically the licence or lease could be suspended until the amount awarded is paid. The Bill also requires some form of financial bond to be paid to the Inspectorate against remediation of environmental damage.²¹⁰

Although the Bill states that the Petroleum Inspectorate will: “facilitate and promote harmony and maximum co-operation between operators in the upstream petroleum industry and the communities residing or working in areas where petroleum is produced”, as far as Amnesty International could discover, there has been no meaningful consultation with the oil-affected communities of the Niger Delta on the Bill. The Bill does not contain any measures for disclosure of information by companies or governmental agencies to communities on the impacts of oil operations. However, a provision on consultation with affected communities is welcome.

Part VII of the Bill refers to health, safety and the environment. This section requires companies “as far as it is reasonably practicable” to rehabilitate the environment affected by exploration and production operations. The same section also states that: “the licensee or lessee shall not be liable for, or under an obligation, to rehabilitate where the act adversely affecting the environment has occurred as a result of sabotage of petroleum facilities, which also includes tampering with the integrity of any petroleum pipeline and storage systems...”. The Bill states that, where pollution is a result of sabotage, the costs of restoration and remediation shall be borne by the local government and the state governments in whose jurisdiction the sabotage occurs, using a Remediation Fund established from oil revenues.

As this report has demonstrated, the designation of the cause of oil pollution as sabotage is heavily dependent on the oil companies' own assessment. The Bill states that the Petroleum Inspectorate will adjudicate in any case of a dispute over whether or not sabotage is the cause of the oil pollution. While these moves are welcome insofar as they provide for finding of fact, adjunction of dispute, and clean-up by government agencies, Amnesty International is concerned that there is little in the Bill to suggest the Petroleum Inspectorate will operate fundamentally differently to the DPR. As noted above, the role of the DPR – particularly its lack of independence and its lack of capacity and resources – is a fundamental problem in terms of effective regulation and oversight of the oil industry in the Niger Delta.

While some of its content is welcome, the Bill also weakens some existing protections and fails to address serious gaps and problems in the oil industry regulatory system that are the root causes of some the Niger Delta's serious environmental and human rights problems.

THE STATE-OWNED NIGERIAN NATIONAL PETROLEUM CORPORATION

The government of Nigeria is the majority shareholder in joint ventures, represented by the Nigerian National Petroleum Company (NNPC). As the majority shareholder and a state-owned company - NNPC has a clear role to play in ensuring that the joint venture does not cause violations of human rights.

As far as Amnesty International could discover, it appears that NNPC does not act with due diligence to ensure that its business operating partners do not violate human rights. Rather, NNPC has failed to act to stop destructive behaviour by its oil company partners. It has also failed to provide adequate funding to the joint ventures for the control of pollution and environmental damage. SPDC, the main oil operator on land, has stated that work on pipeline maintenance and repair and efforts to end gas flaring are behind schedule because its partners (NNPC is the main partner) have not put up their share of the funding.²¹¹ Amnesty International asked NNPC to comment on this, but the state-owned company did not do so. The oil industry provides the government with significant revenues. The failure of the government to allocate sufficient funding, via NNPC, to ensure safety and prevent pollution related to oil operations has contributed to violations of the human rights of the people of the Niger Delta.

BOX 8: NIGERIAN GOVERNMENT ACTION TO ADDRESS PROBLEMS IN THE NIGER DELTA

Over the decades the Nigerian government has established a range of institutions and initiatives to address the poverty, conflict and under-development of the Niger Delta region. As early as 1961, the post-independence government set up the Niger Delta Development Board. Subsequent bodies included the Niger Delta Basin Development Authority (NDBDA), set up in 1976, and the Oil Mineral Producing Areas Development Commission (OMPADEC), set up in 1992. Each of these bodies was plagued by a myriad of problems, from a lack of resources, capacity and legitimacy, to corruption and mismanagement.

In 1999, with the return to civilian rule in Nigeria, President Obasanjo established the Niger Delta Development Commission (NDDC) to replace OMPADEC. However the NDDC has suffered from many of the same problems as its predecessors, including a lack of capacity and accountability.

Under President Yar'Adua, who was elected in 2007, the Federal Government of Nigeria is attempting to grapple with the multiple and serious problems facing the Niger Delta. The following are some of the most prominent initiatives:

House of Representatives Ad Hoc Committee on Niger Delta

This is a 25-member committee established on 27 October 2008 following a motion passed in July 2008 by the House to "conduct a public hearing into the crisis in the Niger Delta and make recommendations to the House".

Presidential Implementation Committee on the Clean-Up Ogoni Project

This Committee was established to oversee progress in implementing solutions to the environmental and social problems in Ogoniland.

Niger Delta Peace and Conflict Resolution Committee

Established on 2 July 2007 by the Vice President, the Committee will make recommendations to the government on how to adequately address the issues of the Niger Delta.

The Ministry of Niger Delta

In September 2008 the President announced the creation of a Ministry of the Niger Delta. The new Ministry is intended to lead and coordinate initiatives to address the problems facing the region, including environmental-related issues.

Revision of Petroleum Legislation

The National Assembly is currently considering the most substantial revision of oil industry legislation since the industry began commercial operations in the 1950s. The main piece of legislation is the Petroleum Bill (see above).

4.3. CORPORATE RESPONSIBILITY

The baseline responsibility of companies is to respect human rights.

Professor John Ruggie, UN Special Representative of the Secretary-General on business and human rights²¹²

CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS

When a government fails to protect people's human rights against harm by non-state actors, this amounts to a violation under international law. However, the fact of government failure to protect rights does not absolve the non-state actor from responsibility for their actions and the impact of them on human rights.

When companies undermine or abuse human rights, it is sometimes the result of genuine lack of knowledge, but more often it is a consequence of lack of due diligence and proper planning, or because of deliberate actions. While some corporate actions and inactions would constitute criminal or civil wrongs in the country where they occurred, the emerging consensus on corporate responsibility for human rights is that companies should – at minimum – respect all human rights. This is the position articulated by Professor John Ruggie, the UN Special Representative of the Secretary-General (UN SRSG) on the issue of human rights and transnational corporations and other business enterprises, in his 2008 report to the Human Rights Council.²¹³

In the context of the oil industry, there are international standards for oil industry operations that oil companies in the Niger Delta should be well aware of (see below). Moreover, most of the oil companies have in place policies which commit them to good practice in terms of environment and social impacts. Given the vast experience that the multinational oil companies have in oil production and their professed commitment to the environment and to corporate social responsibility, it is not credible to conclude that the oil companies are unaware of good standards and good practice.²¹⁴

The UN SRSG has underlined that the corporate responsibility to respect all human rights has a corresponding requirement for concrete action by companies to discharge this responsibility.

To discharge the responsibility to respect requires due diligence. This concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts.

John Ruggie, UN Special Representative of the Secretary-General²¹⁵

Assessment of human rights impact is increasingly seen as vital for businesses, particularly in sectors that are highly physically invasive, such as extractive industries.

According to the UN SRSG, "While these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights. Based on the information uncovered, companies should refine their plans to address and avoid potential negative human rights impacts on an ongoing basis."²¹⁶

A corporate actor is not free to ignore the consequences of its actions because a government failed to hold it to account. The international standard is clearly not “what a company can get away with...”. Amnesty International believes that some oil companies have exploited the weak regulatory system in the Niger Delta, and their actions and failures cannot be attributed to ignorance or lack of understanding of how they should behave.

INTERNATIONAL STANDARDS AND THE OIL INDUSTRY

There exist a range of internationally accepted standards and good practices in relation to oil industry operations. For example, the International Petroleum Industry Environmental Conservation Association (IPIECA), established in 1974, has developed a range of information and guidance documents on issues that are covered in this report, including oil spill response, social impact assessment and the impact of oil spills on fisheries. All the major multinational oil companies that operate in Nigeria are members of IPIECA, including Shell, Eni and Total. There are also, as noted earlier, internationally recognized American Petroleum Institute and American Society of Mechanical Engineering standards, to which Nigerian law makes specific reference. While multinational oil companies are well aware of these standards, compliance with them is not mandatory unless required by national law.

FAILURE TO TAKE PREVENTIVE ACTION

Amnesty International's research found serious failures by some companies when it came to identifying and preventing pollution and environmental harm that leads to human rights abuses. This was because of one or more of: a significant gap between policy and practice; lack of effective oversight; or through under-funding.

Some company practices went beyond failure to ensure that their operations do not harm the environment, and could not be viewed as anything other than acts of negligence. Companies have also impeded effective monitoring of the impact of the oil industry on the environment and communities by failing to disclose information in a clear and systematic way.

As noted earlier, the primary tool used by companies in Nigeria to predict and mitigate potential negative impacts of oil exploration and production is Environmental Impact Assessments (EIAs). EIAs are widely used around the world, and in Nigeria they are legally required for most activities in the oil and gas sector.²¹⁷ These tools are intended to enable identification of potential negative impacts before a proposed project goes ahead. If damage is likely but can be mitigated, then a mitigation plan is put in place. The EIA system in the Niger Delta is seriously flawed.

EIAs are usually carried out by consultants hired by the oil companies. The quality and use of EIAs has been called into question by environmental experts.²¹⁸ According to several experts in the Niger Delta, there is little follow-up and EIAs are largely seen as a regulatory requirement – not a tool to protect the environment or the people. In many cases local people are not given adequate advice on the opportunities and risks of the project during the EIA process or enabled to contribute to it in any meaningful way.

Amnesty International spoke with one EIA expert who has worked for the oil companies since 1986 as a consultant, and who asked not to be named. While he believes that the quality of EIAs varies, with some being far better than others, overall he was critical of the system: “EIAs should be done at an early stage when decisions have not been taken and you can look

at options. But in Nigeria the EIA is often done after the decisions have been taken. Sometimes the EIA is done after work has already started. I have visited one site where the work was completed *before* the EIA was done.”²¹⁹

A critical part of the EIA is the Environment Management Plan, which lays out the mitigation measures which must be undertaken to reduce the negative environmental impacts that the EIA has found will be a consequence of the project. According to non-governmental environmental experts, environment management plans are frequently treated as a paper exercise and there is little effective monitoring of EIAs or of environment management plans.²²⁰ This was confirmed by a senior representative of a State Ministry of Environment during an interview with Amnesty International.²²¹

As noted in the previous section on government failures, EIAs focus on the environmental impacts with little reference to the accompanying social impacts of a project.²²² EIAs do not involve any assessment of the human rights implications of a project. For example, the “Socio-Economic and Health Conditions” chapter of an Nigerian Agip Oil Company EIA found that a range of project activities, such as dredging the Nun River and vegetation clearance along the edges of the creek, were very likely to damage agriculture, fishing and water quality. However, the proposed mitigation measures did not include any plans to deal with the impacts on people. Within the “Socio-Economic and Health Conditions” chapter there is no mention whatever of access to food or quality of water (which the project would seem to impact); instead there is information on education and cultural issues that the project would appear to have no bearing upon.²²³ The associated mitigation measures and environmental management plan lay out ways of reducing the environmental impact but do not provide for any measures to define and address human impacts, such as temporary disturbance to fisheries.

The failure to have established systems that adequately capture and effectively address the social and human rights impacts of the oil industry in a context such as the Niger Delta, with high population density and a large percentage of people who are dependent on the natural environment, constitutes a clear failure by companies to respect human rights.

FAILURE TO APPLY ACCEPTED STANDARDS OR GOOD PRACTICE

The social and environmental impacts of oil exploration and production are relatively well known, and a number of accepted practices, in terms of oilfield operations, environmental management and engagement with communities, have been established. As noted earlier, Nigerian law requires companies to adhere to good oilfield practice and to take steps to prevent and clean up environmental pollution. Moreover, the companies have in place policies and practices for their global and Nigerian operations that should ensure that negative impacts are minimized and problems are dealt with swiftly and effectively. Indeed, several companies underlined to Amnesty International their global and local policies and systems for ensuring they do not harm the environment or the people of the Niger Delta.

Clearly, these policies and systems do not work. The reality on the ground in the Niger Delta is evidence of this. The previous section on government responsibilities concluded that the government has failed to enforce laws and regulations. In the case of corporate policies on social responsibility, ethics and protection of the environment and human rights, these are either inadequate or inadequately implemented.

The majority of the evidence gathered by Amnesty International on pollution and environmental damage related to the Joint Venture operated by the Shell Petroleum Development Company (SPDC). This is unsurprising, given that the company is the major operator on land.

In 1996 Bopp van Dessel, Shell's former Head of Environmental Studies in Nigeria, claimed on the TV programme *World In Action*, that Shell ignored repeated warnings that its oil production operations in Nigeria were causing widespread environmental damage. "They were not meeting their own standards; they were not meeting international standards. Any Shell site that I saw was polluted. Any terminal that I saw was polluted. It was clear to me that Shell was devastating the area," he told reporters.

Shell's environmental standards have also been criticized by independent experts. In a report commissioned by Friends of the Earth Netherlands, Professor Richard Steiner of the University of Alaska concluded that Shell has conducted its petroleum operations in Nigeria "far below commonly accepted international standards used elsewhere in the world".²²⁴

In the mid-1990s Shell appeared to recognize that its own operations were contributing to at least part of the oil pollution problems in the Niger Delta, stating: "The company recognises the gap between its intentions and its current performance. It is working hard to renew ageing facilities, reduce the number of oil spills in the course of operations, the amount of gas that is flared, and to reduce waste products."²²⁵

SPDC established a programme to replace and upgrade ageing facilities and pipelines, and improve the way the company operated and maintained facilities and responded to spills.²²⁶ However, only a limited amount of work was done to fulfil this objective, and many pipelines were not in fact replaced. Instead, between 2003 and 2005, SPDC switched to a Pipeline Integrity Management System.²²⁷ This involves checking the condition of pipes and replacing them on the basis of condition rather than age. The results of the full asset integrity review (which examined the condition of SPDC's pipelines) have never been made public.

According to SPDC, during 2005 the company completed all the higher risk integrity activities identified by their asset integrity review, representing some 1,500 action items. However, some significant spills occurred after the asset integrity review and the initiation of the Pipeline Integrity Management System. SPDC has confirmed that there are delays in carrying out its asset integrity work. In 2007 Basil Omiyi, Country Chair for Shell companies in Nigeria, said, "We do, however, have a substantial backlog of asset integrity work to reduce spills and flaring. This backlog is caused by under-funding by partners over many years, operational problems and, more recently, the lack of safe access to the facilities."²²⁸

Without independent assessment there is no way of confirming the scale and extent of poor pipeline maintenance and integrity in the Niger Delta. However, by SPDC's own admission, the situation prior to the 1990s was poor, a pipeline replacement programme was ended before many pipes had been replaced, and the subsequent Pipeline Integrity Management System is under-funded and behind schedule.

As Professor Steiner has pointed out, corrosion is not inevitable. The Trans-Alaska Pipeline in the US has operated for over 30 years with no corrosion-related spills reported, whereas in

the Niger Delta over a similar period, multiple corrosion-related oil spills have occurred every single year.

Progress on other aspects of environmental performance has been mixed - with no independent monitoring of the situation. SPDC has reported improvements in waste management but also increases in the amount of oil discharged to surface waters in wastewater, for example. Shell has also reported that many of its facilities in the Niger Delta have been certified as complying with ISO 14000 standards. ISO 14000 is a standard on environmental management and does not assess environmental impact.

The allegations of poor practice made by van Dessel and Steiner are consistent with the picture developed by Amnesty International – much of which Shell recognized in the mid-1990s.²²⁹ SPDC continues to fail to meet the standards that are outlined in its own policies or in Nigerian or international standards. While SPDC appears to have taken some steps to improve performance, improvements do not appear either to have ended bad practice or to have brought about effective or adequate clean-up and remediation of decades of oil pollution.

SPDC has failed to respect the human rights of the people of the Niger Delta. It has directly harmed human rights through failure to prevent and mitigate pollution, and failure to adequately address pollution and environmental damage that has occurred (response to pollution is covered in more detail in the next section of this report).

FAILURE TO DEAL ADEQUATELY WITH THE NIGER DELTA AS A HIGH CONSEQUENCE AREA

As noted earlier, much of the oil infrastructure in the Niger Delta runs close to homes, farms and water sources of the Delta communities. The proximity to people living a predominantly rural lifestyle, who have a significant dependence on their environment for food, water and income, should require the utmost care and additional protection measures.

According to Professor Steiner, the Niger Delta can be regarded as a High Consequence Area (HCA) for oil spills. HCAs are defined by a set of criteria under the US regulations on Pipeline Integrity Management in High Consequence Areas (49 CFR 195.425), which can be considered a global standard for pipeline safety and integrity.²³⁰ The criteria include it being a populated area, drinking water area or productive ecosystem – all of which apply to the Niger Delta. As an HCA, the Niger Delta should require additional risk reduction measures from oil companies.

SPDC refutes Amnesty International's findings and has stated that the company strives to comply with the regulations that are in place. SPDC further stated: "The issue in Nigeria is not the strength of the regulatory framework, but its transparent and accountable implementation. SPDC seeks to improve levels of transparency, within the restrictions [of] the regulatory framework and the obligations it imposes." SPDC further challenged Amnesty International's assertion that companies exploit weak regulatory systems in many poor countries, making the poor the most vulnerable to exploitation by corporate actors, stating: "SPDC seeks quite the reverse – a regulatory framework that effectively permits business activities to be carried out in a commercially sustainable way, but which also provides a safe and secure enabling environment for the communities where the company operates."²³¹

TRANSPARENCY AND DISCLOSURE OF INFORMATION

A crucial aspect of ensuring that corporate action respects human rights is the assessment of risks to human rights and the disclosure of information on how corporate operations will affect people. While some information may legitimately be considered confidential, companies frequently take the approach that they will not disclose data unless required to by law. Greater transparency and access to information in the extractive sector are critical factors in building trust and better co-operation with communities.

Disseminating findings is critical to developing effective plans for mitigating adverse impacts and optimising benefits. Dissemination should be a continuous process incorporating the on going learning about the communities and changes in the conceptual design of the project. Where possible, this process should be integrated with the findings of other impact assessments.

An IPIECA Guide to Social Impact Assessment in the Oil and Gas Industry

As noted earlier, companies are responsible for monitoring many aspects of their own environmental impact. Only SPDC discloses this information for the Niger Delta in a systematic manner on a yearly basis. While no law in Nigeria compels the publication of basic environmental monitoring data, there is nothing to prevent the disclosure of such information.

SPDC's annual reports notwithstanding, Amnesty International found a general reluctance among companies to disclose information on the environmental and social impacts of their operations. For example, although companies claim to have undertaken studies on a range of such important issues as health and fisheries, these studies are rarely made available. For example:

- ExxonMobil claimed to have undertaken studies on marine resources and to have commissioned a study called "Air Quality, Precipitation and Corrosion Studies of Qua Iboe Terminal (QIT) Flares and Environs". The latter, according to ExxonMobil, did not find any evidence to support corrosion of roofing linked to flaring. Amnesty International asked ExxonMobil for copies of these studies but did not receive them.
- In 2006, SPDC reportedly carried out a study that looked at the impact on marine life of wastewater disposed of at sea. Amnesty International could not find this study and received no response from SPDC to a request for a copy.²³²
- During an interview with Amnesty International in Port Harcourt on 1 April 2008, SPDC claimed to have studies that looked at a range of impacts of oil operations, which the company said it would supply. Amnesty International never received any of these studies.

The failure to disclose information has also been noted by the courts in Nigeria. In *Shell v Isaiah*, Judge Onalaja, concurring with the lead judgement in the case which dismissed an appeal by Shell, also noted that: "A vital consideration in the oil spillage cases is the extent of the oil spillage. The pattern of defence of the appellant has been to withhold from the court the report of the oil spillage carried out by their employees. In Tiebo's case supra [another oil case] the appellant's report of the oil spillage was similarly withheld from the court..."²³³

In response to a request for information from Amnesty International, Total claimed that it had to have permission from the Nigerian National Petroleum Company (NNPC) and the Department of Petroleum Resources (DPR), the partner organization and regulator respectively, in order to release environmental data. When Amnesty International asked if NNPC or DPR had ever refused to allow Total to provide communities or NGOs with environmental data, the company said they did not believe so, but that was apparently because they had never asked NNPC or DPR if they could release such information. Total has operated in the Niger Delta almost half a century.²³⁴ Total subsequently sent Amnesty International an environmental impact assessment for its main on-land operations.

POOR ACCESS TO INFORMATION FOR AFFECTED COMMUNITIES

If Amnesty International had difficulty accessing information, communities have even greater problems. For example, several communities reported that they did not receive copies of joint investigation reports into oil spills (where communities are supposed to be one of the stakeholders present during the investigation).

Communities frequently do not have access to basic information on oil projects – even when they are the “host” community. An internal SPDC report highlighted the lack of transparency in the company’s operations in relation to many issues that affect communities, and the negative impact this has. According to this 2003 report, SPDC does not “provide substantial information about the scope, impact and duration of major projects” and “there is a widespread corporate assumption that any information can be used by communities against the company... As there is no mechanism available to communities to obtain accurate information the company leaves itself vulnerable to misinformation and rumours that feed grievances.”²³⁵

The failure to monitor and publish relevant data on the human impacts of the oil industry has been strongly criticized by NGOs. The lack of available information on health impacts has fed community fears and anxieties, which are factors that significantly undermine people’s quality of life.

BOX 9: THE NIGER DELTA ENVIRONMENT SURVEY

While Amnesty International found that there was a lack of accessible information on environmental issues in the Niger Delta, one very large body of data is known to exist – the Niger Delta Environment Survey (NDES). This study was initiated by SPDC in the mid-1990s at a reported cost of US\$2 million.²³⁶ It looked at a wide range of environmental issues and impacts, including human health and pollution, and is reported to comprise 53 volumes.²³⁷

According to SPDC:

*The company believes there are not enough facts available to decide how best to manage the needs for resource development and sustain the eco-system of the delta. There is a need to know more about population growth, migration, farming, deforestation, soil degradation, oil activities, road building and other factors and how these have affected each other over time. That is why SPDC has launched a major independent environmental survey of the Niger Delta... The results will be available to the public and will help the federal and state governments, industry and communities to better plan developments and minimize the impact on the environment.*²³⁸

Despite the great need for such information and the cost of producing it, the study has never been released. The study was overseen by a board, reportedly established under the auspices of the Oil Producers Trade Section of the Lagos Chamber of Commerce and Industry, which was subsequently established as an independent corporate entity. Although SPDC paid a considerable sum of money towards the study, the company claims to have no influence over the publication of the data. The reasons given for not publishing this huge report (which SPDC said they paid to have put on to CDs) appear to be spurious. Amnesty International was told that the NDES wanted a further US\$2 million to have the report bound and printed, even though it is available on CD and could more easily be disseminated in that form. The NDES has apparently refused to release the study until this money is made available.

Amnesty International acknowledges that the companies to whom we spoke in preparing this report have taken steps to improve their environmental performance in the Niger Delta. However, this report underlines the fact that the improved systems have not adequately dealt with the impact of oil activities on the ground. There remains a considerable gap between policy and reality. Amnesty International also acknowledges that companies face difficulties – including a deteriorating security situation, sabotage and lack of access to some affected sites.

SECTION III

5. ACCESS TO JUSTICE AND THE RIGHT TO REMEDY

Amnesty International believes that securing justice and redress is not only a way of addressing the past but is an essential tool to shape the future, providing incentives to protect against recurrence, and frameworks for redress when things do go wrong.

The right to remedy is a broad right that includes access to justice and adequate, effective and prompt reparation. Remedy is an important part of the realization of economic, social and cultural rights. The UN Committee on Economic, Social and Cultural Rights has stated that:

[T]he Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.²³⁹

UN Committee on Economic, Social and Cultural Rights

The previous chapters have described how widespread pollution associated with the oil industry has resulted in violations of human rights by damaging the land and water that people use for agriculture and fisheries to feed or sustain themselves and secure their livelihoods, and by undermining the right to a healthy environment and access to safe drinking water. As preceding sections have made clear, the state is responsible where it has failed to establish an effective system to ensure that companies prevent pollution and environmental damage, and respond effectively when pollution does occur.

Under international human rights law, people whose rights are violated should have access to effective remedy. The right to effective reparation includes: restitution, measures to restore the victim to the original situation; compensation for economically assessable damage; rehabilitation; satisfaction, which should include: effective measures aimed at the verification of the facts and full and public disclosure of the truth, judicial and administrative sanctions against persons liable for the violations and guarantees of non-repetition.

Amnesty International has examined whether people in the Niger Delta have been able to access effective remedy. In the context of the oil industry in the Niger Delta, the government of Nigeria has put in place some legal requirements to provide remedy for those whose rights are harmed by oil operations.

Under Nigerian law and regulations, the following processes are required to deal with oil pollution or environmental damage:

- Clean-up of areas affected by oil spills.
- Remediation of oil pollution impacted sites.
- Payment of compensation, for some damages.

Oil industry regulations in Nigeria require that action is taken to clean up and rehabilitate land and water affected by oil pollution.²⁴⁰ Although the environmental regulations of the Department of Petroleum Resources deal with several sources of oil pollution, in reality the issue most frequently addressed by companies is oil spills. Other forms of pollution are neither systematically monitored nor reported on, and no systematic clean-up and remediation are known to take place.

In many, if not most, circumstances the oil companies are expected to carry out these processes directly (or via contractors they hire). Exceptions include major oil spills, when the National Oil Spill Detection and Response Agency should be involved, and cases where people go to court.

While there is theoretically some government oversight, this is minimal. Effectively, the government of Nigeria has placed substantial responsibility for remedying human rights harms in the hands of a non-state actor – the very same non-state actor that is responsible for much of the harm done to people's human rights in the first place. As a consequence, the remedial action is often ineffective, and the violations, far from being addressed, persist and are exacerbated.

5.1. CLEAN UP OF OIL SPILLS

In cases of oil spills - including spills that are attributed to vandalism or sabotage - the company is obliged to contain (limit the spread of), clean-up and remediate (return the area to its prior state) the affected area.²⁴¹

BOX 10: JOINT INVESTIGATION OF OIL SPILL INCIDENCE

When an oil spill occurs in the Niger Delta, a joint investigation team should be mobilized to visit the site, ascertain the cause of the spill and note the impacts. The joint investigation team should include representatives of the Department of Petroleum Resources and the Federal and State Ministries of Environment, as well as the company and representatives of the affected community. The team investigates the cause of the oil spill, and is supposed to jointly agree and sign a report, which confirms the cause. Determining the cause of a spill is often highly contested. In many cases the community representatives refuse to sign the joint investigation reports because of conflict over the cause of spills. Joint investigation team reports are not made public, and communities claim they often do not receive copies of them. Amnesty International obtained several joint investigation reports from SPDC on request.

RULES AND REALITY

Under Nigerian law, the operating oil company is responsible for the clean-up of oil spills, and clean-up is supposed to be both swift and meet good practice standards.²⁴² According to the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, issued by the Department of Petroleum Resources (DPR), clean-up should commence within 24 hours of the occurrence of the spill.²⁴³ These government guidelines also stipulate that for all waters “there shall be no visible sheen after the first 30 days of the occurrence of the spill no matter the extent of the spill.”²⁴⁴ Amnesty International found numerous violations of these regulations.

Firstly, there are regular delays in carrying out the containment and clean-up process. Delays in clean-up of oil spills obviously exacerbate damage both to the environment and to human rights that are dependent on environmental quality. In some instances the delay in dealing with an oil spill is due to the communities refusing entry to the site of the spill until certain conditions are met. For example, communities may demand “access payments” before allowing a company to enter the area.

However, oil companies are also responsible for delays in carrying out clean-up operations. In some cases the oil operator or its representatives (companies often use contractors to carry out clean-ups) simply do not turn up for several days.²⁴⁵ In several cases investigated by Amnesty International, while immediate containment activities were undertaken, the clean-up process was not adequately completed. These included Ikarama (see case study page 67) and Kira Tai (see case study page 31). Similar accounts can be found in many areas of the Niger Delta. In investigations carried out for Friends of the Earth at the villages of Ikot Ada Udo, Oruma and Goi in 2008, Nigerian scientists found that, 10, 24 and 32 months respectively after the oil spills, the soil and water exhibited signs of contamination and ecological stress.²⁴⁶ On 12 January 1998 a major leak occurred from a pipeline linking Mobil's Idoho platform with its Qua Iboe onshore terminal in Akwa Ibom State. Around 20 communities, with a total population of about one million, were considered to be the worst hit, especially at the mouth of the Pennington River. Human Rights Watch reported that shoreline clean-up had still not begun by 28 January. According to Mobil, “consistent with local practice, the company employed local citizens for the cleanup effort and therefore had to train them.” According to Human Rights Watch, as late as March 1998 some sites were still visibly contaminated.²⁴⁷

However, clean-up practice is variable, and in some cases companies respond swiftly. For example, in Abasheke in Imo State, which Amnesty International researchers visited on 6 March 2008, the community reported an oil spill in January 2008 in Obansheke and

confirmed that Nigerian Agip Oil Company came immediately to clean up. According to the villagers, the company usually responds swiftly, in order to avoid tension with the community.²⁴⁸

POOR PRACTICE

The method of clean-up can cause long-term problems and add to, rather than resolve, the damage. Clean-up processes in the Niger Delta frequently fail to meet any expert understanding of good practice.²⁴⁹ Some companies have knowingly allowed contractors using unqualified staff to clean up oil spills, resulting in inadequate cleaning and ongoing contamination of land and water. Among the poor practices reported to Amnesty were oil set ablaze as a means of removing it from the spill site,²⁵⁰ dumping of oil in unlined earth pits, where it continues to leak into the soil and can contaminate nearby water bodies, and contractors who simply transport topsoil from elsewhere to cover contaminated spill sites.²⁵¹

The use of unqualified or poorly performing contractors is not only a company failure. Companies are often under pressure from communities to hire community contractors who are not adequately trained or qualified. SPDC claimed that they supervise the community contractors in their work. They could not explain why, if clean-up is supervised, bad practice appears to be so widespread. In fact an internal report carried out for SPDC gave quite a different picture. This report highlighted the company's *failure* to manage poor performance by community contractors. According to the report, the company did not address poor performance because it feared conflict with the community. However, it pointed out that this sends a message of impunity to contractors, entrenches poor practice, and leads to far wider problems, both for the company and for the affected communities.²⁵²

OIL IN WATER

Given the impact of water pollution on human rights, the information gathered by Amnesty International on clean-up of oil spills in water bodies is a major concern. Clean-up appears, at best, to concentrate on the immediate site, but with rain and moving water bodies, oil will obviously be swept downstream. When oil is not contained within the immediate area, little action appears to be taken to investigate the downstream effects. This was clearly the case at Ogbodo where there was a massive oil spill in 2001.²⁵³

OFFSHORE AND OUT OF SIGHT

As noted in section 3.2, some of the largest oil spills in the Niger Delta have taken place offshore. Obtaining information on clean-up of offshore spills is very difficult, given lack of witnesses or access to sites. According to Professor Emanuel Obot of the Nigerian Conservation Foundation: "Not much is done in the name of clean-up off shore. The oil is usually left or at best sprayed with dispersants. Dispersants gets the oil 'out of sight' but the oil only sinks into the sediment. There it probably causes greater damage to benthic life forms [those living at the bottom of the sea] which means a decrease in fish production due to a decrease in benthic 'fish food'..."²⁵⁴

CASE STUDY: THE IKARAMA OIL SPILLS

On 31 March 2008 Amnesty researchers visited Ikarama in Bayelsa State to investigate two oil spill incidents. The most recent oil spill had taken place on 22 July 2007, as the result of a fault with oil infrastructure.²⁵⁵ All of the surrounding area was affected by the spill, which

one resident described as a resembling a large hose spraying oil. An investigation found that local vegetation and three creeks were affected by the spill. At the time of Amnesty International's visit, eight months after the spill, a heavy oil slick was still clearly visible in the water. Although the joint investigation team report states that a leaking valve was the cause of the oil leakage, the joint investigation team report also states that the "cause of the spill will be established in Shell office".

When Amnesty International visited in March 2008, the site had not been cleaned. Some containment of oil in the water had been carried out, but that appeared to be the extent of the clean-up eight months after the spill, and the water was still full of oil (see photograph in the summary). During a meeting in Port Harcourt, Amnesty International asked SPDC about this delayed clean-up and was told that the contractor had problems accessing the area and also that "the first phase report had not been submitted", which also apparently caused a delay in the process. SPDC confirmed they planned to clean up the 2007 spill at Ikarama in 2008.²⁵⁶ Amnesty International has not been able to obtain confirmation that this had been done. However, clearly there has already been a considerable delay in the clean-up – far beyond the timescale laid down in the regulations.

The second spill site was within the community's housing area. The spill reportedly occurred in 2006, when a contractor working for SPDC ruptured a pipeline. When Amnesty International visited Ikarama, it had clearly not been cleaned up. In fact the site resembled a lake of oil and water, and nearby palm trees appeared to have been badly affected. When Amnesty International raised the issue of the spill with SPDC they said: "without any shadow of doubt ... the 2006 spill was cleaned". Shell later stated that the 2006 spill had been cleaned up and certified by the government as such. Although Amnesty International described the spill – which represented a serious risk to the community – and later provided Shell with a photograph of the site taken by Amnesty International in March 2008, no explanation for the un-cleaned site was provided. SPDC also claimed that their staff had been threatened at Ikarama, and that two SPDC vehicles were held by the community.²⁵⁷

5.2. REMEDIATION

Following clean-up, companies are required to remediate the site, which means returning it as far as possible to its original state.²⁵⁸ Land contaminated by oil-related pollution other than an oil spill, may be remediated, depending on an assessment of the risks associated with the level of contamination.²⁵⁹ The decision that a site requires remediation is supposed to be based on a joint analysis by the company and the regulatory bodies on the basis of levels of Total Petroleum Hydrocarbon and Chemicals of Concern. However, as far as Amnesty International could discover companies often have significant control over the process, and the regulatory role has frequently been limited to assessing data presented by companies rather than independent investigation of the oil-impacted sites and analysis. There does not appear to be any mechanism for communities to request an assessment of a site, and until recently there was no systematic verification of the data supplied by companies. However since 2007 the National Oil Spill Detection and Response Agency (NOSDRA) has been visiting sites that companies say need remediation to review the status of the sites.²⁶⁰

Sites that are left in a degraded state can impair the ability of people to use the area for their livelihood, such as agriculture and fisheries, and can also contribute to an unhealthy environment. Remediation is, therefore, an important process both for the environment and

for the protection of human rights. However, Amnesty International found evidence of both past and current failures in relation to remediation of contaminated land and water.

NOSDRA is responsible for certification of remediation, and agency staff told Amnesty International that certification that a site has been remediated properly is based on scientific evidence. According to the Agency, in approximately one year they certified 390 sites as remediated.

BOX 11: ANOMALIES IN DATA ON REMEDIATION BY SPDC

Between 1999 and 2006, SPDC claimed to have identified 1,516 sites requiring remediation, and to have remediated 1,338.²⁶¹ According to SPDC, during 2006, 715 sites were certified as remediated by the joint certification team, comprising the Federal and State Ministries of Environment (the procedure before the National Oil Spill Detection and Response Agency was established).²⁶² This works out at approximately three certifications per working day, every day of the year. Amnesty International questioned the credibility of the figure presented by SPDC, given the severe restrictions on movement in the Niger Delta and Amnesty International's own interviews with Ministry of Environment officials, during which officials repeatedly underlined their lack of resources to make site visits.

Although, during an interview at their headquarters in The Hague on 15 September 2008, Shell conceded that the figure of 715 certification visits by a joint certification team was questionable, the company declined to provide any explanation. It would appear that the figure of 715 certifications represents an administrative process, where data submitted to the regulator is "certified", and the field visits may have taken place in a previous year. However, even if the 715 visits were made over the preceding three years (2004, 2005 and 2006), the figure is still questionable. It would mean an average of one site visit for every single working day of each of those three years. SPDC has additionally reported that: "[a] joint certification team comprising the Federal and State Ministries of Environment inspected and certified 154 sites in 2005," and "[a] joint certification team comprising the Federal and State Ministries of Environment inspected and certified 231 sites in 2004."

Given the limitations of the regulators in the Niger Delta noted above, of which Shell is fully aware, the number of regulatory certification visits implied by the 2004, 2005 and 2006 figures (totalling 1,100 over three years) does not seem probable. Amnesty International is concerned that the certification of remediation of SPDC sites may not have involved a site level inspection and scientific analysis by the regulators in all cases. If this were the case, it would further underline the major regulator gap in the Niger Delta, and would mean that communities have no way of checking or receiving assurance that oil companies adequately clean up pollution. Amnesty is concerned that some of these polluted sites have not been adequately treated.

Amnesty International also raised with Shell the apparent difference in access to pollution-affected sites, which their information on clean-up and remediation respectively implies. Shell has frequently said that they have difficulty in gaining access to oil spill sites because communities block access. However, based on their figures for 2000-2006 on sites assed for remediation (2,699 by 2005), sites actually remediated (1,338) and sites certified (1,126),²⁶³ they appear to have few, if any, problems accessing sites impacted in the past. Shell did not provide any explanation for this discrepancy.²⁶⁴

5.3. FINANCIAL COMPENSATION

When oil pollution occurs, those whose property and lives are affected are entitled to compensation from the polluter. As with many other aspects of the oil industry's response to pollution, the focus is on oil spills. There appear to be two distinct pathways for compensation, one judicial and one non-judicial.

BOX 12: LEGAL PROVISIONS ON PAYMENT OF COMPENSATION FOR DAMAGE CAUSED BY OIL OPERATIONS

Petroleum Act

Clause 37: "The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands."

Oil Pipelines Act

Clause 6 (3): "The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good."

Clause 11 (5): "The holder of a licence shall pay compensation (a) to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, . . . (b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and (c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good. If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part IV of this Act."

Petroleum (Drilling and Production) Regulations

Clause 21 (2): "If the licensee or lessee cuts down or takes any other productive tree, he shall pay fair and adequate compensation to the owner thereof. . . ."

Clause 23: "If the licensee or lessee exercises the rights conferred by his licence or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first-mentioned rights."

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)

Part VIII of EGASPIN deals with oil spills. This section of the regulations states: "A spiller shall be liable for the damage from a spill for which he is responsible. Settlement for damages and compensation shall be determined by direct negotiation between the operator(s) and the landlord(s)."

NON-JUDICIAL COMPENSATION PROCESS

The non-judicial system involves the agreement of compensation amounts between affected communities and/or individuals and the companies, without any formal court action being involved. The process is used primarily in the case of oil spills, and appears to be based largely on the provisions of the Petroleum Act, the Oil Pipelines Act and on Part VIII of EGASPIN (see Box 12).

While a compensation system that does not require people to go to court can have distinct advantages, especially for the poor, Amnesty International found serious flaws in the system in the Niger Delta.

IMBALANCES OF POWER AND KNOWLEDGE

The oil companies, with minimal government oversight, administer the non-judicial compensation process. Although the Rivers State Ministry of Environment claimed that it was responsible for assessment of damages after oil spills, that the Ministry does a damage assessment and that this is then submitted to the relevant department of the company, in practice the companies frequently negotiate compensation directly with the communities, without the Ministry being involved.²⁶⁵

Compensation is required only if the cause of a spill is not sabotage or vandalism.²⁶⁶ In many cases the community and oil company disagree on the cause of a spill. However, as there is no independent means of verifying the facts, and the company has the greater technical knowledge, it is rare for the community to be able to make their case effectively. As noted in several of the case studies in this report, such as Batan and Kira Tai, the oil companies have considerable control over how the cause of an oil spill is determined, and what may be agreed on the ground can later be contradicted by the company. Even when the cause of a spill is agreed as “controllable”, the community often has to negotiate with the company over what will be covered by the compensation agreement.

HOW MUCH COMPENSATION – AND FOR WHAT?

The scope of what can be covered by compensation and the amounts of money paid under the non-judicial process are also causes for concern. In the Niger Delta compensation for oil pollution has generally been narrowly prescribed primarily in terms of buildings, crops or profitable trees, loss of fishing rights and loss of value of land. The compensation guidance does not address long-term damages or injury to health. In Nigeria the approach to compensation by the oil industry is based on government guidance that specifies the items for which compensation will be paid, as well as standard amounts. In the case of oil industry, compensation for land acquisition and damages caused by oil spills is set by the Oil Producers’ Trade Section of the Lagos Chamber of Commerce and Industry (OPTS – the association of oil producing companies operating in Nigeria), based on the government compensation rates. The OPTS comprises many of the major oil companies. The rates are set in Lagos without involving the affected communities.²⁶⁷ In effect the polluter plays a significant role in setting the terms of compensation. The official rates notwithstanding, compensation often involves negotiation of a “package” that includes community development initiatives.²⁶⁸ This means the system is neither transparent nor fair, leaving people to obtain what they can by negotiation.

The compensation rates create a market failure because the opportunity cost of lost indigenous production is not included in the operational costs, such that oil companies consume excessive land and cause excessive environmental damage.

World Bank, 1995

The imbalance of power and information and the process of negotiation, combined with rates set by OPTS, have seriously disadvantaged many communities and undermined their right to effective remedy. This in turn has led to other problems, as communities sometimes see violence as the only means of extracting compensation from the company.

NOSDRA has recently engaged in a review of the compensation process. In May 2009 the Agency reported that it was establishing a compensation system that would no longer involve the companies, but instead use independent consultants, and new guidelines on compensation would be produced by the end of 2009.²⁶⁹

WHO RECEIVES COMPENSATION?

As noted above, when a community is affected by an oil spill, compensation is often negotiated with community representatives, as an overall “package”. The damage done to individuals can be lost in the course of these negotiations, and more powerful members of the community may benefit at the expense of the more vulnerable. While communal negotiation may be the choice of a community, full and effective reparations should include measures to address the damage both to the community and to the individuals within it.

However, companies frequently fail to conduct a full assessment of the damage caused to individual property, and the overall “package” agreed by the community leaders is often not enough to repair all individual properties. Moreover, the negotiation process with the community leaders is open to abuse. This includes reports of benefit capture by those negotiating with the company, which can leave many people affected by oil pollution without any effective remedy.

The informal compensation system can place women at a particular disadvantage. Most “negotiations” are carried out by chiefs and youths, who are almost always male, even when women’s activities in agriculture and fisheries are affected by oil industry damage. According to women’s rights activist Alice Ukoko, “The government and oil companies continue to refuse to pay compensation or, indeed discuss the issue with grassroots women of the Niger Delta as stakeholders in the affairs of the Niger Delta.”²⁷⁰

LACK OF TRANSPARENCY

The informal compensation system lacks transparency. The amounts paid are not made public and it is not clear to whom compensation is paid. This contributes to community conflicts and distrust of companies.

An internal SPDC report in 2003 noted: “There is no transparency about (a) to whom the company pays compensation; (b) the basis on which the amount is calculated; and (c) how individual or communal compensation is divided.”²⁷¹

MULTIPLE EXCEPTIONS

Many damages are either inadequately covered or not covered at all by the non-judicial compensation system. Some companies, including SPDC, will only pay compensation when a landlord can be identified.²⁷² People in Korokoro Tai in Ogoniland, Rivers State, interviewed on 6 March 2008 told Amnesty International that SPDC does not pay compensation to individual farmers affected by oil spills but does pay compensation to the landlord. This causes considerable distress to members of the community.

According to Tari Dadiwei of Biosphere Resources Monitors: "Negotiation with those who own crops or ponds should be carried out without involving landlords. Landlords do not always pay those who own properties in their land. Recently, when Shell acquired land for the Gbarain integrated oil and gas project in Obunagha, some people from the community who own properties different from their families, such as ponds and economic trees, were prevented from getting their compensation. Companies should independently respect such occupiers' or tenants' rights and effect fair and adequate compensation payments."²⁷³

Refusing to pay compensation to those unable to prove they are a landlord can leave many people whose crops and other property is damaged by an oil spill in a very difficult position. Landlords, occupiers and others dependent on access to land or water resources may experience damages as a result of oil pollution and should have access to compensation.²⁷⁴ Although Amnesty International asked SPDC to clarify the issue of "landlord", the company did not do so.

Damage to moving water bodies, such as rivers and streams, is not covered by standard compensation calculations. The effects of an aquatic oil spill can be geographically extensive. A system based on direct negotiation with the community using a standard set of compensation "items" cannot work in the context of a wetland where many people are dependent on the natural resource base but do not own it. As a consequence, compensation is not paid for damage to many important communal natural resources, despite the fact that many communities have significant dependence on wild forest products and shellfish for food and livelihood. Moreover, calculating the damage from multiple pollution events affecting water requires expertise, and cannot be done by the communities or the companies.²⁷⁵ For some types of environmental damage it would be more appropriate for the government to seek damages on behalf of the people of the Niger Delta but since the government is itself the major partner in the joint venture, this is unlikely to happen.

Compensation is not paid for damage to health, because the oil industry does not look at how pollution affects health.²⁷⁶ Finally, long-term damage to livelihood does not appear to be factored into compensation formulas. The World Bank raised this issue in 1995:

The compensation rates do not include long term, non-market goods, or off-site effects. For example, only crops from a single year are considered for compensation. Similarly, long term ecological changes including vegetation changes from dredging and mangrove destruction are not covered. The program also neglects to include indirect economic impacts, like the disruption of breeding grounds for marine fish.

World Bank, Defining an Environmental Development Strategy for the Niger Delta²⁷⁷

Austin Onuoha of the Africa Centre for Corporate Responsibility, who has monitored oil operations in the Niger Delta for many years, concurs, saying: “[I]f one pays compensation for the fruits on a tree this season, what happens by next season when the compensation money is exhausted? Most communities feel that when oil finishes they will just be left with a barren land.”²⁷⁸

Communities have almost no access to resources or support when the company response is inadequate. Clean-up of oil spillage is frequently delayed and poorly carried out, with the result that human rights violations persist and are exacerbated.

COMPENSATION, CLEAN-UP AND CONFLICT

Access to compensation and clean-up contracts feeds inter- and intra-community conflict and community-company conflict in the Niger Delta. As noted at the start of this report, communities receive few if any benefits from oil operations, but are often exposed to negative impacts, including pollution. For communities in the Niger Delta, oil spills can be the only means of accessing financial benefit from the oil industry. A history of poor practice in the award of compensation and contracts has exacerbated the problem. Communities have become deeply suspicious of anyone associated with the oil companies, and often demand payments before allowing access to sites. Communities have learned that hostage-taking and violence can result in more payment, and that a fair system does not exist.

The current compensation programs aggravate community relations and reinforce the perception that oil activities cause most of the problems of the delta. Riverine people feel that the oil companies do not consider themselves accountable to the local people. Resentment of their marginalization in contrast to the value of the oil reserves has resulted in clashes with oil company personnel and federal police/military forces.

World Bank, 1995

Meanwhile companies blame communities for not allowing access to spill sites and exacerbating oil spill problems. Undoubtedly the situation in some parts of the Niger Delta is now such that community action and reaction is part of the problem of pollution. However, as long as companies such as SPDC continue to see community hostility as a problem apart from them rather than one they have helped to create, and which they continue to feed through poor practices such as those described above, the situation will not improve.

Responding to a draft of Amnesty International's report SPDC emphasised that: “While no company can be immune from the issue of poor practice or corruption, SPDC applies the same standards in Nigeria as other Shell companies use elsewhere. SPDC investigates any substantiated accusation of malpractice, and will take the strongest action against any perpetrator. If AI has substantive evidence that malpractice has taken place involving SPDC or its employees, SPDC will investigate it in the normal way.”

5.4. COURT ACTIONS

Over several decades many communities and individuals in the Niger Delta have sought redress in the Nigerian courts, mostly to seek financial compensation for damage caused as a result of oil operations – often oil spill damage.²⁷⁹ However individuals and communities who try to use the courts to seek redress have been confronted with a range of practical and legal obstacles.

ISSUES OF LAW

Oil damage claims against companies can be based on statutory law or on specific torts under common law. While legal action offers a potential for remedy for those affected by oil spills, the legal system also imposes specific limitations on the plaintiff's ability to sue.²⁸⁰

Negligence is the most frequently used tort to pursue action against oil companies. Under common law, for an action under negligence, the plaintiff must show that the defendant was careless in the exercise of a specified duty of care. The plaintiff bears the burden of proof and has to show not only that the damage occurred, but that the problem was the result of negligence on the part of the defendant.²⁸¹ This can be a very difficult burden to discharge, given the technical nature of oil operations and the fact that technical evidence is frequently either very expensive to obtain or held by the defendant and on which the defendant is significantly more knowledgeable.

The judiciary in Nigeria has generally taken a conservative approach to oil industry cases, tending to weigh the "common good" (oil industry revenue as vital for the country) over individual inconvenience or environmental sustainability.²⁸² However, in some cases judges appear to be more assertive in their approach to the oil industry²⁸³ (see *Shell v Farah*, in Box 13). The courts have also allowed people to take cases in a representative capacity, such as where a village leader will take a case on behalf of a whole community.²⁸⁴ For many communities, this approach is more realistic, as costs can be shared. But despite some positive changes in the approach of the courts, bringing a case to court remains difficult for most plaintiffs, particularly given the burden of proof in a context where the government has no source of independent monitoring of oil pollution on which they can draw as evidence.

BOX 13: THE BOMU WELL 11 BLOW-OUT AND SHELL V FARAH

In 1970 a blow-out at Shell's Bomu Well II in Ogoniland resulted in severe and widespread damage to surrounding land, which was used by the community for farming and hunting. Shell compensated the affected families for the loss of the crops and economic trees. They did not give compensation for damage to the land, but promised to rehabilitate the land on which the affected families could no longer farm.

When the land had not been remediated almost two decades later, residents of the area initiated a lawsuit in 1989. In 1991 the Bori High Court in Rivers State awarded them 4.6 million Naira (US\$210,000 at the official exchange rate) in damages. The court found that the compensation originally paid by Shell was not fair and adequate. While Shell had paid for damage to crops and trees, the court found that the victims should also be compensated for the loss of income in the longer term since, for the two decades after the incident, the victims had not been able to use the land for farming. The court also found that the victims could be compensated for the shock, fear and general inconvenience they had experienced.

Shell appealed the judgment. In December 1994 the Appeal Court dismissed the appeal and affirmed the judgement of the lower court. The Court stated that payment for only the crops and economic trees damaged at the time of the incident "certainly could not amount to a fair and adequate compensation as the damage... went well beyond mere damage to crops and economic trees [and] the arable land was heavily polluted and rendered unproductive for many years."

In the original case both the plaintiff and the defendant called expert witnesses who gave opposing views as to whether the land had been remediated. The Court appointed two independent experts, one chosen by the plaintiff and one by the defendant. The joint report of these two experts supported the testimony of the plaintiff's expert witness. In fact the court was critical of Shell's witness, as it was the same person the company had engaged to undertake remediation of the land (which remediation the community said had not been done, and was one of the main basis of the court action). The trial judge stated:

"This is in effect asking the same expert to go back to the land and confirm that he actually did the job he was commissioned to do some years ago. If I may ask, what kind of report do the defendant [sic] expect from Defence Witness 2? The defendant has been sued because the land has not been rehabilitated, obviously the Professor would not have come back with a report that the land has not been rehabilitated and that crops are not growing in the area that is said to be rehabilitated."

Shell v Farah underlines the difficulties faced by individuals and communities in the Niger Delta in securing fair and adequate compensation. In this case several families were unable to use their farmland for years but received no compensation for the loss of income and could not get an adequate rehabilitation until they went to court. The matter was only resolved after some quarter of a century.

BARRIERS TO ACCESS TO JUSTICE FOR PEOPLE LIVING IN POVERTY

The opportunities and challenges of the Nigerian legal system are overshadowed by the practical obstacles facing many communities. The poor economic situation and lack of knowledge of their rights makes it extremely difficult for many people to initiate legal proceedings.

People can only seek redress against oil companies in the Federal High Courts,²⁸⁵ which are located in state capitals, putting them out of reach of many rural inhabitants. According to the UN Development Programme, for the people in the Niger Delta, this is another example of collusion between the oil companies and the government.²⁸⁶

The costs of going to court include lawyers' fees, travel, court fees and, potentially, the cost of expert witnesses and scientific evidence. This can deter many potential plaintiffs.²⁸⁷ Expert witness and technical evidence are extremely costly and few communities have the capacity to secure such support for their cases unaided. In some cases multiple experts are needed to give specialist evidence on negligence and the impact of pollution on different issues such as fisheries and agriculture.

According to Prince Chima Williams, barrister and Head of Legal Resources at Environmental Rights Action in Rivers State, "In Nigeria getting justice from multinational corporations is a Herculean task."²⁸⁸

While individuals and communities in the Niger Delta have mostly used the courts to seek compensation, some have also gone to court to seek injunctions against oil companies. Courts have only rarely given injunctions.²⁸⁹

CASE STUDY: THE IWEREKAN GAS FLARING CASE

In 2005, Jonah Gbemre, supported by Environmental Rights Action (Friends of the Earth Nigeria) and the Climate Justice Programme, filed a case in the Federal High Court of Nigeria to stop gas flaring in the Iwerekán community in Delta State.

On 14 November 2005, the Federal High Court of Nigeria ruled that gas flaring was a violation of the constitutionally guaranteed rights to life and dignity, and ordered that flaring end in Iwerekán. On 10 April 2006 the Federal High Court granted a conditional stay of execution of the court order. Three conditions were attached, including that Shell and NNPC stop gas-flaring activities in Nigeria by 30 April 2007. The court also told SPDC to produce a detailed plan of action, showing how they would stop gas flaring in Iwerekán. Jonah Gbemre's legal representative attended the court on 30 April 2007. He discovered that, not only had no detailed scheme for stopping the flaring had been submitted, but that the judge had been transferred to another court district and the court file was not available. No representatives of the company or government turned up. SPDC subsequently obtained a further stay of the court order, with no known conditions attached. As of May 2009, two years after the expiry of the original deadline, gas flaring continues in Iwerekán.

Jonah Gbemre spoke to Amnesty International of his despair about the continuing gas flaring

and the inability of the community to have the practice ended. "We use standard avenues [but] the multinationals makes the rules. They do a lot of advocacy. Within the joint venture they hide and seek."²⁹⁰

The government has an obligation to ensure that effective remedies are available to people whose rights have been violated. However, far from fulfilling this obligation, it hands it over to oil companies (who have themselves caused the problems). The government's failure to carry out its duty in this respect constitutes a violation of the right to effective remedy. In addition, according to UNDP, "[t]he lack of appropriate avenues for redress is one of the major causes of conflict in the region."²⁹¹

5.5. OTHER ASPECTS OF REMEDY

Although clean-up is critical when oil spills occur, particularly large-scale oil spills, communities may also be in need of immediate assistance in terms of access to water, food and health-care. According to the National Oil Contingency Plan of 2003, the Federal government will: "provide bore holes for water supply, supply food and relief materials and provide agricultural implements and other outputs to resettle fisherman who may have been put out of business by the pollution of fishing areas by oil".²⁹² The Federal Ministry of Health would, in the event of an oil spill disaster, "set up medical outposts ... to provide medical treatment to the affected communities ... Mobilize medical personnel, drugs and other relief items to check epidemic ... Monitor the effect of the spill on the general health of the community. Observe for possible outbreak of new health conditions ... especially health impacts on potable water supplies."²⁹³

These plans for dealing with a major oil spill disaster appear adequate on paper. However, they have never been tested.

In the case of spills that would not be categorized as a disaster, the government does not provide relief, although oil companies do provide water and some other relief items. The adequacy of relief appears to vary from incident to incident. In cases such as Bodo (see case study, page 7), no relief was provided for several months after the spill, despite damage to a major food source (fisheries). The food provided was considered inadequate to the population affected. In the aftermath of the Ogbodo spill (see case study, page 21) the community claimed that water provided by the company was inadequate to their needs. Without clear standards and effective oversight, corporate relief operations can fall well short of what is required in human rights terms.

6. CONCLUSIONS

This report has described how decades of pollution and environmental damage, caused by the oil industry, have resulted in violations of the right to an adequate standard of living, including food and water, violations of the right to gain a living through work and violations of the right to health.

A lack of accountability and the inability of those affected to access justice or receive adequate reparations and remedies, has perpetuated the context of human rights violations and encouraged them to occur again and again. So long as impunity for abuses of the environment and human rights remains entrenched, so too will the poverty and conflict that has scarred the Niger Delta. Only when there is effective accountability, access to justice and when people are given the information and space needed to participate in decisions that affect their lives, will the human rights tragedy of the Niger Delta begin to end.

The human rights violations described in this report are a consequence of serious failures of the government of Nigeria. Amongst the critical failures of the government are:

Multiple failures to effectively regulate and control the oil industry: The regulatory system in the Niger Delta is deeply flawed, and lacks independence. The oil companies are too involved in the regulatory system, and the main government agency – the Department of Petroleum Resources - is both ineffective and represents conflicting interests. Despite the recommendations of numerous bodies, including the African Commission on Human and Peoples' Rights (African Commission), the Nigerian government, far from strengthening oversight of the oil industry, has weakened it, including by the repeal of the Federal Environmental Protection Agency Act (FEPA) and its replacement with the National Environmental Standards and Regulations Enforcement Agency (NESREA). The structures proposed in the Petroleum Bill do not address most of the fundamental weaknesses in the regulatory system.

Failure to monitor the impacts or provide people with adequate information: the government of Nigeria has never engaged in any effective monitoring of or studies on the impacts of the oil industry on health, fisheries or agriculture, despite concern having been expressed by the communities, civil society groups, the African Commission and many others for decades.

Failure to deal with people at risk: human rights law requires special measures to identify and protect the human rights of groups that are at risk. The largely poor communities of the Niger Delta face clear risks from oil company operations. However, the government has not provided adequate protection, let alone special measures, to protect their human rights.

Devolving critical areas of human rights responsibility to the oil companies: the government of Nigeria has given the oil companies the authority to deal with matters that have a direct

bearing on human rights, without adequate oversight – and oftentimes without any oversight. When communities suffer environmental harm, they are frequently left to negotiate with the oil companies on action to address the problem and obtain redress. This process has fundamentally undermined access to effective remedy, contributed to ongoing violations and led to deeper poverty and deprivation.

Failure to ensure access to remedy: The practice of allowing companies so much direct control over the oil spill investigation and compensation systems represents a critical government failure to protect human rights and ensure access to effective remedy.

Entrenching in law a system that allows land to be taken from communities for oil operations, without adequate protections, as required by human rights law: the land appropriation system linked to the oil industry constitutes a violation of human rights, including the right to an adequate standard of living.

The relationship between the government and the oil industry: the level of dependence of Nigeria on oil and the fact that the Nigerian government is the majority partner in joint ventures are fundamental problems which underpin regulatory failures.

The human rights violations described in this report are also a consequence of the actions and failures of some of the multinational oil companies.

This report's main findings relate to the Shell Petroleum Development Company (SPDC), the main operator on land. The vast majority of the cases which were reported to Amnesty International and which we were able to investigate were cases involving SPDC. The company has operated in the Niger Delta for decades and is aware of the damage that oil operations have done to the environment. SPDC has failed to conduct its operations with respect for human rights. This is not to say that other companies are blameless – there is evidence of bad practice in several areas.

In respect of the allegations made about SPDC operations, this report has presented evidence of the following:

Failure to ensure adequate action to prevent pollution and damage to human rights: for years SPDC has engaged in practices known to be damaging to the environment and people. Pipelines were not adequately maintained. Waste products were released into the environment. Although its operations are within a delta system and oil infrastructure is frequently close to farmland and waterways, no special protection measures were taken by SPDC. After a brief period of openness during the 1990s, when SPDC recognised that its operations were causing serious problems, SPDC and its parent company Shell today refuse to acknowledge most problems associated with their operations in the Niger Delta.

Failure to adequately clean up and remediate contaminated land and water: despite legal requirements to clean-up and remediate land and water swiftly and adequately, frequently this does not happen.

Unfair practices within the system for joint investigation of oil spills and payment of compensation to victims: The non-judicial investigation and compensation systems are

deeply flawed and do not provide the due process to which residents of affected regions are entitled. Moreover, while the system disadvantages communities it is also part of the reason for poor relationships between communities and oil companies and a source of tension and conflict in the Niger Delta. While sabotage is clearly an issue, SPDC appears to have considerable control over how spills causes are designated and Amnesty International found evidence of poor practice in the process of attributing causality.

Failure to disclose information: The control which companies have over data - from what is reported to regulators to knowledge of the impacts of oil operations - is a fundamental problem in the Niger Delta. Although some information was disclosed to Amnesty International, communities in the Niger Delta frequently do not have access to even basic information about the impacts of the oil industry on their lives. In some cases the information exists and is not disclosed, while in other cases the information may not exist. SPDC and other oil companies do not provide communities access to information on the impacts of oil operations on their health and livelihoods. Assessments are either not done - or not disclosed. A range of key data on the cause of oil spills and other issues are not disclosed.

Failure to monitor impacts: Despite awareness that oil pollution and oil industry activities may negatively impact on human rights neither the oil companies nor the government have taken any adequate steps to monitor the health impacts, ensure that effective preventative measures are put in place or even to ensure that people are informed about risks that different types of pollution pose.

This report has also acknowledged that oil companies in the Niger Delta face complex challenges. Some elements of their operations, such as the provision of employment and the development projects, offer benefits to Nigeria. Moreover, companies have sought to improve their environmental practices, although assessment of change is hampered by lack of transparency and independently verified data. The oil industry frequently points to its positive contribution to Nigeria when criticisms are made of its operations. However, positive action in one area does not absolve companies - or the government - of responsibility for the negative impacts their operations have on human rights. Companies must ensure that they take all possible action to identify and prevent human rights harms.

The situation in the Niger Delta is complex. While the major failures of the government and the companies are clear, they are not the only actors involved in destruction of the environment. Communities engage in acts of vandalism and sabotage. Militant groups pose a significant threat to oil company staff safety, while communities have been known to act with aggression towards oil company staff and to prevent access to spill sites. While there is no one underlying explanation for the complex conflict situation in the oil producing states of the Niger Delta, the actions of armed groups and communities - while important to acknowledge - should not be used by oil companies and the government to deflect attention away from their own failures and poor practice.

7. RECOMMENDATIONS

7.1. TO THE PRESIDENT AND THE NATIONAL ASSEMBLY

1. Implement in full the recommendations of the African Commission on Human and Peoples' Rights.

2. Ensure robust, independent and coordinated oversight of the oil industry including the impact on human rights.

Oversight of the environmental, social and human rights impacts of the oil industry must be fully independent of the oil companies and the Ministry of Petroleum Resources. An oversight body should have the power to:

- Overhaul regulation and management of the industry, including in relation to the human rights impacts of the industry.
- Oversee clean-up of oil impacted areas.
- Review the compensation and remediation systems.
- Carry out independent inspections of oil operations and to sanction non-compliance with the law.
- Carry out or ensure studies are done on the human rights impact of the oil industry, specifically on health, water quality, fisheries and agriculture.

The oversight body should be adequately resourced.

The oversight body should work effectively with key government agencies, such as the National Oil Spill Detection and Response Agency (NOSDRA), and ministries, including the Federal and State Ministries of Environment, Health, Agriculture and Justice. It should provide a means for ensuring oversight across the full spectrum of oil industry impacts. In particular it must be able to link up governmental action to prevent, monitor and sanction.

3. Strengthen the role of the National Oil Spill Detection and Response Agency

Ensure that NOSDRA has adequate staff, financial resources and equipment to carry out its functions properly and independently of the oil companies. The Agency should have the capacity to record all investigations into oil spills on video and should be able to call on expert advice in cases where the cause of an oil spill is disputed. The Agency should have the capacity and mandate to look at impacts of oil spills, including on individuals and communities, and pay particular attention to the impact on women, and on potentially marginalized groups in the community. It should ensure it has a facility to enable

communities to identify and report oil spill sites that need clean-up and remediation.

4. Undertake a comprehensive clean-up of oil pollution and environmental damage

- Ensure systematic clean-up of oil pollution. This work should involve coordinated action by an independent oversight body, working closely with NOSDRA and all other relevant ministries and agencies. If necessary the government of Nigeria should invite assistance from international bodies such as the United Nations.
- Work plans and budgets for the clean-up process should be disclosed and regular reports published.
- A mechanism should be put in place to ensure communities in the oil producing areas of the Niger Delta are both consulted on and kept informed of the clean up process, and that they can identify areas which may need clean up. Identification of areas requiring clean up and remediation should not be done solely by the oil companies.

5. Put in place a fair and transparent compensation and reparations system

- While a non-judicial system should be maintained to ensure swift resolution of compensation cases, control of the non-judicial compensation system should not be with companies. At a minimum specially trained government officials should ensure oversight and transparency of the system.
- Amend laws on compensation to ensure that compensation amounts are fair and adequate, and cover long-term impacts, health issues and all other reasonable damages. Ensure that companies are required by law to pay damages both to individuals and for communal losses and that women are not discriminated against in the compensation process.
- Ensure all oil operators have in place adequate insurance and funding structures to ensure they can pay compensation to those affected by oil industry pollution in accordance with the law.
- Put in place a plan to provide access to clean water across all oil affected areas. This should include emergency access as well as plans to provide long-term access to clean water for domestic use.

6. Make the assessment of the social and human rights impacts of all oil and gas projects mandatory

- Mandate that social and human rights impact assessments include assessment of the potential impacts on human health, access to clean water and livelihoods.
- Ensure impact assessments include the participation of the community that will be affected. Ensure consultation processes pay adequate attention to gender dynamics and to inclusion of potentially marginalised groups.
- Ensure that impact assessments contain non-technical summaries, and are made easily

and publicly available throughout the lifetime of the project, and that they are reviewed and updated periodically.

7. Require by law that companies conduct meaningful consultations with affected communities and disclose all information requested by communities that cannot be legitimately considered confidential. Again, ensure consultation processes pay adequate attention to gender dynamics and to inclusion of potentially marginalised groups.
8. Amend the laws on land use to ensure that they are consistent with Nigeria's human rights obligations, and do not undermine the human right to an adequate standard of living, including housing, food and water.
9. Establish a program to ensure people in the oil producing regions of the Niger Delta are aware of their rights in relation to the oil companies and aware of what legal protections exist.
10. Require by law the disclosure of information about the impacts of oil operations on human rights and the environment.
11. Revise the Petroleum Bill.

Many of the above recommendations could be incorporated within the draft Petroleum Bill.

- Amend the Petroleum Bill to incorporate independent oversight and address the recommendations above. In particular those provisions of the Petroleum Bill that undermine human rights must be redrafted. Specifically, provisions on compensation must ensure full and adequate compensation for losses and damage, community consultation and social and human rights impacts assessment must be made mandatory, as must disclosure of impact assessments and any other information on the operations or impact of the oil industry on human rights.

7.2. TO THE NATIONAL ASSEMBLY

Establish a committee to review the impact of joint ventures and the proposals in relation to joint ventures contained in the Petroleum Bill on human rights in Nigeria.

7.3. TO COMPANIES

1. **Disclose information on the impact of oil operations on the environment and human rights in non-technical language, including:**
 - All oil spills, volumes and locations.
 - Information on waste disposal (particularly where waste disposal is into the environment – land, air or water).

- Environmental Impact Assessments.
- Any studies conducted on the impacts of oil operations on water, land and air
- Funds paid in land acquisition/rental.
- Amounts paid in compensation with a break down of what items were covered.²⁹⁴
- Lobby positions in relation to legislation in Nigeria that would have an impact on the environment and human rights.

If the government prohibits the disclosure of any of this information, companies should state this fact publicly and challenge the government on this issue.

2. Make a public statement of support for independent oversight of the oil industry in the Niger Delta, and confirm that your company will not lobby against independent oversight.

3. Allow independent review of the company's environmental management processes, which should include physical site inspections. The independent review should include representatives of independent governmental and non-governmental bodies. The results should be made public.

4. Undertake comprehensive assessment of the social and human rights impacts of all oil and gas projects, ensuring adequate information is provide to affected individuals and communities and that the process is transparent. Ensure the impact assessments, and plans to prevent and mitigate any harm to human rights, are made public and accessible.

5. Undertake a comprehensive clean-up of oil pollution in consultation with affected communities and report on this publicly and regularly.

6. Fully overhaul community engagement and consultation practices and ensure there is robust oversight of the community engagement process.

- Ensure that women are given adequate access to the community engagement process at all stages.

- Establish a complaints mechanism to allow communities' access to a senior officer to raise concerns about how community engagement is undertaken.

- Provide training to all relevant staff on gender dynamics and specifically how to ensure that dialogue with the communities is both non-discriminatory and respectful of local customs.

- Ensure all contractors are fully aware of company policy on human rights, environment and gender issues, and are given training to ensure they act in accordance with ethical principles.

7. Prior to engaging in any project, ensure that the community is fully aware of the project,

is able to participate in a social and human rights impact assessment, and is given full information on the project any other relevant data held by the company.

8. Make it a contractual obligation that all contractors are fully aware of company policy on human rights, environment and gender issues, and are given training to ensure they act in accordance with ethical principles.

7.4. TO GOVERNMENTS OF HOME STATES

1. Require by law that extractive companies headquartered or domiciled in your country undertake human rights due diligence measures in respect of all their overseas operations, with particular attention to high-risk areas such as the Niger Delta. Ensure these measures are reported on publicly. Due diligence measures should be adequate to demonstrate that all reasonable efforts have been taken by the company to become aware of and prevent negative human rights impacts from extractive operations in which the company is involved.

Companies should seek to ensure the following:

- An adequate impact assessment is conducted – in consultation with local stakeholders - which covers impacts on all human rights that may be affected by projects, including health and livelihoods.
- Disclosure of the impact assessment, including a non-technical summary for every project.
- Public reporting on community consultations and outcomes.
- Disclosure of waste management practices including where there are in-country differences.
- Disclosure of all payments to governments, including state and local governments.
- Responding to requests for legitimate information or provide a reason for failure to do so.

The disclosure of information is one of the critical means of ensuring that affected communities can effectively participate in the decision making processes prior to and during project development and that extractive industries can be effectively monitored and held to account especially in countries where the regulatory system is failing.

2. Establish parliamentary or similar oversight mechanisms to hear evidence on and review complaints made against corporate actors in the extractive sector.

3. Ensure that people whose human rights are harmed by the overseas operations of extractive companies headquartered or domiciled in your country can access effective remedy in the home state, including access to the courts, in cases where they cannot access effective remedy in their own state.

4. Engage with and support the government of Nigeria in establishing an independent oversight body for the oil and gas industry.

5. Engage with and support the government of Nigeria to increase access to effective remedy for people whose rights are affected by oil operations in the Niger Delta.

ENDNOTES

- ¹ See: <http://wiwavshell.org/about/about-wiwa-v-shell/>
- ² Shell, "Shell settles Wiwa case with humanitarian gesture", 8 June 2009, available at www.shell.com.
- ³ Centre for Constitutional Rights, "Settlement Reached in Human Rights Cases Against Royal Dutch/Shell", 8 June 2009
- ⁴ Statement of the Plaintiffs' Attorneys in *Wiwa v. Royal Dutch/Shell, Wiwa v. Anderson and Wiwa v. SPDC*, 8 June 2009. Available at: <http://www.ccrjustice.org/>
- ⁵ Interviews with Nenibarini Zabbey, Head of the Environment and Conservation Program at the Center for Environment, Human Rights and Development (CEHRD), 7 February 2009, Amsterdam, and 30 April by phone, as well as follow-up communications by email between February and May 2009. See also: "Environment and Conservation Program, Persistent oil spillage at Bodo Creek: unprecedented impacts on ecosystem stability, biodiversity and food security of Ogoni communities", October 2008, downloadable at www.cehrd.org.
- ⁶ Interview with local fisherman reported in CEHRD's, *Report on the state of human rights abuses and violence in the Niger Delta region of Nigeria*, 2008, www.cehrd.org p157.
- ⁷ Video footage shows the oil bubbling out at Bodo Creek. Shell Petroleum Development Company (SPDC) reportedly estimated that 1,640 barrels of oil were spilt into the creek.
- ⁸ Email communication with Sue Lloyd Roberts of the BBC who covered the case in a report on the Niger Delta in 2008
- ⁹ Email communication with Nenibarini Zabby, Head of the Environment and Conservation Program at CEHRD, 7 May 2009.
- ¹⁰ Representative of the Bodo community speaking in video footage at the spill site in October 2008.
- ¹¹ The Department of Petroleum Resources, *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)*, Revised Edition 2002, Section B para 2.6, states: "For contamination on waters, it shall be required that operators respond for immediately [sic] containment of oil spill in order to prevent the spreading of the spilled product." Para 2.6.3 goes on to state: "Clean-up shall commence within 24 hours."
- ¹² Interview with Nenibarini Zabbey, Head of the Environment and Conservation Program at CEHRD, 30 April 2009, by phone.
- ¹³ Community representative speaking on video taken by CEHRD on 7 November 2008.
- ¹⁴ Email communication with Nenibarini Zabbey, 9 May 2009.
- ¹⁵ Report of the Niger Delta Technical Committee, November 2008, p102. Figure is based on the 2006 census.
- ¹⁶ G. Wurthmann, "Ways of Using the African Oil Boom for Sustainable Development", African Development Bank, Economic Research Working Paper Series, No. 84, March 2006.

¹⁷ UNDP, *Niger Delta Human Development Report*, 2006.

¹⁸ UNDP, *Niger Delta Human Development Report*, 2006..

¹⁹ Constitution of the Federal Republic of Nigeria, 1999, Clause 44 states: "... the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly." The Petroleum Act of 1969, Clause 1 states: "the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State."

²⁰ See: Petroleum Act, 1990 and Oil Pipelines Act, 1990.

²¹ Responding to the question of lack of information on the impacts of oil extraction, some companies referred to Environmental Impact Assessments (EIAs), which are required by law, and which are supposed to give communities the opportunity to know about projects. Some companies also make announcements through media such as radio and newspapers about projects. However, Amnesty International found EIAs to be difficult to access and few communities were aware of the actual or potential impacts of projects (as opposed to the fact that the project might exist). These issues are taken up later in this report.

²² 1999 Constitution of the Federal Republic of Nigeria, Clause 20.

²³ 1999 Constitution of the Federal Republic of Nigeria, Clause 16 (2).

²⁴ 1999 Constitution of the Federal Republic of Nigeria, Clause 17(2)(d).

²⁵ SPDC, *Nigeria Brief, The Environment*, 1995. SPDC has also stated that its environmental footprint is very small.. During an interview with Amnesty International in Port Harcourt, its managing director said: "Our footprint in the Niger Delta is less than 3 per cent. I think it is important to have that perspective." However, this statement is misleading and uses no known methodology. It seems to be based on measuring the land directly under the pipes and other infrastructure but nothing else. According to a 1995 SPDC publication "All facilities, including flowstations, offices, pipelines, flowlines, use a total of only 220 square kilometres of the company's delta oil mining lease areas of more than 31,000 square kilometres – some 0.7 per cent. In terms of the entire Niger Delta area, this land use amounts to 0.3 per cent.

²⁶ Pipes of various sizes are used to transport produced crude oil mixed with gas and water from the wells to flow stations, and from there to the terminals. The small sized pipes that deliver production from wells to flow stations (where gas is separated from the crude oil) are called flowlines. From there, the crude (which is a mixture of oil and water) is transported to the terminals by further pipelines. Source: SPDC.

²⁷ Data on oil industry infrastructure varies. According to website of the Nigerian National Petroleum Corporation (NNPC) : "Of the 606 oil fields in the Niger Delta area, 355 are onshore while the remaining 251 are offshore. The Delta has approximately 7,000 kilometres of pipeline network...". According to Shell's website: "Shell Petroleum Development Company (SPDC) is the largest oil and gas company in Nigeria and has over 6,000 kilometres of pipelines and flowlines, 87 flow stations, eight gas plants and more than 1,000 producing wells.

²⁸ Report of the Niger Delta Technical Committee, November 2008, p102.

²⁹ From www.nnpcgroup.com: "The Nigerian National Petroleum Corporation (NNPC) was established on

April 1, 1977, under the statutory instrument-Decree No. 33 of same year by a merger of Nigerian National Oil Corporation, NNOC, with its operational functions and the Federal Ministry of Mines & Power with its regulatory responsibilities. This decree established NNPC, a public organization that would, on behalf of Government, adequately manage all government interests in the Nigerian Oil industry. In addition to its exploration activities, the Corporation was given powers and operational interests in refining, petrochemicals and products transportation as well as marketing. Between 1978 and 1989, NNPC constructed refineries in Warri, Kaduna and Port Harcourt and took over the 35,000-barrel Shell Refinery established in Port Harcourt in 1965.”

³⁰ SPDC is the operator of a Joint Venture Agreement involving the Nigerian National Petroleum Corporation (NNPC), which holds 55 per cent, Shell, 30 per cent, Elf Petroleum Nigeria Ltd (EPNL), 10 per cent and Agip 5 per cent. Source: www.shell.com

³¹ Source: www.shell.com

³² Declaration of the United Nations Conference on the Human Environment, para 1, available at: <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>

³³ Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia), 1997 ICJ Rep 7 (separate opinion of Justice Weeramantry), p4.

³⁴ See African Commission on Human and Peoples’ Rights, Decision on Communication of The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v Nigeria (155/96), para 54. The decision was adopted at the 30th ordinary session of the African Commission of Human and Peoples’ Rights, Banjul, 13-27 October 2001 (SERAC and CESR v Nigeria), available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>

³⁵ African Commission on Human and Peoples’ Rights, Decision on Communication of The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v Nigeria (155/96), para 54. The decision was adopted at the 30th ordinary session of the African Commission of Human and Peoples’ Rights, Banjul, 13-27 October 2001 (SERAC and CESR v Nigeria), available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>

³⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, 11 August 2000, para 4.

³⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, 11 August 2000, para 15.

³⁸ United Nations Development Programme (UNDP), *Niger Delta Human Development Report, 2006*, p74.

³⁹ Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), “Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report”, May 2006.

⁴⁰ See the section of this report on fisheries, p27.

⁴¹ A 1995 World Bank report noted: “Lumps from oil spillage can be directly observed and oil films cover

the water surface. Spills of raw materials or leaks during processing can cause serious surface water, soil, and groundwater contamination,” World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, Industry and Energy Operations Division West Central Africa Department, p35.

⁴² Oil experts assert that many pipelines and installations in the Niger Delta have not been adequately maintained, and this is a contributory factor in corrosion and leaks. See: “Double standards? International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria”, Professor Richard Steiner, University of Alaska, USA, November 2008. Available at: <http://www.milieudefensie.nl/english/shell/the-people-of-nigeria-versus-shell>

⁴³ Amnesty International interviews with community groups, Niger Delta, March 2008.

⁴⁴ Nigerian law does not require companies to pay compensation when environmental damage is the result of sabotage or vandalism.

⁴⁵ The Niger Delta Technical Committee looked at various reports that covered environmental harm. The Niger Delta Environmental Survey may have considered the scale of oil spills but this study has never been published.

⁴⁶ Some of the sites may not involve oil spills but other forms of pollution. However, no information on the sites is made available.

⁴⁷ See SPDC annual reports 2000 – 2006. Agip told Amnesty International that it had maintained an oil spill register since 2001 and had reported 914 spills to date. The data are not published.

⁴⁸ SPDC, *Nigeria Brief, The Environment, 1995*. The figure of 7,350 barrels is questioned by environmental experts, who claim the true figure may be much higher, due to under-reporting.

⁴⁹ These figures are quoted from several academic papers on the oil industry in Nigeria, including: O.T. Badejo and P.C. Nwilo, Management Of Oil Spill Dispersal Along The Nigerian Coastal Areas and Christopher O. Orubu, Ayodele Odusola and William Ehwarieme, The Nigerian Oil Industry: Environmental Diseconomies, Management Strategies and the Need for Community Involvement in *J. Hum. Ecol.*, 16(3): 203-214 (2004).

⁵⁰ UNDP, *Niger Delta Human Development Report, 2006*.

⁵¹ Interviews with Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, March 2008 Email communication with Professor Richard Steiner, University of Alaska, 19 March 2009.

⁵² Niger Delta Natural Resources Damage Assessment and Restoration Project, Phase I Scoping Report, May 2006, conducted by Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja).

⁵³ Department of Petroleum Resources Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), Section F, p269.

⁵⁴ In 1995 SPDC stated that plans were being developed to rehabilitate land affected by past operations. SPDC stated that it was carrying out an inventory of some 3,000 sites in the Niger Delta, including former well sites, drilling waste pits, former camp sites and pits left after excavating earth for construction. Between 1999 and 2006, SPDC claimed to have identified 1,516 sites requiring

remediation – see SPDC *People and the Environment* reports from 2000 to 2006.

⁵⁵ Interview with the National Oil Spill Detection and Response Agency, Abuja, 3 April 2008.

⁵⁶ Amnesty International interviews with: staff at the Institute of Pollution Studies, Rivers State University of Science and Technology Port Harcourt, March 2008; Professor Emmanuel Asuquo Obot of the Nigerian Conservation Foundation, March and April 2008; Environmental Rights Action, March 2008; and Friends of the Earth Netherlands, various dates in 2008. See also: Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), “Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report”, May 2006, and UNDP, *Niger Delta Human Development Report, 2006*.

⁵⁷ SPDC, *Nigeria Brief, The Environment, 1995*.

⁵⁸ See, for example, an interview with Shell’s country chair in Nigeria, Basil Omiyi. See: www.shell.com/home/content/aboutshell/swol/2008/nigeria/

⁵⁹ Numerous reports, including the UNDP *Niger Delta Human Development Report, 2006*, acknowledge the problem of vandalism and sabotage of oil pipelines. The problem was also acknowledged in interviews with a range of stakeholders in the Niger Delta, including NGOs, communities, government representatives and companies. However, in almost all cases (with the exception of the companies), the lack of independent means of verification of the facts was also acknowledged, as was the fact that some spills have been designated sabotage but later found to be due to company failures.

⁶⁰ See Section 3 of this report. See also Batan oil spills case study on page 48 of this report. This has also been shown in court actions in Nigeria such as *Shell v Isaiah* (1997) 6 NWLR (pt. 508) 236. See section on “Transparency and disclosure”, p62 of this report.

⁶¹ See *Shell v Isaiah*, (1997) 6 NWLR (pt. 508) 263.

⁶² G. J. Frynas, “Legal Change in Africa, “Evidence from oil-related litigation in Nigeria”, *Journal of African Law*, Vol 43, No. 2 (1999), p128.

⁶³ Interview with a senior officer of the Rivers State Ministry of Environment, March 2008

⁶⁴ Shell, for example, has discharged wastewater into Warri River. Source: SPDC *People and the Environment Report, 2001*.

⁶⁵ Email communication with Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, 21 March 2009. See also World Bank, “Defining an Environmental Development Strategy for the Niger Delta”, 25 May 1995, Volume 2, Industry and Energy Operations Division West Central Africa Department, p35 which states “concentrations of dissolved petroleum hydrocarbons have been found to be elevated near refineries in the region (10-50 mg/l), which supports the inference that little or no wastewater treatment, is performed.”

⁶⁶ O. Obire and F. O. Amusan, “The Environmental Impact of Oilfield Formation Water on a Freshwater Stream in Nigeria”, *Journal of Applied Sciences & Environmental Management*, 2003.

⁶⁷ SPDC, *People and the Environment, 2000*, p33.

⁶⁸ SPDC, *People and the Environment, 2006*, p18. The oil in surface water reduced to 328 tonnes in 2006, and the overall volume reduced but the average oil in surface water increased from 8.5 mg/l in

2002 to 17.8 mg/l in 2006.

⁶⁹ Email communication Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, 21 March 2009.

⁷⁰ SPDC, Nigeria Brief, The Environment, 1995.

⁷¹ Environmental Rights Action and The Climate Justice Programme, "Gas Flaring in Nigeria: A human rights, environmental and economic monstrosity", June 2005. In this report the authors quote from British government documents in the 1960s that show awareness of gas flaring as a problem.

⁷² The Associated Gas Reinjection Act 1979, required every company to submit a plan on how they would implement the reinjection of associated gas, including a scheme for the utilization of all produced gas (section 2). Under section 3 of the Associated Gas Reinjection Act 1979, a consent to continue flaring can only be issued if the Minister is satisfied that utilization or reinjection is not appropriate or feasible in a particular field or fields. The Associated Gas Reinjection (Continued Flaring of Gas) Regulations 1984, include a range of conditions for continued gas flaring but also allows the Minister to authorize the production of oil from a field that does not satisfy any of the conditions specified in these Regulations. Despite requests by Environmental Rights Action/Friends of the Earth Nigeria, no consents or conditions have been disclosed by any of the companies. From: www.climatelaw.org.

⁷³ Amnesty International interview with Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, March 2008.

⁷⁴ According to Dr. Solomon Braide of the Institute of Pollution Studies in Port Harcourt: "Canalization can cause a major environmental and ecological problem. The major impact is that the hydrology of the water system will change drastically resulting in upstream movement of brackishwater into the freshwater zone. The implication is that such saltwater intrusion into fresh water zone will cause environmental and ecological problems." (Email communication 21 January 2009).

⁷⁵ Interviews with environmental experts, Port Harcourt, March 2008. According to Dr. Solomon Braide of the Institute of Pollution Studies at Port Harcourt: "Dredging and sandfilling will destroy breeding grounds for fishes and therefore affect the recruitment potential of the systems. This will negatively affect the economy of the fisher folk in the area. Sediment introduced into the system as a result of dredging and other related activities, may destroy fish habitat through blanketing of fish spawning and feeding areas and elimination of certain food organisms, directly impact fish through gill abrasion and fin rot, and reduce sunlight penetration, thereby impairing photosynthesis of aquatic plants. Suspended sediment decreases recreational values, reduces fishery habitat, adds to the mechanical wear of water supply pumps and distribution systems if water is to be obtained from the river for potable use. Nutrient and toxic substances attached to sediment particles are transported to water bodies and may enter aquatic food chains, cause fish toxicity problems, contribute to algal blooms, impair recreational uses and degrade the water as a drinking source." Some academic studies have also been conducted on the impacts. See: Elijah I. Ohimain, Wim Andriessse and Martinus E. F. van Mensvoort, "Environmental impacts of abandoned dredged soils and sediments", *Journal of Soils and Sediments*, Springer, Berlin/Heidelberg, March 2004; Elijah I. Ohimain, Tunde O. Imoobe and Dorcas D. S. Bawo, "Changes in water physico-chemical properties following the dredging of an oil well access canal in the Niger Delta", *World Journal of Agricultural Sciences* 4 (6): 752-758, 2008; E.I. Ohimain, T.O.T. Imoobe, M.O. Benka-Coker, "The impact of dredging on macrobenthic invertebrates in a tributary of the Warri River, Niger Delta", *African Journal of Aquatic Science*, Vol 30(1) 2005: pp49-53.

⁷⁶ Elijah I. Ohimain, Tunde O. Imoobe and Dorcas D.S. Bawo, "Changes in water physico-chemical properties following the dredging of an oil well access canal in the Niger Delta", *World Journal of Agricultural Sciences*, 4 (6), pp 752 – 758, 2008, ISSN 1817-3047

⁷⁷ Amnesty International interview with Dr Solomon Braide, Institute of Pollution Studies, Rivers State University of Science and Technology, Port Harcourt, March 2008.

⁷⁸ Dredge spoils are often poor in plant nutrients and rather acidic, thus while they do not support plant growth, they leach acidic content into the water bodies.

⁷⁹ Elijah I. Ohimain, Wim Andriessse and Martinus E. F. van Mensvoort, "Environmental impacts of abandoned dredged soils and sediments", *Journal of Soils and Sediments*, Springer, Berlin/Heidelberg, March 2004.

⁸⁰ SPDC claimed that it had done some cumulative impact assessments, and offered to give these to Amnesty International. Amnesty International did not receive these studies.

⁸¹ "A reliable basis for sustainable development", presentation by Jonathan Amakiri, Executive Director, Niger Delta Environment Survey, to the conference on coastal zones in sub-Saharan Africa, The Royal Society, London, 28 May 2003.

⁸² African Commission on Human and Peoples' Rights, Decision on communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), para 70. Decision made at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>

⁸³ Amnesty International representatives visited Ogbodo on 4 October 2003 and interviewed members of the community about the 2001 spill. Amnesty International also received reports from the Center for Social and Corporate Responsibility, including the accounts of staff members who were on site after the spill and did follow-up work with the community. See also: Environmental Rights Action and Friends of the Earth, *The Shell Report, Continuing abuses in Nigeria – 10 years after Ken Saro Wiwa*, 2005.

⁸⁴ Interview with Father Kevin O'Hara, who worked with the Centre for Social and Corporate Responsibility (CSCR) at the time of the Ogbodo oil spill and who visited the community on several occasions. Interviews conducted on 6 and 9 April 2009 by phone.

⁸⁵ Interview with Terisa Turner, member of an NGO delegation that visited Ogbodo a few days after the spill.

⁸⁶ SPDC, *People and the Environment Report*, 2001, p41. However several sources told Amnesty International that 70,000 barrels were removed based on a figure reportedly given by the clean-up contractor company.

⁸⁷ SPDC, *People and the Environment Report*, 2001, p41.

⁸⁸ Interviews with Father Kevin O'Hara, formerly of CSCR, 6 and 9 April 2009 by phone.

⁸⁹ Email communication with Centre for Social and Corporate Responsibility, 11 May 2009.

⁹⁰ Email communication with Centre for Social and Corporate Responsibility, 11 May 2009.

⁹¹ Communication 155/96, The Social and Economic Rights Action Center and the Center for Economic, and Social Rights/Nigeria.

⁹² Communication 155/96, The Social and Economic Rights Action Center and the Center for Economic, and Social Rights/Nigeria

⁹³ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), decision of the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html> The African Commission found Nigeria in violation of the right to non-discrimination (Art 2), the right to respect for life and the integrity of person (Art 4), the right to property (Art 14), the right to health (Art 16), the right to protection of the family unit (Art 18(1)), the right of peoples to freely dispose of their wealth and natural resources (Art 21), the right to food, the right to housing, and the right to a general satisfactory environment favourable to their development (Art 24).

⁹⁴ African Commission on Human and Peoples' Rights, Decision on communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), decision made at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

⁹⁵ Constitution of Nigeria, Chapter 4, Section 44. (3) states: "Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."

⁹⁶ Land Use Act CAP 202 (1990), sections 28 (1) and 28 (2) (c) and 28 (3) (b).

⁹⁷ Interview with senior representative of one of the oil producing states in the Niger Delta, London, 27 February 2009, London

⁹⁸ Under the Land Use Act, if a right of occupancy is revoked for purposes related to mining and oil, the occupier is entitled to compensation under the appropriate provisions of the relevant Mining or Oil laws. Section 36 of the Petroleum Act states: "holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands." Section 20 of the Oil Pipelines Act states: "If a claim is made under subsection (3) of section 6 of this Act, the court shall award such compensation as it considers just in respect of any damage done to any buildings, crops or profitable trees by the holder of the permit in the exercise of his rights there under and in addition may award such sum in respect of disturbance (if any) as it may consider just." In practice the tendency has been to focus compensation calculations on the surface goods lost under the headings of crops, economic trees and buildings.

⁹⁹ Clause 47 (2) states: "No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act."

¹⁰⁰ Article 11 of the International Covenant on Economic, Social and Cultural Rights.

¹⁰¹ Section 5 (1) of the Oil Pipelines Act states: "A permit to survey shall entitle the holder, subject to the section 6 of this Act, to enter together with his officers, agents, workmen and other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably

close to such route for the following purposes -(a) to survey and take levels of the land;(b) to dig and bore into the soil and subsoil; (c) to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection; and(d) to do all other acts necessary to ascertain the suitability of establishment of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified.” Section 6(3) of the same Act states: “The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good.”

Section 11 states: “A licence shall entitle the holder, his officers, agents, workmen servants with any necessary equipment or vehicles, subject to the provisions of sections 14, 15 and 16 of this Act, to enter upon, take possession of or use a strip of land of a width not exceeding two hundred feet or of such other width or widths as may be specified in the licence and upon the specified in the licence, and thereon thereover or thereunder construct, maintain and operate an oil pipeline and ancillary installations. A right to object is provided under Section 9 of the Act: “Any person whose land or interest in land may be injuriously affected by the grant of a licence may within the period specified for objections lodge verbally or in writing at one of the specified addresses notice of objection stating the interest of the objector and the grounds of objection.”

¹⁰² For a fuller discussion of the issues see: G. F. Frynas *Oil in Nigeria: Conflict and litigation between oil companies and village communities*, Transaction Publishers, 2000, p170.

¹⁰³ SPDC, *People and the Environment Report*, 2001, p9.

¹⁰⁴ UNDP, *Niger Delta Development Report*, 2006, p28: “An NDES [Niger Delta Environment Survey] Report (2000) covering the states of the Niger Delta region, except Cross River State, also found that most settlements depend on untreated surface water and wells, which leads to health problems from waterborne diseases. It was estimated that only 20 per cent to 24 per cent of rural communities and 45 per cent to 50 per cent of urban communities have access to safe drinking water.”

¹⁰⁵ Committee on Economic, Social and Cultural Rights (CESRC), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E./C.12/2002/11, 20 January 2003.

¹⁰⁶ CESCR, General Comment No. 15, para 3.

¹⁰⁷ CESCR, General Comment No. 15, para 10.

¹⁰⁸ CESCR, General Comment No. 15, para 23

¹⁰⁹ Interviews with local NGOs, Port Harcourt, March 2008. The quality of development projects in general is discussed in an internal SPDC report: WAC Report, “Peace and Security in the Niger Delta, Conflict Expert Group Baseline Report”, Working paper for SPDC, WAC Global Services, 2003, pp 17 – 18. See also, Christian Aid, *Behind the Mask: The real face of corporate social responsibility*, 2004.

¹¹⁰ Interviews with: Rivers State Department of Fisheries, Port Harcourt, and Institute of Pollution Studies, Rivers State University of Science and Technology, Port Harcourt, both in March 2008. The Rivers State Department of Fisheries stated that the factors affecting fishers were oil pollution, air pollution, cost of inputs, militancy and security. According to Niger Delta Natural Resources Damage

Assessment and Restoration Project, Phase I Scoping Report, May 2006, conducted by Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), many of the oil facilities and operations in the Niger Delta are located within sensitive habitats – including areas vital to fish breeding. Despite the fact that all of the governmental and non-governmental sources Amnesty International talked to in the Niger Delta were clear that oil pollution has been one of the most significant factors in damaging fisheries, companies were reluctant to discuss the issue. SPDC, in an interview on 1 April 2008 in Port Harcourt, claimed that its overall impact on fisheries was positive, because of the aquaculture projects they support. They did not provide any data to support this assertion. FAO has also stated that oil companies are involved in promotion of fisheries in the Niger Delta.

¹¹¹ The FAO report is available at: www.fao.org/fishery/countrysector/FI-CP_NG/en.

¹¹² This impact is due to blanketing of fish spawning and feeding areas and the elimination of certain food organisms; these directly affect fish through pill abrasion and fin rot, and reduce sunlight penetration, thereby impairing photosynthesis of aquatic plants. Suspended sediment decreases recreational values, reduces fishery habitat, adds to the mechanical wear of water supply pumps and distribution systems if water is to be obtained from the river for potable use.

¹¹³ Interview with staff at the Institute of Pollution Studies, Port Harcourt, March 2008.

¹¹⁴ Video report provided by the Centre for Social and Corporate Responsibility to Amnesty International.

¹¹⁵ Reported by the Centre for Social and Corporate Responsibility, Rivers State in Batan video documentary. In this video the supervisor of the diver is heard to acknowledge the past leaks at the same point (“one of them was leaking previously, twice”).

¹¹⁶ Interview with Nenibarini Zabby, Center for Environment, Human Rights and Development (CEHRD), who has been monitoring the situation at Bodo, 30 April 2009, by phone.

¹¹⁷ Amnesty International site visit to K-Dere, Rivers State, 5 March 2008.

¹¹⁸ IPIECA, “Biological impact of oil pollution: fisheries. Available at: <http://www.ipieca.org/>

¹¹⁹ Interview with Nenibarini Zabbey, CEHRD, 7 February 2009, Netherlands.

¹²⁰ Quoted from Friends of the Earth Netherlands. See: <http://www.milieudefensie.nl/english/publications/Oruma-english.pdf>

¹²¹ IPIECA, “Biological impact of oil pollution: fisheries. Available at: <http://www.ipieca.org/>

¹²² O. Obire, and F. O. Amusan, “The environmental impact of oilfield formation water on a freshwater stream in Nigeria”, *Journal of Applied Science & Environmental Management*, 2003.

¹²³ See: Sonnich Meier, Craig H. Morton and Ole Arve Misund, “Does the discharge of Alkylphenols in produced water cause oestrogenic endocrine disruption among fish in the North Sea?”, Institute of Marine Research, Norway

¹²⁴ Dredging is reported to have seriously damaged fish stocks in some areas. For example, Professor Bruce Powell of the University of Port Harcourt has estimated that, as a result of canal dredging by a Shell subcontractor, the number of fish in the vicinity of Okoroba fell by approximately 80 per cent. Quoted in J. G. Frynas, “Problems of access to the courts in Nigeria: Results of a survey of legal

practitioners”, in *Social and Legal Studies*, Sage, 2001.

¹²⁵ Interviews with communities in Rivers States, March 2008; interviews with Institute of Pollution Studies, Rivers State University of Science and Technology, Port Harcourt, March 2008.

¹²⁶ Amnesty International interviews with Rivers State Department of Fisheries, Port Harcourt, March 2008.

¹²⁷ Interviews with Rivers State Department of Fisheries and the Institute of Pollution Studies, March 2008.

¹²⁸ Eni has been operating in Nigeria since 1962 when Nigerian Agip Oil Co Ltd. was founded. In 1972 the Nigerian State purchased a stake in NAOC through the Nigerian Petroleum Corporation. See: http://www.eni.it/it_IT/attachments/documentazione/pubblicazioni/paesi/NIGERIA_Brochure_UK_2002.pdf

¹²⁹ Environmental impacts of the oil spill at Ikot Ada Udo in Akwa Ibom State, Nigeria, Submitted by Professor E. J. Udo, PAM Scientific Laboratories, Uyo, Nigeria, for Environmental Rights Action/Friends of the Earth, May 2008.

¹³⁰ Amnesty International interviews in Ebocha, 4 – 6 March 2008.

¹³¹ Expert comment provided by Dr Carolyn Stephens, Reader in International Environmental Health, Public and Environmental Health Research Unit Department of Public Health and Policy, London School of Hygiene & Tropical Medicine, 3 April 2009.

¹³² Amnesty International site visit to Imo State, 6 March 2008.

¹³³ Emmanuel Asuquo Obot, A. Chinda, and S. Braide, “Vegetation recovery and herbaceous production in a freshwater wetland 19 years after a major oil spill,” *African Journal of Ecology* 1992, Vol 30, pp149-156.

¹³⁴ SPDC, Nigeria Brief, *The Environment*, 1995.

¹³⁵ Shell Pet. Dev. Co. v Farah, [1995] 3 NWLR

¹³⁶ Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), section 7.1, p153.

¹³⁷ Shell written notes to Amnesty International, undated

¹³⁸ Interviews with Institute of Pollution Studies, Rivers State University of Science and Technology, Port Harcourt, March 2008. Email communication with Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, 21 March 2009.

¹³⁹ See CEHRD Report on the State of human rights abuse and violence in the Niger Delta region of Nigeria, 2008. Available at: http://www.cehrd.org/files/Human_Rights_Report_2008.pdf

¹⁴⁰ Taken from Amnesty International, Shell Petroleum Development Corporation (SPDC) and the community of Rukpokwu, Rivers State (Index AFR/44/032/2004), unless otherwise stated.

¹⁴¹ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, Social and Rights, E/C.12/1999/5).

¹⁴² CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the

International Covenant on Economic, Social and Rights, E/C.12/1999/5), para 12

¹⁴³ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, Social and Rights, E/C.12/1999/5), para 27.

¹⁴⁴ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v Nigeria (155/96), para 68.

¹⁴⁵ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, Social and Rights, E/C.12/1999/5), para 8.

¹⁴⁶ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v Nigeria (155/96).

¹⁴⁷ Powell and White (1985) quoted in UNDP, Niger Delta Human Development Report, 2006.

¹⁴⁸ Environmental impacts of the oil spill at Ikot Ada Udo in Akwa Ibom State, Nigeria, Submitted by Professor E. J. Udo, PAM Scientific Laboratories, Uyo, Nigeria, for Environmental Rights Action/Friends of the Earth, May 2008, p 23.

¹⁴⁹ See the discussion on the drafting history of this article in M. Craven, *The International Covenant on Economic, Social and Cultural Rights*, Oxford University Press, 1995, p293.

¹⁵⁰ See SPDC report 2000 and 2001, in which it is stated "Subsistence farming and fishing are the mainstay of the people."

¹⁵¹ Companies have invested millions of dollars in development projects in the Niger Delta over years. While some projects have been beneficial to communities, development activities by companies are fraught with difficulties, including lack of coordination and follow-through and poor planning. The quality of development projects in general is discussed in an internal SPDC report: WAC Report, "Peace and Security in the Niger Delta, Conflict Expert Group Baseline Report", Working paper for SPDC, WAC Global Services, 2003, pp 17 – 18. See also, Christian Aid, *Behind the Mask: The real face of corporate social responsibility*, 2004

¹⁵² CESCR, General Comment No. 14 (2000) on the right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Rights, E/C.12/2000/4), para 4.

¹⁵³ CESCR, General Comment No. 14 (2000) on the right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Rights, E/C.12/2000/4), para 15.

¹⁵⁴ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), para 70. Decision of the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available at: <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

¹⁵⁵ *The Lancet*, "Exposure to oil spill has detrimental effect on clean-up workers' health, Vol 361 January 11, 2003

¹⁵⁶ See, for example, Friends of the Earth at: www.foe.co.uk/resource/press_releases/communities_sue_shell_to_s_20062005.html

¹⁵⁷ Email communication, received 3 April 2009.

¹⁵⁸ NAOC written comments to Amnesty International, received 25 March 2009

¹⁵⁹ *Los Angeles Times*, "Dark cloud over good works of Gates Foundation", 7 January, 2007; The New York Times, "Ebocha Journal; Strangers in the Dazzling Night: A Mix of Oil and Misery" Published: 9 December 2005; The health impacts have also been reported on by Friends of the Earth, see: http://www.foe.org/pdf/GasFlaringNigeria_FS.pdf, as well as in numerous Nigerian newspapers.

¹⁶⁰ NAOC written comments to Amnesty International, received 25 March 2009

¹⁶¹ A 1998 study done by a Nigerian company, Ecosphere Nigeria Limited, for the Nigerian Agip Oil Company (NAOC) concluded: "There is no doubt that the flares produce oxides of nitrogen which lead to acid rains but their contribution to rusting either directly or indirectly by accelerating the process cannot be definitely ascertained without carrying out corrosion test on corrugated iron sheets." See: "Gas flaring study of Obiafu/Obrikom Gas Recycling Plant, Ebocha Oil Centre, Oshi Flowstation and Akri Flowstation, submitted to NAOC by Ecosphere Nigeria Limited, April 1998. A 1995 World Bank report on environmental issues in the Niger Delta stated that acidification effects may occur but that it was likely that "serious acidification effects do not arise from gas flaring".

¹⁶² Expert comment provided by Dr Carolyn Stephens, Reader in International Environmental Health, Public and Environmental Health Research Unit Department of Public Health and Policy, London School of Hygiene & Tropical Medicine, 3 April 2009

¹⁶³ P. Middleton and S. L. Rhodes, "Acid rain and drinking water degradation", *Environmental Monitoring and Assessment*, Vol 4, No, 1, March 1984.

¹⁶⁴ Federal High Court of Nigeria in Benin City, 14 November 2005, FHC/B/CS/153/2005.

¹⁶⁵ Roundtable meeting with lawyers and environmental experts, Port Harcourt, March 2008.

¹⁶⁶ (Ndiokwere and Ezihe, 1990), quoted in World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Volume 2, pg 38.

¹⁶⁷ CESCR General Comment No.14, The right to the highest attainable standard of health, 11/08/2000.E/C.12/2000/4.

¹⁶⁸ African Commission on Human and Peoples' Rights, Decision on communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), decision made at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001, available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

¹⁶⁹ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/8/5, para 82.

¹⁷⁰ See: UNDP, *Niger Delta Human Development Report, 2006*, and the *Report of the Technical Committee on the Niger Delta, November 2008*. The failure of regulation over decades was also repeatedly raised with Amnesty International researchers in interviews with NGOs, academics and oil industry experts.

¹⁷¹ Petroleum (Drilling and Production) Regulations (1969), Section 25.

¹⁷² Professor Richard Steiner, University of Alaska, email communication, 20 March 2009.

¹⁷³ Professor Richard Steiner, University of Alaska, email communication, 20 March 2009. Interviews with NGOs in Port Harcourt as part of a roundtable discussion on the oil industry and pollution, March 2008.

¹⁷⁴ Constitution of the Federal Republic of Nigeria, section 44. Under the Constitution of the Federal Republic of Niger, the Exclusive Legislative List under section 323, the Second Schedule to the Constitution lists those areas where the Federal Government has exclusive legislative authority. This includes mines and minerals, including oilfields, oil mining, geological surveys and natural gas.

¹⁷⁵ Interviews with environmental experts, Port Harcourt, March 2008. A senior member of the government of one of the oil producing states, interviewed on 27 February in London, also expressed the view that the regulatory body was also a partner of the oil companies.

¹⁷⁶ World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, Industry and Energy Operations Division West Central Africa Department, p45.

¹⁷⁷ This issue is addressed in a recent environmental assessment: The World Bank, *Nigeria Rapid Country Environmental Assessment, Final Report*, 30 November 2006.

The Federal Ministry of Environment is responsible under the Environmental Impact Assessment Decree and for the National Oil Spill Detection and Response Agency. However, the Department of Petroleum Resources guidelines, EGASPIN, to which most companies refer, covers these issues also. Companies say they follow both.

¹⁷⁸ Interview with a senior State Government representative from one of the oil producing states in the Niger Delta, 27 February 2009, London. The interviewee asked not to be named.

¹⁷⁹ Clause 36 of the National Environment Standards and Regulations Enforcement Agency (Establishment) Act of 2007 repeals FEPA

¹⁸⁰ National Oil Spill Detection and Response Agency (Establishment) Act 2006, section 6 (1) (a).

¹⁸¹ Amnesty International interviews with the National Oil Spill Detection and Response Agency (NOSDRA) staff in Port Harcourt, 1 April 2008 and Abuja, 3 April 2008.

¹⁸² See: World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 25 1995, Vol II, Industry and Energy Operations Division West Central Africa Department, pp 45-53; The World Bank, *Nigeria Rapid Country Environmental Assessment, Final Report 11/30/2006*, p39, which states: "Environmental inspectors belonging to the FMEV often have to rely on private companies for providing cars to undertake monitoring activities, in addition to hotel bills, per diems and other expenses, compromising legitimacy and effectiveness in the environmental monitoring process."

¹⁸³ Interviews with staff from federal and state ministries of environment conducted in March and April 2008 in Port Harcourt and Abuja. See also, World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, p53. Referring to the Federal Environmental Protection Agency, which preceded the Federal Ministry of Environment the report cites: limited funding; weak monitoring and enforcement capacity; and few appropriately trained staff.

¹⁸⁴ Interviews with staff at Federal Ministry of Environment offices in Niger Delta, March 2008.

¹⁸⁵ Interview with State Ministry of Environment official, Port Harcourt, March 2008.

¹⁸⁶ Interview with NOSDRA officials, Port Harcourt, March 2008.

¹⁸⁷ Environmental scientists, some of whom have worked for the oil companies doing environmental assessments, as well as NGO personnel, confirmed the lack of resources and capacity of the Department of Petroleum Resources (DPR). Amnesty International put its concerns to the DPR in writing and followed up by phone but did not receive any response from the Department.

¹⁸⁸ UNDP, *Niger Delta Human Development Report*, 1996.

¹⁸⁹ Grevy, 1994, quoted from World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, Industry and Energy Operations Division West Central Africa Department p55.

¹⁹⁰ Section 14 of The Oil Pipelines Act, for example, prohibits a licence holder from: altering the flow of water in any navigable waterway, or constructing work in a navigable waterway that might obstruct or interfere with the free and safe passage of vessels, canoes or other craft; or from constructing work or depositing material in such a way that would alter the flow of water required for domestic, industrial or irrigational use by diminishing or restricting the quantity of water available for such purpose, or construct such works or make such deposits in any waterway as would cause flooding or erosion, without the prior permission in writing of the Minister.

¹⁹¹ The Associated Gas Reinjection Act 1979, required every company to submit a plan on how they would implement the reinjection of associated gas, including a scheme for the utilization of all produced gas (section 2). Under section 3 of the Associated Gas Reinjection Act 1979, consent to continue flaring can only be issued if the Minister is satisfied that utilization or reinjection is not appropriate or feasible in a particular field or fields. The Associated Gas Reinjection (Continued Flaring of Gas) Regulations 1984, include a range of conditions for continued gas flaring but also seems to allow the Minister to authorise the production of oil from a field that does not satisfy any of the conditions specified in these Regulations. Despite requests by Environmental Rights Action/Friends of the Earth Nigeria, no consents or conditions have been disclosed by any of the companies. From: www.climatelaw.org

¹⁹² Section 6 (2), Oil Pipelines Act

¹⁹³ See page 48 of this report, which described the videoed events at Batan. The video includes a letter from SPDC to the community claiming staff were harassed, although the video footage shows armed public security officers guarding the SPDC representatives and does not show intimidation.

¹⁹⁴ The World Bank, *Nigeria Rapid Country Environmental Assessment, Final Report*, 30 November 2006, p39.

¹⁹⁵ SPDC, *People and the Environment Report*, 2005 stated: "A joint industry study – being executed by Chevron Nigeria Limited on behalf of the industry – is ongoing to determine an acceptable quality of produced water discharged into the environment. This will form the basis for a review of the requirements for disposal of produced water and possible reinjection into formations".

¹⁹⁶ Amnesty International posed the question to Shell, Total, Chevron, ExxonMobile and Nigerian Agip Oil Company as part of a series of written questions to the oil companies, which were sent to them by email between September and December 2008.

¹⁹⁷ The letter is seen on the video documentary made by CSCR

¹⁹⁸ Interviews with Father Kevin O'Hara, who worked with the Center for Social and Corporate Responsibility in Rivers State at that time, 6 and 9 April 2009.

¹⁹⁹ Interviews with Environmental Impact Assessment experts, Port Harcourt, March 2008. See also: C.O. Orubu, A Odusoal and W Ehwareme, *The Nigerian Oil Industry: Environmental Diseconomies, management Strategies and the Need for Community involvement*, Kamla-Raj 2004.

²⁰⁰ NAOC written response to Amnesty International, received 19 December 2008

²⁰¹ NAOC written response to Amnesty International, received 25 March 2009.

²⁰² CESCR, General Comment 14 on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, para 11, and General Comment 15 on the right to water, E/C.12/2202/11, 20 January 2003, para 48.

²⁰³ CESCR, General Comment 15 on the right to water. E/C.12/2202/11, 20 January 2003, para 48.

²⁰⁴ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v Nigeria (155/96), para 55. The decision was adopted at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001 (SERAC and CESR v Nigeria), available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

²⁰⁵ Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (the Covenant) guarantee the right to take part in government or in the conduct of public affairs. According to the Human Rights Committee, interpreting Article 25 of the ICCPR, this includes a right to participate in the formulation and implementation of policy from local to the national and international levels. "The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels". (CCPR, General comment 25, "The right to participate in public affairs" UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 5.

²⁰⁶ Amnesty International received EIAs from Total and NAOC. From SPDC Amnesty International received the following documents on request: Closeout report from Royal Haskoning, 2003 which looked at three sites; presentation of a 2007 ISO 14001 recertification audit; a list of oil spills and impacted sites with JIT status for Jan – March 2008; SPDC's contracting process document, 2005; SPDC's procedure document for joint investigations.

²⁰⁷ Environmental Impact Assessment Decree No. 86 of 1992, Section 7 states: "Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity."

²⁰⁸ Petroleum Act, Section 25 (1) (a) (iii).

²⁰⁹ National Oil Spill Detection and Response Agency (Establishment Act) 2006

²¹⁰ Moreover, if the Minister is not satisfied with the assessment and financial provision contemplated in this section, he or she may appoint an independent assessor to conduct the assessment and determine the financial provision.

²¹¹ See, for example, interviews with Shell's country chair in Nigeria, Basil Omiyi, available at: www.shell.com/home/content/aboutshell/swol/2008/nigeria/ at <http://sustainabilityreport.shell.com/2006/workinginchallenginglocations/nigeria.html> . See also: *Double*

standards? International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria, Professor Richard Steiner, University of Alaska, USA, November 2008.

²¹² Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, paras 54 and 56.

²¹³ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, Para 54.

²¹⁴ Shell, for example, has a set of global environmental standards for all Shell companies and joint ventures the company controls. The topics they cover include: how we do integrated environmental, social and health impact assessments, including engagement with our stakeholders; solid waste; spill response preparedness; continuous flaring and venting of natural gas at oil production sites; and impacts on water (produced water and process effluents). See:

http://www.shell.com/home/content/responsible_energy/integrated_approach/our_commitments_and_standards/global_environmental_standards/minimum_environmental_standards.html. Total has a number of environmental policies, including on remediation of sites and use of water. In 2007 Eni adopted guidelines for the protection and promotion of human rights and the assessment of the environmental and social impact (ESIA) of the groups business activities, with these evaluations being carried out with the active involvement of local stakeholders.

²¹⁵ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, Para 56.

²¹⁶ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, A/HRC/8/5, Para 61.

²¹⁷ Environmental Impact Assessment (EIA) Decree 1992. EGASPIN also provides guidance on EIAs for the oil and gas sector.

²¹⁸ Interview with Rivers State Ministry of Environment official, Port Harcourt, March 2008. Interviews with environmental experts at the Institute of Pollution Studies, Port Harcourt University, March 2008.

²¹⁹ Interview with EIA practitioner, Port Harcourt, March 2008.

²²⁰ Interviews with environmental experts in Niger Delta who did not wish to be named.

²²¹ Interview with Ministry of Environment officer, Niger Delta, March 2008.

²²² The only reference to any social concern is in para 22 sub para b (ii), which refers to public concerns about environmental effects.

²²³ NAOC sent Amnesty International three chapters of an EIA for the Ekedei Deep A Exploratory Drilling Project: chapters 5, 7 and 8.

²²⁴ *Double standards? International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria*, Professor Richard Steiner, University of Alaska, USA, November 2008.

²²⁵ SPDC, Nigeria Brief, *The Environment*, 1995.

²²⁶ SPDC, Nigeria Brief, *The Environment*, 1995.

²²⁷ In 2005, SPDC began to implement the recommendations of its asset integrity management systems review that was completed in 2004. According to SPDC: "The SPDC Pipeline Integrity Management System (PIMS) involves a suite of activities required to properly manage the asset, assure asset integrity, fulfil health, safety and environmental (HSE) requirements, and deliver optimum life cycle performance. The SPDC PIMS is in line with the relevant American Standard for Mechanical Engineers (ASME) B31.8s, adapted to the local environment and supplemented with pipeline management experience from the Royal Dutch/Shell Group. As part of PIMS, a maintenance reference plan has been developed that is tied to the condition of the line. Thus, depending on the monitored condition of the lines, the frequency of maintenance actions is either increased or decreased – rather than being carried out at preset intervals."

²²⁸ An interview with Nigeria Country Chair, Basil Omiyi by Roger Hammond. See: <http://sustainabilityreport.shell.com/2006/workinginchallenginglocations/nigeria.html> .

²²⁹ SPDC, Nigeria Brief, *The Environment*, 1995.

²³⁰ *Double standards? International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria*, Professor Richard Steiner, University of Alaska, USA, November 2008.

²³¹ SPDC, written response to Amnesty International, undated.

²³² SPDC referred to this study in its 2006 annual report. Amnesty International asked if the study was publicly available and specifically requested a copy. Amnesty International did not receive the requested study.

²³³ *Shell v Isaiah*, (1997) 6 NWLR (Pt. 508) 236

²³⁴ Total has been present in Nigeria through its main subsidiary, Elf Petroleum Nigeria Limited, (since 1962). Total is also present through Total Upstream Nigeria Limited (a 100 per cent subsidiary), Total LNG

Nigeria Limited (which owns 15 per cent in Nigeria LNG Ltd) and Brass Holdings Company Limited (which currently owns 17 per cent in Brass LNG Ltd). Source: Financial Transparency, Total in Nigeria, 2008

On 24 March 2009 Total sent Amnesty International its Environmental Impact Assessment for an area known as OML 58.

²³⁵ See: WAC Global Services, "Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report", December 2003.

²³⁶ SPDC, Nigeria Brief, *The Environment*, 1995.

²³⁷ "A reliable basis for sustainable development", presentation by Jonathan Amakiri, Executive Director, Niger Delta Environment Survey, to the conference on coastal zones in sub-Saharan Africa, The Royal Society, London, 28 May 2003.

²³⁸ SPDC, Nigeria Brief, *The Environment*, 1995

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- ²³⁹ UN Committee on Economic, Social and Cultural Rights, General Comment 9: The domestic application of the Covenant, UN Doc. E/C.12/1998/24, 1 December 1998, para 2.
- ²⁴⁰ Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002. Under section 9(i)b (iii) of the Petroleum Act 1969 the Minister is empowered to make regulations. A number of regulatory instruments have been promulgated and EGASPIN is a collection of standards and practices, and is the main environmental document used by the oil industry.
- ²⁴¹ Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002, pp148 and 269 and p152.
- ²⁴² Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002, p 148, para 2.6.3.
- ²⁴³ Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002, p148, para 2.6.3.
- ²⁴⁴ Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), revised edition 2002, p150, para 2.11.3 (i).
- ²⁴⁵ See case studies in this report, including the oil spills at Bodo, p7, and Ogbodo, p22.
- ²⁴⁶ See Friends of the Earth Netherlands (Milieudefensie) website: www.milieudefensie.nl/english/shell/the-people-of-nigeria-versus-shell (last accessed 16 April 2009).
- ²⁴⁷ Human Rights Watch, *The Price of Oil*, 1999.
- ²⁴⁸ Interview with community members, 6 March 2008, Ohaji/Egbema Local Government Area, Imo State.
- ²⁴⁹ Professor Richard Steiner, University of Alaska, email communication 20 March 2009.
- ²⁵⁰ EGASPIN allows for “controlled burning” in some circumstances, but the reports of NGOs and communities are that reckless burning is sometimes undertaken by contractors.
- ²⁵¹ Interviews with community and NGOs, March 2008. See also: Environmental Rights Action, Port Harcourt, web: <http://www.eration.org/>; Centre for Environment, Human Rights and Development (CEHRD), website: www.cehrd.org/. Both NGOs have reported on various oil clean-up practices.
- ²⁵² See: WAC Global Services, “Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report”, December 2003.
- ²⁵³ Interview with Father Kevin O’Hara on 28 April by phone, during which he described the poor clean up of the water system at Ogbodo.
- ²⁵⁴ Email communication with Professor Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation, March 2009.
- ²⁵⁵ The Joint Investigation Team report described it as a leak from the 2-in valve at the manifold.
- ²⁵⁶ Interview with SPDC, Port Harcourt, 1 April 2008.
- ²⁵⁷ Shell provided Amnesty International with a letter sent to the police regarding the seizure of vehicles in Ikarama.

²⁵⁸ EGASPIN, Part VIII, Section B, para 2.11.1 states: "It shall be the responsibility of the spiller to restore to as much as possible the original state of any impacted environment."

²⁵⁹ EGASPIN Part VIII, Section F.

²⁶⁰ Interview with Dr Ajakaiye, Director General of the National Oil Spill Detection and Response Agency, 13 May 2009 by phone.

²⁶¹ SPDC, *People and the Environment Report*, 2006.

²⁶² SPDC, *People and the Environment Report*, 2006 states: A joint certification team comprising the Federal and State Ministries of Environment inspects and certifies cleaned up sites. In 2006, 715 sites were certified, compared to 154 sites in 2005. The increase in the number of sites certified came from an improved process by the certifying bodies, which cleared the backlog of earlier submissions.

²⁶³ These figures are the cumulative totals of figures reported by SPDC in its annual reports from 2000 to 2006.

²⁶⁴ Interview with Shell representatives, Shell Headquarters, The Hague, Netherlands, 15 September 2008.

²⁶⁵ Interview with Rivers State Ministry of Environment official, Port Harcourt, March 2008. This was confirmed by numerous NGOs and in community interviews.

²⁶⁶ Oil Pipelines Act, Section 11 (5)

²⁶⁷ United Nations Development Programme, Niger Delta Development Report, 2006.

²⁶⁸ ENI, in an interview with Amnesty International in Milan on 7 January 2009, described the NOAC system of compensation in the following way: "Payment of compensation resulting from oil spill is all-inclusive. Compensation is paid according to a certain 'rate' set by OPTS (Oil Producer Trade Section) which is a department of the Lagos Chamber of Commerce and Industry. The 'committee on land acquisition and damage compensation' establish the total amount of compensation to be paid on the grounds of such table rate. The final compensation is settled throughout an agreement between the company and the community itself. We don't have the number of recipients because the community representatives settle the transactions."

²⁶⁹ Interview with Dr Ajakaiye, Director general of the National Oil Spill Detection and Response Agency, 13 May 2009 by phone.

²⁷⁰ Email communication with Alice Ukoko, 10 April 2009.

²⁷¹ WAC Global Services, "Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report", December 2003, page 17.

²⁷² SPDC, "Procedure for Joint Investigation of Oil Spill Incident", SPDC-2008-03-00000137, March 2008, p8. This document states: "the affected landlord shall be eligible for compensation in accordance with OPTS guidelines, provided the cause of the spill is not sabotage". However NAOC told Amnesty International that the company pays compensation to owners who have right of usage and are eligible for compensation for farming and fishing rights damaged by oil spills.

²⁷³ Email communication

²⁷⁴ The Nigerian petroleum law and Department of Petroleum Resources (DPR) guidelines use different

language: while Environmental Guidelines and Standards for the Petroleum Industry in Nigeria stipulates that compensation should be negotiated with landlords, the Oil Pipeline Act specifically states that owners and occupiers of land are entitled to compensation.

²⁷⁵ Email communication with Professor, Emmanuel Asuquo Obot, Executive Director, Nigerian Conservation Foundation.

²⁷⁶ G.F. Frynas, *Oil in Nigeria: Conflict and litigation between oil companies and village communities*, Transaction Publishers, 2000, p97.

²⁷⁷ World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol II, Industry and Energy Operations Division West Central Africa Department, p76.

²⁷⁸ Email communication with Austin Onuoha, 19 January 2009.

²⁷⁹ For a fuller discussion see: J.G. Frynas, "Legal Change in Africa: Evidence from oil-related litigation in Nigeria", *Journal of African Law*, Vol 43, No. 2 (1999).

²⁸⁰ J.G. Frynas, "Legal Change in Africa: Evidence from oil-related litigation in Nigeria", *Journal of African Law*, Vol 43, No. 2 (1999), pp121-50.

²⁸¹ Under the doctrine of *res ipsa loquitur* (the thing speaks for itself) the plaintiff can rely on negligence without having to show a breach of a specific duty of care if they can prove the accident occurred, if they can show it would not have happened in the ordinary course of events unless there was negligence on the part of someone other than the plaintiff, and the facts should show it was the defendant, not the plaintiff, who was negligent. However, if the defendant can show that they took all reasonable care and acted in line with accepted standard industry practice – in other words, that they were not negligent – then the burden of proving the negligence switches back to the plaintiff.

²⁸² K.S.A. Ebeku, "Judicial attitudes to redress for oil-related environmental damage", *Review of European Community & International Environmental Law (RECIEL)* 12 (2) 2003; J.G. Frynas, "Legal Change in Africa: Evidence from oil-related litigation in Nigeria", *Journal of African Law*, Vol 43, No. 2 (1999), pp121-150.

²⁸³ J.G. Frynas, "Problems of access to courts in Nigeria: Results of a survey of legal practitioners", *Social and Legal Studies*, Sage 2001.

²⁸⁴ J.G. Frynas, "Legal Change in Africa: Evidence from oil-related litigation in Nigeria", *Journal of African Law*, Vol 43, No. 2 (1999).

²⁸⁵ The Constitution of the Federal Republic of Nigeria 1999 Section 251 (1) (n) specifically prescribes that cases against oil companies can only be heard in Federal High Courts. It states: "Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any court in civil causes and matters ... (n) mines and minerals (including oil fields, oil mining, geological surveys and natural gas)."

²⁸⁶ United Nations Development Programme, *Niger Delta Human Development Report*, 2006.

²⁸⁷ Some lawyers in oil producing areas have changed their operations and now look for contingency fees rather than a flat fee. This means the lawyer does not get paid unless they win. This has improved the potential for access to the courts – at a cost. If a lawyer working on contingency wins the case, they can take a substantial proportion of the financial award. This reflects the fact that they take on the financial

risk and even pay for the expert witnesses to mount the case.

²⁸⁸ Email communication with Prince Chima Williams, 14 April 2009.

²⁸⁹ J.G. Frynas, "Legal Change in Africa: Evidence from oil-related Litigation in Nigeria", *Journal of African Law*, Vol 43, No. 2 (1999), p122.

²⁹⁰ Interview with Jonah Gbemre, Port Harcourt, 2 April 2008.

²⁹¹ UNDP, *Niger Delta Human Development Report*, 2006

²⁹² Federal Ministry of Environment, National Oil Spill Contingency Plan for Nigeria, approved by the Federal Executive Council, 16 April 2003, p26.

²⁹³ Federal Ministry of Environment, National Oil Spill Contingency Plan for Nigeria, approved by the Federal Executive Council, 16 April 2003, p25.

²⁹⁴ This recommendation does not require any breach of privacy of the person or persons who receive compensation. Rather it asks that oil companies disclose the categories and items for which payment was made.

APPENDIX 1

OIL PIPELINES ACT CHAPTER 338 LAWS OF THE FEDERATION OF NIGERIA 1990

An Act to make provision for licences to be granted for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines.

4th day of October 1956

Part I

Preliminary

1. This Act may be cited as the Oil Pipelines Act and shall apply Federation.
2. In this Act, unless the context otherwise requires-
"licence" means an oil pipeline licence granted under the provision of this Act;
"Minister" means the Minister for the time being charged with responsibility for matters incidental to oilfields and oil mining;
"oil pipeline" has the meaning given to it in section 11 (2) of this Act.
3. The Minister may, subject to the provisions of this Act grant-
 - (a) permits to survey routes for oil pipelines; and
 - (b) licences to construct, maintain and operate oil pipelines.

Provided that each licence shall be issued in respect of and authorise this construction, maintenance and operation of one pipeline only.

Part II.

Permit to Survey

4. (1) Any person may make an application to the Minister in accordance with the provisions of this Act and of any regulations made thereunder for the grant of a permit to survey the route for an oil pipeline for the transport of mineral oil, natural gas, or any product of such oil or such gas to any point of destination to which such person requires such oil, gas or product to be transported for any purpose connected with petroleum trade or operations.
- (2) Every application for a permit to survey shall specify the approximate route or alternative routes proposed.
- (3) The Minister may -
 - (a) grant the permit to survey on payment of the fees require of this Act to be paid by the applicant on the submission of the application and on grant of the permit to survey respectively; or

- (b) for reasons which to him appear sufficient, refuse to grant the permit to survey.
- (4) If the Minister refuses to grant the permit to survey he shall notify the applicant in writing of such refusal and the reasons therefor.

5. (1) A permit to survey shall entitle the holder, subject to the section 6 of this Act, to enter together with his officers, agents, workmen and other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably close to such route for the following purposes -

- (a) to survey and take levels of the land;
- (b) to dig and bore into the soil and subsoil;
- (c) to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection; and
- (d) to do all other acts necessary to ascertain the suitability of establishment of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified.

(2) The Minister may, upon application by the holder of a permit to survey, vary the route specified in such permit, but such variation shall not invalidate or make illegal any act done by the holder pursuant to the permit prior to such variation, nor prejudice the rights of any person under this Act with reference to any act done by the holder pursuant to the permit prior to such variation.

6. (1) Except with the previous consent of the owner or occupier no person shall under the authority of section 5 of this Act enter any building or upon any enclosed court or garden attached to any building, without having given the owner or occupier at least fourteen days' notice of his intention to do so, nor enter upon any cultivated land without having given such notice to the owners or occupiers thereof or having affixed some prominent position upon such land.

(2) No person shall under the authority of section 5 of this Act enter any of the lands described in section 15 of this Act except with the prior assent of the owners or occupiers or persons in charge of such lands.

(3) The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good.

(4) In the event of dispute as to the amount of compensation to be paid as to whether or to whom any compensation shall be paid the provision of Part IV of this Act shall apply.

Part III

Oil Pipeline Licence

7. (1) The holder of a permit to survey may make an application to the Minister in accordance with the Provisions of this Act and of any regulations made thereunder for the grant of an oil pipeline licence in respect of any oil pipeline the survey of the route for which has been completed by the applicant.

- (2) The Minister may_
 - (a) grant the licence on payment of the fees required by section 31 of this Act to be paid by the applicant on the submission of the application and the grant of the licence respectively; or
 - (b) for reasons which the Minister considers sufficient, refuse to grant the licence.

(3) If the Minister refuses to grant the licence, he shall notify the application in writing of such refusal and the reasons therefor.

(4) No person other than the holder of a licence shall construction, maintain or operate an oil pipeline.

(5) Every person who acts in contravention of subsection (4) shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding one thousand naira or to both such imprisonment and such fine.

(6) The Minister may require any person who is convicted of an offence under this section to have the pipeline in respect of which the offence was committed and any ancillary installation removed to the extent that Minister does not elect to purchase such pipeline or any such installation or any part thereof. In the event of failure to agree on the purchase same shall be determined by arbitration.

(7) An offender who is required by the Minister under subsection (6) of this section to have a pipeline or any ancillary installation removed shall make good any damage done to any land by such removal.

8. (1) An applicant for a licence shall deliver to the Minister an application for the same stating the terminal points and giving a description and accompanied by a plan of the proposed route of the pipeline sufficient to identify the land affected thereby and the position of any pumping stations, tanks or other ancillary installations. The Minister shall upon application appoint a date not less than six weeks ahead for the hearing of objections, if any, and shall nominate the person or persons by whom and the place or places at which any such objections shall be heard, and shall thereupon cause a notification of such date and other particulars and of the places at which objections shall be lodged to be made in the Federal *Gazette* and of each State concerned.

(2) Before or upon application being made in accordance with accordance of this section mace of the application shall be given by the applicant in the following manner_

(a) by publication thereof in the State Gazette of each State through which the route of the projected pipeline passes;

(b) by Publication thereof in such newspapers circulating in the areas through which the route of the projected pipeline passes as the Minister may require;

(c) by posting or delivering the same to the following persons entitled to be carrying on operations in the area which would be affected by the grant of the licence

(i) holders of exclusive prospecting licences, mining rights, oil exploration licences, and oil prospecting licenses,

(ii) lessees of mining leases, temporary mining leases or oil mining leases,

(d) by publication in areas likely to be affected by the licence in such other manner as the Minister may direct, and by delivering to administrative officers having responsibilities in such area or to such other officers as the Minister may specify such numbers of copies of such notice as the minister may require for distribution to the occupiers or owners of land in the areas so affected who might not otherwise become aware of such notice.

(3) Such notice shall contain a description of the proposed pipeline and its route and the proposed ancillary installations and shall set out a list of places and times at which copies of a plan sufficient to identify the land affected thereby may be inspected, and each copy of such notice shall require that objections (if any) shall be made at least seven days before the date be appointed by the Minister for the hearing of objections and delivered at the places to be appointed by him for such lodgement.

9. (1) An person whose land or interest in land may be injuriously affected by the grant of a licence may within the period specified for objections lodge verbally or in writing at one of the specified addresses notice of objection stating the interest of the objector and the grounds of objection.

(2) Matters relating to quantum of compensation shall not be material grounds to include a notice of objection under this section.

(3) It shall be the duty of any public officer who receives a verbal objection in the course of his duties to

record the name and address, interest and grounds of objection of any person lodging such a verbal objection in accordance with this section.

10. (1) Upon the date fixed for the hearing of objections, the persons appointed by the Minister shall inquire report into any such objection, giving all parties concerned an opportunity to be heard, and a report thereof shall be made without delay to the Minister.

(2) Matters relating to quantum of compensation shall not be material grounds for objection under this section.

(3) If, after consideration of the report, the Minister considers that the licence should be granted he shall inform the President accordingly, but if the Minister considers that a licence should not be granted in respect of the proposed route or any part of it, he shall so inform the applicant or the objector or objectors concerned, and thereupon the applicant shall be entitled to receive a permit to survey such other route or routes as he may propose or to submit an application for a licence in respect of another route and the provisions of Parts II and III of this Act will apply in respect thereof

11. (1) A licence shall entitle the holder, his officers, agents, workmen servants with any necessary equipment or vehicles, subject to the provisions of sections 14, 15 and 16 of this Act, to enter upon, take possession of or use a strip of land of a width not exceeding two hundred feet or of such other width or widths as may be specified in the licence and upon the specified in the licence, and thereon thereover or thereunder construct, maintain and operate an oil pipeline and ancillary installations.

(2) For the purpose of this Act, an oil pipeline means a pipeline for the conveyance of mineral oils, natural gas and any of their derivatives or components, and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives or components.

(3) The power to construct, maintain and operate an oil pipeline shall include a power to construct, maintain and operate on the route of such pipeline all other installations (referred to in this Act as "ancillary installation") that are ancillary to the construction, maintenance and operation of such pipeline, including roadways, telephone and telegraph lines (subject to the section 4 of the Telegraphs Act), electric power. cables (subject to the provision of the Electricity Act), pumping stations, storage tanks and loading terminal.

(4) The holder of a licence shall have power to dig and get free of charge any gravel, sand, clay, stone or other similar substance (not being a mineral within the meaning assigned thereto in the Minerals Act) within any land included within the area covered by the licence to the extent that such gravel, sand, clay, stone or other substance, will facilitate the construction or maintenance of a pipeline or any ancillary installation.

(5) The holder of a licence shall pay compensation -

(a) to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and

(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and

(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.

If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part iv of this Act.

(6) For the removal of doubt it is hereby declared that the powers granted to the holder of a licence under this Act shall: be exercisable only subject to the provisions of this Act and of any other enactment or rule of law.

12. (1) It shall be lawful for the President upon application by the holder of a licence at the time of the grant of such licence or at any time thereafter, to make an order ancillary on use of to such licence prohibiting or restricting the construction of Coloring any building or type of building, or the carrying of any cultivation or industrial or mining or oil mining activity within a specified type of cultivation or industrial or mining or oil mining within a specified distance, not exceeding one hundred feet, from the boundaries of the land or of any part of the land in respect of which such licence is granted.

(2) An order made in accordance with the provisions of this shall be deemed to be part of the licence to which it is ancillary and the provision of this Act shall apply accordingly, and in the event of an application for such an order being made after the grant of the licence to which it is ancillary the provisions of sections 8, 9 and 10 of this Act shall apply as though the application were for a new licence.

13. (1) The right to make a deviation from the route specified in the licence may be granted at any time by the President either by amendment of the licence or by a new licence.

(2) Sections 8, 9 and 10 of this Act shall apply to an application in respect of a deviation from the route specified in the licence as though it were an application for a new licence:

Provided that where the Minister thinks fit, the Minister may approve in respect of minor deviations an agreement reached between the holder of the licence and any person or persons whose land or interest in land may be injuriously affected by such minor deviations.

(3) The grant of the right to make a deviation under this section shall not invalidate or make illegal any act done by the holder of the licence prior to such grant, nor prejudice the rights of any person under this Act with reference to any act done by the holder prior to such grant.

14. A licence shall not, except so far as may be expressly permitted the term of the licence, authorise the holder to -

(a) construct any works upon any land which is the site of or is within fifty yards of any public road, dam, reservoir or building belonging to or occupied by the Federal or a State Government or Local Government, or upon any land appropriated for any railway or situate within one hundred of any railway; or

(b) make such alteration in the flow of water in any navigable waterway, or construct such works in, under or over any navigable waterway, as might obstruct or interfere with the free and safe passage of vessels, canoes or other craft; or

(c) construct such works in, under or over, or deposit such material in or make such alteration in the flow of water required for domestic, industrial or irrigational use as would diminish or restrict the quantity of water available for such purpose, or construct such works or make such deposit in any waterway as would cause flooding or erosion, without the prior permission in writing of the Minister or of such officers as may be nominated by the Minister.

15. (1) A licence shall not authorise any person to enter upon, take possession of or use any of the following lands unless the owners or occupiers or the persons in charge thereof have given their prior assent -

(a) any land occupied by any burial ground or cemetery;

(b) any land containing any grave, grotto, area, tree or thing held to be sacred or the object of veneration.

(2) If any doubt shall arise whether any lands fall within those described in this section, or who the owners or occupiers or persons in charge thereof are, the decision of the High Court shall be final.

16. (1) The holder of a licence shall make and maintain for the accommodation of the owners or occupiers of any land in respect of which the license been granted or of the Owners or occupiers of adjoining land or for the accommodation of the users of any customary track or path such crossing, bridges, culverts, drains or passages as may be necessary for the purpose of making good any interruption to the use of such land or the amenities thereof or to the use of such customary track or path caused by the exercise of the powers granted in accordance with this Act:

Provided that it shall not be necessary to make good any interruption in respect of any of which compensation under this Act has been paid:

Provided further that upon accommodation works being provided in accordance with the provisions of this section no further accommodation works shall be necessary in respect of any change of use of any land deviation of any track or path or any other act or omission of any person not being the holder of the licence or his agent, workman or servant.

(2) The holder of a licence may for the purpose of exercising the powers conferred upon him alter the level or position of any pipe, conduit, watercourse, drain, or electric, telephone or telegraph wire or post, but shall give reasonable notice of his intention so to do to the person in control thereof and shall execute the work to the reasonable satisfaction of the person.

(3) Where there is a danger that a tree standing near an oil pipeline may fall and damage such pipeline or an ancillary installation the holder of the licence may after giving notice to an administrative officer having responsibility in the area fell the tree or otherwise deal with it, and in such event shall upon application by any person interested in the tree pay such compensation as such officer shall consider necessary.

17. (1) A licence may be granted for such period not exceeding twenty years as the Minister may direct; and

(2) Nothing in subsection (1) of this section shall affect the validity of any licence granted before the commencement of this Act for a period exceeding twenty years and every such licence shall, unless earlier revoked, be valid for the period for which it was granted.

(3) The holder of a licence may at any time during the term of licence determine the licence in respect of all or any part of the land included therein by giving to the Minister not less than three months previous notice in writing to that effect.

(4) Every licence shall be subject to the provisions contained in this Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land included in the licence and the prevention of pollution of such land or any waters as may from time to time be force.

(5) In the absence of express provision to the contrary, a licence shall be deemed to include the following conditions to be performed and observed by the holder -

(a) to commence the construction of an oil pipeline within a period to be specified by the Minister and to complete the same and all necessary ancillary installations with reasonable despatch, and to maintain the same during the currency of the licence;

(b) to allow free access to any public officer authorised by or behalf of the Minister in writing, to enter and inspect any work, structure or thing made or done in accordance with the licence;

(c) to indemnify the Minister against any claims arising from injury to any person or damage to any public or private property as a result of any act or thing done by the holder of the licence or his agents, servants or workmen in accordance with the licence;

(d) not to assign, sublet, mortgage or otherwise part with the licence or any right or interest thereunder without the previous consent in writing of the Minister.

(5) Every licence shall be deemed to include a provision that any question or dispute arising between the Minister or the holder of the licence regarding the licence or any matter connected therewith shall if it cannot be resolved by agreement be referred to arbitration.

18. (1) An application may be made to the Minister with respect to any pipeline constructed, maintained and operated in pursuance of a licence granted under this Act by any person other than the owner of the pipeline who seeks a right to have conveyed by the pipeline on his behalf any of the things mentioned in subsection (2) of section 11 of this Act which the pipeline is designed to convey.

(2) Every such application shall be made in the prescribed manner and form containing the prescribed

particulars.

(3) The Minister shall consider every such application in consultation with the applicant and the owner of the pipeline to which the application relates.

(4) If upon such consideration the Minister is satisfied that the pipeline could, without Prejudice to the proper and efficient operation thereof for the purpose of the conveyance on behalf of the owner, in the quantity required by him, of the thing which it is designed to convey, be so operated as to permit of the conveyance thereby on behalf of the applicant of the thing the right to the conveyance of which is sought by the applicant, the Minister shall declare that he is so satisfied.

(5) Subject to the subsequent provisions of this section, the condition of the use of the pipeline by the applicant may be determined by agreement between the owner and the applicant and, failing such agreement, shall, subject as aforesaid, be determined by the Minister.

(6) Where the Minister makes under subsection (4) of this section a declaration with regard to a pipeline, he may by notice served on the owner impose such requirements as he thinks it necessary or expedient to impose for all or any of the following purposes, namely -

(a) securing to the person whose application resulted in the making of the declaration the right to have conveyed by the pipeline the thing to which the application related;

(b) regulating the charges to be made for the conveyance of such thing by the pipeline on behalf of that person;

(c) securing that the exercise of a right secured by virtue of paragraph (a) of this subsection is not prevented or impeded,

but requirements imposed for the purpose specified in paragraph (a) of this subsection shall be so framed as, in the Minister's opinion, to secure that compliance therewith will not prejudice the proper and efficient operation of the pipeline for the purpose of the conveyance on behalf of the owner thereof, in the quantity required by him, of the thing which it is designed to convey.

(7) A notice served on the owner of a pipeline under subsection (6) may authorise such owner to recover, from the person to whom a right is secured by the notice by virtue of paragraph (a) of that subsection, payments of such amounts as may be determined in accordance with provisions in that behalf contained in the notice, being payments in consideration of the rights being secured to such person.

(8) If the owner of a pipeline fails to comply with a requirement imposed by a notice served on him under subsection (6) of this section with reference to the pipeline, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand naira; and, if the failure continues after his conviction he shall be guilty of a further offence and liable, in respect thereof, to a fine not exceeding fifty naira for each day on which the failure.

(9) The Minister may by notice to the owner of a pipeline whose failure to comply with any such requirement as aforesaid continues after his conviction of a first offence under subsection (8) of this section revoke the licence of such owner.

Part IV

Compensation

19. If there be any dispute as to whether any compensation is payable under any provision of this Act or if so as to the amount thereof, or as to the persons to whom such compensation should be paid, such dispute shall be determined by a station magistrate exercising civil jurisdiction in the area concerned if such magistrate has in respect of any other civil matter monetary jurisdiction of at least as much as the amount of compensation claimed and if there be no such magistrate by the High Court exercising jurisdiction in the area concerned and,

notwithstanding the provisions of any other Act or law in respect of the decision of a magistrate in accordance with this section there shall be an appeal to the High Court of the State and in respect of a decision of the High Court of the State under this section, whether original or appellate, there shall be an appeal to the Court of Appeal:

Provided that nothing in this Act shall be deemed to confer power upon a magistrate to exercise jurisdiction in a matter raising any issue as to the title to land or as to the title to any interest in land.

20. (1) If a claim is made under subsection (3) of section 6 of this Act, the court shall award such compensation as it considers just in respect of any damage done to any buildings, lion crops or profitable trees by the holder of the permit in the exercise of his rights thereunder and in addition may award such sum in respect of disturbance (if any) as it may consider Just.

(2) If a claim is made under subsection (5) of section 11 the court shall award such compensation as it considers just having regard to -

(a) any damage done to any buildings, crops or profitable trees by the holder of the licence in the exercise of the rights conferred by the licence; and

(b) any disturbance caused by the holder in the exercise of such rights; and

(c) any damage suffered by any person by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the licence; and

(d) any damage suffered by any person (other than as stated in such subsection (5) of this section) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation; and

(e) loss (if any) in value of the land or interests in land by reason of the exercise of the rights as aforesaid, and also having regard to any compensation already awarded in accordance with subsection (1) of this section.

(3) In determining the loss in value of the land or interests inland of a claimant the court shall assess the value of the land or the interests injuriously affected at the date immediately before the grant of the licence and shall assess the residual value to the claimant of the same land or interests consequent upon and at the date of the grant of the licence and shall determine the loss suffered by the claimant as the difference between the values so found, if such residual value is a lesser sum.

(4) No compensation shall be awarded in respect of unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in that Act.

(5) In determining compensation in accordance with the provisions of this section the court shall apply the provisions of the Land Use Act so far as they are applicable and not in conflict with anything in this Act as if the land or interests concerned were land or interests acquired by the President for a public purpose.

(6) If the total sum awarded by the court in accordance with this section exceeds an amount already offered to the claimant by the holder of the licence the court may order such holder to pay the costs of the proceedings; and if the sum so awarded does not exceed the amount offered by such holder the court shall either order the claimant to pay the cost of the proceedings or order each side to bear its own costs.

(7) Compensation (if any) awarded by the court in accordance with this section shall be a sum of money payable forthwith or shall consist of periodical instalments or partly one and partly the other:

Provided that nothing contained in this subsection shall preclude the court awarding additional compensation upon subsequent application if loss or damage from the operation of the oil pipeline be proved and the court is of opinion that such loss or damage is loss or damage not contemplated at the date of the original award.

21. Where the interests injuriously affected are those of a local community, the court may order the compensation to be paid to any chief, headman or member of that community on behalf of such community or that it be paid in accordance with a scheme of distribution approved by the court or that it be paid into a fund to be administered by a person approved by the court on trust for application to the general, social or educational benefit

and advancement of that community or any section thereof.

22. If any question arises respecting the title to the lands affected under this Act, the parties in possession as being the owners thereof, or in receipt of the rents of such lands as being entitled thereto at the time of service of notice under section enticed to 6 or 8 of this Act as the case may be, shall be deemed to have been lawfully entitled to such lands, unless the contrary be shown to the satisfaction of the court, and they and all parties claiming under them or consistently with their possession shall be deemed entitled to any compensation payable under this Act, but without prejudice to any subsequent proceedings against such parties at the instance of any person claiming to have a better right thereto.

23. The payment to any person to whom any compensation shall be paid or the payment into court of any compensation upon a decision of the court shall effectually discharge the person making such payment from seeing to the application or being answerable for the misapplication thereof:

Provided that where any person is in possession of any land affected by the provisions of this Act by virtue of any estate less than an estate of inheritance, or where any person is in possession thereof in any fiduciary or representative character, the compensation may be paid to such persons and in such proportions and instalments and after such notices as the court may direct.

Part V

Miscellaneous

24. If any person hinders or obstructs any person duly authorised in accordance with the provisions of this Act from entering upon taking possession of or using any lands in pursuance of this Act, the person so hindered or obstructed may apply ex parte at any time to the High Court exercising jurisdiction in the area for a writ of possession and such court may issue a writ of possession addressed to the sheriff under which any officer of the sheriff or police officer may forthwith eject any person so withholding possession.

25. Every person who shall wilfully hinder or obstruct any person duly authorised from entering upon or taking possession of or using any land in pursuance of the provisions of, this Act, or who shall molest, hinder or obstruct such person when in possession of such lands, or shall hinder or obstruct any officer of the sheriff or police officer when executing a writ of possession, shall be liable on summary conviction to a fine of fifty naira or to imprisonment for three months.

26. It shall be lawful for the Minister to require deviation of the route of an oil pipeline so far as it affects any land for a public purpose by the Government of the purpose. Federation or the Government of a State upon such terms as to compensation, or otherwise, as shall be agreed with the holder or failing such agreement as may be arrived at by arbitration.

27. (1) If there shall be a breach of any of the terms or conditions upon which a licence has been granted the Minister may by notice in writing require the holder of the licence to remedy such breach within such period being not less than three months as may be specified in such notice.

(2) If the holder of the licence shall fail within the period so specified to remedy such breach the Minister may by notice to the holder revoke the said licence, without prejudice to anything lawfully done thereunder and without prejudice to any claims for compensation against the holder made in accordance with the provisions of this Act.

28. (1) Upon the expiration or sooner determination of a licence, the holder of the licence shall before or within three, months after the termination of such licence be at liberty upon giving three weeks notice to the Minister to remove such pipeline and any ancillary installation to the extent that the Minister does not elect to purchase such pipeline or any such installation or any part thereof. In the event of the Minister and the holder of the licence not agreeing as to the purchase price the same shall be determined by arbitration.

(2) The holder of a licence shall make good any damage done to the land included in the licence by removal of a pipeline or ancillary installation.

29. No licence granted under this Act shall be sold by or see of under the orders of a court in execution of a

decree or otherwise howsoever, except to a purchaser approved in writing by the Minister and under terms to be approved by the Minister.

30. (1) A copy of any permit to survey and of any licence granted under this Act, certified by the Director-General having supervision over the department of the Federal Government carrying out the provisions of this Act to be a true copy, together with any plans or documents that may be prescribed by regulations made under this Act, shall be delivered by the holder of such permit or licence to the registry established under the Land Use Act for each State to which such permit or licence relates.

(2) The provisions of the Land Use Act shall not apply to any such permit or licence, but any such permit or licence shall in so far as it affects any land take effect as against other instruments affecting the same land as though it had been registered under that Act upon the date of the grant of such permit or licence.

(3) The grant of a permit or licence under this Act shall not be invalid by reason of any provision of the Land Use Act nor shall a permit or licence be subject to any provision of either of such Act.

31. (1) The applicant for a permit to survey shall pay a fee of twenty naira upon submitting his application, and a fee of fifty naira upon the grant of such permit.

(2) The applicant for a licence shall pay a fee of fifty naira upon submitting his application, and a fee of two hundred naira upon the grant of such licence.

(3) The holder of a permit shall pay a fee of fifty naira in respect of each variation of such permit.

(4) The holder of a licence shall pay a fee of two hundred naira in respect of each variation of such licence.

(5) An annual fee shall be paid on each licence of twenty naira per mile of the length of the pipeline subject to a minimum of two hundred naira.

(6) The holder of a licence shall pay a fee of one hundred naira upon submitting his application for a restriction order under section 12 of this Act, and a fee of such amount as the Minister may determine not exceeding four hundred naira on such order being made.

32. Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director manager, secretary, or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

33. The Minister may by regulation prescribe -

(a) the manner in which any application in accordance with the provisions of this Act shall be made and the forms to be used;

(b) the manner in which the holders of exclusive prospecting licences, mining rights and mining leases granted under the Minerals Act or a licence granted under the Nigerian Coal Corporation Act or licences or leases granted under the Mineral Act may operate over an area subject to an oil pipeline licence and the manner in which the area covered by an oil pipeline licence may infringe on the area subject to an exclusive prospecting licence, mining right or mining lease or other licence or lease so granted;

(c) measures in respect of public safety, the avoidance of interference with works of public utility in, over and under any land and the prevention of pollution of any land or water;

(d) such matters relating to the construction maintenance and operation of oil pipelines as the Minister considers it necessary or appropriate to prescribe;

(e) generally for carrying into effect the purposes and provisions of this Act.

34. The powers conferred on the Minister by this Act, or any of them, may be exercised by any officer of the Ministry of Petroleum Resources designated in that behalf by the Minister.

APPENDIX 2

ASSOCIATED GAS RE-INJECTION ACT

ASSOCIATED GAS RE-INJECTION ACT CAP 26 L.F.N. 1990 ACT CAP. A 25 L.F.N. 2004

ARRANGEMENT OF SECTIONS

SECTION

1. Duty to submit preliminary program for gas re-injection.
2. Duty to submit detailed plans for implementation of gas re-injection.
3. Flaring of gas to cease.
4. Penalty.
5. Power to make regulations.
6. Act to apply in Exclusive Zone.
7. Interpretation.
8. Short title.

CHAPTER 26

ASSOCIATED GAS RE-INJECTION ACT

1979 No. 99.

An Act to compel every company producing oil and gas in Nigeria to submit preliminary program for gas re-injection and detailed plans for implementation of gas re-injection.

Commencement.

[28th September, 1979]

Duty to submit preliminary program for gas re-injection. Cap. P10

1. Notwithstanding the provision of regulation 42 of the Petroleum (Drilling and Production) Regulations made under the Petroleum Act, every company producing oil and gas in Nigeria, shall not later than 1st April, 1980 submit to the Minister a preliminary program for-

- (a) schemes for the viable utilisation of all associated gas produced from a field or groups of fields;
- (b) project or projects to re-inject all gas produced in association with oil but not utilised in an industrial project.

Duty to submit detailed plans for implementation of gas re-injection.

2. (1) Not later than 1st October, 1980, every company producing oil and gas in Nigeria shall submit to the Minister, detailed programs and plans for either-

- (a) the implementation of programs relating to the re-injection of all produced associated gas; or
- (b) schemes for the viable utilisation of all produced associated gas.

(2) The fact that some of the gas produced in association with oil has been earmarked for some alternative utilisation shall not exempt compliance with section 1 of this Act and subsection (1) of this section.

Flaring of gas to cease.

3. (1) Subject of subsection (2) of this section no company engaged in the production of oil or gas shall after 1st

January 1984 flare gas produced in association with oil without the permission in writing of the Minister.

(2) Where the Minister is satisfied after 1st January, 1984 that utilisation or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect to a company engaged in the production of oil or gas-

1985 No. 7.

(a) specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields; or

(b) permitting the company to continue to flare gas in the particular field or fields if the company pays such sum as the Minister may from time to time prescribe for every 28.317 Standard cubic metre (SCM) of gas flared:

Provided that any payment due under this paragraph shall be made in the same manner and be subject to the same procedure as for the payment of royalties to the Federal Government by companies engaged in the production of oil.

Penalty.

4. (1) Where any person commits an offence under section 3 of this Act, the person concerned shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed.

(2) In addition to the penalty specified in subsection (1) of this section, the Minister may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable re- injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oilfield practice. Power to make regulations.

5. The Minister may make regulations prescribing anything requiring to be prescribed for the purposes of this Act. Act to apply in Exclusive Zone. Cap. P10.

6. The provisions of this Act shall apply to the Exclusive Zone as they apply to land as defined in section 1 of the Petroleum Act.

Interpretation.

7. In this Act, unless the context otherwise requires-

Cap. E17

"Exclusive Zone" has the same meaning assigned thereto in the Exclusive Economic Zone Act.

1955 No. 7.

"Minister" means the Minister charged with responsibilities for matters relating to petroleum.

Short title.

8. This Act may be cited as the Associated Gas Re-injection Act.

ASSOCIATED GAS RE-INJECTION ACT

CHAPTER 26

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

ASSOCIATED GAS RE-INJECTION (CONTINUED FLARING OF GAS) REGULATIONS

under sections 3 and 5

Commencement:

1st January, 1985

Conditions for issuance of certificate for continued flaring of gas.

1. As from the commencement of these Regulations, the issuance of a certificate by the Minister under section 3 (2) of the Associated Gas Re-Injection Act, for the continued flaring of gas in a particular field or fields, shall be subject to any one or more of the following conditions, that is-

(a) where more than seventy-five per cent of the produced gas is effectively utilised or conserved;

(b) where the produced gas contains more than fifteen per cent impurities, such as N₂, H₂S, CO₂, etc. which render the gas unsuitable for industrial purposes;

(c) where an on-going utilisation program is interrupted by equipment failure:

Provided that such failures are not considered too frequent by the Minister and that the period of any one interruption is not more than three months;

(d) where the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilisation point is less than 50,000 SCF/KM:

Provided that the Gas to Oil ratio of the field is less than 3,500 SCF/bbl, and that it is not technically advisable to re-inject the gas in that field;

(e) where the Minister, in appropriate cases as he may deem fit, orders the production of oil from a field that does not satisfy any of the conditions specified in these Regulations.

Power to review, etc.

2. The Minister may, from time to time, review, amend, alter, add to or delete any provision of these Regulations as he may deem fit.

Short title.

3. These Regulations may be cited as the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations.

APPENDIX 3

Land Use Act

CHAPTER 202

Laws of the Federation of Nigeria 1990

An Act to Vest all Land comprised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers with respect to non urban areas are conferred on Local Governments. (27th March 1978) Commencement.

29th March 1978

Part I General

1. Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.
2. (1) As from the commencement of this Act -
 - (a) all land in urban areas shall be under the control and management of the Governor of each State. And
 - (b) all other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.(2) There shall be established in each State a body to be known as "the Land Use and Allocation Committee" which shall have responsibility for:-
 - (a) advising the Governor on any matter connected with the management of land to which paragraph (a) of subsection (1) above relates;
 - (b) Advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Act; and
 - (c) determining disputes as to the amount of compensation payable under this Act for improvements on land.(3) The Land Use and Allocation Committee shall consist of such number of persons as the Governor may determine and shall include in its membership:-
 - (a) not less than two persons possessing qualifications approved for appointment to the public service as estate surveyors or land officers and who have had such qualification for not less than five years; and

- (b) a legal practitioner.
 - (4) The Land Use and Allocation Committee shall be presided over by such one of its members as may be designated by the Governor and, subject to such directions as may be given in the regard by the Governor, shall have power to regulate its proceedings.
 - (5) There shall also be established for each Local Government a body to be known as "the Land Allocation Advisory Committee" which shall consist of such persons as may be determined by the Governor acting after consultation with the Local Government and shall have responsibility for advising the Local Government on any matter connected with the management of land to which paragraph (b) of subsection (1) above relates.
3. Subject to such general conditions as may be specified in that behalf by the National Council of States, the Governor may for the purposes of this Act by order published in the State Gazette designate the parts of the area of the territory of the State constituting land in an urban area.
 4. Until other provisions are made in that behalf and, subject to the provisions of this Act, land under the control and management of the Military Governor under this Act shall be administered -
 - (a) in the case of any State where the Land Tenure Law of the former Northern Nigeria applies; in accordance with the provisions of that law; and
 - (b) in every other case, in accordance with the provisions of the State Land Law applicable in respect of State Land in the State, and the provisions of the Land Tenure Law or the State Land Law, as the case may be, shall have effect with such modification as would bring those laws into conformity with this Act or its general intendment.

Part II

Principles of Land Tenure, Powers of Governor and Local Governments, and Rights of Occupiers

5. (1) It shall be lawful for the Governor in respect of land, whether or not in an urban areas:-
 - (a) to grant statutory rights of occupancy to any person for all purposes;
 - (b) to grant easements appurtenant to statutory rights occupancy;
 - (c) to demand rental for any such land granted to any person.
 - (d) to revise the said rental -
 - (i) at such intervals as may be specified in the certificate of occupancy; or
 - (ii) where no intervals are specified in the certificate or occupancy at any time during the term of the statutory rights of occupancy;
 - (e) to impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to revise such penal rent as provided in section 19 of this Act
 - (f) to impose a penal rent for a breach of any condition, express or implied, which precludes

the holder of a statutory right of occupancy from alienating the right of or any part thereof by sale, mortgage, transfer or possession, sub-lease or request or otherwise howsoever without the prior consent of the Governor;

- (g) to waive. Wholly or partially, except as otherwise prescribed: all or any of the covenant or conditions of which a statutory right of occupancy is subject where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder;
- (h) to extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terms and conditions as he may think fit.

(2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.

6. (1) It shall be lawful for a Local Government in respect of land not in an urban area.

- (a) to grant customary rights of occupancy to any person or organisation for the use of land in the Local Government areas for agricultural residential and other purposes.
- (b) to grant customary right of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government area concerned.

(2) No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.

(3) It shall be lawful for a Local Government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not

- (a) land within an area declared to be an urban area pursuant to Section 3 of this Act;
- (b) the subject of a statutory right of occupancy;
- (c) within any area compulsorily acquired by the Government of the Federal or of the State concerned;
- (d) the subject of any laws relating to minerals or mineral oils, and for the purpose to revoke any customary right of occupancy on any such land.

(4) The Local Government shall have exclusive rights to the lands so occupied against all persons except the Governor.

(5) The holder and the occupier according to their respective interests of any customary right of occupancy revoked under sub-section (2) shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(6) Where land in respect of which a customary right of occupancy is revoked under this Act was used for agricultural purposes by the holder, the Local Government shall allocate to such holder alternative land for use for the same purpose.

(7) If a Local Government refuses or neglects within a reasonable time to pay compensation to a holder

and an according to their respective interests under the provisions of subsection (5), the Military Governor may proceed to the assessment of compensation under section 29 and direct the Local Government to pay the amount of such compensation to the holder and occupier according to their respective interests.

7. It shall not be lawful for the Governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of twenty-one years; Provided that -
 - (a) Where a guardian or trustee for a person under the age of 21 has been duly appointed for such purpose the Governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person under age;
 - (b) a person under the age of twenty-one years upon whom a statutory right of occupancy devolves on the death of the holder shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.
8. Statutory right of occupancy granted under the provisions of section 5 (1) (a) of this Act shall be for a definite term and may be granted subject to the terms of any contract which may made by the Governor and the holder not being inconsistent with the provisions of this Act.
9. (1) It shall be lawful for the Governor--
 - (a) when granting a statutory right of occupancy to any personal or
 - (b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or
 - (c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.
 - (2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefore by the person in whose name it is issued, such fee (if any) as may be prescribed.
 - (3) If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Governor may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) the Governor may revoke the statutory right of occupancy.
 - (4) The terms and conditions of a certificate of occupancy granted under this Act and which has been accepted by the holder shall be enforceable against the holder and his successors in title, notwithstanding that the acceptance of such terms and condition is not evidenced by the signature of the holder or is evidenced by the signature only of some person purporting to accept on behalf of the corporation.
10. Every certificate of occupancy shall be deemed to contain provisions to the following effect:-

- (a) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;
 - (b) that the holder binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16 this Act.

- 11. The Governor or any public officer duly authorised by the Governor in that behalf shall have the power to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected thereon at any reasonable hours in the day time and the occupier shall permit and give free access to the Governor or any such officer so to enter and inspect.

- 12. (1) It shall be lawful for the Governor to grant a licence to any person to enter upon any land which is not the subject of a statutory right of occupancy or of a mining lease, mining right or exclusive prospecting licence granted under the Minerals Act or any other enactment, and remove or extract therefrom any stone, gravel, clay, sand or other similar substance (not being a mineral within the meaning assigned to that term in the Mineral Act) that may be required for building or for the manufacture of building materials.
- (2) Any such licence may be granted for such period and subject to such conditions as the Military Governor may think proper or as may be prescribed.
- (3) No such licence shall be granted in respect of an area exceeding 400 hectare.
- (4) It shall not be lawful for any licensee to transfer his licence in any manner whatsoever without the consent of the Governor first had and obtained, and any such transfer effected without the consent of the Governor shall be null and void.
- (5) The Governor may cancel any such licence if the licensee fails to comply with any of the conditions of the licence.

- 13. (1) The Occupier of a statutory right of occupancy shall at all times maintain in good and substantial repair to the satisfaction of the Governor, or of such public officer as the Military Governor may appoint in that behalf, all beacons or other land marks by which the boundaries of the land comprised in the statutory right of occupancy are defined and in default of his so doing the Military Governor or such public officer as aforesaid may by notice in writing require the occupier to define the boundaries in the manner and within the time specified in such notice.
- (2) If the occupier of a statutory right of occupancy fails to comply with a notice served under subsection (1) of this section he shall be liable to pay the expenses (if any) incurred by the Governor in defining the boundaries which the occupier has neglected to define.

- 14. Subject to the other provision of this Act and of any laws relating to way leaves, to prospecting for minerals or mineral oils or to mining or to oil pipelines and subject to the terms and conditions of any contract made under section, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Governor.

15. During the term of a statutory right of occupancy the holder -
- (a) shall have the sole right to and absolute possession of all the improvements of the land;
 - (b) may, subject to the prior consent of the Governor, transferor, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land.

Part III
Rents

16. In determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Governor -
- (a) Shall take into consideration rent previously fixed in respect of any other like land in the immediate neighbourhood, and shall have regard to all the circumstances of the case;
 - (b) shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.
17. (1) The Governor may grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so.
- (2) Where a statutory right of occupancy has been granted free of rent the Governor may, subject to the express provisions of the certificate of occupancy, nevertheless impose a rent in respect of the land the subject of the right of occupancy if and when he may think fit.
18. Subject to the provisions of sections 20 and 21, the acceptance by or behalf of the Governor of any rent shall not operate as a waiver by the Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any certificate of occupancy granted under this Act.
19. (1) When in any certificate of occupancy the holder has covenanted to develop or effect improvements on the land the subject of the certificate of occupancy and has committed a breach of such covenant the Governor may
- (a) at the time of such breach or at any time thereafter so long as the breach remains unremedied, fix a penal rent which shall be payable for twelve months from the date of such breach; and
 - (b) on the expiration of twelve months from the date of such breach and on the expiration of every subsequent twelve months so long as the breach continues revise the penal rent to be paid.
- (2) Such penal rent or any revision thereof shall be in addition to the rent reserved by the certificate of occupancy and shall be recoverable as rent:
Provided that the first penal rent fixed shall not exceed the rent so reserved and any revised penal rent shall not exceed double the penal rent payable in respect of the twelve months preceding the date

of
revision.

- (3) If the Governor fixes or revises a penal rent he shall cause a notice in writing to be sent to the holder informing him of the amount thereof and the rent so fixed or revised shall commence to be payable one calendar month from the date of the receipt of such notice.
 - (4) If the breach for which a penal rent has been imposed is remedied before the expiration of the period for which such rent has been paid, the Governor may in his discretion refund such portion of the penal rent paid for such period as he may think fit.
 - (5) The fact that a penal rent or a revised penal rent has been imposed shall not preclude the Military Governor, in lieu of fixing a subsequent penal rent, from revoking the statutory right of occupancy. Provided that the statutory right of occupancy shall not be revoked during the period for which a penal rent has been paid.
20. (1) If there has been any breach of any of the provisions of section 22 or 23 the Governor may in lieu of revoking the statutory right of occupancy concerned demand that the holder shall pay an additional and penal rent for and in respect of each day during which the land subject of the statutory right of occupancy or any portion thereof or any building or other works erected thereon shall be or remain in the possession, control or occupation of any person whomsoever other than the holder.
- (2) The acceptance by or on behalf of the Governor of any such additional and penal rent shall not operate as a waiver by the Governor of any breach of section 22 or 23 which may continue after the date up to and in respect of which such additional and penal rent has been paid or is due and owing and the Military Governor shall accordingly be entitled to exercise in respect of any such continuing breach all or any of the powers conferred upon him by this Act.

Part IV

Alienation and surrender of Rights of Occupancy

21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever -
- (a) Without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or
 - (b) in other cases without the approval of the appropriate Local Government.
22. It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained:
- (1) Provided that the consent of the Governor -
 - (a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor:

- (b) shall not be required to the reconveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged and that mortgage with the consent of the Governor:
 - (c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.
 - (2) The Governor when giving his consent to an assignment mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under subsection (1) may be signified by endorsement thereon.
- 23. (1) A sub-lease of a statutory right of occupancy may with the prior consent of the Governor and with the approval of the holder of the statutory right of occupancy, demise by way of sub-underlease to another person the land comprised in the sub-lease held by him or any portion of the land.
- (2) The provisions of subsection (2) shall apply mutatis mutandis to any transaction effected under subsection (1) of this section as if it were a sub-lease granted under section 22.
- 24. The devolution of the rights of an occupier upon death shall -
 - (a) in the case of a customary right of occupancy, (unless non customary law or any other customary law applies) be regulated by the customary law existing in the locality in which the land is situated; and
 - (b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:

Provided that -
 - (a) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy and land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rule of inheritance of any other customary law;
 - (b) a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor.
- 25. In the case of the revocation or transfer of rights to which any non customary law applies, no deed or will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land.
- 26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.
- 27. The Governor may accept on such terms and conditions as he may think proper the surrender of any statutory

right of occupancy granted under this Act.

Part V

Revocation of Rights of Occupancy and compensation therefor

28. (1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
- (2) Overriding public interest in the case of a statutory right of occupancy means--
- (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;
 - (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
 - (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.
- (3) Overriding public interest in the case of a customary right of occupancy means -
- (a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation.
 - (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
 - (c) the requirement of the land for the extraction of building materials;
 - (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.
- (4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.
- (5) The Military Government may revoke a statutory right of occupancy on the ground of -
- (a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;
 - (b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8;
 - (c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.
- (6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly

authorised in that behalf by the Governor and notice thereof shall be given to the holder.

- (7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.
29. (1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.
- (2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.
- (3) If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid -
- (a) to the community; or
 - (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or
 - (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.
- (4) Compensation under subsection (1) of this section shall be, as respects -
- (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;
 - (b) building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;
 - (c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value a prescribed and determined by the appropriate officer.
- (5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.
- (6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is a respects -
- (a) such land, on the basis specified in that subsection;

- (b) any building, installation or improvement or crops thereon (or any combination or two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in like manner.
- (7) For the purposes of this section, "installation" means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.
- 30. Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.
- 31. The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 shall not apply in respect of any land vested in, or taken over by, the Governor or any Local Government pursuant to this Act or the right of occupancy to which is revoked under the provisions of this Act but shall continue to apply in respect of land compulsorily acquired before the commencement of this Act.
- 32. The revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the Government under or in respect of such right of occupancy.
- 33. (1) Where a right of occupancy in respect of any developed land on which a residential building has been erected is revoked under this Act the Governor or the Local Government, as the case may be, may in his or its discretion offer in lieu of compensation payable in accordance with the provisions of this Act resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).
- (2) Where the value of any alternative accommodation as determined by the appropriate officer of the Land Use and Allocation Committee is higher than the compensation payable under this Act the parties concerned may by agreement require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.
- (3) Where a person accepts a resettlement pursuant to subsection (1) of this section his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such person.

Part VI

Transitional and other related provisions

- 34. (1) The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of this Act.
- (2) Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.
- (3) In respect of land to which subsection (2) of this section applies there shall be issued by the Governor on application to him in the prescribed form a certificate of occupancy if the Governor is satisfied that the land was, immediately before the commencement of this Act, vested in that person.
- (4) Where the land to which subsection (2) of this section applies was subject to any mortgage, legal or

equitable, or any encumbrance or interest valid in law such land shall continue to be so subject and the certificate of occupancy issued, shall indicate that the land is so subject, unless the continued operation of the encumbrance or interest would in the opinion of the Governor be inconsistent with the provisions, or general intendment of this Act.

- (5) Where on the commencement of this Act the land is undeveloped, then
 - (a) one plot or portion of the land not exceeding half hectare in area shall subject to subsection (6) below, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Governor in respect of the plot or portion as aforesaid under this Act; and
 - (b) all the rights formerly vested in the holder in respect of the excess of the land shall in the commencement of this Act be extinguished and the excess of the land shall be taken over by the Governor and administered as provided in this Act.
 - (6) Paragraph (a) of subsection (5) above shall not apply in the case of any person who on the commencement of this Act also the holder of any undeveloped land elsewhere in any urban area in the State and in respect of such a person all his holdings of undeveloped land in any urban area in State shall be considered together -
 - (a) one plot or portion not exceeding 1/2 hectare in area shall continue to be held by such a person as if a right of occupancy had been granted to him by the Governor in respect of that plot or portion; and
 - (b) the remainder of the land (so considered together) in excess of 1/2 hectare shall be taken over by the Governor and administered in accordance with this Act and the rights formerly vested in the holder in respect of such land shall be extinguished.
 - (7) No land to which subsection (5) (a) or (6) above applies held by any person shall be further subdivided or laid out in plots and no such land shall be transferred to any person except with the prior consent in writing of the Governor.
 - (8) Any instrument purporting to transfer any undeveloped land in contravention of subsection (7) above shall be void and of no effect whatsoever in law and any party to any such instrument shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of N5,000.
 - (9) In relation to land to which subsection (5) (a) or (6) (a) applies there shall be issued by the Military Governor on application therefore in the prescribed form a certificate of occupancy if the Military Governor is satisfied that the land was immediately before the commencement of this Act vested in that person.
35. (1) Section 34 of this Act shall have effect notwithstanding that the land in question was held under a leasehold, whether customary or otherwise, and formed part of an estate laid out by any person, group or family in whom the leasehold interest or reversion in respect of the land was vested immediately before the commencement of this Act so however on, group of family in whom the leasehold interest or reversion was vested that if there has been any improvements on the land effected by the person; as aforesaid the Governor shall, in respect of the improvements, pay to that person, group or family compensation computed as specified in section 29 of this Act.
- (2) There shall be deducted from the compensation payable under subsection (1) of this section any levy by way of development or similar charges paid in respect of the improvements on the land by the lessee to the person, group or family in whom the leasehold interest or reversion was vested and the amount to be deducted shall be determined by the Governor taking into consideration all

the circumstances of the case.

36. (1) The following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Act held or occupied by any person.
- (2) Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.
- (3) On the production to the Local Government by the occupier of such land, at his discretion, of a sketch or diagram or other sufficient description of the land in question and on application therefore in the prescribed form the Local Government shall if satisfied that the occupier or holder was entitled to the possession of such land whether under customary rights or otherwise howsoever, and that the land was being used for agricultural purposes at the commencement of this Act register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land in question.
- (4) Where the land is developed, the land shall continue to be held by the person to whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier of such developed land, at his discretion, produces a sketch or diagram showing the area of the land so developed the Local Government shall if satisfied that that person immediately before the commencement of this Act has the land vested in him register the holder or occupier as one in respect of whom a customary right of occupancy has been granted by the Local Government.
- (5) No land to which this section applies shall be sub-divided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.
- (6) Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and shall on conviction be liable to a fine ₦5,000 or to imprisonment for 1 year.
37. If any person other than one in whom any land was lawfully vested immediately before the commencement of this Act enters any land in purported exercise of any right in relation to possession of the land or makes any false claim in respect of the land to the Military Government or any Local Government for any purpose under this section, he shall be guilty of an offence and liable on conviction to any imprisonment for one year or to a fine of ₦5,000.
38. Nothing in this Part shall be construed as precluding the exercise by the Governor or as the case may be the Local Government concerned of the powers to revoke, in accordance with the applicable provisions of this Act, rights of occupancy, whether statutory or customary, in respect of any land to which this Part relates.

Part VII

Jurisdiction of High Courts and other Courts

39. (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-

- (a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph proceedings include proceedings for a declaration of title to a statutory right of occupancy.
 - (b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act.
- (2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.
40. Where on the commencement of this Act proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any land or interest therein such proceedings may be continued and be finally disposed of by the court concerned but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provide in this Act.
41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purposes of this paragraph proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modification as would enable effect to be given to this section.
42. (1) Proceedings for the recovery of rent payable in respect of any certificate of occupancy may be taken before a Magistrate Court of competent jurisdiction by and in the name of the Chief Lands Officer or by and in the name of any other officer appointed by the Governor in that behalf.
- (2) Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the Local Government concerned in the area court or customary court or any court of equivalent jurisdiction.

Part VIII Supplemental

43. (1) Save as permitted under Section 34 of this Act, as from the commencement of this Act no person shall in an urban area -
- (a) erect any building, wall, fence or other structure upon; or
 - (b) enclose, obstruct, cultivate or do any act on or in relation to, any land which is not the subject of a right of occupancy or licence lawfully held by him or in respect of which he has not received the permission of the Governor to enter and erect improvements prior to the grant to him of a right of occupancy.
- (2) Any person who contravenes any of the provisions of subsection (1) shall on being requires by the Ministry Governor so to do any within the periods of obstruction, structure or thing which he may have caused to be placed on the land and he shall put the land in the same condition as nearly as may be in which it was before such contravention.

- (3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦5,000.
 - (4) Any person who fails or refuses to comply with a requirement made by the Governor under subsection (2) shall be guilty of an offence and liable on conviction to a fine of ₦100 for each day during which he makes default in complying with the requirement of the Governor.
44. Any notice required by this Act to be served on any person shall be effectively served on him
- (a) by delivering it to the person on whom it is to be served: or
 - (b) by leaving at the usual or last known place of abode of that person: or
 - (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode: or
 - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.
 - (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.
45. (1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment, of this Act as the Governor may specify.
- (2) Where the power to grant certificates has been delegated to the State Commissioner such certificates shall be expressed to be granted on behalf of the Governor.
46. (1) The National Council of States may make regulations for the purpose of carrying this Act into effect and particularly with regard to the following matters
- (a) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians:
 - (b) the terms and conditions upon which special contracts may be made under section 8:
 - (c) the grant of certificates of occupancy under section 9:
 - (d) the grant of temporary rights of occupancy:
 - (e) the method of assessment of compensation for the purposes of section 29 of this Act.
- (2) the Governor may, subject to subsection (1) make regulations with regard to the following matters:-
- (a) the method of application for any licence or permit and the terms and conditions under which licences may be granted;

- (b) the procedure to be observed in revising rents;
 - (c) the fees to be paid for any matter or thing done under this Act.
 - (d) the forms to be used for any document or purposes.
47. (1) Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federation or of a State and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into:-
- (a) any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act: or
 - (b) any question concerning or pertaining to the right of the Military Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or
 - (c) any question concerning or pertaining to the right of a Local Government to grant a customary right of occupancy under this Act.
- (2) No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.
48. All existing laws relating to the registration of title to, or interest in, land or the transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intentment.
49. (1) nothing in this Act shall affect any title to land whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.
- (2) In this section, "agency" includes any statutory corporation or any other statutory body (whether corporate or unincorporated) or any company wholly-owned by the Federal Government.
50. (1) notwithstanding anything to the contrary in this Act or any other enactment. All laws and subsidiary legislation made at any time between the commencement of this Act and 30th September 1979 by an Administrator (or former Governor) the Executive Council, a Commissioner or any other authority or any public officer of a State shall be deemed to have been validly made and shall have effect as if they have been made under or pursuant to the Act and accordingly, shall hereafter continue to have effect according to their tenor and intentment as if they were regulations made under or pursuant to section 46 of this Act.
- (2) For the purposes of subsection (1) of this section
- (a) all contracts and all executive and judicial acts, including acts pertaining to the establishment, membership and functions of any Land Use Allocation Committee or of any other authority or to the appointment of any person, shall be deemed to have been validly entered into or done and shall hereafter continue to have effect as provided in the said subsection; and
 - (b) any instrument or other evidence relating to the allocation of any land, whether or not expressed to have been made under this Act, shall be deemed to have been validly issued or given under or pursuant to this Act and shall continue to have effect according to its tenor and intentment accordingly.

51. (1) In this Act, unless the context otherwise requires:- "agricultural purposes" includes the planting of any crops of economic value:

"appropriate officer" means the Chief Lands Officer of a state and in the case of the Federal Capital Territory means the Chief Federal Lands Officer;

"customary right of occupancy" means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Act.

"developed land" means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes;

"easement" means a right annexed to land to utilize other land in different holding in a particular manner (not involving the taking of any part of the natural produce of that land or of any part of its soil) or to prevent the holder of the other land from utilizing his land in a particular manner;

"Government" means the Government of the Federation or the Government of a State;

"grazing purposes" includes only such agricultural operations as are required for growing fodder for livestock on the grazing area;

"High Court" means the High Court of the State concerned;

"holder" in relation to a right of occupancy, means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned or has validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sub lessee or sub-under lessee;

"improvements" or "unexhausted improvements" means anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing, wells, roads and irrigation or reclamations works, but does not include the result of ordinary cultivation other than growing produce: "interest at the bank rate" means a simple interest payable at the rate per cent per annum at which the Central Bank of Nigeria will rediscount bills of exchange;

"Local Government" means the appropriate Local Government or any other body having or exercising the powers of a Local Government as provided by law in respect of the area where the land in question is situated;

"Governor" means the Governor of the State concerned;

"mortgage" includes a second and subsequent mortgage and equitable mortgage;

"occupier" means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-under lessee of a holder;

"public purposes" includes:-

- (a) for exclusive Government use or for general public use;
- (b) for use by any body corporate directly established by law or by any body corporate registered under the Companies Act 1968 as respects which the Government owns shares, stocks or debentures;
- (c) for or in connection with sanitary improvements of any kind;
- (d) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;
- (f) for obtaining control over land required for or in connection with mining purposes;
- (g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;
- (h) for obtaining control over land required for or in connection with economic, industrial or agricultural development;

"statutory right of occupancy" means a right of occupancy granted by the Governor under this Act;

"urban area" means such area of the state as may be designated as such by the Governor pursuant to section 3 of this Act;

"sub-lease" includes sub-underlessee.

- (2) The powers of a Governor under this Act shall, in respect of land comprised in the Federal Capital Territory or any land held or vested in the Federal Government in any State, be exercisable by the Head of the Federal Military Government or any Federal Commissioner designated by him in that behalf and references in this Act to Governor shall be construed accordingly.

52. This Act may be cited as the Land Use Act 1978.

APPENDIX 4

Extracts on the environment from past governmental and other reports on the Niger Delta

The Etiebet Report, 1994

'The degradation of the environment has destroyed farmlands and aquatic life and affected the economic life of all.'

'Widespread gas flaring has inflicted untold hardships on human, plant and animal life. For instance, agricultural

production is drastically reduced as increased atmospheric temperature kills plants within the vicinity of the flares.'

'There was a high incidence of pollution caused by oil spillages, leakages, and other discharges into the environment. And the oil companies have not taken action in line with international environmental standards to control and ameliorate the environmental impacts in their operations.'

'Ongoing rates of compensation for loss of land and economic trees should be published with a view to having an up-to-date rate book to avoid arbitrariness in compensation payment by oil companies.'

'There should be review of:

- a. The Mineral Act;
- b. The Petroleum Act;
- c. The Oil Pipeline Act'

'Gas flare should be reduced by design and construction of plants to harness associate gas for supply to industries'

'Decree No. 86 of 1992 should be strictly and faithfully enforced and complied with especially enforcing Environmental Impact Assessments (EIAs)'

The Vision 2010 Report, 1996

'In the area of environmental well-being of the country, of which the Niger Delta has become the focal point, the Committee recommended that in order to protect the

Nigerian economy for its unborn children, oil pollution from spillages and gas flaring,

Amongst others, must be stopped.'

The Ogomudia Report, 2001

'All oil pipelines should be maintained to meet international standards in order to prevent ruptures and its consequential damage to the environment'

'The payment of compensation due to oil spillages should be appropriately worked out and addressed'

'Government should compel oil companies to fully comply with environmental regulations relating to their operations'

'The government should immediately review the following existing laws, which are a source of contention within the Region:

- a. Oil Pipeline Act, 1959;
- b. Oil Terminal Dues Act, 1965;
- c. Petroleum Act, 1969;
- d. Land Use Act, 1978;
- e. Associated Gas Re-Injection Act, 1979;
- f. Land (Title Vesting) Act, 1993'

'The government should embark on massive erosion control, shore protection and reinforcement'

'All gas flaring should be terminated in 2008 with no further deadline extension'

White Paper Report of the Presidential Panel on National Security, 2003

'Oil companies should be made to maintain environmental standards comparable to the high environmental standards of their home countries'

'Government should insist through new legislation at appropriate levels that insist that the *polluter pays*, which is a globally recognized norm'

Report on First International Conference on Sustainable Development of the Niger Delta NDDC and UNDP, 2003

'To effectively address the root causes of marginalisation, inequality and environmental degradation; all subsisting legal and administrative provisions applicable to the Region need to be reconsidered and policies that undermine efforts to optimally utilize human and material resources from the Region reviewed'

The Niger Delta Regional Development Master Plan, 2004

'A credible and transparent compensation mechanism for those affected by oil exploration should be defined and established'

'There should be a review of existing environmental policies with a view to strengthening them and ensuring that the impact of oil exploration on the environment is reduced to its barest minimum'

The National Political Reform Conference Report (NPRC), 2005

'There should be a comprehensive compensation package including specified penalties for environmental negligence in the oil and gas sector with a view to bringing it in line with Section 94-97 of the Minerals and Mining Act 1999, which regulates the operations of the solid minerals development sector'

'That the right to clean and healthy environment should be enshrined in the Constitution as a Fundamental Human Right'.