

The Oil Industry and Human Rights in the Niger Delta

Testimony of Nnimmo Bassey¹

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Mr. Chairman, Ranking Member Coburn, and members of this subcommittee, thank you for inviting me to testify on this important and timely topic.

Overview

This submission describes the deleterious human and environmental impacts of the operations of multinational oil companies in the Niger Delta in Nigeria. It provides information about the population of the Niger Delta and the harmful effects of the oil industry on the region's delicate environment. Oil companies, including Chevron and Shell, have repeatedly used the Nigerian military to violently repress Delta inhabitants' peaceful protests, causing deaths and injuries, and creating an environment in which ordinary citizens are unable to exercise their rights to free expression. Finally, recommendations are presented for improvements in corporate practice by extractive industry companies, as well as suggestions for further inquiries by the Subcommittee.

Background

The Geographical, Economic, and Cultural Context

The Niger Delta region is a coastal plain covering approximately 70,000 km² in southeastern Nigeria. Over 12 million people live in the states of the Niger Delta; a large percentage of the inhabitants come from diverse minority ethnic groups like the Ijaw, Ilaje, Urhobo, Ibibio and Itsekiri, who have been marginalized historically in Nigerian political and economic life. Farming and fishing are key livelihood activities for the region's inhabitants.

The area is a treasure trove of biodiversity; it is mostly forested, with mangrove forests in the immediate coastal regions and tropical rainforests and freshwater swamps dominating further inland. Much of these forests have been degraded except in protected areas.

The Oil Industry in the Niger Delta

The Niger Delta region is also the heart of Nigeria's oil production, with production estimates at approximately 2.4 million barrels daily. Oil companies have been producing petroleum in the Niger Delta for more than fifty years, but production has greatly

¹ Nnimmo Bassey is the Executive Director of the advocacy organization Environmental Rights Action (ERA) / Friends of the Earth Nigeria (FoEN). The organization is dedicated to the defense of human ecosystems in terms of human rights, and to the promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria through the empowerment of local people.

intensified since the 1970s. The oil companies have built thousands of miles of pipelines, hundreds of well heads, and many rigs, refineries, and flow stations across the Delta.

Since the 1970s, the Nigerian government has required all foreign oil companies to create joint ventures with the state-owned Nigerian National Petroleum Corporation (NNPC). NNPC allocates oil blocs as concessions to each joint venture partner. NNPC owns 60% of each venture, giving the Nigerian government a controlling stake and power over changes in production policy. Five multinational corporations participate in these joint ventures. The Anglo-Dutch conglomerate Royal Dutch/Shell has long been the largest oil producer in Nigeria; the American companies ExxonMobil and Chevron are the next largest, and other oil fields are operated by France's Total and Italy's Agip. The foreign partner such as Shell or Chevron is the operator of each joint venture, controlling the day-to-day operations.

One consequence of the joint venture arrangements is that the Nigerian state ends up shouldering the majority of costs incurred by the enterprises, even though the foreign company controls operations and modes of production. For example, while oil companies pay a fine for flaring the natural gas that is generated in the course of oil production, 60% of this fine is actually paid by the government. When oil companies use community development projects to publicize themselves as good corporate citizens, they often do not mention that the Nigerian government typically pays for 60% of these projects.

Petroleum remains the mainstay of the Nigerian economy. Oil and gas operations are estimated to account for about 35% of Nigeria's GDP and over 80% of government revenue. At the same time, our own anti-corruption officials have estimated that 40% of the oil revenue is lost to corruption.²

Poverty and Under-Development in the Delta

In total, Nigeria has received more than \$350 billion in oil revenues since 1970.³ Nonetheless, almost three-quarters of all Nigerians live in desperate poverty.⁴ This level of poverty and deprivation for ordinary citizens is intensified in the Niger Delta region, where most of Nigeria's oil wealth is produced.

Studies by human rights groups conclude that the average income of Delta residents is *lower* than the GNP per capita for the country as a whole. Unemployment stands at about 75% and reaches 95% in some areas.⁵ Life expectancy is 40 years—substantially lower than the national figure of 46.7 years—child mortality rates are shocking, and the

² Reuters, "Corruption costs Nigeria 40 percent of oil wealth, official says," *The Boston Globe* (Dec. 17, 2004).

³ Expert Report of Michael J. Watts in *Bowoto v. Chevron* at para. 33 (October 30, 2005) (hereafter "Watts Report").

⁴ World Bank, *Nigeria: Country Brief 2005* (2005), available at <http://www.worldbank.org>.

⁵ Watts Report at para. 68.

instance of malaria and waterborne diseases is extraordinarily high.⁶ Transportation, education, and health infrastructure are practically non-existent in much of the region.

The Delta lags far behind the rest of Nigeria in economic and human development for several reasons. Chief among these are:

- Nigeria's laws and federal system give complete ownership of all petroleum to the federal government, which redistributes revenues away from the oil-producing states. The Delta is only guaranteed to retain 13% of the revenues from oil produced within its borders, up from 1.5% before 1992.
- Rampant corruption and mismanagement have led to the loss of much of the oil revenue, as well as the dismal performance of the Niger Delta Development Commission (NDDC), a special agency established to provide for development in the Delta region. Earlier agencies set up in this mold performed even worse.
- The Delta is inhabited by minority tribes with limited political power, who have been historically marginalized in Nigerian political life. This allows the federal government and states dominated by more powerful groups to capture a higher percentage of revenue that might otherwise be allocated to the Delta.

Environmental and Human Impacts of Oil Production

Oil production in the Niger Delta has had severe negative impacts on the sensitive environment of the region, resulting in many hardships for the inhabitants, whose traditional livelihood relies on the health of their local ecosystem. The following impacts are among those that have been documented in the Niger Delta.

Oil Spills

Largely because of the lack of adequate regulatory capacity in Nigeria, many oil production operations are carried out under sub-standard conditions. Spills, accidents, leaks and waste discharges have had a significant impact on the Delta ecosystem, causing destruction of vegetation, die-off of land animals and aquatic life, and the contamination of farmland. For Delta inhabitants who rely mainly on agriculture and fishing to meet their nutritional needs, these effects can be devastating. Spilled oil spreads quickly over water, and it can be carried into the streams, where it kills many fish, along with trees and other vegetation.

After a crude oil spill from Shell operations near the communities of Ikarama and Zarama Nyambiri in Bayelsa state, three residents described the impacts:

This [spill] has prevented us from eating. Since we do not have water flowing in our taps, the river is the only source of water for drinking, cooking, washing and bathing. Since the spill on the creek, we no longer use it as we used to. Our children, who are ignorant, often go to swim in it only to come out crying and scratching their eyes and other parts of their bodies, besides becoming feverish.⁷

⁶ *Id.*, at paras. 71-73.

⁷ ERA Interview with Mrs. Penninah Ivelive.

The oil is affecting the fishes in the creek, fishing activities are no more and even the cassava our people usually soak in the river for the purposes of preparing foofoo were badly affected as the spill took us by surprise. Our only source of drinking has been polluted with adverse health conditions as a consequence.⁸

Last week when I was ill and went to a clinic in Port Harcourt , I was told that my illness is related to the water I drank. Apart from this spill affecting fishes and cray fish, even the fishing gears are affected and damaged by the spill.⁹

Summing up, a local leader, Chief Esau Bekewei, stated: “The spill has affected my people both in health and economic terms. Shell should own up to her responsibility and save us further problems.”¹⁰

Dredging Mangroves for Canals and Waterways

The estuarine mangrove forests constitute a key habitat for marine life and are thus important both for biodiversity and for human food systems. Furthermore, they play an essential role in regulating the presence of fresh and salt water in coastal areas, thereby shaping agricultural possibilities and other human livelihood strategies.

In order to allow deep-hulled ships to access terminals and production sites for the transport of crude oil, mangrove forests in the Delta region have been dredged and narrow waterways have been transformed into canals. In addition to destroying forests and disrupting important breeding grounds for aquatic life, these practices have created connections between previously isolated bodies of fresh and salt water. As salt water encroaches further inland, it upsets delicate ecological relationships that allow plants and animals to flourish, kills freshwater fish and vegetation, and degrades the fertility of farmland.

Monday Omosaye, a fisherman and community leader in the Delta, described the impacts after canals were dredged by Chevron:

I discovered that the whole lagoon that is formerly fresh has become salt water. The riverine fish that were used to freshwater were no longer there. Like . . . mud fish, aro, agbadagiri, oteke, ohanrin. They’re no longer there.

And the water is no longer drinkable to the people. And the lagoon becomes dry land, becomes silted up as a result of mud, silt, soil coming in from the channel dug into the Atlantic Ocean by Chevron.

[And] some of the grasses [around the lagoon] are very useful. . . we have a type of grass that we use in making mats. And these type of grasses also do not survive in salt water. As a result of existence of salt water . . . the grasses, they disappear from the area. . . .

⁸ ERA Interview with Justice Ikah.

⁹ ERA Interview with Jonah Zagunu.

¹⁰ ERA Interview with Chief Esau Bekewei.

People were put out of jobs because of the condition of no fish in the riverine area, and that the lagoon becomes silted up, becomes dry. And . . . there was no job opportunity for the indigene in the community.¹¹

The saltwater incursions also kill other useful plants, as related by Chief Nicholas Omomowo:

Before the canal was dug . . . we are felling timbers. When timber logs are felled, we used to bring them to Lagos for sale, [and use] the wood for the construction of our houses. Because that type of wood does not germinate under salty water, the wood, the trees, were destroyed. . . .

[In addition to] the trees and the timbers . . . there's other things that we call the palm tree poles. We use the poles of palm trees for the construction of our houses. But we find that those things are not used to salty water, they've been entirely destroyed and we don't have them for the construction of our houses again.¹²

This pattern has been observed in many communities, resulting in disruption of traditional lives and livelihoods.

Gas Flares

After its extraction, pipelines carry petroleum to a flow station, where gas is separated out for refining or flaring. In Nigeria, most gas extracted through the oil production process is flared – gas which, if refined, would have a total value of \$15 million each day. Gas flaring creates large quantities of soot, smoke, and other air pollutants. Mercury, benzene and lead are common contaminants, which are often released into the environment if the gas is flared at temperatures that are too low. This cocktail of chemicals causes cancers, respiratory diseases and blood disorders. Flaring also releases nitrogen oxide and sulfur dioxide, creating acid rain that kills fish and defoliates vegetation. These impacts are intensified when the gas is flared from flare stacks, some of which are horizontal and at ground level.

Philemon Ebiesuwa, a community leader with college-level scientific training, described the effects of Chevron's gas flaring near his home in the community of Awoye:

What I observe is that there is constant gas flaring from the flow station, Opuekeba, which releases into the atmosphere around Awoye some dangerous hydrocarbon particulates, like hydrogen sulfide, sulfur dioxide, nitrogen dioxide. And when this one mixes with rainwater, it changes to weak acid, maybe sulfuric acid and some other weak acid, which makes the roofing of the people, those who use corrugated iron, to go bad quickly, to rust. Because this weak acid from acid rain corrodes the building around the area. . . .

¹¹ Deposition of Monday Omosaye in *Bowoto v. Chevron Corp.* at 17:3-14, 19:13-20 (Aug. 18, 2005).

¹² Deposition of Chief Nicholas Omomowo in *Bowoto v. Chevron Corp.* at 342:15-344:10 (Jan. 28, 2005).

[In] Nigeria, there's a lot of gas flaring all over the country. . . . They don't want to produce the gas with the oil, they will flare it, they will burn it into the atmosphere. So that is what happens in Opuekeba flow station. . . . For all the periods that I've visited Awoye, I've seen it on. Even if you are not there, if you are far away, you can also see the flare. It illuminates the skies, lighting the skies. . . .

I know that carbon monoxide is also released with this. And carbon monoxide is poisonous, because if it's inhaled, it can deoxygenate. . . it can reduce the supply of oxygen to the blood. So it lowers blood oxygen to the hemoglobin. To someone in a critical state, it can lead to some—a serious health hazard. Apart from that, it can also cause some respiratory diseases. It can cause maybe irritation to the upper respiratory tract and some other associated respiratory disease which can be associated with burning of gas within the vicinity of Awoye or other oil producing communities in the Niger Delta.

There is also . . . change in the vegetation. Around the place too, you have change in the coloration. And some of the gaseous emissions . . . can damage some plants . . . there are dead and dying vegetation around the area.¹³

In 2005, Delta communities brought suit against Shell and other oil companies to stop the practice of gas flaring. The court agreed, declaring gas flaring to be an illegal practice and a violation of human rights.¹⁴ This decision, however, has not been implemented, and the judge who handed down the decision was transferred to a faraway region of Nigeria.

Release of Drilling Wastes into Water

Drilling for oil requires the injection of a mixture of clay, chemicals, and water through a pipe, and the eventual ejection of this mixture, along with excavated material. The waste material, which can be radioactive, is often dumped in the rivers and sea, where chemicals and particulate matter can contaminate water supplies and degrade water quality. Up to 300,000 gallons of drilling waste can be ejected each day in the process of oil production.¹⁵

Seismic Tests and Line Cutting

In the initial stages of oil exploration, areas are cleared of vegetation, and explosives are detonated to send seismic waves into the earth's crust. This process can cause long-term deforestation; it also depletes populations of fish and land animals who are harmed or scared off by the repeated vibrations.

¹³ Deposition of Philemon Ebiesuwa in *Bowoto v. Chevron Corp.* at 152:18-157:12 (July 12, 2005).

¹⁴ Julie Ziegler, Bloomberg News, "Nigerian court orders an end to gas flaring," *Houston Chronicle* (Nov. 15, 2005).

¹⁵ Watts report at para. 48.

All Costs and Few Benefits: a Bad Deal for Delta Residents

Inhabitants of the Niger Delta receive little in return for the environmental degradation and destruction that jeopardizes their traditional livelihoods. Instead of reaping benefits in education, employment, and health, their fishing stocks have declined, their fields have lost fertility, and their children have been denied opportunities to improve the economic circumstances of their communities. Meanwhile, foreign oil companies have flourished in their midst, protected and supported in their disputes with the locals by government resources in the form of armed security personnel.

Human Rights Violations in the Military Suppression of Oil Protesters

While five multinational corporations operate oil fields in Nigeria, most reported human rights abuses have been associated with two of them: Shell and Chevron. Most of the complaints concerning Shell relate to the Ogoni crisis in the 1990s, although sporadic incidents of violence have been reported in recent years. Abuses tied to Chevron are generally more recent, and Chevron, unlike Shell, does not appear to have changed its relationship with the Nigerian security forces.

Oil Companies and Nigerian Security Forces

Nigeria has one of the largest standing armies in Africa, with an estimated 94,000 soldiers in the armed forces¹⁶ and more employed by paramilitary and police forces. The Nigerian security forces are widely known to be corrupt, undisciplined and characterized by an abysmal human rights record.¹⁷ The paramilitary mobile police have an especially brutal reputation; they are known locally as the “kill and go.” Nigeria was under direct military rule from 1966 to 1979, and again from 1983 until 1999; in 1993, the Nigerian Army’s own retiring Chief of Staff, Lt. Gen. Salihu Ibrahim, condemned the breakdown of professionalism among the armed forces, describing the military as “an army of anything is possible.”¹⁸

In 1999, with the return to civilian rule, an attempt was made to clean up the military.¹⁹ Yet even this year’s Country Report on Human Rights Practices for Nigeria, published by the U.S. Department of State, concludes that the human rights record remains “poor” and the national police, army and security forces “committed extrajudicial killings” and “used excessive force” while the police were “poorly trained . . . and poorly supervised” and

¹⁶ D. Farah, “U.S. to Help Nigeria Revamp Its Armed Forces, *Washington Post* (April 29, 2000).

¹⁷ S. Adejumobi, “The military and the national question,” in A. Momoh & S. Adejumobi (eds.), *The National Question in Nigeria* at 155-83 (2002); Amnesty Int’l, *A 10 point Program for Human Rights Reform* (1996); Amnesty International, *Nigeria: Releases of political prisoners - questions remain about past human rights violations* (1999); Amnesty International, *Nigeria: Security forces constantly fail to protect and respect human rights* (2002); U.S. Dep’t of State, *Country Reports on Human Rights Practices: Nigeria* (multiple years).

¹⁸ Jane’s Information Group Ltd., *Jane’s World Armies* at 628 (J.C. O’Halloran, A. Oppenheimer, & M. Stenhouse eds., June 2004).

¹⁹ UN Office for the Coordination of Humanitarian Affairs, *Nigeria: Moves to Clean Up Military* (1999).

“were rarely held accountable.”²⁰ The three principal security and intelligence agencies, the State Security Service (SSS), the National Intelligence Agency, and the Directorate of Military Intelligence (DMI), operate, according to the International Crisis Group, “without oversight.”²¹ Former President Olesegun Obasanjo admitted in 2005 that Nigerian police and security regularly tortured and killed prisoners in their custody, acknowledging earlier reports by Human Rights Watch and others of systematic abuses by security forces.²²

Unfortunately, despite this record, the Nigerian security forces have been regularly used to protect oil installations and to respond to perceived threats, with varying degrees of involvement by the corporations themselves. In the early 1990s, Shell was known to have called on the mobile police to respond to demonstrations;²³ multiple witnesses have stated that Col. Paul Okuntimo, who was at the time the head of a joint military-police security task force, stated that he was paid or directed by Shell.²⁴ Shell also admitted that it had procured firearms for the Nigerian police, a fact that was revealed when one of Shell’s arms suppliers sued the oil company for breach of contract.²⁵ Through litigation, even more details of Chevron’s relationship with the Nigerian security forces have emerged, demonstrating that their connections go far beyond the ordinary relationship between civilians and police. Like Shell, Chevron has directly requested the intervention of the Nigerian security forces.²⁶ Chevron regularly houses and feeds the security forces, including Army, Navy, and police, and pays them above their government salaries.²⁷ Chevron personnel have reported “leading” or “supervising” Nigerian security forces in the course of their duties.²⁸ Chevron provides transportation to the military and police in Chevron-leased helicopters and boats.²⁹ And Chevron has the ability to investigate and demand the removal of problematic officers,³⁰ but has apparently rarely exercised this power in response to human rights abuses. All of the companies have employed Nigerian supernumerary or “spy” police for their security, but Total has denied that it uses the Nigerian military for security operations or in response to demonstrations.³¹

²⁰ U.S. Dep’t of State, *2007 Country Reports on Human Rights Practices: Nigeria* (2008); see also Centre for Law Enforcement (Lagos), *Police-Community Violence in Nigeria* (2000).

²¹ International Crisis Group, *Nigeria: want in the midst of plenty* (2006) at 27.

²² T. Dagne, Congressional Research Service, “Nigeria in Political Transition,” *CRS Issue Brief for Congress*, at 9 (2005).

²³ Shell Petroleum Development Co. of Nigeria, “Response to Human Rights Watch/Africa publication — The Ogoni Crisis: A Case Study of Military Repression in Southeastern Nigeria, July 1994” (1995).

²⁴ Geoffrey Lean, “Shell ‘paid Nigerian military,’” *The Independent* (London) (Dec. 17, 1995); Deposition of James N-Nah in *Wiwa v. Shell*, at 38:14-50:24 (Oct. 16, 2003) (Okuntimo said soldiers were “sent in by Shell”); Deposition of Monday Gbokoo in *Wiwa v. Shell*, at 14:7-9, 61:11-67:25 (Oct. 19, 2003) (Okuntimo stated “I was directed by Shell to kill all of you”).

²⁵ P. Ghazi & C. Duodu, “How Shell tried to buy Berettas for Nigerians,” *The Observer* (Feb. 11, 1996).

²⁶ Interview with Chevron Nigeria Public Affairs Manager Sola Omole, “Drilling and Killing,” *Democracy Now!* (July 11, 2003) (“Q: Who authorized the call for the military to come in? Omole: That’s Chevron’s management.”).

²⁷ Order re: Defendants’ Motion for Summary Judgment on Plaintiffs’ Claims 10 Through 17, *Bowoto v. Chevron Corp.*, at 21 (Aug. 13, 2007).

²⁸ *Id.* at 20-21.

²⁹ *Id.* at 20.

³⁰ *Id.* at 21.

³¹ Human Rights Watch, “The Price of Oil,” at 105 (Jan. 1999).

The oil companies' role in the military's abuses has been acknowledged by the Nigerian government itself. With the transition to civilian rule came an attempt to account for the human rights abuses of the military era, in the form of Nigeria's truth commission, the Human Rights Violations Investigation Commission chaired by Justice Chukwudifu A. Oputa (popularly known as the "Oputa Commission"). The Oputa Commission, which was created by an act of the Nigerian legislature, submitted its findings in a report to President Obasanjo in May of 2002. The Oputa Commission concluded that "the protection given to oil Companies . . . led to the systematic and generalized violations and abuses, which occurred in the Niger-Delta during the dark period of military rule in the country."³²

Shell and the Ogoni Crisis

Umuechem and Bonny: Prelude to Ogoni

The first documented major case of violence against oil protesters was against people from the Etche community in the village of Umuechem, Rivers State, in the fall of 1990. As documented by the Oputa Commission, "youths from Umuechem in Ikwerre local government area of Rivers State protested at a [Shell oil] facility. On November 1, police, in a bid to stop the demonstrations, invaded the community."³³ In fact, a Shell manager had expressly requested that the notorious mobile police respond to the demonstrations.³⁴ It is generally accepted that eighty people were killed in this attack and that nearly 500 houses were destroyed.³⁵

A subsequent Judicial Commission of Enquiry found that the demonstrators were neither violent nor armed, and that the Nigerian security forces displayed "a reckless disregard for lives and property."³⁶

Another protest against Shell two years later brought a similar response. In 1992, according to a report by Greenpeace, "one person was killed, 30 shot and 150 beaten when local villagers from Bonny demonstrated against Shell."³⁷ Human Rights Watch similarly reported that Nigerian security forces "responded with indiscriminate shootings and beatings" on this occasion.³⁸

³² Human Rights Violations Investigation Commission (HRVIC), "Synoptic Overview of HRVIC Report: Conclusions and Recommendations," at 13 (May 2002) (hereafter Oputa Commission Report").

³³ Oputa Commission Report, vol. 3 at 50.

³⁴ Human Rights Watch, "The Price of Oil," at 162 (Jan. 1999).

³⁵ *Id.* at 123; Amnesty Int'l, "Freedom in the Balance: Nigeria/Kenya," at 2-3 (1995); A. Rowell, J. Marriott & L. Stockman, *The Next Gulf* at 69 (2005).

³⁶ Human Rights Watch, "The Price of Oil," at 123-23 (Jan. 1999); Human Rights Watch / Africa, "Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria," at 9, 51 (July 1995).

³⁷ A. Rowell, Greenpeace Int'l, "Shell-shocked: The environmental and social costs of living with Shell in Nigeria," at 19 (July 2004).

³⁸ U.S. Dep't of State, *1998 Country Reports on Human Rights Practices: Nigeria* (1999).

The Ogoni Crisis

The military campaign against the Ogoni people of Rivers State, which became violent beginning in 1993, was one of the major campaigns against oil protesters of the 1990s, involving thousands of victims and at least hundreds of deaths.

The Ogoni homeland is home to a large number of onshore oil facilities and has seen severe environmental damage from oil spills, gas flaring, and other activities. In 1990, the Movement for the Survival of the Ogoni People (MOSOP), led by author and activist Ken Saro-Wiwa, presented its Ogoni Bill of Rights to the military government.³⁹ In 1992, MOSOP sent a letter with several demands, including compensation for and stoppage of environmental degradation, to three oil companies. In reaction to these demands, the Nigerian government issued a decree declaring that disturbances at oil installations would be considered treason, punishable by death.⁴⁰

In 1993, MOSOP stepped up its protests, with a corresponding increase in repression. Ken Saro-Wiwa spoke at Ogoni Day, January 4, 1993, and said the Shell was not welcome in Ogoni.⁴¹ In April 1993, thousands of people demonstrated against Willbros, a Shell contractor, in Ogoni. Nigerian security forces responded with violence, shooting at least 10 people and permanently maiming at least one; in subsequent protests at least one protester was shot and killed by the Nigerian military.⁴² Beginning in 1993 the security forces also began raiding Ogoni villages in a generalized campaign of violence designed to intimidate the Ogoni. In August 1993, government security forces attacked the Ogoni village of Kaa, killing at least 35 people.⁴³ Human Rights Watch documented interviews with military personnel who described being ordered to attack Ogoni communities, opening fire indiscriminately on the village of Kpea and then looting and burning it.⁴⁴ In October 1993, a conflict between Shell and villagers at the Korokoro flowstation in Ogoni resulted in one villager being killed and two others shot by security forces.⁴⁵

In 1993, Shell suspended production in Ogoniland.

In May 1994, Ken Saro-Wiwa and fifteen other MOSOP leaders were arrested on charges of murdering four Ogoni leaders, without any credible evidence connecting them to the

³⁹ Human Rights Watch, "The Price of Oil," at 124 (Jan. 1999); O. Ibeanu, "Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria," 6 *Environmental Change & Security Project* 19, 26 (2000).

⁴⁰ Oputa Commission Report, vol. 2, at 29-30.

⁴¹ Deposition of Michael Vizer in *Wiwa v. Royal Dutch Petroleum Co.*, at 222:8-224:7 (May 28, 2004).

⁴² A. Rowell, Greenpeace Int'l, "Shell-shocked: The environmental and social costs of living with Shell in Nigeria," at 19 (July 2004); O. Ibeanu, "Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria," 6 *Environmental Change & Security Project* 19, 27 (2000).

⁴³ Human Rights Watch / Africa, "Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria," at 13 (July 1995).

⁴⁴ *Id.* at 12 (July 1995).

⁴⁵ A. Rowell, Greenpeace Int'l, "Shell-shocked: The environmental and social costs of living with Shell in Nigeria," at 20 (July 2004).

murders.⁴⁶ Following the arrests of the MOSOP leadership, security forces attacked at least 60 Ogoni villages to punish them for supporting MOSOP, including Oloko I, Oloko II, Gbaeken, Tumbe, Mumba, Eemu, Agbeta, Nwenkova, Boobee, Ledor, Nomaban, Gaagoo, Kemkora, Nweol, Giokoo, Biara, Barako, Deeyor, Bera, Nwebiaru, Deken, K-Dere, B-Dere, Mogho, Kpor, Lewe, Bomu, Bodo, Chara, Barobara, Bunu, Koroma, Itoro, Kpite, Korokoro, Ilegen, Gbenue, Botem-Tai, Semi, Bane, Bori, Wiyakara, Kono-bue, Buan, Yeghe, Okwali, and Uegwere/Bo-ue. During these raids, soldiers shot indiscriminately as people fled, raped women, detained and beat people, including children, and looted villages.⁴⁷ At least 50 people were killed overall in these attacks.⁴⁸ At least several hundred were detained.⁴⁹ The detainees were beaten, often severely.⁵⁰ Amnesty International estimated that, in 1994, at least 50 people were extrajudicially executed by the security forces in their campaign against the Ogoni, 600 people were detained, and “scores of villages razed and destroyed.”⁵¹

Incidents of violence against the Ogoni continued into 1995. In November 1995, after a sham trial before a special tribunal which was denounced by the international community, Ken Saro-Wiwa and eight other Ogoni leaders were executed. The U.S. State Department’s human rights report described this execution as a denial of due process.

Ken Saro-Wiwa’s final statement to the tribunal is a testament to his cause:

I am a man of peace, of ideas. Appalled by the denigrating poverty of my people who live on a richly endowed land, distressed by their political marginalization and economic strangulation, angered by the devastation of their land, their ultimate heritage, anxious to preserve their right to life and to a decent living, and determined to usher to this country as a whole a fair and just democratic system which protects everyone and every ethnic group and gives us all a valid claim to human civilization, I have devoted my intellectual and material resources, my very life, to a cause in which I have total belief and from which I cannot be blackmailed or intimidated. I have no doubt at all about the ultimate success of my cause, no matter the trials and tribulations which I and those who believe with me may encounter on our journey. Nor imprisonment nor death can stop our ultimate victory.

He was 54 years old when he was executed, leaving behind his wife and several children. The Oputa Commission described the executions as the “high point” of a campaign of “state sponsored violence” against perceived enemies of the military regime, especially in

⁴⁶ Human Rights Watch, “The Price of Oil,” at 125 (Jan. 1999).

⁴⁷ Human Rights Watch / Africa, “Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria,” at 15 (July 1995); Amnesty Int’l, “Freedom in the Balance: Nigeria/Kenya,” at 3 (1995).

⁴⁸ Human Rights Watch / Africa, “Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria,” at 17-18 (July 1995).

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 19-21.

⁵¹ Amnesty Int’l, “Freedom in the Balance: Nigeria/Kenya,” at 3 (1995).

resource rich areas such as the Niger Delta.⁵² The Commission summarized the state repression against the Ogoni as follows:

The resistance of the Ogoni people . . . to exploitative relations with the federal and state governments and multinational corporations attracted state repression. In the aftermath of the murder of 4 Ogoni leaders in 1994, the state government set up the Rivers State Internal Security Task Force (Joint Task Force). The leader of the force, Major Paul Okuntimo, was reported to have told the media that they had only used 9 out of the several ways of killing people in Ogoniland. The communities in Ogoniland experienced several raids aimed at fishing out the Ogoni activists. In the process, several people lost their lives and property. Many Ogoni people had to go into exile . . . after the murder of Ken Saro Wiwa by the junta. Several Ogoni activists . . . have on various occasions been arrested. In the heat of this repression, violent clashes suspected to have been instigated by the state security erupted between the Ogoni and their neighbours such as the Andoni, Okrika and Afam. The death toll of the clashes, which is enormous, is yet to be ascertained.⁵³

On the subject of the Rivers State Internal Security Task Force – one of the major security forces used by the Nigerian government to suppress Ogoni protests – the Oputa Commission concluded that:

...[T]he establishment of some institutions like the Rivers State Task Force on Internal Security though purposely established for the sake of maintaining peace was counterproductive because the Security Agents (i.e. Nigerian soldiers) abused their positions to illegally arrest and detain innocent people and also raped women in the name of maintaining peace and order.⁵⁴

Unfortunately, the abuses in Ogoniland were not exceptional. Throughout the 1990s, numerous other communities who protested against Shell or demanded compensation were met with severe force by the Nigerian security forces.⁵⁵

Shell's Response

While not accepting responsibility for any of these abuses, Shell has acknowledged that it has taken steps to prevent the recurrence of violence connected with its operations. According to Human Rights Watch, after the Umuechem massacre, Shell stated that it had “learned from the ‘regrettable and tragic’ incident at Umuechem, so that it would now never call for Mobile Police protection.”⁵⁶

⁵² Oputa Commission Report, Synoptic Overview, at 98-99.

⁵³ Oputa Commission Report, vol. 3, at 50-51.

⁵⁴ Oputa Commission Report, vol. 4 at 149.

⁵⁵ See generally Human Rights Watch, “The Price of Oil” (Jan. 1999); Human Rights Watch / Africa, “Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria” (July 1995).

⁵⁶ Human Rights Watch, “The Price of Oil,” at 162 (Jan. 1999).

In 2002, Human Rights Watch noted that Shell had “undertaken a major review of its attitude toward communities and issues of human rights and sustainable development” following the execution of Ken Saro-Wiwa.⁵⁷ However, although “Shell has made serious efforts to improve its performance in Nigeria . . . these efforts have in too many areas yet to yield meaningful results on the ground. . . . For the villager living near Shell’s facilities in the Niger Delta, little if anything has changed: too often, oil spills still destroy farming land or fishing grounds and remediation is poor; state security forces deployed to Shell’s facilities continue to harass people indiscriminately; and the benefits of the oil industry are still channeled to a small elite.”⁵⁸ Shell has yet to resume oil production in Ogoniland.

Chevron and the Parabe Incident

Following the Ogoni crisis, one of the best-documented incidents of abuses against oil protesters is the 1998 attack on a demonstration at Chevron’s Parabe platform. In this incident, Chevron did precisely what Shell vowed never to do after Umuechem—it expressly called on the military and the mobile police to respond to a demonstration.

Chevron had previously had its own direct experience with the military’s use of force against protestors. In May 1994, when protestors used boats to blockade Chevron facilities at Opuekeba in Ondo State, the Nigerian security forces responded by sending a barge in that sunk sixteen boats, killing three people by drowning and causing other injuries.⁵⁹ When Ilaje communities engaged in protests several years later, Chevron knew of the security forces’ propensity to violence.

The Ilaje are a small ethnic group of Nigerians, many of whom live in relatively remote swamplands and river areas in Ondo State in the southwest Niger River delta region. Many of these communities can only be accessed from the air or by water. Ilajeland, as it is called, has been severely disrupted by Chevron’s operations and the environmental damage it has caused; the destruction of the local environment has meant great hardship and unemployment for many Ilaje people, as well as the loss of traditional food supplies. Saltwater incursions have devastated freshwater fish stocks, killed vegetation, and destroyed sources of potable water.⁶⁰ Gas flaring has caused dangerous air pollution and acid rain that eats through metal roofs.⁶¹ Bola Oyinbo, an Ilaje community leader, described the impacts: “Go to Awoye community and see what they have done. Everything there is dead: mangroves, tropical forests, fish, the freshwater, wildlife. All killed by Chevron. . . . At Abiteye, Chevron discharges hot effluent into the creeks. Our people complain of ‘dead creeks.’”⁶²

⁵⁷ Human Rights Watch, “The Niger Delta: No Democratic Dividend,” at 30 (Oct. 2002).

⁵⁸ *Id.* at 31.

⁵⁹ Human Rights Watch / Africa, “Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria,” at 33 (July 1995).

⁶⁰ Deposition of Monday Omosaye in *Bowoto v. Chevron Corp.* at 17:3-14, 19:13-20 (Aug. 18, 2005); deposition of Chief Nicholas Omomowo in *Bowoto v. Chevron Corp.* at 342:15-344:10 (Jan. 28, 2005).

⁶¹ Deposition of Philemon Ebiesuwa in *Bowoto v. Chevron Corp.* at 152:18-157:12 (July 12, 2005).

⁶² Interview with Bola Oyinbo.

In 1998, an Ilaje community organization made up of representatives from nearly all of the 42 affected communities sent a series of letters to CNL detailing the problems facing the Ilaje communities, including environmental and economic degradation. This group, the Concerned Ilaje Citizens, was led by a group that included Larry Bowoto and Bola Oyinbo. Chevron did not respond, and even when the local government authorities attempted to set up a meeting between the villagers and Chevron, Chevron did not attend.⁶³

Finally, on May 25, 1998, over 100 unarmed and peaceful Ilaje protesters went to the Chevron offshore Parabe oil platform and barge. Nigerian Navy and mobile police stationed at the platform, who were armed, allowed the protesters aboard, and remained at Parabe and in control throughout the protest.⁶⁴ As Chevron's personnel later acknowledged, the protesters were seeking compensation including environmental reparations, jobs, medical assistance and scholarships.⁶⁵ The protesters told CNL to negotiate with their elders on shore, and the company representatives eventually did meet with them to begin discussions on their grievances. At the end of that time, on May 27, 1998, the elders believed that Chevron had begun to address their concerns and sent messengers out to the protesters on the platform instructing them to come home the next morning, which the protesters told Chevron they would be doing. The protesters prepared to leave.⁶⁶

At the same time, despite the fact that the protesters had agreed to leave the next morning, Chevron convened a joint military and mobile police task force and directed them to go to the Parabe platform. Very early on the morning of May 28, 1998, when the protesters were just waking up, CNL and its lead security officer flew members of the Nigerian security forces, including army and mobile police, to Parabe in Chevron-leased helicopters. Chevron had told the workers on the platform to hide. The mobile police and soldiers opened fire on the unarmed civilians; one of the helicopter pilots confirmed that the security forces began shooting from the helicopters even before they landed.⁶⁷ Chevron's own security officer later wrote that CNL "closely supervised" the security forces.⁶⁸ The mobile police and soldiers shot and killed two people, Arolika Irowarinun and Jolly Ogungbeje.

⁶³ Declaration of Larry Bowoto in Opposition to Defendants' Motion for Summary Judgment in *Bowoto v. Chevron Corp.* at 6:12-14. (April 1, 2003).

⁶⁴ Deposition of Taiwo Irowaninu in *Bowoto v. Chevron Corp.* at 615:12-18 (June 25, 2005); deposition of Adebisi Atimise in *Bowoto v. Chevron Corp.* at 83:6-85:10 (June 29, 2005); deposition of Johnson Boyo in *Bowoto v. Chevron Corp.* at 26:25-27:19; 29:2-30:15 (June 28, 2005); deposition of Harrison Ulori in *Bowoto v. Chevron Corp.* at 60:12-68:1 (June 20, 2005).

⁶⁵ Deposition of Deji Haastrup in *Bowoto v. Chevron Corp.* at 209:3-214:12 (Aug. 27, 2002).

⁶⁶ Deposition of Larry Bowoto in *Bowoto v. Chevron Corp.* at 493:15-494:23 (Oct. 20, 2004); deposition of Chief Nicholas Omomowo in *Bowoto v. Chevron Corp.* at 410:7-14; 423:1-25 (Jan. 28, 2005).

⁶⁷ Deposition of Cristopher Crowther in *Bowoto v. Chevron Corp.* at 150:20-152:2, 154:18-156:9 (Oct. 6, 2005).

⁶⁸ Memo from J. Neku to M.E. Uwaka (June 2, 1998), produced in *Bowoto v. Chevron Corp.* and stamped C0050-53.

Although Chevron has since claimed that the protesters became violent before Chevron called in the military, the oil company's officials reported to the U.S. Embassy at the time that "the villagers were unarmed and the situation has remained calm since their arrival."⁶⁹ Chevron has also suggested that the slain protesters were attacking the soldiers who shot them, and that the protesters were wielding heavy objects in close range that could have caused serious injury. Again, the evidence suggests otherwise. In particular, the pathologist's report indicates that Mr. Irowarinun was shot in the side and that Mr. Ogunbeje was shot in the back. Furthermore, according to the pathologist, both men were shot at a range of 4-10 meters—about 12-30 feet.⁷⁰

Other protesters were also shot, including Larry Bowoto, who was shot multiple times and nearly died. Even Chevron does not dispute that Mr. Bowoto was unarmed when he was shot,⁷¹ and no one has ever suggested that Mr. Bowoto attacked any of the security forces.

After the attack, a number of protesters were locked in a small container on the Chevron platform and held without food or water, while Chevron Nigeria officials looked on. They were subsequently taken in Chevron boats to jails onshore where they were imprisoned, tortured, and beaten by the police and military. One of the detained protesters, Bola Oyinbo, was hung from a ceiling fan and repeatedly beaten to the point where he could not stand and blood was coming from his mouth. Another described how, immediately after the shootings, the security forces beat him with a gun and a horse whip, until he fell down and bled through his nose. The protesters were kept in inhumane jail conditions for weeks. During their imprisonment, the beatings and torture continued.

ExxonMobil, Total, and Agip

Compared with Chevron and Shell, there have been fewer reported incidents of abuse in connection with the operations of Agip, ExxonMobil, and Total. Nonetheless, these companies have still been guilty of severe environmental damage, sometimes precipitating abuse as security forces respond to community protests. The following accounts of such incidents are representative, not comprehensive.

Agip

In November 1993, when thousands of protesters from the town of Brass held a peaceful demonstration outside a local Agip terminal, the Nigerian security forces attacked them with teargas and fired into the air, beating protesters with clubs. The security forces

⁶⁹ Fax from T. Schull to S. Chalvsky (May 27, 1998), produced in *Bowoto v. Chevron Corp.* and stamped C17526.

⁷⁰ Deposition of Dr. Williams Ajewole in *Bowoto v. Chevron Corp.* at 63:18-24, 66:2-67:15, 76:8-10 (Dec. 14, 2005).

⁷¹ Order re: Defendants' Motion for Summary Judgment on Plaintiffs' Claims 10 Through 17, *Bowoto v. Chevron Corp.*, at 28 (Aug. 13, 2007).

blocked the access road and the protestors were forced to escape through a drainage ditch filled with oil and water. Access to the village was blocked for the next nine months.⁷²

In 1996, the Rivers State Internal Security Task Force—the military force responsible for most of the repression against the Ogoni—was also implicated in an incident involving Agip:

In Egbema community members came together in 1996 to demand that Agip, the operator of a flow station close to the village, provide electricity to the village. The delegation was led by Chief COB Aliba, and met with Agip's community relations officer, who stated that it would be too expensive to purchase the necessary transformer. Following the meeting, youths from the village, dissatisfied with the result, began impounding Agip vehicles as they passed through the community. While the matter was still under negotiation, members of the Rivers State Internal Security Task Force, led by Major Umahi, came to Chief Aliba's house and arrested him, with nineteen others, taking them to one of the Task Force's premises in Ogoni. They were held two weeks from June 26, 1996, and released without charge upon petition from other community members. Community members said that they believed that the Task Force, which is usually deployed in Ogoni, several hours drive away, must have been summoned at the request of Agip.⁷³

ExxonMobil

On January 12, 1998, a massive oil spill of over 40,000 barrels occurred from ExxonMobil's Qua Iboe terminal in Akwa Ibom State. This spill devastated numerous communities and affected up to a million people. On January 19th and 20th, hundreds of local youths protested near the Qua Iboe terminal, and were subsequently detained by security forces. ExxonMobil stated that the arrests had "nothing to do with" the oil company.⁷⁴ According to Human Rights Watch, "In July 1998, it was reported that police shot dead eleven people during further demonstrations in Warri, Delta State, over compensation payments resulting from the spill."⁷⁵

Total (Elf)

In February 1994, Nigerian security forces entered the Egi community of Obagi, allegedly to retrieve equipment taken from the Elf (now Total) oil company in October 1993. A melee ensued, resulting in the death of one officer and injury to a villager, and the Nigerian security forces then went into the village shooting indiscriminately,

⁷² Human Rights Watch / Africa, "Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria," at 35-36 (July 1995).

⁷³ Human Rights Watch, "The Price of Oil," at 131 (Jan. 1999).

⁷⁴ *Id.* at 16.

⁷⁵ *Id.* at 135.

destroying and looting houses, beating villagers and driving them into the bush. At least two people were shot, and villagers fled for months.⁷⁶

In 1998, Elf was again involved in the use of force against protesters in communities in Egiland. According to the Oputa Commission, in June of 1998 the Egi communities were “protesting against the neglect and exploitation of their area.” Elf and two of its contractors collaborated with the Rivers State Internal Security Task Force in moving against the protesters, resulting in at least eleven protesters being “arrested, tortured, and detained.” One protester was apparently killed, “stabbed to death by a mobile police officer. His crime was that he confronted the officers who indecently dispersed protesting Egi women.”⁷⁷ Human Rights Watch reported that one of the protesters who had been previously detained, the youth leader Prince Ugo, was subsequently attacked again:

On October 11, 1998, Prince Ugo . . . was attacked by individuals he believed to be guards employed by Elf at its Obite gas project and by Mobile Police deployed at the facility. He was severely beaten, suffering injuries requiring hospitalization, including a punctured left lung.⁷⁸

Attempts at Accountability: *Bowoto v. Chevron* and *Wiwa v. Royal Dutch Petroleum (Shell)*

The families of the executed Ogoni leaders, including Ken Saro-Wiwa, as well the victims of the Parabe incident, did not believe they could obtain justice in Nigeria, and had no other local remedies against Shell or Chevron. Thus, these families and surviving victims brought lawsuits against Shell in 1996 and against Chevron in 1999.

Wiwa v. Royal Dutch Petroleum (Shell)

The families of Ken Saro-Wiwa and several other Ogoni victims brought suit against Shell in U.S. federal court in New York, claiming violations of international law under the federal Alien Tort Statute as well as various common law claims.⁷⁹ The case was initially dismissed, because the court found that it should be heard in England, where one of the Shell parent companies was headquartered, rather than in the United States. This decision was subsequently reversed by the U.S. Court of Appeals for the Second Circuit, which found that the Torture Victim Protection Act of 1991 “expresses a policy favoring receptivity by our courts to” human rights lawsuits.⁸⁰

In 2002, the federal district court allowed the case to proceed further, finding that the plaintiffs’ allegations were sufficient to constitute crimes against humanity, torture, summary execution, arbitrary detention, cruel, inhuman, and degrading treatment, and

⁷⁶ Human Rights Watch / Africa, “Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria,” at 34 (July 1995).

⁷⁷ Oputa Commission Report, vol. 3 at 50.

⁷⁸ Human Rights Watch, “The Price of Oil,” at 138 (Jan. 1999).

⁷⁹ *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 Civ. 8386 KMW (S.D.N.Y.).

⁸⁰ *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 105 (2d Cir. 2000).

other violations of international law. The case remains in litigation; no trial date has been set.

Bowoto v. Chevron

The case against Chevron was filed by several of the Ilaje victims of the Parabe incident, including Larry Bowoto, Bola Oyinbo, and the family of Arolika Irowarinun. The case, known as *Bowoto v. Chevron*, has been litigated in federal court in San Francisco.⁸¹ The plaintiffs have sued under the Alien Tort Statute as well as bringing claims such as wrongful death, assault, battery, and negligence.

Chevron has never taken any responsibility for the deaths and injuries at Parabe. Instead, Chevron's CEO has called Larry Bowoto a "criminal"⁸² and its lawyers have likened the protestors to terrorists,⁸³ despite the fact that Chevron's own documents show that they knew the protestors were unarmed, that the situation on the Parabe platform was calm, and that there were Nigerian military personnel on board the platform during the entire protest. In a recent ruling the U.S. District Court judge found that Mr. Bowoto had presented evidence that Chevron Nigeria's personnel "were directly involved" in the Parabe attack, transporting the soldiers to the attack site, despite knowing that they were "prone to use excessive force."⁸⁴ The Court concluded that the evidence could allow a jury to find not only that Chevron Nigeria assisted the soldiers knowing that they would attack the protestors, but also that Chevron Nigeria actually agreed to the military's plan.⁸⁵

Larry Bowoto has also filed suit in state court in California against Chevron, seeking an injunction to stop the practices that contribute to Chevron's complicity in abuses by the Nigerian military, and to force Chevron to initiate practices that will reduce such abuses in the future.⁸⁶

Lawsuits such as *Bowoto v. Chevron* and *Wiwa v. Royal Dutch Petroleum* represent the best hope for redress against the human rights abuses in which Chevron and Shell are complicit. When multinational companies are involved in human rights abuses overseas, it is critical that the U.S. courts remain open to the victims of those abuses.

The Persistence of Abuses Against Protesters Under Civilian Rule

In 1999, democratic elections in Nigeria finally marked the end of over a decade of military rule. Nonetheless, the Nigerian military remains a brutal and largely unprofessional force, and abuses against those challenging the oil companies continue. In

⁸¹ *Bowoto v. Chevron Corp.*, No. C 99-02506 SI (N.D. Cal.).

⁸² D.R. Baker, "Chevron CEO attacks critics at meeting," *San Francisco Chronicle* (May 29, 2008).

⁸³ Overview of Defendants' Dispositive Motions re: First Cause of Action, and Statement of Facts, filed in *Bowoto v. ChevronTexaco Corp.*, at 2 (June 15, 2006).

⁸⁴ Order re: Defendants' Motion for Summary Judgment on Plaintiffs' Claims 10 Through 17, *Bowoto v. Chevron Corp.*, at 19 (Aug. 13, 2007).

⁸⁵ *Id.*

⁸⁶ *Bowoto v. ChevronTexaco Corp.*, No. CGC 03-417580 (S.F. Sup. Ct.).

particular, Chevron's close relationship with the Nigerian military appears to continue, the military presence in the Delta has intensified, and reliance by the oil companies on armed soldiers and policemen to respond to perceived threats has repeatedly led to the death and serious injury of peaceful protesters.

The consequences have been perverse for personal security and freedom of expression in the region. As the oil companies and the Nigerian security forces continued to overreact to peaceful protests from 1999 through 2005, leading to a number of deaths and serious injuries, nonviolent activity began to wane due to fear of a violent response. Conversely, increasingly militant and violent groups who say they are protesting the environmental damage caused by the oil industry and the poor conditions in which Delta inhabitants live have gained in strength and visibility in recent years.

Again, the incidents described below are representative, not comprehensive.

September 20, 1999, Bonny

The continuation of military repression even after the transition to civilian rule was demonstrated forcefully in September 1999, when members of the Bonny community protested against a natural gas facility run by Nigeria Liquefied Natural Gas (NLNG), a Shell affiliate. In response to the pollution caused by Shell's plant, the Bonny people blocked an intersection near the facility and demanded dialogue. Community leader Goddy Jumbo described the pollution and related his experience at the protest:

Experts told us that anyone who drank the water could contract some fatal diseases, including cancer. . . . in Bonny now you cannot distinguish day from night and the NLNG's doing nothing about this. . . .

[W]e approached them for discussion. They refused to come. As gentle, civilized people we made efforts to reach them to dialogue on these developments. They did not budge, so the entire Bonny community . . . call for a meeting with the officials of the NLNG. This invitation was ignored. This went on for two days so an agreement was reached by the community that the entire Bonny people should move to the LNG location in a procession, wearing white 'esibo' (jumper) and wrapper. We chose white because it symbolizes power.

Before we knew what was happening . . . the American security manager for . . . the consortium of contracting firms handling the construction of the LNG plants, fired into the crowd. Then he ordered the team of mobile policemen to shoot. At first, the mobile policemen refused, probably seeing that . . . the people were running for their dear life and not out to harm. . . . He shot two people down, then he ordered the mobile policemen who had come towards us . . . They also started shooting and throwing tear gas at us. I had been shot in the leg and went down bleeding profusely. When my people saw me down and bleeding—there was blood everywhere, even my shoes were full of blood—they carried me away.

People like me were assigned the responsibility of crowd control so I was out there in front, so if the people had been unruly, I would have seen it. They were not.⁸⁷

The mobile police denied that any foreign security officer had been involved and maintained that several police were wounded.⁸⁸

October 17, 2000, Olugbobiri

According to Amnesty International, a protest in Olugbobiri, Bayelsa State, in October 2002 was met by violence from security forces. Protestors approached an Agip flow station in boats, intending to demonstrate at the facility and shut down production. Soldiers guarding the facility fired on the protestors, killing at least eight people.⁸⁹ There has been no accountability for this incident.⁹⁰

August 10, 2002, Warri

In July 2002, a series of peaceful protests at Chevron oil facilities by members of the Ugborodo and Gbaramatu communities had led Chevron to conclude agreements in which it promised that in return for a peaceful working environment, it would hire local community members, help to develop infrastructure, and open dialogue with community leaders in the event of problems of mutual concern.⁹¹

Less than a month later, early on the morning of August 10, protests broke out again as 3,000 Ilaje, Ijaw, and Itsekiri women arrived at the operational headquarters of Shell and Chevron affiliates in Warri and barricaded the doors. The women were unarmed, and their protest was peaceful. They carried placards, waved green leaves, and sang solidarity songs.⁹² Police and soldiers responded by firing tear gas at the demonstrators to induce them to disperse. In addition, according to some reports, security forces raped some of the women; others were whipped or beaten severely with gun butts. One report described 10 serious injuries, including one Itsekiri woman who was beaten “to a state of coma” in front of Shell’s Warri office.⁹³ At least one pregnant woman may have lost her child due to the beatings, and “a particular lady’s breast was chopped off.”⁹⁴

Independent confirmation by Amnesty International shows that as a result of the violent repression of the protest, severe wounds were inflicted on elderly women, including a 70

⁸⁷ A. Maja-Pierce, Civil Liberties Organisation (Lagos), “Blood Trail: Repression and Resistance in Niger Delta,” at 46-47 (2002).

⁸⁸ *Id.* at 48.

⁸⁹ Amnesty Int’l, “Nigeria: Time for justice and accountability” (Dec. 2000).

⁹⁰ Amnesty Int’l, “Nigeria: Ten years on: Injustice and violence haunt the oil Delta,” at 26-29 (Nov. 2005).

⁹¹ PANA Daily Newswire, “Nigerian women protesters vacate oil terminal after accord” (July 17, 2002); “Oil company, Gbaramatu leaders sign pact on seized flow stations,” *Vanguard (Nigeria)* (July 26, 2002).

⁹² “Some 3000 Women Seize Oil Producing Companies,” *Vanguard (Nigeria)* (Aug. 10, 2002).

⁹³ *Id.*

⁹⁴ “Fresh crisis looms in N-Delta, as women threaten showdown with Shell,” *Vanguard (Nigeria)*, (Nov. 11, 2002).

year-old woman whose lower limbs were badly beaten and an 89 year-old woman who was whipped by security personnel.⁹⁵ More than a year later, participants in a workshop for victims of state torture described themselves as victims of police brutality and insisted that they still had not recovered from the psychological and physical damage.⁹⁶

August 21, 2002, Ugborodo

Soon after the Warri protests, Ugborodo women took over the production platforms at the Ewam and Isan oil fields and the Opuekeba flow station, in the Ilaje region of Ondo State. According to the protesters, armed Mobile Police and other security personnel hired by Chevron attacked the protesters, “pouring hot water on the women, flogg[ing] them with horse tail, capsiz[ing] their boats” and firing at them. Allegedly, four women were killed, two others detained, and six were treated for injuries. Chevron denied the allegations.⁹⁷

Several days later, Chevron reported that the protesters at Ewam had vacated the premises of their own accord.⁹⁸ Neither the protesters’ allegation of deaths nor the company’s account of the end of the occupation was confirmed by independent reports.

January 15, 2003, Escravos

Members of the Maritime Workers Union of Nigeria went to the jetty at Chevron’s Escravos oil platform to engage in peaceful protest of the company’s refusal to hire union members for work on its private jetties. According to the dockworkers, anti-riot police and armed soldiers attacked them, “thrashing us with horse whips and releasing their dogs on the unarmed workers.”⁹⁹ Protesters ran from the security forces, and two drowned when they jumped into the Escravos River to escape arrest. Others were beaten or arrested.¹⁰⁰

February 4, 2005, Escravos

Frustrated with what they perceived to be Chevron’s failure to honor the terms of the 2002 agreement, three hundred Ugborodo residents entered the Escravos oil terminal to engage in peaceful protest. Security personnel from the Joint Task Force (JTF)—consisting of soldiers from the army and navy along with mobile, regular, and supernumerary police—responded to suppress the demonstration. In the ensuing violence, over thirty protesters were injured and one was shot dead.¹⁰¹

⁹⁵ Amnesty Int’l, “Repression of Women’s Protests in Oil-Producing Delta Region,” at 4 (2003).

⁹⁶ “Group donates to police brutality victims,” *Vanguard (Nigeria)* (Oct. 29, 2003).

⁹⁷ “Unconfirmed Reports Say Four Women Killed in Ilaje Oil Clash,” *Vanguard (Nigeria)* (Aug. 21, 2002); PANA Daily Newswire, “Nigerian Oil Community Alleges Attack on Women Protesters” (Aug. 21, 2002).

⁹⁸ BBC Monitoring Int’l Reports, “Protesters at Chevron Oil Facilities Voluntarily End Nine-Day Picket,” (Aug. 26, 2002).

⁹⁹ “Two Dockworkers Drown During Protest Against Chevron, Union Alleges,” *Vanguard (Nigeria)* (Jan. 24, 2003).

¹⁰⁰ “Dockworkers Threaten Showdown Over Missing Colleagues,” *This Day (Nigeria)* (Jan. 24, 2003).

¹⁰¹ Amnesty Int’l, “Nigeria: Ten years on: Injustice and violence haunt the oil Delta,” at 6 (Nov. 2005).

Video records, eyewitness testimony, and the photographic evidence of injuries treated in the emergency section at Warri General Hospital provide dramatic proof that the JTF engaged in unnecessary and illegal brutality in suppressing the protests. Male protesters suffered open head wounds, major lacerations, and injuries to their limbs.¹⁰² A videotape shows security personnel beating a man whose hands are tied, using the butt of a rifle.¹⁰³ Protesters reported receiving beatings to the head and other parts of the body, even while trying to surrender.¹⁰⁴

One protester told investigators:

“[The soldiers] had big guns, but they used tear gas, and some of the security staff had iron rods and knives, too. When soldiers began shooting, I bent down begging to be spared, and that was when I was hit by the bottom of a gun by three men. I fainted... since then my head is really sore and it hurts.”¹⁰⁵

Conversely, Chevron never made public any evidence to support their allegations that the protesters were armed, or that they injured security personnel and caused widespread damage to Escravos facilities.¹⁰⁶

The record is clear that Chevron had a good deal of control over the operation of the JTF during this time period in general, and during the protest in particular. JTF often operated at Escravos, and members received allowances and transportation from Chevron that often amounted to as much or more than a soldier’s daily wage.¹⁰⁷ In 2004, Chevron had invited the leadership of the JTF at Escravos to participate in its training for security personnel; attendance was not required, however, even though the JTF formed an integral part of Chevron’s security procedures.¹⁰⁸ In fact, the intervention of the JTF during the Escravos protest was not unplanned—once the facility’s security had been breached on the morning of February 4, established security protocols went into effect that included the return of all employees to their residential units and the transfer of control over security at the facility to government forces.¹⁰⁹

July 2008, Aja-Omaetan Community

In July 2008 the Aja-Omaetan community in Warri North of Delta State petitioned the Delta State Governor, accusing Chevron of deploying heavily armed security forces to the area following agitation by local people. The community was protesting against the detrimental human and environmental impacts of gas flaring from Chevron’s Dibi Field. They urged the state governor to urgently intervene to stave off imminent bloodshed in

¹⁰² *Id.* at 9.

¹⁰³ *Id.* at 7-8

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.*, at 7.

¹⁰⁶ *Id.* at 8.

¹⁰⁷ *Id.* at 13.

¹⁰⁸ *Id.* at 11.

¹⁰⁹ *Id.* at 6.

the area. They complained that the security operatives were intimidating, beating, molesting and driving the people away from their homeland.¹¹⁰

September 2, 2008, Iwherekan Community

On September 2, 2008, the Iwherekan community in Delta State held a community forum on gas flaring, focusing on the local operations of Shell. The forum included journalists and representatives of Environmental Rights Action/Friends of the Earth Nigeria, as well as community elders, women, and children. Without apparent cause, Nigerian soldiers arrested and detained the forum participants, about 25 people, for about five hours. They were released later that day. Although no injuries were reported, this most recent incident is troubling because it suggests that the government and the oil companies may be adopting the tactics of former military regimes, intimidating nonviolent meetings of groups challenging the oil companies.

The Chilling of Peaceful Protests and the Rise of Violent Militancy

In recent years, the Niger Delta has seen an increase in militarization. And despite the signing of a Global Memorandum of Understanding with Delta communities in 2005, Chevron's tight collaboration with the Nigerian armed forces continues.¹¹¹ Given this increased military presence, communities are hesitant to engage in peaceful protests against the oil companies. Unfortunately, armed groups are increasingly filling the void left as the nonviolent protests dwindle.

The Chilling of Protests in Ilajeland and Elsewhere

The environmental problems faced by the Ilaje communities have continued long after the Parabe incident. Before Parabe, the communities' primary environmental complaints against Chevron were gas flaring and saltwater incursions, but in recent years Ilajeland has experienced several major oil spills as well. The first oil spill in the Ilaje waters apparently from Chevron facilities occurred in Ewan Field on May 13, 2000. Another occurred on June 24, same year, followed by three others in 2004, on July 31, September 30, and December 7. On June 24, 2007, another major spill occurred offshore, blackening many Ilaje communities. Researchers observed streets laced with large quantities of crude, damaged fishing nets and canoes; the residents complained that the handful of fish they had managed to catch since the spill were not edible because they had turned blackish and smelt of crude. One local resident described the damage:

The crude oil spill on Aiyetoro, which is made up of six communities, has impacted badly on fishing which is our major profession. Worse is the fact that we no longer breathe fresh air in the area because of the pollution. Instead, we

¹¹⁰ E. Arubi, "Community accuses Chevron of intimidation", *Vanguard (Nigeria)* (July 30, 2008).

¹¹¹ For example, a series of attacks on the city of Port Harcourt in 2007 "led Chevron . . . to change their regular security from police to military men drawn from the Joint Military Task Force." A. Ogbu & J. Taiwo, "'We Won't Use Excessive Force in Delta,' Says Military," *This Day (Nigeria)* (Aug. 10, 2007).

inhale the poison that the crude spill emits.

The river was the only source of water for drinking, cooking, washing and bathing until the spill took place but that is no longer possible because those who drank the water started vomiting and coming down with various internal and external diseases. Our children suffer more because some of them still drink the water in ignorance.¹¹²

Nonetheless, the Ilaje have engaged in little collective protest against the devastation of their environment. Larry Bowoto, a leader of the Concerned Ilaje Citizens' organization who was severely wounded by Chevron's security forces during the Parabe protest, believes that the circumstances are too dangerous for unarmed civilians to continue protesting against oil companies. He has observed Chevron's willingness to use disproportionate force, even against women and the elderly, and has seen no discernible change in Chevron's use of the military in the Delta region. As a result, despite his previous role as an organizer of community protests among the Ilaje, he has continually advised against organizing further protests against Chevron in the area. As a leader who opposes any form of armed or violent activity, he has been left with no options for pursuing grievances.

Other leaders have come to similar conclusions. In 2007, forty communities prepared to stage massive protests over Chevron's refusal to assess damage to their lands from a 2006 Abiteye oil spill. Elders intervened, however, to scale back the protesters' plans. Knowing well the likely consequences if the activists were perceived as a threat to the smooth continuation of Chevron operations, the elders insisted that rather than demonstrating at Chevron facilities, the protesters should confine their activities to the communities themselves in order "to avoid a bloodbath."¹¹³

There are signs that the increasingly restrictive space for airing grievances is radicalizing once-peaceful protesting groups. Whereas Ijaw women once entered oil company facilities carrying nothing but banners and threatening to strip naked in order to shame the oil companies, last year saw a group of Ijaw women march onto a Chevron drilling station armed with machetes and clubs to protest delays in compensation for an oil spillage.¹¹⁴ Incidents like this are even more likely than peaceful protests to provoke security forces and to lead to carnage.

Leaders of peaceful protests certainly have come to understand the consequences of the alliance between Nigerian security forces and the oil companies: unarmed and non-violent expressions of grievances against oil companies in the Delta region are met with the disproportionate use of force and often lead to injury and death, irrespective of the age, gender, or social status of the protester.

¹¹² ERA Interview with Mr. Aiyedatiwa Taiwo, Abreke Community.

¹¹³ BBC Monitoring Int'l Reports, "Nigeria: Forty Niger Delta Communities Protest Chevron Oil Firm Neglect" (Feb. 13, 2007).

¹¹⁴ F. Okwuonu, "Women's Protest Closes Chevron Plant", *This Day (Nigeria)* (May 9, 2007).

Violent Militancy and the “Oil War”

In the past three years the pattern of protests against the oil companies in the Niger Delta has shifted from unarmed, largely peaceful demonstrations to increasingly violent action by armed militants, especially the Movement for the Emancipation of the Niger Delta (MEND). Along with other human rights and environmental organizations, Environmental Rights Action/Friends of the Earth Nigeria condemns the use of violence in the strongest terms, and recognizes that there are legitimate security concerns for oil operations in the Delta, as well as for the people and the environment.

Unfortunately, the rise of groups such as MEND is traceable to the lack of space for peaceful opposition movements and the lack of progress in bringing the benefits of oil production to the people of the Niger Delta. It would be a grave error to use the decision by some individuals to embrace armed struggle in order to justify greater repression against those who use peaceful means to work toward progress. Instead, the oil companies and the Nigerian authorities should welcome nonviolent opposition groups; elevating these groups and respecting their positions is one method of combating the support for armed resistance and guaranteeing the security of company facilities. If the people of the Delta see nonviolence delivering better results than violence, the constituency for violence will rapidly diminish.

Recommendations

Numerous steps that oil companies can take to increase transparency and limit the potential for future human rights abuses are outlined below. Other measures described below are possible ways forward for this Subcommittee as it investigates extractive industries and human rights abuses.

Recommendations for Changes in Corporate Practice

Line Item Reporting of Payments to Security Forces

Changes in externally or internally mandated accounting procedures could help to improve transparency and thereby allow the public to hold corporations accountable for their security arrangements with foreign governments. In the case of Chevron, line item reporting of payments to the Nigerian government and, in particular, the military would make it possible to trace the flow of cash as human rights situations develop and are resolved.

Companies are already required to review each payment to foreign governments for the purposes of compliance with the Foreign Corrupt Practices Act; the requirement to report those payments would not be unduly burdensome.

Review of Security Operations to Eliminate or Reduce Dependence on Government Security Forces

The Voluntary Principles on Security and Human Rights (VPs) – an initiative in which both Chevron and Shell take part – tend to assume that in the normal course of business, primary responsibility for corporate security will fall on public security forces. It is imperative, however, that Chevron and other Delta oil companies reconfigure their relationship with the Nigerian military and police, which have such a deep history of abuse that resorting to them to protect company facilities is demonstrably likely to lead to serious human rights violations.

This situation can be at least partly remedied by a comprehensive review of security procedures to determine whether public security forces are appropriate partners, and if not, to develop a feasible plan for eliminating or reducing dependence on them for protection. Furthermore, compliance with the findings of such a review should become one of the criteria by which the job performance of managing directors and security personnel is evaluated.

In Chevron's case, such a review was conducted in 1999.¹¹⁵ Evaluators found that Nigerian security forces were actually more of a liability than a benefit, and that they were prone to cause great harm both to Delta residents and company employees. Chevron did not, however, implement the recommendations of this review. Similarly, in 2003, Shell consultants submitted a report in which they found that Shell's policies contributed to violence and conflict in the community.¹¹⁶

Effective Communication of Human Rights Principles to Security Forces and Proper Training, and Screening of Known Human Rights Abusers

The Voluntary Principles recognize that corporations and public security forces are often tied together in mutually dependent arrangements whereby governments take primary responsibility for security and the private entity provides resources and logistical support. The VPs provide extensive guidelines for how the two sides should interact, and places obligations on corporations to insist on conduct that abides by human rights law.

In the event that it is not feasible to disengage from public security forces, companies should communicate clearly and effectively to security personnel and responsible government officials the imperatives of human rights and ethical conduct. They should also provide the resources and training to inculcate and enable more ethical practices. For example, this could include provision of rubber bullets and tasers rather than live ammunition; implementation of weapons transportation protocols that discourage the use of loaded firearms; and conduct of awareness-raising programs and other training courses for security personnel, their commanding officers, and responsible government officials.

Furthermore, companies can implement screening procedures in order to ascertain whether any of the security personnel either directly hired by them or assigned to them by

¹¹⁵ See Declaration of Scott Davis in *Bowoto v. Chevron Corp.*, para. 41 (filed Nov. 22, 2006).

¹¹⁶ WAC Global Services, *Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report - Working Paper for SPDC* (2003). Available at http://www.npr.org/documents/2005/aug/shell_wac_report.pdf

cooperating armed forces have committed human rights abuses or are known to have used excessive force in the completion of their duties. All efforts should be made to prevent such individuals from providing security services to the company.

Tracking of Human Rights Abuses and Holding Individuals Accountable

Chevron, like most companies, keeps a security log that records all security incidents as they occur at its facilities in Nigeria. It would be a reasonable and useful step in promoting accountability and deterring future abuses if companies were required to keep full records of incidents in which local residents are injured, killed, or otherwise harmed in confrontations with government security forces. In such cases, if security personnel individuals are found to be responsible for human rights abuse, then their employment should be terminated. If termination is not an option, then the company should request that the individuals no longer provide security services to the facility.

Publication and Prompt Investigation of Proven and Alleged Incidences of Human Rights Abuse

Companies should strive for transparency with regard to their responses to human rights abuses. Transparency can help corporations to reduce the incidence of abuse and also to maintain their reputation for ethical conduct. Companies should be expected to make public any incident in which local residents are injured, killed, or otherwise harmed in confrontation with government security forces, within a reasonable time after the occurrence of the incident. In the case of Chevron, deliberate deception and publication of false information about the Parabe incident hindered efforts to hold the company accountable for years.

Similarly, companies should be expected to make public any credible allegations of human rights abuses by their security personnel or by government security forces acting in the service of the company. They should investigate all such allegations within a reasonable time frame and make public the steps taken and the results of the investigation.

If companies are unwilling to voluntarily take these steps to increase transparency and limit the potential for future human rights abuses, Congress should consider requiring them to do so.

Recommendations for the U.S. Government

Conduct a Systematic Review of Corporations' History of Compliance with VPs

The U.S government should conduct a systematic survey of corporations' experience with the Voluntary Principles on Security and Human Rights. This survey could include the responses of corporate officers and field representatives, cooperating government officials and security personnel, and delegates from local communities. The responses could be compiled into a report that summarizes and analyzes the challenges all parties

have encountered in implementing the VPs, identifies weaknesses and omissions, and spotlights the successes and areas of convergence of interest among parties.

Much has been learned about the relationship between corporations and government security forces, as well as the consequences of that relationship, since the VPs were first promulgated in 2000. The review process should hear witnesses who can testify to the successes various multinational corporations have achieved in developing effective security protocols that incorporate a respect for human rights and ethical conduct. This testimony can be compiled into a report on best practices in security arrangements for corporations operating in the developing world.

Identify Provisions of the Voluntary Principles and Other Practices for Legislative Consideration

The results of this review may be used to identify ways in which the United States legislative process may help to prevent human rights abuses by companies employing government security forces. This could entail identifying key provisions of the Voluntary Principles for enactment into law, with a focus on those portions that have been neglected by signatory parties.

Expanding Criminal Jurisdiction in the United States for International Human Rights Violations

The 1998 Parabe incident, in which Chevron called in the Nigerian military to respond to nonviolent protesters, leaving two dead and others wounded and tortured, has been reviewed by experts in the United States. In particular, Hugh McGowan, the former head of the New York Police Department's Hostage Negotiation Team, reviewed the events and determined that it was not a hostage situation, that the use of military force was not warranted, and—most importantly—that in his opinion, he would refer the attack to the proper authorities for possible prosecution.¹¹⁷ Of course, there have been no prosecutions of anyone at Chevron involved in the Parabe incident, and it is not clear who would have the authority to engage in such prosecutions. The U.S. Congress should look into expanding the reach of United States courts, to grant them greater criminal jurisdiction over corporations that are complicit in human rights abuses in violation of international human rights law and U.S. domestic law.

Conclusion

Extractive industries such as oil and gas companies must learn to listen to the complaints of the local people in whose territories they carry out their business. They need to understand that the environment is the life of the people and that continual degradation of the environment directly affects the means of livelihood of the people. The Ogoni, the Ilaje, and their fellow protesters chose the best route out of the mire that the Niger Delta

¹¹⁷ Expert Report of Hugh McGowan in *Bowoto v. Chevron Corp.* para. III(2)(g) (Oct. 31, 2005); deposition of Hugh McGowan in *Bowoto v. Chevron Corp.* at 271:14-273:8 (Nov. 4, 2005).

has become: through nonviolent dialogue. This is what was demanded ten years ago. This demand still remains to be answered.

By reforming their relations with security forces, increasing transparency, and introducing practices that respect human rights and the environmental rights upon which those rights are dependent, Chevron and other extractive industry companies can combine sound business practices, effective security protocols, and respect for the rights of those who are directly affected by their operations. They will improve community relations, burnish their corporate image, and potentially boost profit margins. Similarly, by implementing common-sense legislation based on widely accepted standards, this country has the opportunity to increase its capacity to help bring corporate practice in line with human rights and ethical norms worldwide.