



A CRIMINAL ENTERPRISE?

SHELL'S INVOLVEMENT IN HUMAN RIGHTS VIOLATIONS IN
NIGERIA IN THE 1990S

AMNESTY
INTERNATIONAL



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Cover photo: Collage over an image of a Shell gas flare at Bomu oil field, Ogoniland, 1994.

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GLOSSARY

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|--------------|---|
| ISTF | Internal Security Task Force |
| MOPOL | Mobile Police, a paramilitary Nigeria police force |
| MOSOP | Movement for the Survival of the Ogoni People |
| NNPC | Nigerian National Petroleum Corporation |
| NYCOP | National Youth Council of Ogoni People |
| SIPC | Shell International Petroleum Corporation (headquarters in London) |
| SIPM | Shell International Petroleum Maatschappij (headquarters in The Hague) |
| SPDC | Shell Petroleum Development Company (headquarters in Lagos) |
| SPY | Shell Supernumerary Police, the Nigerian police unit seconded to guard Shell property and personnel |
| SSS | State Security Service, Nigeria's internal security and intelligence agency |



Amnesty International torch lit vigil on Damsquare in Amsterdam, The Netherlands on 11 1995 November, the day after the Ogoni Nine were executed
© Amnesty International

EXECUTIVE SUMMARY

In November 1995, the Nigerian state arbitrarily executed nine men after a blatantly unfair trial. The executions led to global condemnation. The United States and the European Union imposed sanctions on Nigeria, and the Commonwealth group of nations suspended the country's membership. Officially accused of involvement in murder, the men had in fact been put on trial for confronting the Anglo-Dutch oil giant, Shell, over its devastating impact on the Ogoniland region of Nigeria's oil-producing Niger Delta.

The executions were the culmination of a brutal campaign by Nigeria's military to silence the protests of the Movement for the Survival of the Ogoni People (MOSOP), led by author and activist Ken Saro-Wiwa, one of the men executed. MOSOP said that others had grown rich on the oil that was pumped from under their soil, while pollution from oil spills and gas flaring had, *"led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster."* In January 1993, MOSOP declared that Shell was no longer welcome to operate

in Ogoniland. The military's subsequent campaign directly led to widespread and serious human rights violations, including the unlawful killing of hundreds of Ogonis, as well as torture and other ill-treatment, including rape, and the destruction of homes and livelihoods. Many of these violations also amounted to criminal offences.

This report examines the role played by the UK-Dutch multinational Shell in these human rights violations and crimes. That the company was a central player in the events in Ogoniland in the 1990s is undisputable: MOSOP was protesting against Shell's negative environmental and social impact on the Ogoni community and had told the company to leave the area. Shell stopped operations in Ogoniland in early 1993 citing security concerns, but subsequently sought ways to re-enter the region and end the MOSOP protests.

Shell has always denied that the company played any part in the violence and gross human rights violations that took place in Ogoniland in the 1990s. However, Amnesty International has undertaken a detailed review of thousands of pages of internal company documents and witness statements which expose what Shell knew and how it engaged with the Nigerian security forces throughout this period.

Many of the company documents referenced in this report were released as part of legal proceedings in the US and include accounts of meetings with the Nigerian leadership, including the president General Sani Abacha, strategy papers, internal memos and letters to officials. The report also draws on Amnesty International's own archives and the organization's work in the Niger Delta at the time. This is the first time any organization has brought all of this material together and analysed it. In Amnesty International's view, the evidence raises serious questions about the extent of Shell's involvement not just in gross violations but also in criminal conduct.

SHELL AND THE NIGERIAN GOVERNMENT: "INEXTRICABLY LINKED"

In the 1990s Shell was the single most important company in Nigeria and in 1995 pumped almost one million barrels of crude oil a day, roughly half of Nigeria's total daily oil production. Nigeria's oil exports made up 95.7% of the country's foreign earnings so were vital to the economy.

The country and the company had a shared interest in ensuring that the oil kept flowing. Shell and the government were business partners, running the highly profitable Nigerian oil fields as a joint venture. The two entities were in constant contact. As the chairperson of Shell Nigeria from 1994-7, Brian Anderson, conceded, *"The government and the oil industry are inextricably entangled."*

Shell's Nigerian operations were also of great importance to the multinational's overall balance sheet. A 1996 internal strategy document revealed that Nigeria was home to the single largest portion of Shell's entire worldwide oil and gas reserves and that Shell Nigeria had, *"access to the biggest low cost hydrocarbon resource base in the Group, with enough oil to sustain production for almost 100 years at current levels."*

The Ogoni protests not only deprived Shell and the government of access to wells in that area, they

also threatened to disrupt the flow of a pipeline that carried oil from other regions across Ogoniland. The government in Abuja was also worried that the protests would spread throughout the oil-producing region, where other communities had similar grievances to the Ogonis. According to an internal Shell memo, General Sani Abacha, who seized power in a coup in November 1993, *"seemed to find it unbelievable that such a small tribe could have the effrontery to cause such a lot of trouble."*

SHELL KNEW MOSOP HAD A LEGITIMATE GRIEVANCE

While framing the Ogoni protests as a largely economic problem, Shell downplayed the community's concerns about the environment and other issues. In public statements Shell denied that its operations had caused environmental problems. This was completely false. Internal documents reveal that senior staff were highly concerned about the poor state of Shell's ageing, inadequately maintained and leaky pipelines. In November 1994, the head of environmental studies for Shell Nigeria, Bopp Van Dessel, resigned over the issue, saying that he felt unable to defend the company's environmental record *"without losing his personal integrity."* Van Dessel went public with these allegations in a TV interview in 1996 stating:

"(Shell managers) 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."

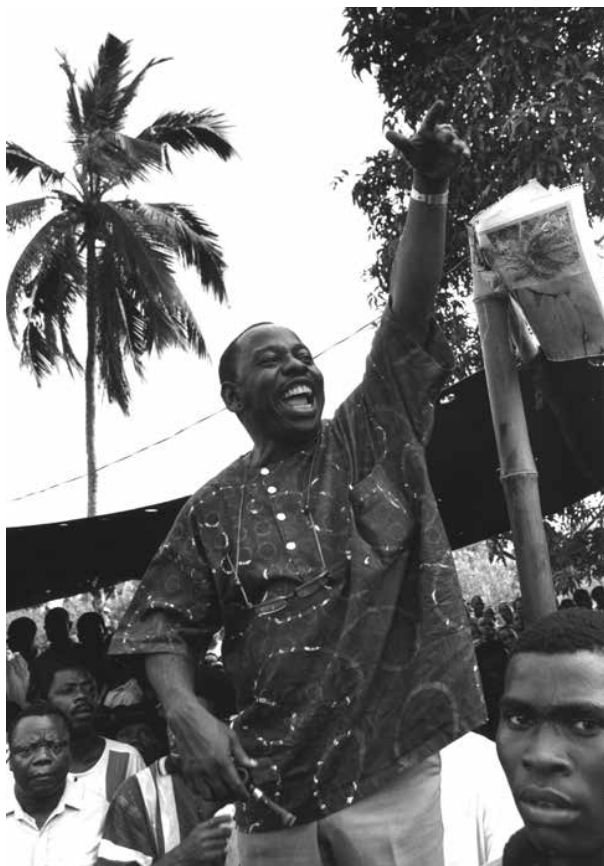
While Van Dessel's comments relate to all of the Shell operations in the Niger Delta, other credible sources provide evidence of the specific situation in Ogoniland. After taking up the case of Ogoniland in 1996, the African Commission for Human and Peoples' Rights found that pollution and environmental degradation in Ogoniland were at a level that was, *"humanly unacceptable and has made living in the*

Ogoniland a nightmare". A 2011 scientific study of the environment in Ogoniland conducted by the United Nations Environment Programme confirmed that the land, air and water of Ogoniland were badly polluted and made clear that the oil pollution dated back decades.

HUMAN RIGHTS ABUSES IN Ogoniland 1993-6

In January 1993, Shell withdrew from Ogoniland citing security concerns for its staff. These concerns had some basis: Shell staff had been subjected to intimidation and physical attacks on several occasions. Shell sought to blame these attacks on MOSOP, but MOSOP and Ken Saro-Wiwa had always underlined the peaceful nature of the movement and had actively tried to stop those in the community who engaged in violence.

Ken Saro-Wiwa, Ogoni Day 1993
© Tim Lambon / Greenpeace



Despite announcing its withdrawal from Ogoniland, and knowing that the Ogoni people no longer wanted them to be there, Shell decided that its contractors should continue to lay a new pipeline through the area. Although the company was well aware that there was a high risk that the security forces would respond to community protests with excessive and possibly lethal force, Shell requested the army to hold off protestors who tried to block the work. On 30 April 1993, at Biara village, troops guarding Shell's contractors opened fire on protestors, injuring 11 of them. Several days later, at Nonwa, soldiers shot at protestors again, killing one man. There is no evidence that the armed forces had come under attack from the community or that their use of force was in any way proportional or justified.

Starting in mid-1993, the security forces incited and participated in a series of violent attacks on the Ogoni that the government sought, ultimately unsuccessfully, to blame on inter-communal tensions. An official report, published in 2002, found that these attacks resulted in the death of about 1,000 people, destroyed ten villages, and made 30,000 people homeless. Survivors told reporters that some of the attackers wore army uniforms and used automatic weapons and grenades. Many people were extra-judicially executed while others died as a result of the arbitrary use of lethal force. In 1996, Human Rights Watch interviewed two soldiers who said they had taken part in an attack.

Following these attacks, Shell tried to return to Ogoniland in October 1993, to inspect its oil production sites - and brought with it a Nigerian army escort. Given the events at Biara and Nonwa, as well as the highly publicised attacks that had devastated the Ogoni, this move was reckless and incendiary. Protests broke out again at Korokoro village. There are conflicting accounts of how the clash started, but troops opened fire, killing another man.

Soon afterwards, in November 1993 the defence minister General Sani Abacha seized power in a coup. Abacha banned all political activity, replaced civilian governors with military administrators, and

jailed and executed opponents. Abacha's government established the Rivers State Internal Security Task Force (ISTF), to "restore and maintain law and order in Ogoniland." One of the ISTF's objectives was to ensure that "those carrying out business activities... are not molested." Shell and its sub-contractors were the only significant business actors in Ogoniland at the time. This implied that, from the start, a primary goal of the ISTF was to allow Shell, the largest corporate actor in Ogoniland, to resume operations.

On 12 May 1994, the ISTF commander Major Paul Okuntimo outlined his plans in a confidential memo which was later obtained by MOSOP and released to the media. In it, Okuntimo stated that:

"Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence."

Amnesty International has not been able to independently verify the authenticity of the memo, and Shell has questioned whether it was genuine. Nevertheless, days after the memo was released, the crisis in Ogoniland worsened.

On 21 May 1994, MOSOP leaders, including Ken Saro-Wiwa, were accused of involvement in the murder of four prominent traditional leaders, and detained by the ISTF. They were subjected to torture and other ill-treatment in whilst in detention. Meanwhile, the ISTF launched raids on Ogoni villages. They carried out numerous extrajudicial executions and other unlawful killings, raped women and girls and detained and tortured many people. The ISTF commander went on television and publically admitted to some of the Force's tactics:

"The first three days of the operation, I operated in the night. Nobody knew where I was coming from. What I will just do is that I will just take some detachments of soldiers, they will just stay at four corners of the town. They ... have automatic rifle[s] that sound death. If you hear the sound you will freeze."

It is not known how many people died during these attacks before they started becoming less intense by the end of August 1994. According to an Amnesty International report released on 24 June 1994 some 30 villages had been attacked and "more than 50 members of the Ogoni ethnic group are reported to have been extra-judicially executed." In July that year, the Dutch ambassador told Shell that the army had killed some 800 Ogonis.

SHELL UNDERSTOOD THE RISKS OF CALLING FOR MILITARY INTERVENTION

There is irrefutable evidence that Shell knew that the Nigerian security forces committed grave violations when they were deployed to address community protests. The company knew the risks since at least 1990, when Shell called for the assistance of a paramilitary police unit to deal with peaceful protestors at Umuechem village, also in the Niger Delta. According to an official enquiry, the police descended on the community, *"like an invading army that had vowed to take the last drop of the enemy's blood."* The police officers, using guns and grenades, killed 80 people.

It is clear from both public statements and internal company documents that at least from this point on Shell executives knew and understood the risks associated with calling for the intervention of the security forces in dealing with protestors. This was well before the ISTF launched its operation in May 1994. For example, an internal Shell memo dated 23 February 1993 reveals that senior Shell staff worried that calling for a *"military presence...will attract a potential confrontation which may have catastrophic results."*

These risks were confirmed by three other incidents involving protestors in 1992-3: the death of a man and injury of several others on Bonny Island in July 1992 after Shell airlifted a "Rapid Intervention Force" comprising paramilitary police to the location; and the two incidents mentioned earlier, when soldiers shot local people along the pipeline in

April and May 1993. By February 1994, Shell had had further confirmation – if it was needed – of the specific risks associated with the army, when the ISTF, commanded by Major Paul Okuntimo, shot at thousands of peaceful protestors outside the main gate the Shell HQ in Port Harcourt, injuring several of them.

SHELL KNEW ABOUT THE HUMAN RIGHTS VIOLATIONS IN Ogoniland

From mid-1993, as the violence increased in Ogoniland, it is inconceivable that Shell was not aware of the worsening human rights situation. The involvement of the armed forces was widely reported on at the time, both in Nigeria and internationally. Organizations, including Amnesty International, published numerous documents, drawing attention to specific incidents, such as the detention of Ken Saro-Wiwa and extrajudicial executions of Ogoni residents by the security forces.

Shell's knowledge went beyond widely reported events. Executives met regularly with top government officials, and discussed the government strategy for dealing with the Ogoni protests. Shell had close links with Nigeria's internal security agency. Shell's former head of security for the region gave a witness statement saying that he shared information with the agency on a daily basis.

SHELL MOTIVATED THE GOVERNMENT TO STOP THE OGONI PROTESTS

Internal Shell documents reveal that company executives repeatedly underlined to government officials the economic impact of the Ogoni protests and requested they resolve the “problem.”

For example, on 19 March 1993 Shell sent a letter to the governor of Rivers State, where Ogoniland is located, requesting his “*intervention to enable us carry out our operations given the strategic nature*

of our business to the economy of the nation.” After General Sani Abacha seized power in November 1993, Shell wrote almost immediately to the newly appointed military administrator of Rivers State (on 13 December) saying that “*community disturbances, blockade and sabotage*” had led to a drop in production of almost nine million barrels during the course of the year and asked for help to “minimize the disruptions.” In the letter, Shell named the communities, including those in Ogoniland, where these “community disturbances” had taken place. Shortly afterwards, the military administrator created the military force, the ISTF.

Shell then had other opportunities to lobby the government for action. The then chairperson of Shell Nigeria, Brian Anderson, had at least three meetings with Sani Abacha during the height of the Ogoni crisis from 1994-5. During their first discussion (which took place on 30 April 1994), Anderson said he raised, “*the problem of the Ogonis and Ken Saro-Wiwa, pointing out that Shell had not been in the area for almost a year. We told him of the destruction that they had created at our sites of which he was apparently unaware.*”

Throughout 1994 and 1995 when many of the events described in this report occurred, Shell and the government were also in negotiations over a \$4 billion dollar liquefied natural gas project, at the time one of the largest investments in Africa. Shell announced that this joint venture project was going ahead just five days after the execution of the Ogoni Nine.

SHELL SOLICITED AND ENCOURAGED INTERVENTION BY THE NIGERIAN SECURITY FORCES AND MILITARY AUTHORITIES

Despite knowing that serious human rights violations were almost inevitable, Shell encouraged and solicited the intervention of the Nigerian security forces and the military authorities. In 1993, Shell repeatedly asked the Nigerian government to deploy the army

to Ogoniland to prevent protests from disrupting the laying of the pipeline. This resulted in the shooting and injuring of eleven people at Biara on 30 April and the shooting to death of a man at Nonwa on 4 May. According to an internal Shell document, Shell executives even advised the Nigerian military not to release protestors it had detained unless the military received commitments from their community to stop protests, thereby directly soliciting a violation of the human rights of the detainees.

Shell also made general requests for the intervention of military authorities in Ogoniland. Shell managers met senior government and security officials in Abuja on 11 May 1993, after the company had decided to suspend the laying of the pipeline following clashes between protestors and the army. At a meeting with the Inspector-General of Police, *"the opportunity was taken to stress the need for extra police presence in strategic locations and offer logistical support (since they are incapable of doing it themselves)."* Later the same day, with the Director-General of the intelligence agency, the SSS, Shell reiterated *"our requests for support from the police and army."*

The minutes of these meetings show that Shell was actively lobbying the government and the security forces to support them – and was offering "logistical" help in return. Based on their own notes of these meetings, the Shell executives did not raise any concern with the government officials about the recent shooting of unarmed protesters in Ogoniland by the army unit guarding the pipeline.

By the start of the following year, the military authorities had created the ISTF. On 3 March 1994, Shell paid its commander Major Okuntimo, and 25 of his troops, an *"honorarium"* as a *"show of gratitude and motivation for a sustained favourable disposition towards [Shell] in future assignments."*

According to Shell, the payment was related to an operation at Korokoro in late 1993, during which soldiers shot one person following a clash with protestors. The honorarium amount was 20,000 Naira (or \$909) which was described as covering the

cost of lunches and "special duty allowance". However, the internal memo implies that Shell expected the military force to conduct "future assignments" in relation to Shell. Shell approved the payment to Major Okuntimo just days after he had opened fire on peaceful protestors outside the Shell HQ in Port Harcourt.

As noted above, the documents released by Shell include the records of three meetings that Brian Anderson had with General Sani Abacha during the crisis. During the first meeting, on 30 April 1994, Anderson reported that he came away from the meeting with the sense that Abacha, *"will intervene with either the military or the police."* Brian Anderson said he made it clear to Abacha that Anderson had asked Shell staff, *"not to involve either body during the recent problems for fear of escalation and of Shell being accused of hiding behind the forces of law and order, and in fact of being responsible."* However, Anderson's record of the meeting does not suggest he asked General Abacha not to take the military action that Abacha appeared intent upon, only that Anderson had not wanted Shell staff to involve the military or police in the "recent problems."

On 5 August 1994, Brian Anderson had another meeting with General Abacha. Despite being aware that Ken Saro-Wiwa and scores of others were now in detention and that many Ogonis had been killed in raids by the ISTF, Anderson's own notes of the meeting do not refer to these issues at all.

One week after this meeting, and despite knowing that the army was conducting brutally violent operations in Ogoniland, Brian Anderson requested that the military be deployed to guard Shell's facilities at Bomu in Ogoniland. In a note to his superiors in London and The Hague, Anderson conceded that this request *"impinges on our 'no military protection' stance to a limited extent."*

However, as the evidence presented in this report makes clear, Shell's 'no military protection' stance was inconsistent at best, and at times appeared little more than a public relations fiction. The company


repeatedly sought the intervention of military or security forces in Ogoniland, to protect its equipment and business operations, despite knowing the risks that communities would face.

Moreover, all of the evidence indicates that Shell was well aware that MOSOP has a legitimate grievance and that the environment on which the Ogoni's were almost completely dependent was in fact devastated by oil pollution. Yet at no point on record did Shell suggest to its various government and military interlocutors alternative ways of dealing with the concerns of the Ogoni people and MOSOP.

SHELL LENT MATERIAL SUPPORT AND ASSISTANCE TO THE ARMED FORCES

Shell provided the security forces with logistical support and payments as a matter of routine during the 1990s. Former Shell Nigeria chairperson, Brian Anderson explained that this was standard practice in relation to the military:

"In reality, any operational contact with the government requires financial and logistical support from Shell. For example to get representatives of the Department of Petroleum Resources to view an oil spill we often have to provide transport and other amenities. The same applies to military protection." (emphasis added)

 Soldiers in Ogoniland, 1993
© Private.



Shell managed a large force of police officers, which provided security for the company's personnel and property. The records show that this force included a team of undercover officers, which received training from the security services. According to a former Shell security official, this team conducted intelligence gathering operations in the Niger Delta, including Ogoniland. The official said that he shared information with the security services on a daily basis.

As detailed above, Shell admitted to paying Major Paul Okuntimo, the commander of the ISTF and his men, for conducting a patrol in Ogoniland in October 1993. Shell Nigeria's then chairperson, Brian Anderson claimed that this payment was the only occasion Shell had been in contact with Paul Okuntimo. However there is evidence that Shell continued to be in contact with Okuntimo after this payment was made.

Paul Okuntimo twice told journalists that he continued to be in contact with Shell throughout the crisis, although these statements contradict one another. According to the Sunday Times (of London), on 17 December 1995, Paul Okuntimo admitted to journalists that Shell had indeed paid him and his troops. He said that, *"Shell contributed to the logistics through financial support. To do this, we needed resources and Shell provided these."* In a televised interview in 2012, (by now Retired General) Paul Okuntimo denied receiving a "single penny" from Shell. But he said that Shell had been secretly in touch with him, encouraging him to take action in Ogoniland.

"They would only send that stupid man to me who will come even when I am worshipping in church and say that 'there is trouble in Ogoni, go and, go and...'"

There is further evidence of secret payments by Shell to Paul Okuntimo, including the witness statements of three former members of the Nigerian security forces. Boniface Ejiogu was Major Okuntimo's orderly from May 1994. Ejiogu testified that Shell provided the ISTF with logistical support. He said that he saw Okuntimo transported in a Shell-operated helicopter, and soldiers ferried in buses and boats provided by the company. He said that when the ISTF planned "night operations", Okuntimo would call George

Ukpong, the then head of security for Shell, to request the use of company pick-up trucks. He also said that he saw the company provide the ISTF with regular food deliveries at its camp.

Ejiogu testified that he twice collected money from George Ukpong to give to Major Okuntimo. Boniface Ejiogu's account of seeing Major Okuntimo receive money was supported by Raphael Kponee, a police officer seconded to guard Shell. Eebu Jackson Nwiyon, a former member of MOPOL, also testified to seeing Shell staff make payments to the security forces and Major Okuntimo.

COMPLICITY IN THE MISCARRIAGE OF JUSTICE AND EXECUTION OF THE OGO NI NINE

The culmination of the Nigerian military government's campaign to crush the MOSOP protests was the execution of the Ogoni Nine on 10 November, 1995. Shell knowingly provided encouragement and motivation to the military authorities to stop the MOSOP protests, even after the authorities repeatedly committed human rights violations in Ogoniland and specifically targeted Ken Saro-Wiwa and MOSOP. By raising Ken Saro-Wiwa and MOSOP as a problem, Shell was reckless, and significantly exacerbated the risk to Saro-Wiwa and those linked to MOSOP. Shell knew full well that the government regularly violated the rights of those linked to MOSOP and had targeted Saro-Wiwa. Following the arrests and during the blatantly unfair trial, the nature of the danger was clear. However, even after the men were jailed, being subjected to torture or other ill-treated and facing the likelihood of execution, Shell continued to discuss ways to deal with the "Ogoni problem" with the government, and did not express any concern over the fate of the prisoners. Such conduct cannot be seen as other than endorsement and encouragement of the military government's actions.

Shell later claimed that it worked behind the scenes to advocate for the release of Ken Saro-Wiwa and the other men, yet Amnesty International has seen no evidence of this in the many internal Shell documents from the period. Indeed, one month after the executions, according to a message sent back to

Europe by Brian Anderson, President Sani Abacha complimented Shell on the stance it had taken, referring to the \$4 billion natural gas plant that Shell had recently announced was going ahead.

"The HoS [Head of State, Abacha] told S[honekan – a former Shell executive and former head of state] that he was very happy that Shell had remained steady under pressure, and asked him to convey his thanks to me. [...] He was particularly happy about the NLNG Project."

CULPABILITY OF SHELL'S PARENT COMPANY IN THE UK AND THE NETHERLANDS

Internal company documents show that responsibility for Shell's actions during the Ogoni crisis do not solely rest with staff based in the country. These documents provide a unique insight into the inner workings of one of the world's largest multinational corporations at a time of crisis. They show that at least from the time that Shell appointed UK national Brian Anderson to head its Nigeria operations in early 1994, key strategic decisions were not taken in Lagos and Port Harcourt, where Shell's Nigeria subsidiary, Shell Petroleum Development Company, was based, but in the corporate headquarters of Royal Dutch/Shell in London and The Hague.

These documents include many faxes, letters and emails sent between these different offices, including the regular "Nigeria Updates" that Brian Anderson sent to his superiors to keep them closely informed. These updates outlined the latest news relating to the Shell's businesses in Nigeria, detailed accounts of important meetings Anderson had had, as well as summaries of key political, economic and security developments in the country. They demonstrate that at all times, Shell's directors based in The Hague and London were fully aware of what was happening in Nigeria and what the staff of Shell Nigeria were up to. The evidence also makes clear that staff in London and The Hague were not passive recipients of this information. A clear directing role is evident.

CONCLUSION

That Nigeria's government was responsible for grave human rights abuses during its campaign to crush the largely peaceful Ogoni protests during the 1990s is not in doubt. These human rights violations were carried out in response to community protests, and many occurred during armed attacks on defenceless Ogoni villages. Most of the violations of international human rights law detailed in this report also amount to crimes, potentially including murder or other unlawful killing, torture, a range of crimes related to physical assault, rape and destruction of property.

This report examines the role of the oil company Shell in the violations and crimes committed by the Nigeria security forces. It focuses specifically on the potential criminal liability of Shell and/or individual Shell executives. A person (including in some jurisdictions a "legal person", such as a company) can be found guilty of the commission of a criminal offence either through direct or indirect actions (i.e. either as a principal or through their involvement as an accessory). The question of whether a company or its individual representatives are liable to prosecution for their involvement in criminal offences will depend on the specific crime and the legal framing in a given jurisdiction.

A range of legal concepts may apply, from complicity to aiding and abetting, to other prohibited involvement in the criminal acts. Within the corpus of criminal law, a number of actions are generally held to give rise to potential criminal liability. For example, criminal liability may arise when an individual or company encourages, enables, exacerbates or facilitates a criminal offence. Knowledge of the risks that corporate conduct could contribute to a crime, or wilfully blindness to such risk, may also lead to allegations that a company has criminal involvement, as could a close connection to the situation or the actors involved.

Following a detailed review of all of the evidence Amnesty International considers that Shell and specific executives should face investigation, with a view to prosecution, over their involvement in the crimes committed in Ogoniland in the 1990s. Shell repeatedly encouraged the Nigerian military and police to take action to deal with community protests

when the company knew this put lives at risk. Even when the risks came to fruition, and hundreds of Ogoni women, men and children had been killed or assaulted, Shell went back to the military and asked for their engagement. Although there is no evidence that Shell asked the military or police to execute or assault people, the company asked them to act when it knew that extrajudicial executions and assault were the likely outcome.

On several occasions Shell provided logistical assistance to military or police personnel – specifically transport. Without transporting the military or police to areas where community protests were occurring, it is likely that the subsequent violence would not have happened. While Shell might be forgiven for making this mistake once, providing the military with logistical support repeatedly to enable them to enter areas of community tensions amounts to enabling or facilitating the human rights violations or crimes. Again, Shell's knowledge about the likely actions of the armed forces is critical here.

Finally, Shell's relationship with the Nigerian authorities at the time gives rise to questions about its complicity or involvement in the violations and crimes. The company had significant access to senior figures, and was at times in daily contact with parts of the security forces. None of the hundreds of internal documents analysed reflect any attempt by Shell to express concern about the violence in Ogoniland.

Shell has always denied that the company was involved in the human rights violations and crimes that were carried out by the Nigerian state and armed forces.

RECOMMENDATION

The governments of Nigeria and Shell's home states, The Netherlands and The United Kingdom, should investigate, with a view to prosecution, Shell and/or individuals, who were formerly in decision-making or supervisory positions within the company, for potential involvement in crimes linked to human rights violations committed by the Nigerian security forces in Ogoniland in the 1990s.

METHODOLOGY

This report draws on a wide range of archive material, dating back to the 1990s. These include court records, company documents, letters, Nigerian and international newspaper articles from the 1990s,¹ reports by Amnesty International and other organizations,² official Nigerian government reports, documentary films,³ academic articles, memoirs and other historical accounts.⁴

An important source of information has been the large cache of documents that Shell released after a number of Nigeria individuals sued the company in the US in 1996. This was in relation to the events that took place in the mid-1990s and specifically the execution by the Nigerian military of activist Ken Saro-Wiwa and eight other men from the Ogoniland oil-producing areas of the Niger Delta.⁵ The cache includes hundreds of previously confidential

documents, including internal memos, accounts of meetings, strategy papers and letters. As part of the pre-trial discovery phase of the New York case, lawyers also recorded depositions from dozens of former Shell executives, former members of the Nigerian military and victims of the military campaign in Ogoniland. The depositions took the form of lengthy interviews, conducted by the lawyers for the plaintiffs. In some instances the lawyers taking depositions also quoted from documents, such as internal company memos, which were not later made public in full.

It is worth noting that while the Shell documents and the depositions are valuable sources of information they still only provide a limited insight into Shell's activities in Nigeria and Ogoniland at the time. The cache does not include every document produced by Shell staff in Nigeria during the mid-1990s, nor an account of every meeting its staff had with government officials. In April 2017, lawyers for Shell appealed a decision by a US judge to release further documents relating to the events in question.⁶

1. With thanks to Andy Rowell.

2. Including: Amnesty International, *Nigeria: Military Government Clampdown on Opposition* (Index: AFR 44/013/1994), (hereinafter Amnesty International, *Nigeria: Military Government Clampdown on Opposition* (Index: AFR 44/013/1994), available at <https://www.amnesty.org/en/documents/afr44/013/1994/en/>); *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), (hereinafter *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), available at <https://www.amnesty.org/en/documents/afr44/020/1995/en/>); *Nigeria: Rape – The Silent Weapon* (AFR 44/020/2006), available at <https://www.amnesty.org/en/documents/afr44/020/2006/en/>); Michael Birnbaum QC, *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*, Article 19, December 1995, (hereinafter Michael Birnbaum QC, *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*) and *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, Article 19, June 1996 (hereinafter Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*); Civil Liberties Organisation, *Ogoni: Trials and Travails*, 1996; The Commonwealth Human Rights Initiative, *Nigeria: Stolen by Generals*, 1995, available at http://humanrightsinitiative.org/publications/ffm/nigeria_stolen_by_generals.pdf; Greenpeace, *Shell Shocked: The Environmental and Social Costs of Living with Shell in Nigeria*, July 1994 (hereinafter Greenpeace, *Shell Shocked*); Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, July 1995, (hereinafter Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*), available at <https://www.hrw.org/reports/1995/Nigeria.htm>; *Nigeria: Permanent Transition*, September 1996, available at <https://www.hrw.org/reports/1996/Nigeria.htm>; *The Price of Oil, Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 1999, (hereinafter Human Rights Watch, *The Price of Oil*) available at <https://www.hrw.org/reports/1999/nigeria/>; Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, available at <http://unpo.org/images/reports/ogoni1995report.pdf>; Andy Rowell, Steve Kretzmann, the Lowenstein Human Rights Clinic at Yale University, *A Brief History of the Struggle for Justice in the Niger Delta*, 2005.

3. Glenn Ellis and Catma Films for Channel 4: *The Drilling Fields* (1994), *Delta Force* (1995) and *In Remembrance: Ken Saro-Wiwa* (1996).

4. Vince Cable, *Free Radical: A Memoir*, Atlantic Books, 2009 (hereinafter Vince Cable, *Free Radical: A Memoir*); Ide Corley, Helen Fallon, Laurence Cox (eds), *Silence would be treason: Last Writings of Ken Saro-Wiwa*, CODESRIA, 2013; Stephen Ellis, *This Present Darkness: A History of Nigerian Organised Crime*, Hurst, 2016; Jędrzej George Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*, Transaction Publishers, 2000 (hereinafter Jędrzej George Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*); J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, McClelland & Stewart, 2005 (hereinafter J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*); Karl Maier, *This House Has Fallen: Nigeria in Crisis*, Penguin, 2000 (hereinafter Karl Maier, *This House Has Fallen: Nigeria in Crisis*); Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, Verso, 2003 (hereinafter Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*); Andy Rowell, James Marriott and Lorne Stockman, *The Next Gulf: London, Washington and Oil Conflict in Nigeria*, Constable 2005, (hereinafter Andy Rowell, James Marriott and Lorne Stockman, *The Next Gulf*); Ken Saro-Wiwa, *Genocide in Nigeria: The Ogoni Tragedy*, Saros International Publishers, 1992; *A Month and a Day: A Detention Diary*, Penguin, 1995; Ken Wiwa, *In the Shadow of a Saint, A Son's Journey to Understand His Father's Legacy*, Black Swan, 2002.

5. For details see the website of the Center for Constitutional Rights, <https://ccrjustice.org/home/what-we-do/our-cases/kiobel-v-royal-dutch-petroleum-co-amicus>

6. Law360, *Cravath Wants Shell Docs Order Stayed During Appeal*, 13 February 2017, available at <https://www.law360.com/articles/891753/cravath-wants-shell-docs-order-stayed-during-appeal> (last accessed, 24 July 2017)

Amnesty International conducted an interview with Esther Kiobel, the widow of one of the men executed alongside Ken Saro-Wiwa, and has the transcripts of interviews conducted by lawyers with three other widows of executed men (Victoria Bera, Blessing Eawo and Charity Levula). In addition, Amnesty International has consulted its own records of the time, including notes taken during a mission by researchers to the Niger Delta in December 1994.

In response to a Freedom of Information request, in May 2017, the UK's Foreign & Commonwealth Office provided Amnesty International with copies of nine previously confidential internal memos relating to meetings between UK diplomats and Shell staff in Nigeria between 1993-5.

Amnesty International has presented a summary of the findings of this report to Shell.⁷ Its reply is in the Annex.

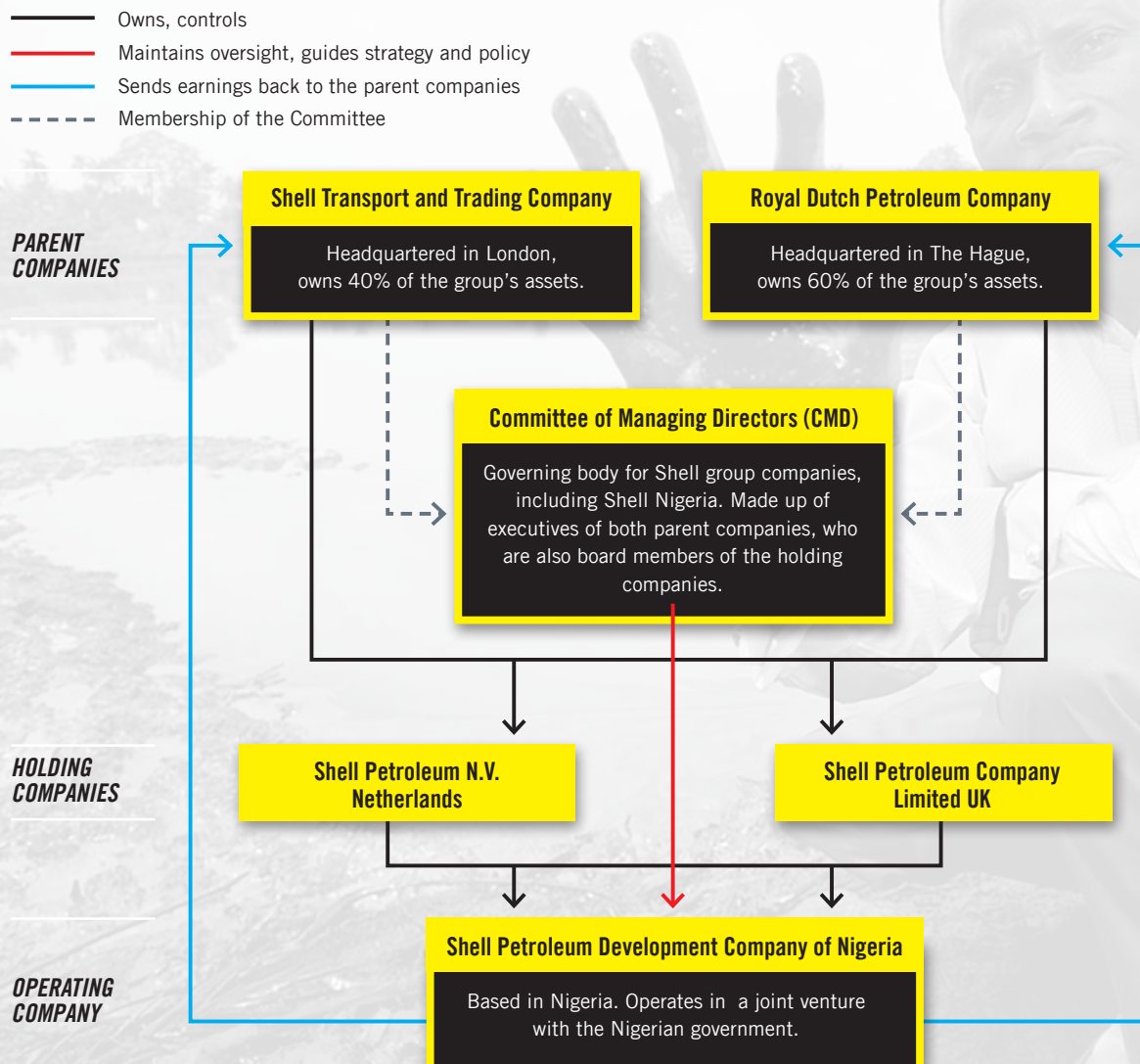
Map of the Niger Delta region in Nigeria



7. Letter to Ben Van Beurden, the CEO of Royal Dutch Shell, 18 June 2017.



SHELL CORPORATE STRUCTURE IN THE 1990s





Ogoni communities protest against oil pollution, 1993
© Private

PART ONE: THE OGONI CRISIS

1.1 HISTORICAL OVERVIEW

On 10 November 1995, nine men from Ogoniland, a small area within Nigeria's oil-producing Niger Delta region, were hanged by the military authorities, after a blatantly unfair trial. Their bodies were then dumped in unmarked graves. One of them was the outspoken and acclaimed writer Kenule (Ken) Saro-Wiwa, who had gained worldwide recognition for his leadership of a campaigning organization, the Movement for the Survival of the Ogoni People (MOSOP). This had drawn attention to the ecological devastation caused by decades of oil production, and the lack of economic development, in Nigeria's oil-producing areas. The other men executed that day

were Dr Barinem Kiobel, a former government official, and seven members and supporters of MOSOP: Saturday Dobee, Paul Levula, Nordu Eawo, Felix Nuate, Daniel Gbokoo, John Kpuinen and Baribor Bera. The military government had accused them, without evidence, of involvement in the murder of four Ogoni elders who were well-known critics of MOSOP.⁸ Ken Saro-Wiwa, John Kpuinen and Barinem Kiobel were sentenced for encouraging the murders, the other men for carrying them out. The hanging of the "Ogoni Nine", as they became known, sparked outrage around the world. For example, the then British Prime Minister, John Major, called it *"a fraudulent trial, followed by judicial murder."*⁹ The European Union and the United States imposed sanctions and the Commonwealth group of former British colonies suspended Nigeria from its membership.¹⁰

The executions were the culmination of a brutal operation by the military government to crush MOSOP.¹¹ MOSOP had begun its campaign in 1990 with the publication of the "Ogoni Bill of Rights" which outlined the movement's grievances and demands.

8. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

9. Steve Crawshaw and Karl Maier, 'World Fury as Nigeria Sends Writer to Gallows', *The Independent*, 11 November 1995, available at <http://www.independent.co.uk/news/world-fury-as-nigeria-sends-writer-to-gallows-1581289.html> (last accessed 24 July 2017).

10. Professor Michael Watts, *Wiwa Plaintiffs' Expert Report*, 2008, p. 41-2 (409 Declaration of R. Millson re Watts with exhibits).

11. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

MOSOP wanted the government to grant Ogoniland political autonomy and a much greater share of its oil wealth. MOSOP argued that oil had made others rich while condemning the inhabitants of the area, who mainly relied on farming and fishing, to poverty. Pollution from oil spills and gas flaring had, MOSOP said, “led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster.”¹² In January 1993, the MOSOP campaign forced the oil company that operated in Ogoniland, the Anglo-Dutch firm Shell, to announce its withdrawal from the area.¹³ Shell said that this was because of a worsening security situation and attacks on members of staff.¹⁴

Although Ogoniland is only a small part of the Niger Delta, MOSOP's protests had potentially wide ramifications. The government's finances relied upon oil. In 1995, the year of the executions, oil made up 95.7% of Nigeria's total exports.¹⁵ Nigeria could not afford for production to be disrupted by prolonged community protests, and the government was afraid that MOSOP's campaign would be copied by other disaffected communities.¹⁶ Indeed, inspired by MOSOP, 23 other communities organized their own groups during the 1990s.¹⁷ In 1993-94 alone, Human Rights Watch documented protests in four other oil-producing communities.¹⁸ In each case, the security forces used violence to break up demonstrations.¹⁹

SHELL IN NIGERIA

Shell was by far the largest and most important oil company operating in the Niger Delta. It had first discovered oil in commercially viable quantities in Nigeria in 1956, when the country was still a British colony.²⁰ Shell operated more than 1,000 wells in 90 oil fields covering an area of 31,000 km² across the Niger Delta. Within Ogoniland, Shell operated 96 wells in five oil fields and was able to produce 28,000 barrels a day – some 3% of its total.²¹

In order to produce so much oil in Nigeria, the company directly employed 4,900 Nigerian and 300 foreign workers. Shell indirectly employed a further 25,000 people, who worked as sub-contractors for both Nigerian and foreign companies.²² In 1993, one of the largest sub-contractors was Willbros West Africa, a US engineering company.²³ An indication of the size of Shell's operations in the Niger Delta in the mid-1990s was provided by a British diplomat in an internal letter:

“The infrastructure which Shell has at its disposal (stocks of fuel, transport, helicopters, small planes and oil service barges and ships) makes their contingency planning much more superior than that of any other operator, contractor, company or government.”²⁴

12. MOSOP, *The Ogoni Bill of Rights*, article 16, 1990.

13. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 3 (ex cc).

14. Shell said it finally stopped all oil production in Ogoniland by mid-1993. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 2.

15. Jędrzej George Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*, p. 25.

16. Jędrzej George Frynas, ‘Political Instability and Business: Focus on Shell in Nigeria’, *Third World Quarterly*, Vol. 19, No. 3 (Sep., 1998), p. 464 (hereinafter Jędrzej George Frynas, *Third World Quarterly*).

17. The Oputa Panel, *Human Rights Violations Investigation Commission, Volume IV*, 2.12, p. 35, 2002.

18. In October 1992, members of the Ijaw community announced the establishment of the Movement for the Survival of the Izon Ethnic Nationality in the Niger Delta (MOSIEND). The Ogbia community in Oloibiri set up the Movement for Reparation to Ogbia (MORETO) in November 1992. The Council for Ikwerre Nationality was founded in 1993. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

19. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

20. Shell's subsidiary in Nigeria is called the Shell Petroleum Development Company (SPDC). Shell operates the country's largest oil joint venture, which it owns along with the state-owned Nigerian National Petroleum Corporation (NNPC) and two other international companies. Shell owns 30% of this joint venture. The rest is owned by the NNPC (55%) and subsidiaries of the French company Total (10%) and the Italian firm ENI (5%). See Shell Nigeria, *Shell in Nigeria Portfolio*, April 2015, <http://s08.static-shell.com/content/dam/shell-new/local/country/nga/downloads/pdf/portfolio.pdf>

21. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 2-3.

22. Shell UK, *Shell Briefing Note: Operations in Nigeria*, London, May 1994.

23. Deposition of James Kenneth Tillery, July 22, 2003. See also, Andy Rowell, James Marriott and Lorne Stockman, *The Next Gulf*, p103-4.

24. UK Foreign & Commonwealth Office, letter to UK High Commissioner, *Visit to Port Harcourt and Warri, 27-31 August*, 5 September 1994.

Shell invested so much in Nigeria because its assets there were so important to the overall company. Shell's annual profits from oil production in Nigeria during the 1990s were \$220-\$240 million, the company reported.²⁵ This accounted for an average of 7% of Shell's total worldwide profits from exploration and production.²⁶ An internal strategy document revealed that in 1995, Nigeria was home to the single largest portion of the company's worldwide oil and gas reserves, amounting to 20% of the total.²⁷ In Nigeria, Shell had *"access to the biggest low cost hydrocarbon resource base in the Group, with enough oil to sustain production for almost 100 years at current levels."*²⁸ The author of this document was Shell's UK-based chief economist, Vince Cable. He later became a prominent politician, serving as the UK's business minister from 2010-15, and is currently the head of the Liberal Democrats party. In his 2009 memoirs, Vince Cable laid out the importance of Shell's Nigeria operations:

*"The upstream business in Nigeria was the jewel in the crown of the exploration and production division, the company's elite corps. Many managing directors, past and present had served time in the Niger Delta; Nigeria accounted for one of Shell's largest sources of equity oil (oil owned by the company rather than managed on Shell's behalf), and a steady if unspectacular profit. And it offered enormous potential for expansion in both oil and gas."*²⁹

As the Ogoni crisis developed from January 1993 onwards, Shell was in negotiations with the Nigerian

government and international creditors for one such expansion. The \$4 billion Liquefied Natural Gas project, to be built on Bonny Island close to Ogoniland, was going to be *"the largest investment project in Africa."*³⁰ Shell announced that this joint venture project was going ahead just five days after the execution of the Ogoni Nine.³¹

LOCAL PROTESTS AND MILITARY CRACKDOWN

In November 1990, just over two years before the Ogoni protests gathered pace, a violent crackdown by armed police in Umuechem community (some 30km from Ogoniland), showed how high the stakes were for anyone protesting in the oil-producing region. Following demonstrations by villagers, Shell warned the government of an *"impending attack."*³² The manager of Shell's eastern division, J.R. Udofia, faxed the Commissioner of Police in Rivers State specifically requesting the intervention of the Mobile Police (also known as MOPOL), a paramilitary unit.³³

According to a subsequent judicial enquiry, the villagers had not in fact attacked Shell installations, but conducted a peaceful protest demanding that the oil company compensate them for damage caused by pollution from oil spills. Over the course of the next two days, the Mobile Police attacked the village, *"like an invading army that had vowed to take the last drop of the enemy's blood"*, the inquiry found.³⁴ The Mobile Police, using guns and grenades, killed 80 people, throwing many corpses into a nearby river, the survivors testified.³⁵ They

25. Alan Detheridge and Noble Pepple, *A Response to Frynas*, Third World Quarterly, Vol. 19, No. 3 (Sep., 1998), p481.

26. Alan Detheridge and Noble Pepple, *A Response to Frynas*, Third World Quarterly, Vol. 19, No. 3 (Sep., 1998), p481.

27. Shell International Exploration and Production, *Note for information: Review of Strategy for Nigeria*, 1996, p. 2. (Exhibit 9. Decl of J. Green in Opp to Motion to Dismiss Ric).

28. Shell International Exploration and Production, *Note for Information: Review of Strategy for Nigeria*, 1996, p. 1. (Exhibit 9. Decl of J. Green in Opp to Motion to Dismiss Ric)

29. Vince Cable, *Free Radical*, 2009, p 195.

30. Shell International Exploration and Production, *Note for information: Review of Strategy for Nigeria*, 1996, p. 1 (Exhibit 9. Decl of J. Green in Opp to Motion to Dismiss Ric).

31. *The Independent*, *Day of Decision for Shell on Nigeria Project*, 15 November 1995, available at <http://www.independent.co.uk/news/world/day-of-decision-for-shell-on-nigeria-project-1582021.html?amp>

32. J.R. Udofia to The Commissioner of Police, 29 October 1990 (Exhibit 20. C004465).

33. J.R. Udofia to The Commissioner of Police, 29 October 1990 (Exhibit 20. C004465).

34. Rivers State of Nigeria, *Judicial Commission of Inquiry into Umuechem Disturbances*, January 1991, p. 23, on file with Amnesty International.

35. Rivers State of Nigeria, *Judicial Commission of Inquiry into Umuechem Disturbances*, January 1991, p. 9.

also torched 595 houses.³⁶ Although the government established a commission to investigate the incident, it took no steps to subsequently prosecute or otherwise hold to account the Mobile Police officers who carried out these killings.

In July 1992, violence broke out at a different Shell facility, the Bonny Island export terminal, which was also close to Ogoniland. According to an internal Shell report on the incident, drawn up over a year later, a group of approximately 50 young men forced their way into the facility, damaging and stealing property and injuring at least two members of staff.³⁷ The following morning, Shell airlifted 51 members of a government “Rapid Intervention Force” from Port Harcourt (the capital city of Rivers State where Shell’s Nigeria operations were based) to Bonny Island. According to this report, “one Bonny resident was apparently shot dead,” and eight other men were injured in the ensuing clash. The report does not say that the men were armed, nor does the report clarify whether the government force had any cause to open fire on them.

Another account of these events was provided in the *African Concord* newspaper, from August 1992.³⁸ According to interviews with some of the injured men, the protest started in a dispute over jobs, and the lack of opportunities offered to locals. The men said they had approached Shell’s terminal and had thrown stones at the security post but not gone inside. The next day, the security force, comprised of Mobile Police officers, which Shell had helicoptered to Bonny overnight, clashed with protestors. According to this article, the police officers, thinking that some

of their colleagues had been taken hostage, attacked the unarmed protestors, shooting dead 21-year old student Owusa Brown. According to the newspaper’s account of the incident:

“(They) swooped on the town, met the youths at Ikugba square and opened fire, spraying tear gas and live bullets. By the time the coast was cleared three hours later, Brown was dead. 30 people shot and wounded and 150 others beaten and injured.”

Undeterred by these events, MOSOP stepped up its campaign. In November 1992, it made its first direct demands of the oil company. MOSOP issued Shell with a 30-day ultimatum, demanding it pay the Ogonis \$6 billion in royalties that it claimed was the value of oil pumped from the area since 1958, and \$4 billion in compensation for pollution caused by oil spills.³⁹ Shell refused, and produced figures that showed it had earned only a fraction of this amount.⁴⁰

In response, on 3 January 1993, MOSOP organized the peaceful “Ogoni Day” protest march, involving an estimated 300,000 people – some three-fifths of the population.⁴¹ It declared Shell to be “*persona non grata*” – no longer welcome – in Ogoniland.⁴² Later that month, Shell announced it was pulling out of the area, citing security concerns. It said it had faced “*intimidation and attacks from communities that included physical beatings, theft and destruction.*”⁴³ Shell reported that some people had “ambushed” a member of staff who was driving into Ogoniland, and set his car on fire.⁴⁴

36. Rivers State of Nigeria, *Judicial Commission of Inquiry into Umuechem Disturbances*, January 1991, p. 23.

37. Fax from SPDC to SIPC, *Community Disturbances*, 12 May 1993 (ex e).

38. *African Concord*, *On the War Path*, 24 August 1994.

39. See Annex (Exhibit 95. C002151-2153).



40. Shell said that since 1958, it had pumped oil from Ogoniland worth \$5.8 billion, before costs. Of this amount, 15% covered costs and investment, 79% was paid to the Nigerian government, and only 6% went to Shell and other foreign joint venture partners. Shell Nigeria, *Nigeria Brief: Ogoni and the Niger Delta*, 1996, p. 2 (wiwa 2/51).

41. There are numerous contemporary news reports describing the peaceful nature of the demonstration, as well as their large scale, e.g. Abdulfatai Oladeinde, *Ogonis Demonstrate*, National Concorde, 7 January 1993; Cyril Bakwuye, *Ogonis protest over oil revenue*, Daily Sunray, 6 January 1993.

42. Ike Okonto and Orono Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 119.

43. Shell said it finally stopped all oil production in Ogoniland by mid-1993. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 2 (ex cc).

44. Deposition of George Ukpong, 23 October 2003, p. 44.

 The peaceful "Ogoni Day" protest march, 3 January 1993
 © Private.



Despite the claim that it was ceasing operations there, Shell in fact continued certain activities within Ogoniland. It still pumped oil until May 1993,⁴⁵ and its contractors continued to work in the area, laying a new pipeline. On 30 April 1993, Nigerian army troops guarding contract workers laying this pipeline opened fire on protestors, injuring 11 unarmed villagers. Four days later, troops clashed with villagers again, shooting dead a protestor.⁴⁶

Meanwhile the government took steps to suppress the MOSOP campaign, which by this time had gained widespread international attention from environmental and human rights groups.⁴⁷ Nigeria's security agency, the State Security Service (SSS), arrested Ken Saro-Wiwa on three separate occasions from April to June 1993. On the first two occasions he was released after 24 hours, without having been charged. On the third occasion, he was charged in

connection with his campaigning activities along with two other men.⁴⁸ Ken Saro-Wiwa twice collapsed in jail due to a heart condition. Amnesty International publicly campaigned for the men's release, considering them to be prisoners of conscience who were detained because of their political activities and who neither used nor advocated violence. The men were released on bail more than a month after they were originally detained.⁴⁹

Then from July 1993, there were a series of armed attacks on Ogonis. The government claimed that these attacks were perpetrated by neighbouring communities and were the result of communal disputes over land and fishing rights.⁵⁰ Although the Niger Delta has a history of inter-communal violence, evidence recorded by both Amnesty International and Human Rights Watch at the time exposed the involvement of the Nigerian armed forces in the attacks on Ogoniland.⁵¹ According to newspaper reports, some Ogoni youths subsequently launched revenge attacks on Andoni villages.⁵²

According to MOSOP, the first of the attacks on the Ogoni occurred on 23 July 1993, when uniformed men wielding automatic weapons attacked people returning by boat from Cameroon on the Andoni river.⁵³ The local community reported that 136 Ogoni women, men and children were missing, but according to the police no-one had died.⁵⁴ Another attack took place on 4 August. Amnesty International reported that at least 35 people in the Ogoni town of Kaa, on the banks of the Andoni river were "extra judicially

45. Shell said it finally stopped all oil production in Ogoniland by mid-1993. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 2 (ex cc).

46. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

47. Initially Greenpeace and the Unrepresented Nations and Peoples Organisation (UNPO). See Karl Maier, *This House has Fallen*, 2000, p 92-93

48. They were charged on six counts relating to unlawful assembly, seditious intention and seditious publication. Amnesty International, UA 238/93 – *Nigeria: Health Concern / Legal Concern: Ken Saro-Wiwa, N.G. Dube, Kobari Nwile*, 19 July 1993 (Index: AFR 44/007/1993), available at <https://www.amnesty.org/en/documents/afr44/007/1993/en/>

49. Amnesty International, *Further Information on UA 238/93*, (Index: AFR 44/07/93), 20 July; and *Follow-Up* (Index: AFR 44/12/93), 16 August – *Nigeria: Health Concern / Legal Concern: Ken Saro-Wiwa, N.G. Dube, Kobari Nwile*, 31 August 1993 (Index: AFR 44/013/1993), available at <https://www.amnesty.org/en/documents/afr44/013/1993/en/>

50. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

51. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

52. Sam Olukoya, *Wasteland*, Newswatch 1 November 1993.

53. Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, Verso, 2003, p124.

54. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 94.

executed by armed men, some of whom are believed to have been in navy and police uniforms."⁵⁵ According to Karl Maier, the Nigeria correspondent of The Independent newspaper (of London) who visited Kaa soon after the attack, the scale of the damage *"betrayed a military operation rather than an ethnic tussle."*⁵⁶ Claude Ake, an independent academic who was appointed by the government to investigate the violence, also concluded that the army was involved, stating:

*"It had to be the military, or at least elements of the security forces. Andonis are fishermen, and fishermen don't usually have such weapons as hand grenades and mortars. There was no real dispute between the Ogonis and the Andoni over fishing rights, territory or the like."*⁵⁷

Human Rights Watch later interviewed two Nigerian soldiers who described their participation in these secret military raids on Ogoniland in 1993, which were designed to appear like intercommunal clashes.⁵⁸ According to one soldier, a force of 150 soldiers entered a village and shot indiscriminately. After the shooting they burned and looted homes. The second soldier, interviewed separately, told Human Rights Watch that he was told he was deployed to repel an invasion from Cameroon. He said: *"they told us to shoot everyone who crossed our path"*, but then he realized he was shooting at Nigerian civilians. Residents of Kaa told Human Rights Watch that they had seen soldiers attacking their village in August 1993. When Human Rights Watch sought comment from a

Nigerian intelligence official, they were told that the men were ex-soldiers.

Further evidence of the involvement of the Nigerian security forces in the raids on the Ogoni villages emerged in the context of the US legal action against Shell. A former member of the Mobile Police, Eebu Jackson Nwiyon, gave a deposition in which he described a mission to Andoni, on the border with Ogoniland, in 1993. He testified that he was flown there in a Shell-operated helicopter.⁵⁹ After arriving in Andoni, Nwiyon said he discussed operations with a soldier and a navy officer. The two men described to him how they had attacked villages in neighbouring Ogoniland. One explained to him that the Ogoni were being punished for defying Shell.⁶⁰ Several people living in Ogoniland at that time also gave depositions in which they described hearing or seeing helicopters, which they believed belonged to Shell, at the time of the attacks.⁶¹ Shell has denied that its helicopters were involved.⁶²

The attacks on Ogoni villages lasted until November 1993. An official report, published in 2002, did not state whether the army was involved, but reported that the attacks resulted in the death of about 1,000 Ogonis, destroyed 10 villages, and made 30,000 people homeless.⁶³ During this time, the government did not provide any medical or humanitarian assistance to the affected people, even though many were critically injured and others needed food and shelter.⁶⁴ Troops stationed in the region did not intervene to restore peace. A government spokesman said that these troops had *"no mandate to interfere in the fighting."*⁶⁵

55. Amnesty International, 9 August 1993, UA 268/93 – Nigeria: Extrajudicial Executions: At Least 35 Members of the Ogoni Ethnic Group from the Town of Kaa in Rivers State, Including Mr Nwiku and Three Young Children, available at <https://www.amnesty.org/en/documents/afr44/011/1993/en/>

56. Karl Maier, *This House Has Fallen: Nigeria in Crisis*, p. 100-01.

57. Karl Maier, *This House Has Fallen: Nigeria in Crisis*, p. 101.

58. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

59. Deposition of Eebu Jackson Nwiyon, 24 May 2004, p. 17.

60. Deposition of Eebu Jackson Nwiyon, 24 May 2004, p. 27.

61. Deposition of Benson Ikari, vol. I, 28 July 2003, pp. 171-180; Deposition of Lete Allens Gbarale, 27 May 2004, pp. 7-15; Deposition of Princewill Nathan Neebani, 13 May 2004, pp. 152-157; Deposition of Lebara Tony Idigima, vol. I, 24 July 2003, pp. 37-47; Deposition of Israel Nwidor, 24 September 2003, pp. 106-118; Deposition of Victor Barima Wifa, 2 April 2004, pp. 262-270.

62. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 3 (ex cc).

63. The Oputa Panel, *Human Rights Violations Investigation Commission, Volume III*, 6.44, 2002.

64. Chris McGreal, *Town pays in blood for seeking share of oil riches*, The Guardian (UK), 9 August 1993; Sam Olukoya, *Wasteland*, Newswatch 1 November 1993; J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 132-3.

65. Sam Olukoya, *Wasteland*, Newswatch 1 November 1993.

Following the attacks, the authorities invited representatives of the Ogoni and Andoni communities to attend a “peace” conference on 6 October 1993. A Shell employee also attended the meeting. When asked by Ken Saro-Wiwa why he was there, this employee explained that although the company had not been involved in the conflict, it wanted to defend itself against accusations that it had been. Ken Saro-Wiwa walked out of the meeting after he was asked to sign a “peace agreement” that called for the “*immediate resumption of all full economic and social activities*” within Ogoniland, as this would have allowed Shell’s return.⁶⁶ The inclusion of this clause cast further doubt on the government’s claims that the clashes were genuinely caused by inter-communal rivalry.

Despite MOSOP’s refusal to sign this document, a Shell inspection team subsequently travelled with an armed forces escort under the command of Major Paul Okuntimo, to inspect facilities in Ogoniland to see if it could resume activities there.⁶⁷ The plan was abandoned following a clash between Okuntimo’s men and protesters at Korokoro village during which troops fatally shot one man and injured several others. There are conflicting accounts of what happened in Korokoro, with the government reporting that armed protestors had attacked their soldiers unprovoked, injuring several of them.⁶⁸

Meanwhile, a split had developed within the leadership of MOSOP. Several important traditional rulers and politicians had grown unhappy with Ken Saro-Wiwa’s leadership of the movement.⁶⁹ Following a dispute over whether or not to boycott national elections in June 1993, five senior MOSOP officials resigned

from its Steering Committee.⁷⁰ From then on, these former leaders became vocal opponents of MOSOP and Ken Saro-Wiwa.

At the same time, within Ogoniland, MOSOP struggled to contain gangs of men who called themselves “vigilantes.” These gangs became involved in illegal activity, such as the setting up of roadblocks, extortion and murder.⁷¹ The government and those leaders who had resigned from MOSOP’s leadership accused the vigilantes of being members of the youth organization that Ken Saro-Wiwa had founded, the National Youth Council of Ogoni People (NYCOP). MOSOP denied this and took steps to tackle the problem. In November 1993, it issued an appeal for peace, and condemned the activities of the so-called vigilantes.⁷² On one occasion, Ken Saro-Wiwa even asked the military to arrest three gang members, and on another, MOSOP dismissed one of its own co-ordinators for running a vigilante gang.⁷³

MILITARY RULE AND DEEPENING VIOLENCE IN Ogoniland

In November 1993, General Sani Abacha, a man intolerant of dissent who was prepared to use violence to suppress opposition, seized power in a coup.⁷⁴ Abacha banned all political activity, replacing civilian governors with military administrators, and jailing and executing opponents.⁷⁵ By early the next year, the military administrator of Rivers state Lieutenant-Colonel Musa Dauda Komo had put in place a new plan to deal with MOSOP, creating the Internal Security Task Force (ISTF), under Major

66. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria’s Oil*, p. 139.

67. Shell Nigeria, *Report of the Joint Location Visit by SPDC and Armed Forces Personnel to Ogoni Area Oil Fields*, 26 October 1993 (Exhibit 5. C003607-16).

68. Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 127.

69. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria’s Oil*, p. 100-04.

70. Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, p. 13-14, available at <http://unpo.org/images/reports/ogoni1995report.pdf>

71. Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, p. 15, available at <http://unpo.org/images/reports/ogoni1995report.pdf>

72. MOSOP, Public Notice, 10 November 1993, in Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, Appendix 2, available at <http://unpo.org/images/reports/ogoni1995report.pdf>

73. Karl Maier, *This House Has Fallen: Nigeria in Crisis*, p. 104-05.

74. According to an official commission set up after Abacha’s death, “a virtual state of terror prevailed in the country” during his time in power. The Oputa Panel, *Human Rights Violations Investigation Commission, Volume II*, 2.28, 2002.

75. Amnesty International, *Nigeria: Military Government Clampdown on Opposition* (Index: AFR 44/013/1994), available at <https://www.amnesty.org/en/documents/af44/013/1994/en/>

Paul Okuntimo.⁷⁶ Almost immediately the ISTF engaged in excessive use of force and other human rights violations in response to community protests in the Niger Delta. For example, on 21 February 1994, security forces led by Okuntimo shot at thousands of people who were peacefully demonstrating outside Shell's main compound at Rumuobiakani in Port Harcourt. One eyewitness told Human Rights Watch that he heard Major Paul Okuntimo order his soldiers, "Shoot at anyone you see."⁷⁷ According to Human Rights Watch:

*"The troops began throwing canisters of tear gas, shooting indiscriminately, beating demonstrators with the butts of their guns, and making arrests. P, a community elder, still has a scar on his head from the brutal beating to which he was subjected. Five people were shot, and more than ten people were arrested."*⁷⁸

On 21 April 1994, Lieutenant-Colonel Komo, the Rivers State military administrator, ordered this force, which was made up of army, navy, State Security Service and Mobile Police personnel, to "restore and maintain law and order in Ogoniland." The memo did not name Shell, but stated that a key goal of the force was to ensure that all businesses in the region be allowed to resume. It read:

"The purpose of this operation order is to ensure that ordinary law abiding citizens of

*the area, non-indigenous residents, of carrying out business ventures...within Ogoniland are not molested."*⁷⁹

MOSOP later claimed to have obtained a confidential memo, dated 12 May 1994, in which Major Okuntimo appears to have replied to Lieutenant-Colonel Komo, and outlined his plans. The memo stated that:

*"Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence."*⁸⁰



According to the memo, Okuntimo was recommending that the government deploy 400 soldiers to the region. They should conduct:

"Wasting operations during MOSOP and other gatherings making constant military presence justifiable...wasting operations coupled with psychological tactics of displacement/wasting."

Under the heading "Financial Implications (Estimates/Funding)", the memo states that the government wanted the oil companies to pay for the campaign: "Pressure on oil companies for prompt regular inputs as discussed."

Amnesty International has not been able to verify the authorship of the memo, and Shell has questioned whether it was genuine.⁸¹ Days after the memo was released, the crisis in Ogoniland worsened.

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76. Amnesty International has not been able to find any official sources detailing the creation of this unit. Human Rights Watch reported that it was formed in January, 1994, (*Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p14). This was also reported by Ike Okonto and Oronto Douglas (*Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 128). In a newspaper interview in 2001, Lt Colonel Dauda Komo said that the decision to deploy the army to Ogoniland was in fact taken by his civilian predecessor Chief Ada George in 1993, (*The News (Lagos), Nigeria: Why Saro-Wiwa Was Killed*, 21 May 2001, available at <http://allafrica.com/stories/200105230193.html>.)
77. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p36
78. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p36.
79. Rivers State Commissioner of Police, *Restoration of Law and Order in Ogoniland, Operation Order No 4/94*, 21 April 1994, cited in Andy Rowell, Steve Kretzmann, A Project Underground Report, the Lowenstein Human Rights Clinic at Yale University, *All for Shell: The Ogoni Struggle*, 2006.
80. Major P. Okuntimo, *RSIS Operations: Law and Order in Ogoni, Etc*, 12 May 1994, published in: Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, p. 44, available at <http://unpo.org/images/reports/ogoni1995report.pdf>
81. "The government has asserted that the document is a fake. Even if it is genuine, it does not describe an action taken by Shell. It refers only to 'pressure or inputs' from oil companies. [Shell] was never asked to input, nor would we have supplied any if asked. The company is opposed to violence and the government is well aware of our commitment not to operate with military support but only with community co-operation and backing." Shell Nigeria, *Nigeria Brief: Ogoni and the Niger Delta*, 1996, p. 12. However, according to a newspaper's account of Paul Okuntimo's testimony at a public hearing in 2001, the former commander of the ISTF, "acknowledged writing a memo dated May 12, 1994, to the then military administrator making some requests for his men's welfare." See Ahamefula Ogbu and Chuks Akunna, *Nigeria: Saro-Wiwa Invited Soldiers To Ogoniland – Komo, This Day*, 21 January 2001, available at <http://allafrica.com/stories/200101240266.html>. Amnesty International has not been able to corroborate this account and the transcript has not been made public.

 A man allegedly shot by military after protesting the construction of a new pipeline by Shell contractor Willbros, Ogoniland, 1993
 © Private.



ARREST OF MOSOP LEADERS AND FURTHER VIOLENCE IN Ogoniland

On 21 May 1994, four of the traditional Ogoni leaders, who had fallen out with Ken Saro-Wiwa the previous year, were attacked while they were holding a meeting in Giokoo, Ogoniland. Because of serious flaws in the investigation and subsequent trial, and because prosecution witnesses gave conflicting accounts of what happened, the key facts surrounding the killings have never been fully established. According to the version put forward by the prosecution, the attack was carried out by a mob of hundreds of men.⁸² The prosecution said that these attackers beat the four traditional leaders to death and then set fire to their corpses. The victims were Chief Edward N. Kobani, who had resigned as MOSOP Vice-President in 1993, Albert T. Badey, Chief Samuel N. Orage and Chief Theophilus B. Orage.

The next day, Lieutenant-Colonel Dauda Komo announced at a press conference that MOSOP was to blame, and accused Ken Saro-Wiwa of inciting his supporters to kill his opponents.⁸³ Ken Saro-Wiwa was subsequently arrested without charge the next day. The security forces later arrested a further 14 men, including a commissioner (minister) in the Rivers State government, Dr Barinem Kiobel. Dr Kiobel was also from Ogoniland, but was not a member of MOSOP (see below for details). Despite the fact that the government publicly levelled allegations against the men, the police did not formally charge them for next eight months. All the defendants said they were innocent.⁸⁴

The ISTF was given responsibility for investigating the murders, as well as for the detention and interrogation of the defendants, and the security of the trial.⁸⁵ Its commander, Major Okuntimo, was promoted to Lieutenant-Colonel.⁸⁶

Following the murders, the ISTF launched raids on Ogoni villages.⁸⁷ These raids, and accompanying human rights violations, were widely reported on at the time in Nigerian newspapers.⁸⁸ National human rights groups, as well as Amnesty International and Human Rights Watch published investigations.⁸⁹ In operations that appeared to be carried out as collective punishment for real or assumed association with MOSOP, the armed forces carried out near nightly raids on Ogoni villages, killing some, and arresting others who were later subjected to torture or other ill-treatment. Troops carried out many extrajudicial executions.⁹⁰ According to an Amnesty International report released on 27 June 1994, some 30 villages had been attacked in the space of approximately one

82. Michael Birnbaum QC, *A Travesty of Law and Justice*, p. 2.

83. Footage of press conference on file with Amnesty International.

84. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

85. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

86. Amnesty International meeting with Paul Okuntimo, 11 December 1994.

87. Amnesty International, *Nigeria: Military Clampdown on the Opposition* (Index: AFR 44/013/1994).

88. Uche Maduemesi, *This is Conquest*, TELL, 18 July 1994; The Guardian (Nigeria), *Terror in Ogoniland*, 25 July, 1994; Claude Ake, *Nightmare of State Violence*, TELL, 25 July 1994; Tomson Ajayeoba, *The Killing Field*, TELL, 25 July 1995; Ibiba Don Pedro, *Inside Ogoniland*, The African Guardian, 8 August 1994; Sam Olukoya, *The Ogoni Agony*, Newswatch, 26 September 1994.

89. E.g. Amnesty International, *Urgent Action*, 27 June 1994 (Index: AFR 44/06/94); Civil Liberties Organisation, *No Roof Over Their Heads*, Liberty, May-August, 1994; Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*

90. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

month, and during this time *“more than 50 members of the Ogoni ethnic group are reported to have been extra-judicially executed and over 180 others wounded during attacks by the security forces on Ogoni villages.”*⁹¹

Nigeria's Civil Liberties Organisation (CLO) sent human rights researchers to Ogoniland, and on 2 August 1994 called for an international inquiry into the “ongoing brutalisation of the Ogonis.”⁹² According to the CLO:

*“Our investigations show that over 43 villages have been invaded by Okuntimo's men since May. Today in the forests of Ogoni is a fast-growing population of refugees fleeing from the invaders. Many of them have had their homes completely destroyed. Others have simply abandoned their homes for fear that the soldiers may return....Ogoni is indeed in a state of war. Witness homes razed by fire, others whittled down to bamboo and raffia skeletons by bullets and grenades, wall crushed in, blood splattered walls etc.”*⁹³

The CLO published a list of Ogoni people, most of whom said they had fled the destruction of their homes or businesses by the military between May and July 1994. The CLO named 192 people, who said that between them they had 921 children.⁹⁴

In February/March 1995, through interviews with victims of attacks on Nwe-ol, Uegwere/Bo-ue, Bori, Bera, Barako, Bane, Biara, and Bomu, Human Rights Watch also established that the ISTF's raids generally involved the indiscriminate use of armed force and followed a consistent pattern:

*“Troops entered towns and villages shooting at random, as villagers fled to the surrounding bush. Soldiers and mobile police stormed houses, breaking down doors and windows with their boots, the butts of their guns, and machetes. Villagers who crossed their path, including children and the elderly, were severely beaten, forced to pay ‘settlement fees’, and sometimes shot. Many women were raped. Security forces randomly arrested and detained several hundred Ogonis, primarily young men, while a number of other prominent MOSOP activists were declared wanted by Rivers State Police Commissioner Bukar Ali. Before leaving, troops looted money, food, livestock, and other property.”*⁹⁵

In response to Human Rights Watch's inquiries about allegations of widespread human rights abuses in Ogoniland, Lieutenant-Colonel Paul Okuntimo acknowledged that *“there may have been a few small problems”* during the *“first few weeks.”* His troops were searching for the killers, he said, and the *“process of separating the chaff from the wheat”* was not an easy one. He labelled the rest of the allegations *“propaganda.”*⁹⁶

Human Rights Watch spoke to two soldiers involved in the violence (different men from those referred to earlier). One soldier stated that:

*“We were told that any mature man in the Ogoni areas was a suspect. We needed to find as many as possible for interrogation. The idea was to go into villages, shooting in the air, and then when people ran, to grab some as prisoners. The orders were to shoot on sight able-bodied men, if they ran. The Ogonis, they lost many people.”*⁹⁷

91. Amnesty International, Urgent Action, 27 June 1994 (Index: AFR 44/06/94).

92. Edetaen Ojo, *CLO seeks international inquiry on Ogoni massacre*, The Guardian (Nigeria, 2 August 1994).

93. Okko Sylvester Olumhense and Oronto Douglas, *Ogoni: Agony of a Nation*, Liberty, May-August, 1994, p16.

94. The CLO gathered the names and dates of birth of each individual. Three were aged 12-17, the rest were adults. The list does not specify whether the adults' children, who numbered 921 were accompanying them or not. Civil Liberties Organisation, *No Roof Over Their Heads*, Liberty, May-August, 1994, p17-22.

95. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

96. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

97. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

The other soldier also reported being told to shoot at will. He also said many villagers were wounded in the gunfire, but the military made no effort to care for them. The testimonies of the two soldiers were consistent with accounts of local church workers, who told Human Rights Watch that soldiers had warned them against entering Ogoniland in the days following the murders of the four Ogoni chiefs because they had been given orders to shoot local villagers. They are also consistent with information gathered by Amnesty International at the time.

Despite Paul Okuntimo's claims of propaganda, his public statements appear to confirm serious human rights violations. Speaking after May 1994, he addressed a press conference, which was broadcast by national TV:

"The first three days, the first three days of the operation, I operated in the night. Nobody knew where I was coming from. What I will just do is that I will just take some detachments of soldiers, they will just stay at four corners of the town. They...have automatic rifle[s] that sound death. If you hear the sound you will freeze. And then I will equally now choose about twenty [soldiers] and give them...grenades – explosives – very hard one[s]. So we shall surround the town at night...The machine gun with five hundred rounds will open up. When four or five like that open up and then we are throwing grenades and they are making 'eekpuwaa!' what do you think the...and they know I am around, what do you think the people are going to do? And we have already put roadblock[s] on the main road, we don't want anybody to start running...so the option

*we made was that we should drive all these boys, all these people into the bush with nothing except the pant[s] and the wrapper they are using that night."*⁹⁸

In June 1994, Paul Okuntimo publicly claimed that the army had taught him 204 ways of killing people. He claimed at a news conference that he had practised only three and that he would welcome the opportunity to exercise the rest of his repertoire.⁹⁹ It is not known how many people died during the raids, which lasted until August 1994, when the military claimed to have successfully "restored peace" to Ogoniland.¹⁰⁰ In July, the Dutch ambassador told Shell Nigeria's then chairperson Brian Anderson that the army had killed some 800 Ogonis.¹⁰¹

TORTURE AND OTHER ILL-TREATMENT OF DETAINEES

During this time, numerous people – mostly from Ogoniland – were detained and held in military-run camps and subjected to torture and other cruel, inhuman or degrading treatment. Many were arbitrarily arrested and detained without charge for varying periods in 1994 and 1995 at either Bori Military Camp, in Port Harcourt, or the military detention centre set up in what used to be the police station in Kpor, in Ogoniland.¹⁰²

Two environmentalists (Oronto Douglas and Nick Ashton-Jones) who went to visit Ledum Mitee, the MOSOP vice-president, in detention in the Bori Military Camp, on 26 June 1994, have described how they were detained, flogged and threatened with execution, on Paul Okuntimo's orders.¹⁰³ Nick Ashton-Jones described his experience:

98. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

99. Claude Ake, *War and Terror*, The News, 22 August 1994, cited in Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

100. Stepp Offi, *What Manner of Peace?*, TELL, 22 August 1994; Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p. 15.

101. Brian Anderson, *Nigeria Update*, 26 July 1994 (Exhibit 48. A000001-6).

102. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

103. Excerpt of letter from Nicholas Ashton-Jones to Michael Birnbaum QC, 8 April 1995, reprinted in Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied*, Appendix 5A, p. 12.

*"I was taken out and told to lie face down on the floor and given about 9 strokes across my lower back and buttocks: painful but not enough to break the skin. The whip was made of a double length of 10mm electrical cable and the man who used it was clearly as afraid of Major (now Lt. Col.) Okuntimo as we were."*¹⁰⁴

In a verbal deposition recorded as part of the US legal action, Boniface Ejiogu, who was Paul Okuntimo's orderly from May 1994, confirmed that the ISTF tortured Ogoni chiefs and youths, often beating them with horse whips (*koboko*):

*"There were men with underwear and they would ask all of them to face the ground. They were handcuffed like this, handcuffed them like this. There is not enough handcuffs so our soldiers use this barbed wire, cut barbed wire with nails and handcuff them, tie them behind...All of them face the ground. Others receive koboko, mostly the chiefs they give them koboko. They will go to Okuntimo's office, community chiefs."*¹⁰⁵

A chief who was taken to Kpor on 21 May 1994, recounted to Human Rights Watch that when he refused to respond to Lieutenant-Colonel Okuntimo's inquiries about the murders and MOSOP, he was ordered to strip and lie face down on the ground. He recalled:

"As I was lying there with my arms out at a 90 degree angle, Okuntimo ordered two soldiers standing on either side of me to whip me on the buttocks. The two men took turns hitting me, thirty lashes each, striking only when

*Okuntimo told them to do so. I couldn't walk when they finished."*¹⁰⁶

A man arrested in late June 1994 and taken to Kpor, told Human Rights Watch how he and four other villagers were forced to walk on their knees inside their cell for close to an hour while soldiers beat them with *kobokos*. Another man, who was also whipped at Kpor, was ordered to show other Ogonis his lash marks so they would not participate in MOSOP activities.¹⁰⁷

The human rights violations continued in 1995. Victor Wifa, who provided a deposition in the US legal action, said he took part in peaceful protest marches against Shell in Ogoniland. The ISTF raided his home and arrested him in July 1995. He said he was also detained at the Kpor camp and subjected to beatings and torture. On the third day, he remembered being ordered to sign a piece of paper which he recalls involved agreeing to *"never participate in any MOSOP activities and that I will not protest against Shell coming to Ogoni to operate anymore."* When he refused, soldiers ordered him to put his hands on the ground and then shot one of his fingers off.¹⁰⁸ During his deposition in 2003, according to the transcript, Victor Wifa showed lawyers his missing finger.¹⁰⁹ Ken Saro-Wiwa and other people arrested in connection with the murder of the four chiefs reported being subjected to torture or other ill-treatment while held at the Bori Military Camp and the Kpor detention centre, under the control of Paul Okuntimo.

Evidence of torture and other ill-treatment of the detainees emerged during their subsequent trial (details below). According to an affidavit, which was read out on the second day of the trial, Ken Saro-Wiwa said he was regularly beaten, held in manacles in a cell containing 30 other Ogoni prisoners, and

104. Excerpt of letter from Nicholas Ashton-Jones to Michael Birnbaum, QC, April 8, 1995; reprinted in Michael Birnbaum, QC, *Nigeria: Fundamental Rights Denied* (London: Article 19, June 1995), Appendix 5A, p. 12.

105. Deposition of Boniface Ejiogu, Part I, 22 May 2004, p. 54.

106. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

107. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

108. Deposition of Victor B. Wifa, 2 April 2002, p. 133-5.

109. Deposition of Victor B. Wifa, 2 April 2002, p. 133.

denied food and medical care while in detention.¹¹⁰ Baribor Bera, a member of the MOSOP youth organization, NYCOP, told the court that after his arrest he had been brutally tortured, forced to sign a confession and implicate other defendants.¹¹¹ On 23 February 1995 he showed the tribunal scars from beatings he said he had received at the Kpor detention centre: he said that he was stripped naked, tied to a pillar, flogged with a koboko and made to swallow teeth knocked out as a result of being beaten.¹¹² On 27 June 1995, Paul Levula told the tribunal that he had been strung up by his hands for a long period on two occasions by the police in Port Harcourt following his arrest.¹¹³ Nordu Eawo, another NYCOP member, said that a leading prosecution witness had initially detained him and taken to the witness' house, where he was beaten and cut on the genitals and head with a sharp stick by other prosecution witnesses.¹¹⁴ Nordu Eawo said that a tape-recording made at the time of this assault was later used by the police to prepare a statement, which he was forced to mark with his thumbprint. Another of the accused, Daniel Gbokoo, also claimed he was badly beaten during questioning by the police.¹¹⁵

Two Ogoni fishermen have described how they were arrested by members of the police unit seconded to guard Shell personnel and installations (known as the Supernumerary or SPY police) on 22 June 1994. In a letter faxed to journalists after their release from prison in October 1998, Kagbara Basse and Blessing Israel said that the police arrested them at Benson Beach, Akwa Ibon State. They said that the police officers, who were accompanied by Shell staff,

beat them with batons, knocking Blessing Israel unconscious. After five days in the police's detention, they were collected by the ISTF and transferred to Kpor, where the ill-treatment continued.

*"We were all beaten half-dead and they told us that it is said that we the youths are the ones who destabilize the effort of government and stopped Shell of their operation."*¹¹⁶

The two men were held along with 19 other men on the same charges as Ken Saro-Wiwa and the "Ogoni Nine."¹¹⁷ Shell denied that its staff were involved in their arrest.¹¹⁸ In August 1995 Clement Tusima, one of this group of detainees, died in detention as a result of malnutrition, poor prison conditions and medical neglect, Amnesty International reported at the time.¹¹⁹

RAPE OF Ogoni WOMEN AND GIRLS

During the military raids on Ogoni villages in 1994 and in the detention centres of Bori Military Camp and Kpor, soldiers raped women and girls. Human Rights Watch recorded several accounts in its 1996 report.¹²⁰ One woman told researchers that she watched as two soldiers raped her 13-year-old sister at gunpoint during a midnight raid on Bori around June 1994. A woman in her late thirties gave a harrowing account of her rape by five soldiers on the morning of 28 May 1994. A teenager said she had been raped by four soldiers whom she and her younger sister encountered one morning in June 1994, as they were returning from a well near their house:

110. Transcript of the Ogoni Civil Disturbances Tribunal, Day 2, 21 February 1995, p. 33-37.

111. Transcript of the Ogoni Civil Disturbances Tribunal, Day 4, 23 February 1995, p. 41-5.

112. Transcript of the Ogoni Civil Disturbances Tribunal, Day 4, 23 February 1995, p. 45.

113. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

114. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

115. Statement by Dabiel Gbokoo, 9 July 1994.

116. Letter from Kagbara Basse and Blessing Israel, 27 October 1998.

117. The Nigerian government eventually set the men free unconditionally in 1998, following General Abacha's death. Ian Black, *Nigeria frees 20 Ogonis jailed with Saro-Wiwa*, The Guardian (UK), 9 September 1998, <https://www.theguardian.com/world/1998/sep/09/ianblack>

118. Associated Press, *UK: Shell Oil Company Deny Allegations Of Torture In Nigeria Update*, 11 August 1998, <http://www.aparchive.com/metadata/youtube/8e86477a83e7771c27a29a40ab37f857>

119. Amnesty International, Urgent Action, 19 August 1997 (AI Index: AFR 44/17/97), available at file://intsec.amnesty.org/data/users/mark.dummett/Downloads/afr440171997en.pdf

120. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p22-3.

*"The soldiers pursued us and pushed me down. They kicked me and hit my junior sister's mouth with a wooden stick. They...tore my dress. One soldier held each of my legs. Then each of the four soldiers took turns. I was lying in a pool of blood when they left, unconscious. My small sister was there crying...Since then, I have not had my period. I have severe pains in my lower abdomen. At times I can't move."*¹²¹

In 2006, Amnesty International recorded interviews with several of the survivors. One woman described how soldiers had gang-raped her in 1994, and also provided Amnesty International with photographs of injuries sustained by her child as a result of torture. She was in her thirties at the time of the rape. She said:

*"I was raped by three army men. They carried guns and they had uniforms. They kicked in the door and one man shouted to me 'if you move, I'll move you', as he hit me in the face. He threw me on the bed and raped me using his gun. Other persons came and also raped me. Another woman had miscarriage because of being raped too. My son was trying to run away from the soldiers but he was beaten up by them. There were no witnesses to the rape. No doctor was available, I treated myself with boiling water and salt and opened my private parts to burn germs in the uterus, I also got herbal drugs [to treat the injuries]. I didn't report [the rape] to the police, there is no police in Ogoniland,"*¹²²

Another woman recounted how she was raped and her husband killed by soldiers in 1994:

"I was lying naked in bed when they came into my house with force, and knocked on the door. They beat me so that I lost some

*teeth. They carried my husband outside and shot him dead. I had delivered a stillborn child by surgery recently and [the] wound never healed nicely. [There was a large scar across her stomach.] The soldier hit me on wound, and raped me. There were two men. I still have pain in the operation wound. The men in uniform were looking for my husband and other women's husbands; the wives were sometimes tortured and raped. I was afraid to report it, so I fled to the bush. I didn't report to [the] chief because he had been detained."*¹²³

Girls under 18 years were among those raped by the security forces in Ogoniland. Fatima, 10 years old at the time, described how she had been repeatedly raped and held in sexual slavery for five days in April 1994:

*"The army came in at night and asked for my brother and father. I didn't know where they were. They took me to their station. I stayed there five days. Four men raped and beat me. They all used me. When they saw I was almost dead they dropped me along the road. I couldn't find anybody. I ran to the clinic inside the bush. My tummy was rising. I saw an old man and he took me to the place. The man operated me in the bush. He was then shot by the army. I remembered wounds all over my body. Now I am called 'Army property' by the youth in the community where I live. My father has disowned me. I did not report to anybody. It is a shameful thing."*¹²⁴

Peace, who was only 11 years old at the time, suffered a similar experience:

"I was in the house at night. Army people push[ed] [into] the house and carr[ied] us to their camp. They beat and raped me. They kept me there for one week, they maltreated

121. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p23.

122. Amnesty International, *Nigeria: Rape – The Silent Weapon* (AFR 44/020/2006), p12.

123. Amnesty International, *Nigeria: Rape – The Silent Weapon* (AFR 44/020/2006), p13.

124. Amnesty International, *Nigeria: Rape – The Silent Weapon* (AFR 44/020/2006), p13.

me, forced us to cook for them after the raping. I wanted to escape, I managed. When I escaped the army people shot me. Since then I suffer from the raping. I don't know the cause for the rape and the beating. Since then I have pain in my leg. During that time, [there was] no open clinic. I couldn't run with the bullet, so I enter the bush. They did not check for rape because I did not have money. My uncle brought me to the hospital. The doctor said I was pregnant, I told him about the rape. He operated me. He put a little thing in my private parts. I have not had a period since then. I am still suffering. I did not have any medical report [to prove that I was raped]. When something like this

happens, you are segregated [from the rest of the community].¹²⁵

Relatives of the prisoners were also the target of gender-based violence and abuse when they went to visit them. Esther Kiobel says that when she tried to visit her detained husband Barinem Kiobel at the Bori Military Camp in Port Harcourt, in December 1994, Paul Okuntimo, took her to another room and tried to force himself on her. "When I pushed him away, I guess he got upset, and slapped me. He has a big hand, and that was like fire coming out. I slapped him back." Okuntimo was furious. "He started a fight with me, left me half-naked, and called the army," she says. "They dragged me, so there were all these cuts... and they tied me like an animal."¹²⁶



Nigerian daily newspaper detailing the arrest of Esther Kiobel, during the trial of her husband Dr Barinem Kiobel and 8 other Ogoni activists and community members. Paper dated 24 February 1995
© Private



125. Amnesty International, *Nigeria: Rape – The Silent Weapon* (AFR 44/020/2006), p13.

126. Amnesty International Interview with Esther Kiobel, Amsterdam, 6 December 2016.

One of the soldiers who spoke to Human Rights Watch in 1996 said he personally witnessed seven rapes by soldiers who took Ogoni village women into the bush when they got off guard duty.¹²⁷ Another soldier, Boniface Ejiogu, who was Major Okuntimo's orderly from May 1994 until Okuntimo was replaced in July 1995, and who gave a deposition in the US litigation against Shell, said he twice stood guard as Major Okuntimo raped female detainees.¹²⁸

GOVERNMENT DENIALS

The former military administrator, Dauda Komo and the ISTF commander, Paul Okuntimo have both denied that they either ordered or were involved in human rights violations. In a 2001 newspaper interview, Daudu Komo argued that the military was deployed to Ogoniland to keep the peace, following months of intercommunal violence, and in response to a request from Ken Saro-Wiwa. He said:

*"There was complete breakdown of law and order there. If Ogoniland is a part of Nigeria, why should there be law and order everywhere else except in Ogoniland. That is why the troops were deployed."*¹²⁹

Dauda Komo denied that the ISTF troops had raped women. He said that the soldiers had been deployed in several different areas, as well as previously on foreign UN peacekeeping missions, but only Ogoni women had complained of rape:

"I am not saying that Ogoni women are not pretty but surely they cannot be prettier than all those other women, including the Lebanese

*and Somalian women that an army that can hold its discipline would suddenly lose that discipline in the sight of Ogoni women. I think we should draw deductions here."*¹³⁰

Paul Okuntimo also denied that he and his men had carried out human rights violations, and insisted that they had actually saved lives in Ogoniland. He blamed MOSOP for the violence, and stated that *"The Ogonis should be thankful to me and the troops because if not for us, Ogoni land would have been levelled."*¹³¹

Despite these denials, the military authorities tried to prevent impartial investigations of the situation in Ogoniland. In December 1994, Paul Okuntimo refused permission for three Amnesty International delegates to enter Ogoniland.¹³² He said that they could only travel with a military escort, and accused MOSOP of killing hundreds of people, without providing any evidence.

In April, 1996, when a UN fact finding team visited Port Harcourt and Ogoniland, the authorities tried to prevent them from gathering information. MOSOP reported that forty three people were detained before and during the UN visit, clearly aimed at preventing Ogonis from speaking to the UN team.¹³³

The government also tried to prevent foreign journalists from reporting on events in Ogoniland. The SSS detained Wall Street Journal reporter Geraldine Brooks on 9 April 1994, after she had approached an army officer to ask for the military's account of some violent incidents. The government then deported her for "security reasons".¹³⁴ In January 1996, the ISTF arrested Paul Adams of the Financial Times (London) at road block in Ogoniland.¹³⁵

127. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p23.

128. Deposition of Boniface Ejiogu, Part II, 23 May, 2004, p. 114.

129. The News (Lagos), *Nigeria: Why Saro-Wiwa Was Killed*, 21 May 2001, available at <http://allafrica.com/stories/200105230193.html>.

130. The News (Lagos), *Nigeria: Why Saro-Wiwa Was Killed*, 21 May 2001, available at <http://allafrica.com/stories/200105230193.html>.

131. Ise-Oluwa Ige and Sam Onwuemeodo, *Nigeria: Okuntimo Appears Before Panel, Expresses No Regret*, Vanguard, 24 January 2001, available at <http://allafrica.com/stories/200101260487.html>

132. Meeting with Paul Okuntimo in Port Harcourt, Nigeria, 10 November 1994.

133. Human Rights Watch, *Nigeria: Permanent Transition*, September 1996, available at <https://www.hrw.org/reports/1996/Nigeria.htm>.

134. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 171.

135. Human Rights Watch, *Nigeria: Permanent Transition*, September 1996, available at <https://www.hrw.org/reports/1996/Nigeria.htm>.

UNFAIR TRIAL AND EXECUTION

On 6 February 1995, Ken Saro-Wiwa, Dr Barinem Kiobel and the other prisoners were allowed to see their lawyers for the first time since their arrest in May the previous year.¹³⁶ They were put on trial by a specially constituted tribunal – The Civil Disturbances Tribunal. Ken Saro-Wiwa, Barinem Kiobel, John Kpuinen, and Saro-Wiwa's deputy in MOSOP, Ledum Mitee, were accused of inciting the murders. The other men were accused of carrying them out. They all faced the death penalty and were denied the chance to appeal.

In September 1995, Amnesty International reported that *“the prosecutions appear to be politically motivated and the proceedings and decisions of the special tribunal set up specifically to try the cases do*

*not satisfy international standards for fair trial.”*¹³⁷

Amnesty International highlighted the following concerns: during their detention, defendants said they were tortured and denied food.¹³⁸ They were held incommunicado for at least eight months, denied access to lawyers and their own doctors.¹³⁹ Even after the start of the trial, the commander of the ISTF, Paul Okuntimo, allowed consultations between defendants and their lawyers only by prior arrangement with him and usually only in his presence.¹⁴⁰ Relatives said they were assaulted by soldiers when trying to visit the defendants, who were held at the Bori camp, which was under the control of Lieutenant-Colonel Okuntimo.¹⁴¹ The tribunal was not independent of government control.¹⁴² The tribunal divided the defendants into two groups and tried them separately, yet simultaneously, on the basis of almost identical indictments and prosecution statements. This was prejudicial to the defendants.¹⁴³



Spill Sites in K-Dere community in Ogoniland, Niger Delta, Nigeria. This community has experienced multiple oil spills since Shell started operations there in the 1960's.

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136. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 32.

137. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995).

138. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

139. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

140. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

141. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 9.

142. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 11.

143. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 14.

On the merits of the case, Amnesty International raised serious concerns about the eyewitness accounts used as evidence by the prosecution.¹⁴⁴ In addition, evidence that supported the defence was not admitted.¹⁴⁵ For example, the judges ignored statements by two key prosecution witnesses that they had been offered bribes to sign false statements incriminating Ken Saro-Wiwa.¹⁴⁶ The bribes allegedly included the offers of job contracts with Shell. One prosecution witness, Charles Danwi, said that representatives of Shell, as well as security agents and government officials, were all present at the meeting where the bribes were offered. Charles Danwi said that in exchange for the bribes, “he was told to identify anyone that the military arrested.”¹⁴⁷ A second prosecution witness, Naayone Nkpah, also said that a representative of Shell, its lawyer O.C.J. Okocha, as well as the commander of the ISTF, Lieutenant-Colonel Okuntimo, were present at the meeting where he was offered bribes.¹⁴⁸ Shell has

always strongly denied it or its representatives was involved in bribing the witnesses.¹⁴⁹

A British criminal lawyer, Michael Birnbaum QC, who observed the trial, concluded that it was deeply unfair.

*“The judgement of the Tribunal is not merely wrong, illogical or perverse. It is downright dishonest. The Tribunal consistently advanced arguments which no experienced lawyer could possibly believe to be logical or just. I believe that the Tribunal first decided on its verdict and then sought for arguments to justify them. No barrel was too deep to be scraped.”*¹⁵⁰

In spite of worldwide protests and condemnation by world leaders, Ken Saro-Wiwa and eight others were convicted and, on 10 November 1995, executed by hanging.¹⁵¹

144. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p.13; Michael Birnbaum QC, *A Travesty of Law and Justice*.

145. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p. 6.

146. Cited in Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, Appendix 10.

147. Cited in Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, Appendix 10.

148. Deposition of Naayone Nkpah, 19 March 2004 (exhibit 24 Nkpah).

149. For example: “The Shell Petroleum Development Company denies all allegations of bribery made during the proceedings of the Ogoni Civil Disturbances Tribunal...We have not paid cash, awarded contracts or used any other means to try to influence events surrounding the cases before the Tribunal.” Shell Nigeria, *Statement by Brian Anderson*, 8 November 1995.

150. Michael Birnbaum QC, *A Travesty of Law and Justice*, p. 2.

151. Ledum Mitee and five others were acquitted.

THE OGONI NINE

Ken Saro-Wiwa: Before launching MOSOP, Ken Saro-Wiwa, from Bane in Ogoniland, was a successful writer. From 1985-90, some 30 million Nigerians tuned in every week to *Basi and Company*, a comedy-drama he wrote for Nigerian TV.¹⁵² Several of his books won international acclaim, including *Sozaboy: A Novel in Rotten English*, and *On a Darkling Plain*.¹⁵³ The prosecution accused Ken Saro-Wiwa of inciting his supporters to kill the four chiefs meeting at Giokoo. It claimed that shortly before the attacks, he told a group of supporters “to deal with the ‘vultures.’”¹⁵⁴ The only witnesses to allege this, Charles Danwi and Nayone Akpa, subsequently signed alleging that the government and Shell had bribed them to make false statements (see above).¹⁵⁵ Ken Saro-Wiwa denied the accusation.¹⁵⁶

Dr Barinem Kiobel: Dr Kiobel was from Kpor in Ogoniland. Between January and July 1994 he was a senior official in the Rivers State government. His post was Commissioner of Commerce, Industry and Tourism.¹⁵⁷ He was arrested on 22 May 1994, and later charged with encouraging the murders of the four Ogoni chiefs. Kiobel protested his innocence, saying that he sought to prevent rather than encourage the violence. Michael Birnbaum QC, who observed the trial, found that the prosecution’s summary of the evidence against Kiobel was unfair, and that the evidence “appears consistent with the claim that [Kiobel] was trying to stop the violence.”¹⁵⁸

Kiobel was unusual among the Ogoni Nine not only because he held a government post, but because he was not a member of MOSOP. The military later claimed that Kiobel was a leading member of MOSOP, something which both Kiobel and Ken Saro-Wiwa denied.¹⁵⁹

It remains uncertain why Kiobel was targeted alongside Saro-Wiwa and his supporters. His wife, Esther Kiobel, believes it was because he had been critical of the government’s operations in Ogoniland, and had refused to collaborate with the government against Saro-Wiwa.¹⁶⁰ His private correspondence show that in the months prior to his arrest, Kiobel had helped communicate concerns about the human rights situation in Ogoniland to Lieutenant-Colonel Komo, the military administrator of Rivers State.¹⁶¹ Even after his arrest, Kiobel bravely campaigned to improve condition in his home area, writing to Komo to appeal for a military withdrawal from Gokana (in Ogoniland) because of “indiscriminate shootings, killing of innocent persons.”¹⁶²

Baribor Bera, from Bera, Ogoniland, was a member of NYCOP, the MOSOP youth organization. The prosecution accused him of leading the mob that actually carried out the murders.¹⁶³ He denied this, and said that in fact he had tried to prevent the violence.¹⁶⁴ Baribor Bera told the court that after his arrest he had been brutally tortured, forced to sign a confession and implicate other defendants.¹⁶⁵

Saturday Dobe worked as a security guard at a bank in Bori, Ogoniland. He denied being a MOSOP member, but said he knew Ken Saro-Wiwa “in person.”¹⁶⁶

152. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 54.

153. J. Timothy Hunt, *The Politics of Bones, Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 53-4.

154. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 71.

155. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 36.

156. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 72.

157. Letter from Lieutenant-Colonel Dauda Musa Komo (Military Administrator, Rivers State) to Barinem Kiobel, 29 July 1994.

158. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, 10.7 and 23.15.

159. Ken Saro-Wiwa's statement to the tribunal, cited in Civil Liberties Organization, *Ogoni: Trials and Travails*, 1996.

160. Amnesty International Interview with Esther Kiobel, Amsterdam, 6 December 2016. In 2003 Esther stated that her husband had publicly disagreed with Lieutenant-Colonel Komo on the subject of Ken Saro-Wiwa.

161. In April 1994, Kiobel facilitated a group of Ogoni chiefs to meet with Lieutenant-Colonel Komo, the military Administrator of Rivers State, and raise their concerns about the situation in Ogoniland. In May 1994, just prior to his arrest, Kiobel forwarded to Komo a letter by a US Congressional Committee that criticized human rights violations in Ogoniland.

162. Letter from Kiobel to Komo, 3 June 1994.

163. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 75.

164. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 76.

165. Transcript of the Ogoni Civil Disturbances Tribunal, Day 4, 23 February 1995, p. 41-5.

166. Statement by Saturday Dobe (undated).

Nordu Eawo was a member of NYCOP, from Nwe-ol, Ogoniland.¹⁶⁷ On 7 July 1995 he told the tribunal that he had been arrested by a leading prosecution witness and taken to his house, where he was beaten and cut on the genitals and head with a sharp stick by other key prosecution witnesses.¹⁶⁸

Daniel Gbokoo was an electrician and farmer in Bera, Ogoniland. He denied being a member of MOSOP, but said his brother might have signed him up as a member of NYCOP without his knowledge while he was in hospital.¹⁶⁹

John Kpuinen, from Bera, Ogoniland, was the deputy president of NYCOP. He denied accusations that he both instigated and took part in the murders, saying he was not present.¹⁷⁰

Paul Levula was an active member of MOSOP, and worked as a clerical officer at a health clinic at Bomu in Ogoniland.¹⁷¹ He denied the charges.¹⁷²

Felix Nuate was a trader and farmer from Loko, Ogoniland, who was an “ordinary member” of MOSOP, according to his widow, Friday Nuate.¹⁷³

Others

Ledum Mitee was the deputy president of MOSOP. Like Ken Saro-Wiwa and Barinem Kiobel, he was accused of inciting the killings. He was acquitted after the prosecution submitted that there was a lack of evidence against him. Yet as trial observer Michael Birnbaum noted, this submission undermined the convictions of all the others. His assessment was that Mitee was acquitted because, “*at least one verdict of not guilty was necessary in order to maintain a pretence of fairness.*”¹⁷⁴

1.2 TIMELINE



1990

26 August – MOSOP launches its campaign for Ogoni rights, with the signing of the Ogoni Bill of Rights.¹⁷⁵

1 November – The Mobile Police Force, using guns and grenades, kill dozens of people protesting against Shell at Umuechem.¹⁷⁶

1992

21 July – Shell airlift a group of Mobile Police Force officers to respond to protests by unemployed youths at its terminal on Bonny Island, next to Ogoniland. The police open fire on the protestors, killing one of them and injuring others.¹⁷⁷

30 November – MOSOP issues a 30-day ultimatum to Shell, demanding that the company pay the Ogonis \$10 billion in royalties and compensation.¹⁷⁸

167. Transcript of interview with Blessing Eawo, 8 February 2017.

168. Amnesty International, Nigeria: The Ogoni Trials And Detentions, Index number: AFR 44/020/1995

169. Statement by Daniel Gboko, 9 July 1994.

170. Michael Birnbaum QC, *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*, p. 17-18.

171. Layers interview with Charity Levula, 2 February 2017.

172. Statement by Paul Levula, undated.

173. Deposition by Friday Nuate, 18 October 2003, p. 68.

174. Michael Birnbaum QC, *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*, p. 19.

175. On file with Amnesty International.

176. Rivers State of Nigeria, *Judicial Commission of Inquiry into Umuechem Disturbances*, January 1991, on file with Amnesty International.

177. Fax from SPDC to SIPC, *Community Disturbances*, 12 May 1993 (ex e); African Concord, “*On the War Path*”, 24 August 1994.

178. See Annex (Exhibit 95. C002151-2153).

TIMELINE CONTINUED



1993

3 January – Peaceful “Ogoni Day” mass protest march. MOSOP declares Shell “persona non grata” in Ogoniland.¹⁷⁹

19 January – Shell announces the suspension of operations in Ogoniland citing security concerns.¹⁸⁰

15-16 February – Shell Nigeria executives travel to London to discuss the crisis with colleagues. At a follow up meeting on 18 February in The Hague, Shell decides to monitor the activities of campaigners, including Ken Saro-Wiwa.¹⁸¹

April – Protests take place against a US firm laying a Shell oil pipeline through Ogoniland.

18 April – The State Security Service (SSS) detain Ken Saro-Wiwa for the first time, holding him without charge and releasing him after 16 hours.¹⁸²

23 April – The SSS detain Ken Saro-Wiwa again, holding him without charge, for 12 hours.¹⁸³

30 April – Troops guarding Shell's pipeline contractors open fire on protestors, hitting 11 people.¹⁸⁴

3 May – Shell suspends the laying of the pipeline and asks the government to deal with protestors.¹⁸⁵

4 May – The army shoots dead a protestor.

11 May – Shell executives meet top government and security officials in order to “mobilise support”. The head of SSS tells Shell that the Ogoni situation “*would be over soon*”.¹⁸⁶

12 June – Presidential elections are held, but then cancelled by President Babangida.¹⁸⁷ On 27 August, Babangida hands over to an “interim national government”, headed by Ernest Shonekan, a former executive of Shell.

21 June – The SSS detain Ken Saro-Wiwa again. He is charged in connection with the MOSOP campaign. Saro-Wiwa suffers from health problems while in jail and he is released a month later on bail.¹⁸⁸

July – The start of a series of armed attacks on Ogonis. Survivors say that they were attacked by men in uniforms, but the government blames the attacks on neighbouring communities.¹⁸⁹

20 October – Following the signing of a government - brokered “peace deal,” a Shell inspection team enters Ogoniland with an armed escort to “ascertain the possibility of [Shell] commencing operations in the area.”¹⁹⁰

23 October – Clash between armed forces and villagers protesting against Shell at Korokoro, Ogoniland. Soldiers fatally shoot one man and injure several more.¹⁹¹

17 November – General Sani Abacha takes power.

13 December – Shell writes to the newly appointed military governor of Rivers State, warning that “disruptions” in Ogoniland and other communities had caused the loss of 9 million barrels of oil that year.¹⁹²

179. Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 119.

180. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p. 2.

181. Minutes of Meeting at Central Offices on Community Relations and Environment, 15-16, and 18 February 1993 (Exhibit 3. Decl of J. Green in Opp to Motion to Dismiss Ric).

182. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 94.

183. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 94.

184. Amnesty International, *UA 163/93 – Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, And 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

185. Letter from J.R. Udofo (GME SPDC) to Rufus Ada George, 4 May 1993 (ex d).

186. Urgent telex from the Managing Director of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

187. Human Rights Watch, *Nigeria: Permanent Transition*, September 1996, available at <https://www.hrw.org/reports/1996/Nigeria.htm>.

188. Ken Saro-Wiwa's account of his detention was later published in the book *A Month and a Day: A Detention Diary*.

189. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

190. Shell Nigeria, *Report of the Joint Location Visit by SPDC and Armed Forces Personnel to Ogoni Area Oil Fields*, 26 October 1993 (Exhibit 5. C003607-16).

191. Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 127.

192. Letter from G.E. Omene (Deputy Managing Director, SPDC) to Lieutenant-Colonel Dauda Musa Komo (Military Administrator, Rivers State), 13 December 1993, (Plaintiffs' Response to Surreply Ex H).

TIMELINE CONTINUED



1994

January – Brian Anderson becomes chairperson of Shell Nigeria

January – The Rivers State Internal Security Task Force (ISTF) is created, under Major Paul Okuntimo, with the stated goal of restoring law and order to Ogoniland.¹⁹³

21 February – ISTF troops shoot at peaceful protestors outside Shell's HQ in Port Harcourt.¹⁹⁴

30 April – Chairperson of Shell Nigeria, Brian Anderson, meets President General Sani Abacha for the first time, and mentions having had no access to Ogoniland for a year.¹⁹⁵

4 May – Shell receives information that the Nigerian security forces are planning a “*massive intervention*” in Ogoniland.¹⁹⁶

12 May – Major Paul Okuntimo sends a confidential memo to the military administrator of Rivers State advising that “*Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence.*” The memo recommended “wasting operations”, and that oil companies should provide funding. The government later denied the authenticity of the document, and Shell said it had never seen a copy.¹⁹⁷

14 May – Shell Nigeria executive, Emeka Achebe, travels to Abuja for discussions with the head of the SSS and government ministers.¹⁹⁸

21 May – Four Ogoni chiefs, who were known to be political opponents of Ken Saro-Wiwa, are murdered.

22 May – Lieutenant-Colonel Dauda Komo, the military administrator of Rivers State, blames the MOSOP leadership and orders their arrest. He does not provide any evidence.¹⁹⁹ Ken Saro-Wiwa is detained, and held without charge. The security forces later arrest a further 14 men.

May-June – Following the arrests, the ISTF launch nightly raids on Ogoni villages, committing numerous human rights violations.

5 August – Shell Nigeria chairperson Brian Anderson discusses the crisis with General Abacha and government ministers.²⁰⁰

193. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

194. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

195. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

196. Meeting with Professor Claude Ake on Ogoni, 4 May 1994 (Exhibit 117. A000127-136).

197. Major P. Okuntimo, *RSIS Operations: Law and Order in Ogoni, Etc*, 12 May 1994, published in: Unrepresented Nations and Peoples Organization, *Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995*, p. 44, available at <http://unpo.org/images/reports/ogoni1995report.pdf>

198. Brian Anderson, *Nigeria Update*, 20 May 1994 (Exhibit 70. DEF 005425-005430).

199. Footage of press conference on file with Amnesty International.

200. Brian Anderson, *Nigeria Update*, 6 August 1994 (Exhibit 62. C004791-004794).

TIMELINE CONTINUED

1995

6 February – Ken Saro-Wiwa, Barinem Kiobel and the other prisoners are allowed to see their lawyers for the first time since their arrest in May.²⁰¹

16 February – Prosecution witness Charles Danwi says that he was bribed by government officials to incriminate the accused. He says that he was offered a house, money and a job with Shell.²⁰² A second prosecution witness, Nayone Akpa, later says that he too was offered a job with Shell. Shell denies that it has bribed witnesses.

16 March – Meeting between Shell executives, the Nigerian High Commissioner and representatives of Nigeria's armed forces in London. Nigeria's High Commissioner tells Shell that "there is every chance" that Ken Saro-Wiwa will be convicted.²⁰³

June – Report by English lawyer Michael Birnbaum, who observed the trial, concludes that the trial was "fundamentally flawed and unfair."²⁰⁴

22 July – Shell Nigeria chairperson Brian Anderson meets General Abacha again in Abuja.²⁰⁵

30/31 October – Ken Saro-Wiwa, Barinem Kiobel and seven others are convicted and sentenced to death, prompting global protests. Six other defendants are acquitted.

10 November – The nine convicted men are hanged in Port Harcourt. Their bodies are dumped in an unmarked grave.

15 November – Shell launches new \$4 billion natural gas joint venture with the Nigerian government.²⁰⁶

201. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, p. 32.

202. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*, Appendix 10.

203. Alan Detheridge to Brian Anderson, *Meeting with Nigerian High Commission*, 16 March 1995 (Exhibit 126. C000225-26).

204. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: Report on the Trial of Ken Saro-Wiwa and Others*.

205. Brian Anderson, *Nigeria Update*, 22 July 1995 (Exhibit 53. A002909-002917).

206. The Independent, 'Day of Decision for Shell on Nigeria Project', 15 November 1995, available at <http://www.independent.co.uk/news/world/day-of-decision-for-shell-on-nigeria-project-1582021.html?amp>



Shell Oil Pipelines, Ogoni region, Nigeria, 1994

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PART TWO: SHELL'S ROLE IN THE HUMAN RIGHTS VIOLATIONS IN Ogoniland

This section of the report examines the role played by the UK-Dutch multinational Shell and its Nigerian operations in the grave human rights violations that occurred in Ogoniland between January 1993 and the execution of the Ogoni Nine on 10 November 1995. Many of these violations also amounted to criminal acts. That the company was a central player in the events in Ogoniland is indisputable: MOSOP was protesting Shell's impact on the Ogoni community. Shell stopped operations in Ogoniland and was, throughout this period, seeking ways to re-enter the area and end the protests. A review of the evidence raises a serious question about the extent to which

Shell bears responsibility for the grave violations that occurred. The following chapters set out the evidence collated by Amnesty International.

2.1 WHAT SHELL KNEW AND WHEN

SHELL UNDERSTOOD THE RISKS OF CALLING FOR THE INTERVENTION OF THE SECURITY FORCES

Shell was fully aware, from at least November 1990 when the incident at Umuechem took place, that the Nigerian state was willing to use excessive force to address demonstrations by communities in the oil-producing regions, and that these tactics resulted in serious human rights violations, including unlawful killings. As noted earlier, an official inquiry found that over the course of two days, the Mobile Police attacked Umuechem, *"like an invading army that had vowed to take the last drop of the enemy's blood"*.²⁰⁷ Shell had called for MOPOL's intervention

207. Rivers State of Nigeria, *Judicial Commission of Inquiry into Umuechem Disturbances*, January 1991, p. 23, on file with Amnesty International.

at Umuechem to deal with protests, and saw the absolutely devastating results.

From that moment on, there can be no doubt that Shell understood that the Nigerian security forces used excessive force and that lives were at risk when they were deployed to deal with protests. Because of their knowledge of these risks, Shell's managers, in Nigeria and in the UK and the Netherlands, had a responsibility to avoid any action that would encourage or otherwise support military or security forces interventions in the oil-producing areas.

These risks were confirmed by four subsequent incidents involving protestors (which preceded the military crackdown in Ogoniland in May 1994): the death of a man and injury of several others on Bonny Island in July 1992 after Shell airlifted a "Rapid Intervention Force" of Mobile Police officers to the location;²⁰⁸ the April 1993 shootings by the army during a protest over the laying of a pipeline, during which soldiers shot and wounded 11 villagers in Ogoniland;²⁰⁹ and, the killing of one man at a protest at Nonwa village in Ogoniland May 1993, after the army again opened fire.²¹⁰ By March 1994, Shell received further confirmation, if it was needed, of the specific risks associated with the army. On 21 February, the Internal Security Task Force (ISTF), commanded by Major Paul Okuntimo, shot at thousands of peaceful protestors outside the Shell HQ in Port Harcourt.²¹¹

Subsequent public statements by the company showed that executives were fully aware of these risks as well as their responsibility to avoid any action that could lead to violence. For example, in 1996 Shell said that the Umuechem incident had

led to some changes in how it communicated with the security forces:

*"The event affected our policy on community disturbances and we have stepped up efforts to communicate with police our rules of conduct in event of community disturbances – that force will not be used in the event of community disturbances. This has prevented bloodshed on a number of occasions."*²¹²

In other public statements, Shell executives claimed that the company would only operate in areas with the consent of the local communities, and therefore not have to rely on the protection of the security forces at all. The then Chairperson of Shell Nigeria, Brian Anderson, stated in 1995 that, *"we have consistently spoken out against violence and have said we will not operate behind guns."*²¹³

In several top-level meetings, Shell did tell government officials that it did not want the military to protect its staff. On 5 August 1994, Brian Anderson met the minister of state for petroleum, and told him:

*"I was concerned that the security forces might get trigger happy, and that I did not want Shell staff injured...you only had to see what had happened at Umuechem at 1990 and the subsequent degradation of our relationship with the Ogoni etc. to realise why we were adamant about this."*²¹⁴

These statements confirm that Shell knew and understood the risks associated with calling for the intervention of the security forces, and especially the army and Mobile Police, in dealing with protestors.

208. Fax from SPDC to SIPC, *Community Disturbances*, 12 May 1993 (ex e); African Concord, *On the War Path*, 24 August 1994.

209. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

210. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

211. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

212. Shell Nigeria, *Nigeria Brief: Ogoni and the Niger Delta*, 1996 (wiwa 2/51).

213. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

214. Brian Anderson, *Nigeria Update*, 6 August 1994 (Exhibit 62. C004791-004794).

SHELL KNEW ABOUT THE HUMAN RIGHTS VIOLATIONS IN Ogoniland

From mid-1993, as the violence increased in Ogoniland, it is inconceivable that Shell was not aware of the worsening human rights situation. As detailed earlier, starting in July 1993, there were a series of armed attacks on Ogonis, which the government blamed on neighbouring communities. The involvement of the armed forces was widely reported on at the time, both in Nigeria and internationally.²¹⁵ Ken Saro-Wiwa and other MOSOP leaders were repeatedly detained and ill-treated in detention throughout 1993. These arrests were also widely reported on.²¹⁶ In January 1994, the military administrator of Rivers State created the ISTF, under the command of Major Paul Okuntimo. Shell had been aware of Major Okuntimo since at least October 1993 when he was involved in a violent clash with anti-Shell protestors in Korokoro, Ogoniland. On 21 February 1994, the ISTF shot at thousands of peaceful protestors outside the Shell HQ in Port Harcourt.²¹⁷ Then, from May 1994, the ISTF carried out repeated attacks in Ogoniland, which were also widely reported on.²¹⁸ Paul Okuntimo even admitted on television that the violence was occurring.²¹⁹ Organizations, including Amnesty International, published numerous “Urgent Actions” and other documents, drawing attention to specific incidents, such as the detention of Ken Saro-Wiwa and extrajudicial executions of Ogoni residents by the security forces.²²⁰

It is not in doubt that Shell closely monitored the Nigerian and international media. Different Shell

documents confirm that the company watched media reporting of the crisis. For example, on 30 May 1994, Brian Anderson told colleagues in Europe about a CNN report which reported on Ken Saro-Wiwa's “*detention, torture and withholding of essential medicines (he has a heart problem apparently).*”²²¹

On 6 June 1994, Anderson informed his colleagues in Europe that he had heard about deaths and other abuses in Ogoniland:

*“There were unsubstantiated rumours last week that some 100 Ogoni people had been killed (either by the security forces or by intercommunal fights, or perhaps both). There have been press report that Ogonis were being picked up and I was told some 60 remain in detention at this time. Obviously things are pretty bad down there.”*²²²

Executives were concerned about harm to Shell's reputation and followed the activities of campaigning groups like MOSOP, Greenpeace, The Hague-based Unrepresented Nations and Peoples Organization, and Amnesty International as well as the UK company, The Body Shop, whose activist founders were supportive of MOSOP. In February 1993, Shell Nigeria executives travelled to discuss the crisis with colleagues in London. Internal documents show that following this, Shell decided to keep a record of individuals and organizations that took part in protests and campaigns around the world, “*to avoid unpleasant surprises and adversely affect the reputation of the Group as a whole.*”²²³

215. Karl Maier, *This House Has Fallen: Nigeria in Crisis*, p. 100-01.

216. J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p. 94.

217. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

218. Uche Maduemesi, *This is Conquest*, TELL, 18 July 1994; The Guardian (Nigeria), *Terror in Ogoniland*, 25 July, 1994; Claude Ake, *Nightmare of State Violence*, TELL, 25 July 1994; Tomson Ajayeoba, *The Killing Field*, TELL, 25 July 1995; Ibiba Don Pedro, *Inside Ogoniland*, The African Guardian, 8 August 1994; Sam Olukoya, *The Ogoni Agony*, Newswatch, 26 September 1994.

219. In Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

220. For a list of Amnesty publications on Nigeria in 1993, see <https://www.amnesty.org/en/search/?q=nigeria&ref=&year=1993&lang=en&adv=1&sort=relevance&contentType=2564>. For Amnesty publications on Nigeria in 1994, see <https://www.amnesty.org/en/search/?q=nigeria&ref=&year=1994&lang=en&adv=1&sort=relevance&contentType=2564>. For Amnesty publications on Nigeria in 1995, see <https://www.amnesty.org/en/search/?q=nigeria&ref=&year=1995&lang=en&adv=1&sort=relevance&contentType=2564>

221. Brian Anderson, *Nigeria Update*, 30 May 1994 (Exhibit 65. C004811-004814).

222. Brian Anderson, *Nigeria Update*, 6 June 1994 (Exhibit 72. DEF 0009987-0009991B).

223. E.g. Minutes of Meeting at Central Offices on Community Relations and Environment, 15-16, and 18 February 1993 (Exhibit 3. Decl of J. Green in Opp to Motion to Dismiss Ric).

Shell's knowledge went beyond widely reported events. As detailed later in this report, Shell staff regularly shared information with the Nigerian security services, and managed a unit of undercover police officers which conducted surveillance within Ogoniland.²²⁴ Company documents also show that Shell received advance information of the government's plans to tackle MOSOP. At a meeting in May 1993, the senior most civilian in the government and a former Shell director, Chief Ernest Shonekan, told Shell executives of the ultimately successful plan to weaken MOSOP. This was to conduct a *"concerted campaign to split off the more radical leaders and youth from the more traditional elders."*²²⁵

The next year, on 30 April 1994, Brian Anderson, met President General Sani Abacha for the first time, and discussed the fact that Shell had not been able to operate in Ogoniland for over a year.²²⁶ According to Anderson's account of the meeting, the president said that in response to MOSOP's campaign, he would suspend all *"development"* work in the region.²²⁷ Although this was not military action, it was a clear signal that Nigeria's government was going to make all 500,000 Ogonis suffer for their anti-Shell campaign.

A few days later, 4 May 1994, academic and peace activist Professor Claude Ake warned then senior Shell manager Emeka Achebe that he had seen a *"Nigeria Police Force Operations Order"* outlining plans for a *"massive intervention"* in Ogoniland. Professor Ake told Achebe that *"such an intervention could easily result in confrontation, loss of lives and an escalation of the current crisis."*²²⁸ Achebe wrote up his meeting with Professor Ake and passed the

notes on to senior Shell colleagues in Europe, so they too would have been aware of the government's plans.

On 21 May 1994, the four Ogoni chiefs were murdered, prompting the security forces to launch a brutal crackdown in Ogoniland. On 30 May, Brian Anderson reported to his superiors in Europe that he had discussed the situation with Nigeria's oil minister Don Etiebet, who referred to it as a *"showdown"*:

*"(His) comments were of some satisfaction that the showdown had come at last and that the government could use Saro-Wiwa's mistake to advantage."*²²⁹

Shortly afterwards, on 26 July 1994, Brian Anderson received confirmation about the impact that this *"showdown"* had had. The Dutch ambassador informed him that according to his sources, the armed forces had killed some 800 Ogonis since the end of May.²³⁰ The ambassador also reported that under pressure from some European countries, *"the army have withdrawn a Major who was widely believed to have been behind the brutalities against the Ogonis."*²³¹

Put together, the evidence shows beyond doubt that Brian Anderson and other Shell executives (including those in London and The Hague to whom Anderson reported) were well aware – at the time – that the Nigerian armed forces were carrying out human rights abuses in Ogoniland. At the very least this knowledge should have prompted Shell to take active steps to ensure it was not contributing to those abuses.

224. Deposition of George Ukpog, 23 October 2003, p279.

225. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. C004769-004771).

226. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

227. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

228. Meeting with Professor Claude Ake on Ogoni, 4 May 1994 (Exhibit 117. A000127-136).

229. Brian Anderson, *Nigeria Update*, 30 May 1994 (Exhibit 65. C004811-004814).

230. Brian Anderson, *Nigeria Update*, 26 July 1994 (Exhibit 48. A000001-6).

231. There is no public record of who this major was. It was not Major Paul Okuntimo, the commander of the ISTF, who was later promoted to Lt. Colonel, and only removed as commander of the ISTF in July 1995. This is according to a letter sent by Ken Saro-Wiwa to Sister Majella McCarrom, 8 July 1995, available at <http://maynoothdigitalcollections.ie/catalog/8049g504g>

SHELL'S CLOSE RELATIONSHIP WITH GOVERNMENT

In the 1990s Shell was the most important company in Nigeria. In 1995, the year that the military regime hanged Ken Saro-Wiwa and the rest of the “Ogoni Nine”, Shell pumped almost one million barrels of crude oil a day, roughly half of Nigeria’s total daily oil production.²³² Shell was also a business partner of the Nigerian state. Its subsidiary in Nigeria, the Shell Petroleum Development Company, operated (and still operates) the country’s largest oil joint venture. Shell owns a 30% share in this joint venture. The largest shareholder is the Nigerian government, through the Nigerian National Petroleum Corporation (NNPC), which has a 55% stake.²³³ The importance of this partnership was highlighted in a company strategy document, written in August 1995. According to this, the most important of seven “critical success factors” for Shell Nigeria was, “to have mutually beneficial relationships with the authorities.”²³⁴

Shell’s importance to the Nigerian economy, and its business relationship with the Nigerian state, inevitably meant that executives had frequent contact with the highest levels of the government. For example, company records show that at the height of the crisis the then chairperson of Shell Nigeria, Brian Anderson, had three long, private conversations with General Sani Abacha, at the President’s residence in Abuja between April 1994 and July 1995. At the end of the first of these meetings, which Brian Anderson detailed in confidential memos, the men exchanged personal numbers, and promised to stay in touch with one another.²³⁵ In 1996, Shell’s London-based chief economist, Vince Cable, also reported meeting the president in private. In his memoirs, Vince Cable wrote that he was twice taken to meet Abacha “at the dead of night” to present the findings of his report on Shell’s Nigeria operations.²³⁶

Company records show during this period there were numerous meetings between other Shell executives and senior government officials at both the national and state level. Contact was regular. Shell staff and government officials also had frequent opportunities to meet socially. In Port Harcourt, capital of Rivers state, Shell invited leading officials, including the state governor, the Chief Justice and the Commissioner of Police to join its staff club – a unique facility in the region, boasting of sports facilities, a restaurant and bar.²³⁷

Several leading government figures at this time also had their own professional ties to Shell. From 1986-92, Chief Ernest Shonekan was a non-executive director of Shell Nigeria. From 1993 Chief Shonekan was a key figure in government, first under the presidency of General Ibrahim Babangida, then under General Sani Abacha.²³⁸ He was also, briefly, Nigeria’s head of state during the short interim period between Babangida and Abacha. Shell memos show that from 1993-95, Chief Shonekan acted as an intermediary between Shell and the government, and an advisor to the company. Among other useful tasks, he facilitated the relationship between Brian Anderson and General Abacha, organizing meetings and passing on messages.²³⁹

Another key figure during this period was Chief Rufus Ada George, the governor of Rivers State, of which Ogoniland is a part, from 1992 to late 1993. He had previously worked for Shell as a member of staff (as an accountant) from 1970-79.²⁴⁰ While governor, Chief Ada George led the government’s day-to-day response to the Ogoni crisis. He was in regular contact with Shell staff.

232. Deposition of George Ukpog, 23 October 2003, p. 279.

233. The other shareholders are the French company, Total (10%) and the Italian firm ENI (5%). See Shell Nigeria, Shell in Nigeria Portfolio, April 2015, <http://s08.static-shell.com/content/dam/shell-new/local/country/nga/downloads/pdf/portfolio.pdf>

234. The Shell Companies in Nigeria, Country Business Plan, 1996 (Exhibit 1. Decl of J. Green in Opp to Motion to Dismiss Ric).

235. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

236. Vince Cable, *Free Radical*, 2009, p. 197.

237. Deposition of Egbert Imomoh, 2003, p. 25.

238. Alan Detheridge and Noble Pepple, *Third World Quarterly*, p. 480.

239. Brian Anderson, *Nigeria Update*, 6 December 1995 (Exhibit 138. A002883-84).

240. Shell, *WCC Report: Ogoni – The Struggle Continues. Comments by Shell*, 15 September 1998.

Finally, Shell's lawyer from 1987 to at least 2003 was O.C.J. Okocha.²⁴¹ For two years of this same period, from 1990-92, he served as the Attorney General of Rivers State.²⁴² It is not clear whether he continued to act as Shell's external solicitor while also holding this post. If he did then there would have been a clear conflict of interest between acting as the senior law officer in the state, and representing a private corporation. As Attorney General, O.C.J. Okocha would certainly have had to deal with legal issues relating to the largest company in the state, Shell. The only documented example of this was to do with the violence at Umuechem in 1990 (detailed earlier), in which MOPOL officers killed dozens of people who were protesting against Shell. During his spell as Attorney General, O.C.J. Okocha decided not to take legal proceedings against any of the officers involved in the incident.²⁴³ O.C.J. Okocha continued to be hired by Shell after he stood down as Attorney General. For example, in 1995 his firm secretly observed the trial of Ken Saro-Wiwa and the others on Shell's behalf (see section below).

Shell has subsequently played down the significance of the relationship between the company and these three men.²⁴⁴ It noted that there was a gap of 13 years between Rufus Ada George leaving Shell and becoming Governor of Rivers State. The company stated that Ernest Shonekan had never been an employee of Shell Nigeria, and that when he joined Shell's board as a non-executive director in 1986, the company obviously had had no idea that he would become Nigeria's head of state nine years later, in 1993. Finally, Shell argued that it could "*hardly avoid*" hiring Mr Okocha, as he was one of only two Senior Advocates of Nigeria (SAN) in Rivers State during this time.²⁴⁵ SANs are the most senior lawyers in Nigeria. Shell's statement is misleading. According to his own website, O.C.J. Okocha became a SAN in 1995, fully eight years after Shell first hired him, and three years after he stood down as Attorney General of Rivers State.²⁴⁶ If Shell was only interested in hiring a SAN, it could have found one elsewhere, for example in Lagos, where most of them are based.

Other examples of senior governmental officials with close Shell ties during this period are Dr Edmund Daukuru, who left his senior managerial role in Shell to become the managing director of the state-owned Nigerian National Petroleum Corporation from 1992-3.²⁴⁷ In 2000, the government appointed Godwin Omene (who was the Deputy Managing Director of Shell Nigeria from 1992-5) to head the "Niger Delta Development Commission."²⁴⁸

These examples illustrate the extent to which, as political scientist Jędrzej George Frynas describes, Shell was effectively "*embedded in state structures*."²⁴⁹ As the former chairperson of Shell Nigeria, Brian Anderson, put it to his superiors in 1994, "*the government and the oil industry are inextricably entangled*."²⁵⁰ Shell's close relationship with the Nigerian government, its business partner, meant that it was able to regularly communicate its concerns to officials at the highest level and seek to influence government policy. As this report will later show, Shell did not use this privileged position to advise the country's military rulers to avoid committing human rights violations in Ogoniland, even though they knew these were occurring.

241. Declaration of O.C.J. Okocha, 8 December 2003 (332 1.16.09 Decl of R. Millson Ex. 1-39).

242. Declaration of O.C.J. Okocha, 8 December 2003 (332 1.16.09 Decl of R. Millson Ex. 1-39).

243. Jędrzej George Frynas, 'Shell in Nigeria: A Further Contribution', *Third World Quarterly*, Vol. 21, No. 1 (Feb., 2000), p. 159.

244. Alan Detheridge and Noble Pepple, *Third World Quarterly*, p. 480.

245. Alan Detheridge and Noble Pepple, *Third World Quarterly*, p. 480.

246. <http://okochaandokocha.com/legal-practitioners-notary-public-port-harcourt-rivers-state-nigeria/>

247. Andy Rowell, James Marriott and Lorne Stockman, *The Next Gulf*, p99.

248. *Former Shell executive nominated to lead Nigeria's NDDC*, Dow Jones, 13 October 2000, available at <http://www.gasandoil.com/news/2000/11/cna04439>

249. Jędrzej George Frynas, *Third World Quarterly*, p. 464.

250. Brian Anderson, *Nigeria Update*, 14 March 1994 (Exhibit 69. C004849-004854).



↑ Oil pollution around the Bomu Manifold, a Shell facility in Ogoniland, August 2015
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2.2 SHELL IGNORED THE HUMAN RIGHTS VIOLATIONS AND ENVIRONMENTAL CONCERNS AND SAW Ogoniland AS AN ECONOMIC PROBLEM

The section above demonstrates that, according to the available evidence, Shell was well aware of two things. Firstly, that when the Nigerian armed forces responded to oil protestors, there was a high risk of them using excessive force. Secondly, that after MOSOP's protests forced Shell out of Ogoniland in January 1993, the armed forces committed grave human rights violations there. These became worse after the ISTF launched raids from May 1994 onwards.

However, despite having this knowledge, the evidence shows that when Shell executives communicated with the military government, with whom they had close relations, they did not discuss the violations

taking place, or try to persuade the government to stop them. Instead, as the following section will demonstrate, Shell repeatedly reminded the government of the economic cost of the protests. In public statements, the company also repeatedly played down the significance of MOSOP's environmental and social concerns, in line with the government's own position. Shell downplayed or denied these concerns even while knowing them to be true.

ECONOMIC MOTIVATION TO END THE OGONI PROTESTS

Shell repeatedly framed the Ogoniland protests to senior government representatives as an economic problem for the country. Documents released by Shell reveal how the company reminded the government of the cost of the protests. For example, on 7 January 1993, Shell sent a letter to the Governor of Rivers State warning that protests were holding up the laying of the important Trans Niger pipeline. It stated

that this pipeline project was “*very crucial to our capacity to meet our National Production Target*”.²⁵¹ On 19 March 1993 Shell sent another letter to the governor requesting his “*intervention to enable us carry out our operations given the strategic nature of our business to the economy of the nation*.”²⁵² After protests had forced Shell to suspend the laying of the pipeline, the company explained the decision in a letter to Governor Ada George, on 4 May 1993:

*“I regret to inform you that work on the Bomu end of the line has been forced to stop because of some community intervention... As at now, work has been suspended in this area of the line which carries a significant portion of the crude oil production from Shell and Elf operations.”*²⁵³

Later in the year, once General Sani Abacha seized power in a coup and replaced all of Nigeria’s civilian state governors with military administrators, Shell wrote to the newly appointed military administrator of Rivers State, saying that “*community disturbances, blockade and sabotage*” had led to a drop in production of almost nine million barrels during the course of the year and asked for help to minimize the disruptions. In the letter, dated 13 December 1993, Shell named the communities, including those in Ogoniland, where these “*community disturbances*” had taken place.²⁵⁴

From this period in late 1993, all major decisions in Nigeria, were taken by General Sani Abacha following the military takeover. Because of its position as the most important company in the country, Shell had the opportunity to directly influence him. The then chairperson of Shell Nigeria, Brian Anderson, had at least three meetings with Sani Abacha in 1994-95,

during the height of the Ogoni crisis. During their first discussion (which took place on 30 April 1994), Anderson linked the MOSOP protests to damage to Shell’s production infrastructure:

*“I raised the problem of the Ogonis and Ken Saro-Wiwa, pointing out that Shell had not been in the area for almost a year. We told him of the destruction that they had created at our sites of which he was apparently unaware.”*²⁵⁵

In the same meeting, while discussing investment in Nigeria, Brian Anderson reported that:

*“I made the point that we were long term players and that we were prepared to continue to invest so long as we felt that there was political stability and that the economic terms and conditions of doing business were sufficiently attractive.”*²⁵⁶

The protests in Ogoniland threatened both the “*political stability*” and attractive “*economic terms of conditions*” that Anderson had said that Shell wanted in Nigeria. It is worth noting that at this time, Shell was preparing to increase its investment in Nigeria, with the \$4 billion Liquefied Natural Gas project, to be built on Bonny Island close to Ogoniland. This was described by the company as “*the largest investment project in Africa*.”²⁵⁷ Shell announced that this project was going ahead just five days after the execution of the Ogoni Nine.²⁵⁸ Given this, it is inevitable that discussions about the major investment were ongoing with the Nigerian State throughout the Ogoni crisis, and were a top priority for the company.

251. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 7 January 1993 (Wiwa 2, exh 11).

252. J.R. Udofia, Shell Nigeria to Rufus Ada George, Governor, Rivers State, 19 March 1993 (Exhibit 12. Decl of J. Green in Opp to Motion to Dismiss Ric).

253. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (ex d).

254. Letter from G.E. Omene (Deputy Managing Director, SPDC) to Lieutenant Colonel Dauda Musa Komo (Military Administrator, Rivers State), 13 December 1993, (Plaintiffs’ Response to Surreply Ex H).

255. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

256. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

257. Shell International Exploration and Production, *Note for Information: Review of Strategy for Nigeria*, 1996, p. 1 (Exhibit 9. Decl of J. Green in Opp to Motion to Dismiss Ric).

258. The Independent, ‘*Day of Decision for Shell on Nigeria Project*’.

Shell clearly saw MOSOP as a threat to its business in Nigeria. In repeatedly describing the economic costs of the Ogoni protests, Shell gave the Nigerian military government – its business partner – a strong motive to crack down on Ken Saro-Wiwa and MOSOP. As noted earlier, oil was the mainstay of the Nigerian economy, accounting for almost 96% of all exports.²⁵⁹

NO MEANINGFUL ENGAGEMENT WITH ENVIRONMENTAL AND COMMUNITY CONCERNS

While framing the Ogoni protests as a largely economic problem, Shell also downplayed the community's concerns about the environment and other issues. In public statements, Shell denied that its operations had caused environmental “devastation” in Ogoniland as MOSOP alleged. Shell maintained that such allegations were simply “not true.”²⁶⁰ The company wrote to Greenpeace in 1995, advising it to stop campaigning on the issue as “the problems that face the communities of the Niger Delta are political and economic and not environmental.”²⁶¹

Yet the fact that MOSOP was right about the devastating impact of pollution in Ogoniland, and had a legitimate grievance, has been borne out by several high profile revelations and studies. For example, the impact of oil operations in Ogoniland was taken up by the African Commission for Human and Peoples' Rights (ACHPR) in 1996.²⁶² After examining the case, the ACHPR issued a landmark decision in 2002, which found Nigeria to be in violation of a number of rights guaranteed under the African Charter, 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.”*²⁶³

The African Commission found that pollution and environmental degradation in Ogoniland were at a level that was “humanly unacceptable and has made living in the Ogoniland a nightmare.”²⁶⁴

In 2011 a scientific study of the environment in Ogoniland was conducted by the United Nations Environment Programme (UNEP). The UNEP report confirmed that the land, air and water of Ogoniland were polluted, that groundwater supplying boreholes was contaminated, and that agriculture and fisheries – the main local livelihoods – have been significantly undermined. The UNEP report made clear that the oil pollution dates back decades and raised serious concerns about its impact on public health:

*“Since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives.”*²⁶⁵

Despite Shell's public denials about the impact of the oil industry on the environment and human rights, internal documents released as part legal

259. Jędrzej George Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*, p. 25.

260. Shell Nigeria, *Nigeria Brief: Ogoni and the Niger Delta*, 1996 (wiwa 2/51).

261. SIPC letter to Greenpeace, 2 February 1995.

262. Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009), p 23, available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>.

263. 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>.

264. 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>.

265. United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, p204 available at: www.unep.org/disastersandconflicts/CountryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx.

proceedings reveal that senior staff were actually highly concerned about the poor state of its ageing, poorly maintained and leaky pipelines. In a 1991 performance review of Shell Nigeria, senior Europe and Nigeria-based staff concluded that the environment “represents a major challenge with many years to catch up.”²⁶⁶ Following meetings in London and The Hague in March 1993, Shell executives agreed that in the wake of the MOSOP protests, the health, safety and environment aspects of Shell Nigeria’s “operational activities will require particular attention.”²⁶⁷

In November 1994, the head of environmental studies for Shell Nigeria, Bopp Van Dessel, resigned over the issue, complaining that he felt unable to defend the company’s environmental record in the wake of criticism from Greenpeace and other organisations, “without losing his personal integrity.”²⁶⁸ In an “exit interview” with the head of human resources, Van Dessel said that senior managers, including the then chairperson, Brian Anderson, had not acted on his advice.²⁶⁹

Bopp Van Dessel went public with these allegations in a TV interview in 1996:

*“(Shell managers) 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.”*²⁷⁰

In December 1994, another internal briefing paper, which was shared with Shell’s managing directors in London and The Hague, exposed the scale of the failure, revealing that the company had not properly funded improvements to its pipelines and other infrastructure in Nigeria for years:

*“The production infrastructure of [Shell Nigeria] is on average over 25 years old. In response to extended periods of severe budgetary constraints through much of the 1980s little was done to upgrade the facilities to current group standards. This, combined with an essentially reactive approach to maintenance, has led to a degradation in facility integrity which is clearly recognized as being unacceptable. One measure of this deterioration is the frequency and severity of oil pollution incidents caused by corrosion and other integrity failures in the production system.”*²⁷¹

None of these concerns were made public by Shell, which instead blamed the majority of oil spills in Ogoniland on the local communities. For example, in January 1995, Shell stated that:

*“In the Ogoni area, investigations show that 69 per cent of all spills between 1985 and the start of 1993 have been caused deliberately by the population...to win compensation and make political gains.”*²⁷²

266. Shell, 1991 *Chief Executives Performance Review*, 1991, p 4 (Exhibit 36. Decl of J. Green in Opp to Motion to Dismiss Ric)

267. Minutes of Meeting at Central Offices on Community Relations and Environment, 15-16 February (Exhibit 3. Decl of J. Green in Opp to Motion to Dismiss Ric).

268. Shell, *Exit Interview with JP Van Dessel*, 28 November 1994 (Exhibit 82. DEF 057557).

269. Shell, *Exit Interview with JP Van Dessel*, 28 November 1994 (Exhibit 82. DEF 057557).

270. ITV World in Action, May 1996, cited in Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009), p 54, available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>.

271. Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, (Exhibit 5. Decl of J. Green in Opp to Motion to Dismiss Ric). The state of Shell’s pipelines running through Ogoniland have remained a concern for Shell ever since. An internal Shell email from December 2009, revealed in UK court case, stated that: “[the company] is corporately exposed as the pipelines in Ogoniland have not been maintained properly or integrity assessed for over 15 years.” Papers referred to in the UK court case revealed that senior Shell employees were concerned that Shell’s pipelines in the Bodo area of Ogoniland had reached the end of their lives and needed replacing to avoid danger to lives, the environment and the economy. The court documents refer to an internal presentation, carried out in 2001 by Shell and Shell Global Solutions International, which stated that the “the remaining life of most of the [Shell] Oil Trunk lines is more or less non-existent or short, while some sections contain major risk and hazard”. These documents were released as part of a court case in London in September 2015. See Amnesty International, *Court documents expose Shell’s false claims on Nigeria oil spills*, 13 November 2014, available at: www.amnesty.org/en/latest/news/2014/11/court-documents-expose-shell-s-false-claims-nigeria-oil-spills

272. Shell Nigeria, Nigeria Brief: *The Ogoni Issue*, 1 January 1995 (cc).

In highlighting a “political” motive, Shell appeared to be implying that MOSOP was involved, yet it provided no evidence to support this claim, and none of the internal Shell records that were released in connection to the US court case support it. In 1996, following a complaint from Friends of the Earth, Britain’s Advertising Standards Authority said that Shell had failed to provide evidence that spills occurring in Ogoniland after 1993 were caused by sabotage:

*“The Authority noted the information described incidents that could have been sabotage but did not substantiate this. The Authority considered the advertisers had not given enough information to support the claim and asked for it not to be repeated.”*²⁷³

Amnesty International and other organisations have since documented a number of instances when Shell has made false claims about the cause of oil spills.²⁷⁴

In response to criticism over its environmental record, Shell set up the “Niger Delta Environmental Survey” in January 1995. The purpose of this was “to start to produce much needed data in 1996 to put (Shell Nigeria’s) environmental record in perspective and provide a common baseline for discussion.”²⁷⁵ Although Shell provided the survey with at least \$2 million in funding, the company later sought to present it as an independent body. It invited peace activist and academic Professor Claude Ake to sit on its steering committee as a representative

of the communities of the oil-producing region. Professor Ake resigned five days after the execution of the Ogoni Nine, on 15 November 1995, describing the survey as “*diversionary and morally repugnant*.”²⁷⁶ The survey has been widely criticised by environmentalists and its findings have never been made public.²⁷⁷

In public documents, Shell also regularly described its efforts to fund community development projects in the Niger Delta and Ogoniland.²⁷⁸ However, internal documents reveal that executives were concerned that staff were mismanaging community relations. For example, an internal Shell memo dated 23 February 1993 referred to conversations that the Lagos-based Head of Health, Security and Environment at Shell Nigeria had with the general manager of Shell’s contractor, Willbros, at a time when Willbros was laying a pipeline through Ogoniland in the face of community opposition. The memo was sent to senior staff of Shell Nigeria:

*“[General Manager of Willbros]...believes that Shell has a lack of sensitivity for the villagers, has poor lead time planning in relation to negotiating with the villagers prior to bull dozers arriving to destroy farmland, and is willing to accept lengthy delays in resolving villagers’ claims [...]. Unfortunately, his view is shared by the majority of the [Shell] and contractor staff I met on my visits [...]”*²⁷⁹

273. Friends of the Earth, ASA UPHOLD COMPLAINTS AGAINST SARO-WIWA ADVERT, 10 July 1996, available at http://legacy.www.foe.co.uk/resource/press_releases/19960710010011.html.

274. See, for example, Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009), available at <https://www.amnesty.org/en/documents/AFR44/017/2009/en/>; Amnesty International, *Bad Information: Oil Spill Investigations in the Niger Delta* (Index: AFR 44/028/2013), available at: <https://www.amnesty.org/en/documents/af44/028/2013/en/>; Amnesty International, *Clean It Up: Shell’s False Claims about Oil Spill Response in the Niger Delta* (Index: AFR 44/2746/2015), available at: <https://www.amnesty.org/en/documents/af44/2746/2015/en/>.

275. *The Shell Companies in Nigeria*, Country Business Plan, 1996, (Exhibit 1. Decl of J. Green in Opp to Motion to Dismiss Ric)

276. Ike Okonto and Orono Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, Verso, 2003, p168.

277. In 2003, its director, Jonathan Amakiri, stated 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.” See *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.

278. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1 January 1995 (cc).

279. Shell memo from the Head of Health, Security and Environment in Lagos, on ‘Community Problems – Willbros Incident and SPDC Operations in General’, 23 February 1993 (Maria 2, exh. J).

Other Shell documents refer to managers' concerns about staff attitudes and competency. Addressing the environmental problems would *"involve improving staff motivation and training,"* the company acknowledged in 1993. A December 1994 document noted that, *"vigorous staff reorientation will continue in order to imbue an attitude of mutual understanding with communities and of respect for the environment."*²⁸⁰

This issue was also raised by General Sani Abacha in his first meeting with Brian Anderson on 30 April 1994. Abacha said he thought the "company attitude towards the locals could be better", and Anderson agreed. However, there is no evidence that Amnesty International is aware of that Shell took any meaningful action to address the genuine concerns of the Ogoni (and other communities).²⁸¹

THE GOVERNMENT AND SHELL CO-ORDINATED PUBLIC RELATIONS

Documents released by Shell also reveal that the company co-ordinated its public relations response to the Ogoni crisis with the Nigerian government – discussing and keeping each other informed of key developments. For example, in May 1994, having learnt that the UK's Channel 4 was due to broadcast a highly critical documentary, Shell executive Emeka Achebe travelled to Abuja to inform the head of the State Security Service (SSS). He wanted to let him and senior officials, including the Minister of Information, know that they *"should be aware of the potential problems they would have to face from a hostile media both here and in Europe."*²⁸² Shell was

so concerned by the likely fallout of this film, that Brian Anderson also tried (and failed) telephoning General Abacha to warn him about it.²⁸³

"I think that it is important that we are seen by him to be assisting the State by giving him the requisite intelligence as it comes to us," Anderson wrote in a memo to his colleagues in Europe.

The government and Shell both released a series of documents during this period that made similar allegations about Ken Saro-Wiwa and MOSOP. These documents played down or did not mention the existence of human rights violations in Ogoniland. For example, in January 1995, Nigeria's Ministry of Information published a booklet entitled, *Crisis in Ogoniland: How Saro-Wiwa turned MOSOP into the Gestapo*.²⁸⁴ That same month, Shell released a brochure to set *"out the facts as part of the company's commitment to open, honest debate."*²⁸⁵ Yet in this document, Shell did not refer to the grave violations that had taken place.

In another document, Shell repeated the government's false claims that MOSOP was a violent organisation. In November 1993, Shell UK wrote to the Unrepresented Peoples and Nations Organisation, suggesting that Ken Saro-Wiwa was involved in the Andoni-Ogoni violence:

*"It would appear many questions remain unanswered. Not only about the Peace Accord, but more sadly about the Ogoni/ Andoni clashes, and what role did Mr Saro-Wiwa play."*²⁸⁶

280. Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, (Exhibit 5. Decl of J. Green in Opp to Motion to Dismiss Ric).

281. On the contrary, Amnesty International's ongoing research on the Niger Delta and Ogoniland from the 1990s to the present time has repeatedly exposed Shell's failure to address community concerns about the environmental, social and health impacts of the oil industry. See, for example, Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009); Amnesty International, *Bad Information: Oil Spill Investigations in the Niger Delta* (Index: AFR 44/028/2013), available at: <https://www.amnesty.org/en/documents/af44/028/2013/en/>; Amnesty International, *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta* (Index: AFR 44/2746/2015), available at: <https://www.amnesty.org/en/documents/af44/2746/2015/en/>

282. Brian Anderson, *Nigeria Update*, 20 May 1994 (Exhibit 70. DEF 005425-005430).

283. Brian Anderson, *Nigeria Update*, 20 May 1994 (Exhibit 70. DEF 005425-005430).

284. Cited in Andy Rowell, Steve Kretzmann, A Project Underground Report, The Lowenstein Human Rights Clinic at Yale University, *All for Shell: The Ogoni Struggle*, 2006, p. 17.

285. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, January 1995.

286. Fax from Eric Nickson to Richard Boele, UNPO, 4 November 1993.

In actual fact, not only was there no evidence that Ken Saro-Wiwa had any link to the violence, evidence was already emerging by this time, that the Nigerian military, rather than MOSOP, was involved.

Shell and the Nigerian government also discussed the negative media coverage that both were receiving. At a meeting between Shell executives and the Nigerian High Commissioner and representatives of Nigeria's armed forces, held in London on 16 March 1995, the two sides agreed to share information:

*"There was no suggestion that we work together, but it was agreed that it would be useful to meet from time to time to share perceptions and exchange relevant information."*²⁸⁷

At a meeting between Brian Anderson, chairperson of Shell Nigeria, and the military ruler Sani Abacha in July 1995, the two men also discussed public relations concerns and their efforts to provide the public with the "real facts" about the Ogoni situation. The engagement between Shell and the military government strongly suggest the two parties shared and shaped a joint narrative on the Ogoni issues, in which both the community's legitimate concerns and the human rights violations were conspicuously absent. This is one of the ways in which the two worked together to tackle what Anderson termed, "the Ogoni problem."

2.3 SHELL SOLICITED THE INVOLVEMENT OF THE ARMED FORCES AND ENCOURAGED HUMAN RIGHTS ABUSES IN Ogoniland

The preceding sections of this report have demonstrated how Shell knew that the Nigerian armed forces used excessive and lethal force in dealing with protestors in Ogoniland and the wider oil producing areas.

The report has also shown that Shell was well aware that there were serious environmental problems in Ogoniland. This means that the company knew that MOSOP and other protestors had legitimate grievances. This section examines how, despite what it knew about the realities on the ground, Shell encouraged and/or solicited actions by the military that it knew were highly likely to lead to grave human rights violations in Ogoniland and the targeting of Ken Saro-Wiwa and MOSOP.

 Soldiers in Ogoniland, 1993
↓
© Private



The killing of protestors at Umuechem in 1990 provided Shell with evidence of the serious risks faced by local people who protested. This event should have led to extreme caution by Shell in terms of its engagement with the security forces. Indeed, with this event as a clear marker, it is difficult to see how Shell could justify making any requests to the authorities for interventions that could put security forces in contact with the communities. However, the evidence shows that Shell repeatedly asked the security forces and the military government, for action and support, even after executives saw how the government and security forces responded.

Shell asked both for general support to deal with the situation in Ogoniland and also requested military intervention on several specific occasions in 1993 and 1994.

287. Alan Detheridge to Brian Anderson, *Meeting with Nigerian High Commission*, 16 March 1995 (Exhibit 126. C000225-26).

REQUESTS TO NIGERIAN AUTHORITIES FOR SUPPORT TO DEAL WITH OGOINI PROTESTS

One internal memo, headed *Security/Community Disturbances* detailed a series of meetings that Shell managers had with senior government and security officials on 11 May 1993.²⁸⁸ The memo was sent from Shell in Nigeria to executives in London. During these meetings, Shell requested support from the security forces to protect its installations from protestors in exchange for logistical help. The meetings occurred just two weeks after Nigerian army troops guarding contract workers laying a pipeline for Shell had opened fire on protestors in Ogoniland, injuring 11 unarmed villagers, and a week after troops clashed with villagers again, shooting dead a protestor.²⁸⁹

According to the memo, the purpose of these meetings was *“to mobilise support at top government levels.”*²⁹⁰ The first meeting was with Chief Ernest Shonekan, the “Chairman of the Transitional Council”, the most senior civilian in government and a former non-executive director of Shell in Nigeria. Shell staff *“informed him about our efforts to work with the police, providing logistical support for their protection of key locations.”*²⁹¹

At a meeting the same day with the Inspector-General of Police, Alhaji Attah, *“the opportunity was taken to stress the need for extra police presence in strategic locations and offer logistical support (since they are incapable of doing it themselves).”*²⁹² Later, with Peter Nwaoduah, Director-General of the intelligence agency, the SSS, Shell reiterated *“our requests for support from the police and army.”* (emphasis added) The memo quotes Nwaoduah as responding that:

*“Police reinforcements have been ordered to man strategic points in the Niger Delta and that troops would be sent in if necessary. He brought up the Ogoni issue saying that the situation would be under control shortly.”*²⁹³ (emphasis added)

The minutes of these meetings show that Shell was actively lobbying the government and the security forces to support them – and was offering “logistical” help in return. The Shell executives did not raise any concern with the government officials about the recent shooting of unarmed protestors in Ogoniland by the army unit guarding the pipeline.

Given that this had only just happened (and was widely reported on in Nigeria and internationally) it must have been clear to executives what they were risking by calling for the intervention of the armed forces. Equally, it must have been clear to the government officials that in asking for the intervention of the security forces at that actual moment, Shell was not deterred by the fact the soldiers had recently fired at unarmed protestors.

Just a couple of months later, starting in July 1993, there were a series of armed attacks on Ogonis involving the military (see Historical Overview for details). As many as 1,000 people were killed. The timing of the armed attacks on Ogoniland, just two months after the Director-General of the SSS told Shell the “Ogoni issue” would soon be under control” raises serious questions about whether this was the security forces way of making good on their commitment to Shell. Given the evidence which emerged of armed forces involvement in the attacks, it seems these are questions Shell should have been asking itself, particularly as there was no move by

288. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

289. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

290. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

291. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

292. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

293. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

the authorities to address the “Ogoni issue” in any legitimate manner.

Later that year, on 13 December 1993, after the coup that brought General Sani Abacha to power, Shell wrote to the new military administrator of Rivers State, naming communities, including in Ogoniland, where protests against the company had occurred. The letter requested “any assistance you can give to minimise these disruptions.”²⁹⁴ There is no suggestion in the letter that Shell was worried about asking for assistance from the military authorities who had just taken over in a coup, or about the possible consequences, in terms of public safety. One month later, in January 1994, the government ordered the setting up of the ISTF (the militarized special unit for Rivers State) under Paul Okuntimo.

The fact that one of the company’s earliest contacts with the military following the coup was to name specific communities and ask for assistance to stop disruptions raises serious questions about whether Shell was encouraging the new regime to take a military approach. Another serious question – which Amnesty International put to Shell – was the whether the company viewed the establishment of the ISTF, following as it did so swiftly on the heels of Shell’s request to the military authorities for help, as anything other than a response by the authorities to that request.²⁹⁵ Shell did not respond to this question.

Later, on 17 March 1994, Brian Anderson met the Inspector General of Police in Port Harcourt, where he made another request for support from the security forces, albeit by the police and not the military. In an internal note on the meeting, Anderson said it had been called by the presidency which “*wanted to determine its strategy for dealing with the (Ogoni) problem.*”²⁹⁶ This shows that General Abacha was closely involved in the Ogoni crisis. According to

Anderson’s memo, he told the Inspector General that Shell did not want to go back to Ogoniland unless it was “*provided with adequate protection and the grievances of the Ogoni are resolved.*” Anderson said that he told the police chief that Shell “*emphatically...did not support any application of force by the Military to resolve the crisis and only wished a detachment of police to be deployed to the Shell facilities for defence purposes.*”²⁹⁷

Notwithstanding the fact that on this occasion Shell made clear its opposition to the army intervening in Ogoniland, only four months later Brian Anderson specifically called for them to protect its installation at the Bomu Manifold (see below).²⁹⁸

SHELL REQUESTS FOR SECURITY FORCE INTERVENTION IN SPECIFIC CASES

As well as those occasions, detailed above, where Shell made general requests for support and/or intervention from the security forces, including the army, the company also made requests in response to specific incidents or threats. Some of these involved its laying of a pipeline through Ogoniland.

JANUARY 1993: SHELL ASKS FOR SECURITY FORCES TO GUARD WILLBROS

Shell continued work on this pipeline throughout early 1993 even after it had announced the suspension of its operations from the area, and despite the fact that communities along the pipeline had held protests against Shell. On 7 January 1993, Shell wrote to the governor of Rivers State, Rufus Ada George detailing the location of these protests, and warning that only 50% of the pipeline had been built.²⁹⁹ The company

294. Letter from G.E. Omene (Deputy Managing Director, SPDC) to Lieutenant Colonel Dauda Musa Komo (Military Administrator, Rivers State), 13 December 1993, (Plaintiffs’ Response to Surreply Ex H).

295. Amnesty International letter to Shell, 18 June 2017.

296. Shell Nigeria, *Briefing notes*, MD visit to Inspector General of Nigerian Police Force, 17 March 1994 (1994-03-17 Briefing notes).

297. Shell Nigeria, *Briefing notes*, MD visit to Inspector General of Nigerian Police Force, 17 March 1994 (1994-03-17 Briefing notes).

298. Brian Anderson, *Nigeria Update*, 12 August 1994 (Exhibit 61. C004788-004790).

299. J.R. Udofia, GME, Shell Nigeria to Rufus Ada George, Governor, Rivers State, 7 January (Exhibit 11. Decl of J. Green in Opp to Motion to Dismiss Ric).

requested what it termed the “usual assistance.”³⁰⁰ Following this, and at the request of Shell’s contractors, Willbros, the governor deployed an army unit to guard staff laying the pipeline through Ogoniland.³⁰¹

Shell knew that by asking for support from the army they were endangering the safety of protestors. They understood how tense the situation was at this time. In January, MOSOP had declared Shell “*persona non grata*” in Ogoniland, so further protests against the pipeline were almost inevitable, yet Shell decided to go ahead anyway.

The former chairperson of Shell Nigeria, Brian Anderson, later claimed that the army was “*under the strict conditions that the soldiers did not use their weapons and that they were used only to ensure a safe withdrawal of staff if necessary.*”³⁰² This is yet more evidence that Shell executives knew perfectly well the risk of calling for the help of the army. However, the security guidelines that Willbros drew up for this operation (and that Shell approved), which became public years later in the context of US litigation, provided no clear instructions to the military.³⁰³ For example, the guidelines did not mention that weapons should not be used. The credibility of Brian Anderson’s claim that the soldiers were under “strict conditions” not to use weapons is undermined by the fact that this strict condition is not mentioned in written guidelines.

In fact the guidelines only vaguely outlined that the duty of the military guards was to “1. Act in preventative roles. 2. Suppress disruption and interference and 3. Keep non-workers out of work areas.”³⁰⁴ The guidelines (a one-page document) did not explain what “suppress” meant, nor how

the soldiers were supposed to attempt to complete these duties. They simply explained that “*during active roles first and foremost provide security and protection for safety of individual then avoid further confrontation by withdrawing from area.*”³⁰⁵

These were woefully inadequate guidelines that fell well short of international standards.³⁰⁶ Given the context and evidence of past violations, it is hard to believe that Shell and its contractor Willbros believed them to be acceptable or likely to be effective.

The decision to continue with the pipeline operation under military guard certainly raised concerns among staff of both Willbros and Shell. An internal memo dated 23 February 1993 (also mentioned in section 2.2) recounts a conversation that a senior Shell member of staff had with Neil Whyte, the general manager of Willbros Nigeria, in which the men worried about Shell’s mishandling of the situation and the danger that it could get out of hand. The same note also reports on the views and concerns of other Shell staff at the time. Shell’s Head of Health, Security and Environment wrote:

*“Neil Whyte stated that clearly there are two alternative courses of action namely, to apply maximum military presence which GME (J.R. Udofia, the General Manager East – a senior Shell manager) rightly says will attract a potential confrontation which may have catastrophic results, or to dramatically increase our public relations effort. His opinion is quite clear – Shell has an apparent unclear policy with respect to construction operations security.”*³⁰⁷ (emphasis added)

300. J.R. Udofia, GME, Shell Nigeria to Rufus Ada George, Governor, Rivers State, 7 January (Exhibit 11. Decl of J. Green in Opp to Motion to Dismiss Ric).

301. File Note: GME’s meeting with Rivers State Governor Rufus Ada George, 18 March 1993 (Exhibit 9. C002119-21).

302. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

303. Willbros West Africa, *Security Services for Trans Niger Pipeline Project*, 23 January 1993 (ex a).

304. Willbros West Africa, *Security Services for Trans Niger Pipeline Project*, 23 January 1993 (ex a).

305. Willbros West Africa, *Security Services for Trans Niger Pipeline Project*, 23 January 1993 (ex a).

306. E.g. *UN Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officers*, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

307. Shell memo from the Head of Health, Security and Environment in Lagos, on *Community Problems – Willbros Incident and SPDC Operations in General*, 23 February 1993 (Maria Z, exh. J).

This memo was sent to the senior executives in Shell Nigeria. Yet despite the clear warnings that the company was mishandling the situation, as well as the ongoing opposition of MOSOP to the laying of the pipeline, Shell insisted that the work continue under the protection of the army. This was highly questionable decision, since soldiers are not trained to carry out policing work and their deployment should have been a matter of serious concern. The decision to deploy the military in situations of public order actually increased the risk of use of excessive force, simply because the use of lethal force is the first choice of action for any military, which is equipped and trained to neutralize the enemy.³⁰⁸

Even the Nigerian government thought that it was a bad idea.

On 18 March 1993 following a violent clash between the army and protestors at Rumuekpe (which is outside Ogoniland but through which the pipeline also passed), in which several protestors were detained, Shell managers met the governor of Rivers State, Rufus Ada George, as well as the commander of the army unit guarding the pipeline.³⁰⁹ Willbros reported that protestors had attacked their staff at Rumuekpe and beaten one of them up. During this meeting, according to minutes kept by Shell, Governor Ada George said that the army unit should be replaced either by the police or a *“quick intervention force.”* The memo suggests he believed that the army was not suitable for dealing with such protests, but does not give his reasons.

The Shell executives disagreed with this assessment and advised the governor to maintain the army guard. The senior Shell managers, *“pleaded with him*

to assist in giving adequate security to our operations in the state,” the memo recorded.³¹⁰ One of these managers was the General Manager East of Shell Nigeria, J.R. Udofia, who had just a month earlier warned his colleagues that a military guard *“will attract a potential confrontation which may have catastrophic results.”*³¹¹ At a follow-up meeting with Brigadier General T. Ashei, commanding officer of the Second Amphibious Brigade at Bori camp, later that day, the Shell managers repeated their call not to withdraw the army.³¹² According to the Shell record of this meeting, the men also discussed the fate of several protestors who had been detained by the army. Extraordinarily, Emeka Achebe, a then senior Shell manager, advised the army commander to use the detained protestors as a bargaining chip with the community:

*“GMB (Achebe) suggested that an undertaking could be secured from the Rumuekpe Community for a trouble free operation before the release of the detained Community Youths.”*³¹³

This would appear to be a clear request from a senior Shell manager that the army violate the rights of detained youths by advising their continued unlawful detention, and leaving them at risk of other violations at the hands of the armed forces.

It was not long before Shell's insistence that the army guard its pipeline in Ogoniland resulted in the inevitable violence and human rights violations.

On 30 April 1993, Shell's contractors Willbros began bulldozing operations near Biara village in

308. Under international human rights standards, the military should only be used to police public protests and assemblies in exceptional circumstances. In these instances the military personnel must be fully trained in, adopt and be bound by international human rights law and standards applicable to law enforcement, in particular the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law, as well as any national law enforcement policy, guidelines and ethics. They must be provided with all necessary instructions, training and equipment to enable them to act with full respect for this legal framework. See Amnesty International, *Use of Force: Guidelines For Implementation of the UN Basic Principles On the Use of Force and Firearms by Law Enforcement Officials*, 2015, https://www.amnesty.org.uk/files/use_of_force.pdf.

309. Shell Nigeria, *File Note: GME's meeting with Rivers State Governor Rufus Ada George*, 18 March 1993 (Exhibit 9. C002119-21).

310. Shell Nigeria, *File Note: GME's meeting with Rivers State Governor Rufus Ada George*, 18 March 1993 (Exhibit 9. C002119-21).

311. Shell memo from the Head of Health, Security and Environment in Lagos, on *Community Problems – Willbros Incident and SPDC Operations in General*, 23 February 1993 (Maria 2, exh. J).

312. Shell Nigeria, *File Note: GME's meeting with Rivers State Governor Rufus Ada George*, 18 March 1993 (Exhibit 9. C002119-21).

313. Shell Nigeria, *File Note: GME's meeting with Rivers State Governor Rufus Ada George*, 18 March 1993 (Exhibit 9. C002119-21).

Ogoniland. During the subsequent protest by the community, the army shot and wounded 11 villagers.³¹⁴ Willbros reported to Shell that the protestors were “hostile” and some had “explosive devices.”³¹⁵ However, one of the victims, Karalola Kogbara, later testified that soldiers, wearing army uniforms, shot her even though she was not taking part in any protests. She was a farmer who was gathering up crops that had been damaged by the bulldozers. She later had to have her arm amputated.

*“I was picking the things they destroyed.
My crops that were destroyed. I was picking
them and when I got tired I sat down and I
was crying with my two hands on my head.
Then they shot me.”³¹⁶*

Protests against the laying of the pipeline continued, and on 3 May 1993 Shell and Willbros decided to suspend work on the pipeline.³¹⁷ On 4 May Shell explained the decision in a letter to Governor Ada George, and asked once again for the government to intervene, reminding him of the economic importance of the pipeline:

*“I regret to inform you that work on the
Bomu end of the line has been forced to stop
because of some community intervention...
As at now, work has been suspended in this
area of the line which carries a significant
portion of the crude oil production from Shell
and Elf operations. We humbly request the
usual assistance of his Excellency to enable
the project to proceed (emphasis added).”³¹⁸*

Once again, a direct request from Shell led to human rights violations: the same day there was a protest at Nonwa village, which was as Shell described at the “Bomu end of the line.”³¹⁹ The army opened fire again, killing one man, Agbarator Otu. The circumstances of the shooting are unclear but at the time Amnesty International reported that the shooting may have amounted to an extra-judicial execution.³²⁰

OCTOBER 1993: ATTEMPT TO RETURN TO Ogoniland AND CLASH AT KOROKORO

From 20-22 October, travelling in a Shell bus, Shell staff and armed forces personnel entered Ogoniland to inspect the condition of Shell’s facilities. The military contingent was led by Major Paul Okuntimo, the second in command of the Second Amphibious Brigade, which had provided the guards for the Trans Niger Pipeline, and had shot at protestors in April and May 1993.³²¹ The inspections were cancelled due to unrest at Korokoro, and on 25 October, Shell wrote to the Rivers State governor, Chief Rufus Ada George, to once again request assistance. Shell claimed that the community had captured two Shell fire trucks, and Shell asked for the government’s help in recovering them.³²² Once again, this request for “assistance” resulted in the Nigerian armed forces shooting protestors.

Brian Anderson later stated that the soldiers “were attacked by a large number of villagers with guns, knives and broken bottles. A soldier was hit by a bullet. The soldiers showed restraint and retreated... no villagers were reported injured.”³²³

314. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalola Kogbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

315. Letter from Willbros to Shell, 3 May 1993 (Exhibit 92. A000100-112).

316. Deposition by Karalola Kogbara, 15 October 2003 (Exhibit 10. Kogbara).

317. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (ex d).

318. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (ex d).

319. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (ex d).

320. Amnesty International, UA 163/93 – *Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalola Kogbara; One Other Detained Without Charge or Trial* (Index: AFR 44/04/93), 18 May 1993, available at <https://www.amnesty.org/en/documents/afr44/004/1993/en/>

321. Shell Nigeria, *File Note: GME's meeting with Rivers State Governor Rufus Ada George*, 18 March 1993 (Exhibit 9. C002119-21).

322. Letter from E.U. Imonoh, General Manager, East, SPDC, to Chief Rufus Ada George (Governor Rivers State), 25 October 1993 (Maria 3/Exhibit N).

323. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (wiwa 4/11).

However according to MOSOP, the soldiers had in fact shot and killed an 18-year-old man, Uebari N-nah, at Korokoro, and injured two others.³²⁴ Regardless of who started this confrontation, the fact that one took place – and that it had fatal consequences – was entirely predictable, considering the situation at the time in Ogoniland. Shell knew of the army's record of committing violations against the Ogoni people, and knew that this particular unit had fired on unarmed protestors earlier that year in Ogoniland.

AUGUST 1994: REQUEST FOR ARMY AT BOMU MANIFOLD

Shell consistently claimed that the company “*had contact*” with the military only on two occasions during the crisis (which spanned January 1993–November 1995) – during the incidents detailed above (when soldiers guarded the laying of the pipeline, and when soldiers escorted Shell staff to inspect its facilities around Ogoniland in October 1993).³²⁵

But this claim is contradicted by both the factual evidence and an internal memo written by Brian Anderson the following year, on 12 August 1994.³²⁶ This described an attempt to protect Shell's pipelines running through Ogoniland at an important facility known as the Bomu Manifold. Using the need to clean up a nearby spill as an opportunity to access the Bomu Manifold, Anderson explained that Shell staff would “*open and lock those valves which take flow from upstream and outside the Ogoni territory.*”³²⁷

Anderson explained to his colleagues in Europe that he would request a “security force protective screen”

and then ask the military to provide a permanent guard at the Bomu Manifold to prevent the sabotage of its pipelines.³²⁸ He conceded that this request “*impinges on our ‘no military protection’ stance to a limited extent.*” Nevertheless, on 23 August, Anderson wrote to colleagues in London and The Hague saying that he had explained this plan to the Minister of Petroleum, “*who agreed that we should leave a military or police protection unit at the Manifold.*”³²⁹ Anderson specifically mentioned that he would request the military, rather than the police, to conduct this operation.

This is a shocking admission by Shell. As noted earlier, it runs counter to international standards which state that militaries should never, bar extraordinary circumstances, be used for civil enforcement functions.³³⁰ More specifically, by the time Shell made this request, in August 1994, the situation in Ogoniland was dire. Shell was well aware that the ISTF (the military unit led by Major Paul Okuntimo) was conducting nightly raids on Ogoni villages at this time, and committing grave human rights violations (see section 1.1). Just two weeks earlier, on 26 July 1994, the Dutch ambassador had told Anderson that according to his sources, the armed forces had killed some 800 Ogonis since May.³³¹ By this time the scale of the attacks on Ogoniland were attracting international attention and condemnation.³³²

Yet this knowledge did not deter Anderson from asking for the army to guard the Bomu Manifold.

This is one of the starkest examples of Shell soliciting armed intervention with full knowledge of the grave risks. It is hard to see how this action by Shell could

324. MOSOP, letter to Governor Rufus Ada George, 26 October 1993, on file with Amnesty International.

325. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

326. Brian Anderson, *Nigeria Update*, 12 August 1994, (Exhibit 61. C004788-004790).

327. Brian Anderson, *Nigeria Update*, 12 August 1994, (Exhibit 61. C004788-004790).

328. This was important, Anderson explained, because 220,000 barrels of oil a day lay upstream of the Bomu Manifold in fields outside Ogoniland. This was much more than was produced from Ogoniland itself – some 28,000 barrels a day – so securing the Bomu Manifold was in fact more crucial to Shell's business than pumping oil from its fields in Ogoniland.

329. Brian Anderson, *Nigeria Update*, 23 August 1994, (Exhibit 8. Decl of J. Green in Opp to Motion to Dismiss Ric).

330. Amnesty International, *Use of Force: Guidelines For Implementation of the UN Basic Principles On the Use of Force and Firearms by Law Enforcement Officials*, 2015, https://www.amnesty.org.uk/files/use_of_force.pdf.

331. Brian Anderson, *Nigeria Update*, 26 July 1994 (Exhibit 48. A000001-6).

332. Most notably the Channel 4 films.

not be seen as anything other than encouragement and endorsement of the brutal raids on Ogoniland that had been taking place since May. It also showed that Shell was indeed willing to operate “*behind guns*” after all, in stark contrast to what it was saying in public.

MEETINGS BETWEEN SHELL AND GENERAL ABACHA

The documents released by Shell include the records of three meetings that Brian Anderson had with General Sani Abacha during the crisis. The notes of these meetings were written up by Anderson and then shared with colleagues in Europe. They provide further important evidence of Shell's troubling relationship with Abacha's military government.

He had seized power in a coup in November 1993, soon after which Shell informed his government of the losses it was incurring due to community protests in Ogoniland.³³³ Soon afterwards, the military administrator of Rivers state, Lt. Colonel Komo ordered the creation of the military unit, the ISTF, under Major Paul Okuntimo.³³⁴ Almost immediately the ISTF engaged in excessive use of force and other human rights violations in response to community protests in the Niger Delta. On 21 February 1994, the ISTF shot at thousands of people who were peacefully demonstrating outside Shell's main compound at Rumuobiakani in Port Harcourt.³³⁵

On 30 April 1994 Brian Anderson met General Abacha for the first time, during which he reiterated Shell's concerns over, “*the problem of the Ogonis and Ken Saro-Wiwa*”.³³⁶

Anderson reported that: “*The [Head of State]... believed that there must be more enforcement of discipline to stop such lawlessness.*” According to Anderson, Abacha said that he would be calling Military Administrators from the relevant states and would make them responsible for dealing with any future problems. In fact, the Rivers State military administrator had already ordered the ISTF, the previous week, to “*restore and maintain law and order in Ogoniland.*”³³⁷ Anderson came away from the meeting with the sense that Abacha, “*will intervene with either the military or the police.*” Anderson said he explained to Abacha that he had specifically asked Shell staff “*not to involve either body during the recent problems for fear of escalation and of Shell being accused of hiding behind the forces of law and order, and in fact of being responsible.*”³³⁸ However, Anderson did not ask General Abacha not to take military action, even though he knew that this would almost certainly lead to human rights violations.

On 4 May 1994, just four days after the Abacha meeting, Shell was told by the highly regarded academic, Professor Claude Ake, that he had seen a police force order outlining plans for a “*massive intervention*” in Ogoniland. Professor Ake told Shell that “*such an intervention could easily result in confrontation, loss of lives and an escalation of the current crisis.*”³³⁹ There is no suggestion that Shell did not view Professor Ake or his information as credible. However, within the documents released by Shell, there is no record of the company attempting to raise concerns with the authorities about this “*massive intervention*” or to contact General Abacha to call for restraint.

333. Letter from G.E. Omene (Deputy Managing Director, SPDC) to Lieutenant Colonel Dauda Musa Komo (Military Administrator, Rivers State), 13 December 1993, (Plaintiffs' Response to Surreply Ex H).

334. Amnesty International has not been able to find any official sources detailing the formation of this unit. Human Rights Watch reported that it was created in January, 1994, see *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p14. This was also reported by Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, p. 128.

335. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*, p36

336. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

337. Rivers State Commissioner of Police, Restoration of Law and Order in Ogoniland, Operation Order No 4/94, 21 April 1994, cited in Andy Rowell, Steve Kretzmann, A Project Underground Report, the Lowenstein Human Rights Clinic at Yale University, *All for Shell: The Ogoni Struggle*, 2006.

338. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

339. Meeting with Professor Claude Ake on Ogoni, 4 May 1994 (Exhibit 117. A000127-136).

From then on, events unfolded swiftly. On 21 May 1994, the Ogoni chiefs were murdered, the government blamed MOSOP without producing any evidence, and arrested Ken Saro-Wiwa and scores of Ogonis. The authorities held many people incommunicado and subjected them to physical abuse. Ken Saro-Wiwa and the other 14 men who were ultimately accused in relation to the murders were not given access to lawyers for eight months. The intervention which Professor Ake warned Shell about went ahead as the ISTF conducted raids across Ogoniland. An unknown number of Ogoni women, men and children died in the ensuing violence. Within the public documents there is no record of Shell questioning the horrific abuses that unfolded in the three months after Brian Anderson met Sani Abacha or the fact that the army targeted the Ogoni and Ken Saro-Wiwa shortly after Brian Anderson, by his own admission, “...raised the problem of the Ogonis and Ken Saro-Wiwa.”³⁴⁰

On 5 August 1994, Brian Anderson had another meeting with General Abacha. Despite being aware by now that Ken-Saro-Wiwa and scores of others were in detention and that many Ogonis had been killed in raids by the ISTF,³⁴¹ Anderson did not use the meeting to call for end to violence.³⁴² He did not refer to the violence and widespread human rights violations at all. On the contrary, he spoke to General Abacha about “the ongoing, and now accelerating, Ogoni problems” and said he was not prepared to go into Ogoniland until there was “a solution to the security (read political) problems there.” There is no suggestion that these remarks referred to the grave threats and actual harm being faced by the Ogoni people. Instead it is apparent that the “problems” that Anderson referred to related to those faced by

Shell.³⁴³ He went on to say that Abacha offered to “send in troops to protect” Shell, but he said he would not accept that.³⁴⁴

Given his knowledge at this time, Brian Anderson’s report of the meeting with Abacha is deeply problematic. The failure to so much as mention the military activity in Ogoniland that had taken place in the preceding three months, while raising, again, the “Ogoni problem” can only be read as tacit encouragement of this action.

Another meeting between Anderson and Abacha took place on 22 July 1995, during which they discussed the bad publicity that both Nigeria and Shell were receiving internationally over Ogoniland.³⁴⁵ Brian Anderson noted that MOSOP’s success in forcing Shell to withdraw from Ogoniland infuriated and alarmed Abacha, who “seemed to find it unbelievable that such a small tribe could have the effrontery to cause such a lot of trouble”.³⁴⁶

At the time of this meeting Ken Saro-Wiwa and the Ogoni Nine were in detention, subject to ill-treatment and an unfair trial that could see them sentenced to death, yet Anderson continued to discuss dealing with the Ogoni problem with a military ruler who was clearly angry. At no point did Anderson express any concern about the detention and trial.

During the meeting General Abacha expressed concern that Shell was not doing enough to portray the “real facts” about the Ogoni issue. According to Anderson, General Abacha “seemed to be particularly upset that we had not told the story properly about the Ogoni misdeeds...and how the government had not been responsible for wanton killings etc.”³⁴⁷

340. Brian Anderson, *Nigeria Update: Notes of Meeting with Head of State*, 2 May 1994 (Exhibit 66. C004819-004824).

341. He was told this by the Dutch Ambassador in July 1994. See: Brian Anderson, *Nigeria Update*, 26 July 1994 (Exhibit 48. A000001-6).

342. Brian Anderson, *Nigeria Update*, 6 August 1994 (Exhibit 62. C004791-004794).

343. Amnesty International asked Shell and Brian Anderson to explain what “read political” referred to and put it to them that the phrase “security (read political) problems” could, given the wider context, be read as the political problems caused by MOSOP and the protests against Shell. There was no other circumstance at the time in Ogoniland which could be described as a political problem, especially by Shell. Neither responded on this point. Amnesty International letter to Shell, 18 June 2017.

344. This statement is undermined by the fact that just days later Anderson wrote a memo saying he would ask the government for a military or police force to enter Ogoniland to guard Shell’s facilities at the Bomu Manifold (described above).

345. Brian Anderson, *Nigeria Update*, 22 July 1995 (Exhibit 53. A002909-002917).

346. Brian Anderson, *Nigeria Update*, 22 July 1995 (Exhibit 53. A002909-002917).

347. Brian Anderson, *Nigeria Update*, 22 July 1995 (Exhibit 53. A002909-002917).

Anderson did not disagree with Abacha's account (that the violence was the result of Ogoni "misdeeds" rather than the government) but simply replied by telling Abacha that it was *"not up to us to defend the government's role."* Considering that both knew the "real facts" included hundreds of deaths, torture and other ill-treatment, rapes, unlawful and arbitrary detention, and the blatantly unfair trial of Ken Saro-Wiwa and the other Ogoni leaders, Anderson's decision not to challenge Abacha's version of events can be taken as acquiescence.

As the head of the most influential company in Nigeria, and having established a personal relationship with General Abacha, Anderson had no excuse not to raise the human rights violations taking place in Ogoniland. By not discussing them, and in fact agreeing to a false narrative which ignored them, Brian Anderson gave the impression that they had nothing to do with Shell. Of course in actual fact, Shell was inextricably connected to them. MOSOP's protests had targeted both the government and the oil company, and were caused in part by decades of oil pollution. Shell had repeatedly asked for assistance, including on occasion, specifically from the army, in dealing with what it termed "community disturbances." In choosing to ignore the violations at this time, Shell encouraged the actions of the military state, which at this point included the high likelihood of a grave miscarriage of justice in the trial of the Ogoni Nine.³⁴⁸

response to what the company defined as "the Ogoni problem." Rather than distance itself from the government and use its undoubted influence to end the violence, the company told the government that the protests were costing the nation millions of dollars in lost revenue, and on occasion specifically requested intervention. These interventions led to human rights violations, as the company should have foreseen.

In addition there is evidence that during 1993-94 Shell lent material support and assistance to the Nigerian security forces and/or facilitated the action taken by the government of Nigeria. This includes the sharing of information, payments and logistical support.



Major Paul Okuntimo, commander of the Rivers State Internal Security Task Force (ISTF), Ogoniland 1994
© Private



2.4 SHELL'S PAYMENTS AND ASSISTANCE TO THE SECURITY FORCES

The evidence above shows how Shell both encouraged and on occasion solicited the intervention of the Nigerian security forces, including the army, in

SHELL'S INTELLIGENCE GATHERING AND LINKS WITH THE SSS

Shell was assigned a contingent of police officers by the Nigerian government to guard its property and personnel, instead of hiring its own private security force, which it was not allowed to do under Nigerian law.³⁴⁹ In 1994, the number had gone up to 1,633

348. Anderson's notes of the meeting show he was well aware that the military ruler had influence in the trial. In a paragraph of his notes titled "Saro-Wiwa's chances", Anderson concluded that Shell must prepare itself for a conviction in the trial.

349. Shell said it needed this force as it faced a variety of threats, including community protests, sabotage of pipelines and wells, and high crime levels. In 1994, for example, the company said it had recorded 360 security incidents there, 36 of which involved the use of arms, mainly attempted car-jackings. In 1993, Shell said it had recorded 85 armed incidents against its staff and property. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

regular police officers and 128 members of the Mobile Police, after a request by Shell for extra protection.³⁵⁰ The SPY police was spread over more than 100 sites and properties.³⁵¹ Shell provided the SPY police with salaries, equipment (including 107 pistols) and uniforms.³⁵² Shell's own security staff supervised their activities.³⁵³ Brian Anderson described them as *"our police."*³⁵⁴

Shell has publicly stated that its SPY police were used *"solely to guard"* its people and property.³⁵⁵ However evidence produced as part of legal proceedings against the company in the US revealed that this force also had close links with Nigeria's internal security agency, the SSS. George Ukpog, former head of security for Shell's Eastern Region, which included Ogoniland, who supervised the SPY police, said that Shell and the SSS would frequently pass information on to each other.³⁵⁶

*"Each day I come to work...I will phone the director of state security. General pleasantries. Exchange of information. If there's anything that he thinks is of need to know regarding the general security situation in the state, he believes it's not disruptive to his own information management, he will pass it on to me."*³⁵⁷

One of George Ukpog's key sources of information, which he would then pass on to the SSS, was a unit of the SPY police which would gather information by entering sensitive areas in plainclothes.³⁵⁸

"I received information from the SPY intelligence unit, and I regard them as my informants."

He went on to explain that the SSS provided this unit with training:

*"We invited their training wing, come in, gather a number of our intelligence team, we have a section in the supernumerary police who are supposed to look at areas. Then, basically, they sat them down and gave them the principles of surveillance and information gathering."*³⁵⁹

George Ukpog explained that one of the tasks that this unit conducted was to assess the state of Shell facilities in Ogoniland after the company had publicly announced its withdrawal from the area.³⁶⁰ In other words, even after publicly declaring it had left the area in the wake of MOSOP's protests, Shell sent undercover agents there to gather information.

Shell has always kept the details of these links to Nigeria's security forces secret. The company has never officially revealed that it shared information with the SSS, that the SSS had provided training for the SPY police force that Shell supervised, or that Shell ran its own intelligence gathering operation. Shell has never released any of the information that this unit gathered.

The documents reveal that George Ukpog was not the only senior Shell manager with close links to the security services. For example, Victor Oteri, Shell Nigeria's security advisor from 1988-95 described the *"constant meetings and discussions"* he had with the deputy Inspector General of Police.³⁶¹

350. Shell Nigeria, *Briefing notes, MD visit to Inspector General of Nigerian Police Force*, 17 March 1994 (1994-03-17 Briefing notes).

351. Shell International Limited letter to the *Guardian*, 6 November 1996 (Exhibit 118. A000589-595).

352. Shell International Limited letter to the *Guardian*, 6 November 1996 (Exhibit 118. A000589-595).

353. Deposition of Osazee Osunde, October 22, 2003, p. 27.

354. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Volume 3 Exhibit 11)

355. Shell International Limited letter to the *Guardian*, 6 November 1996 (Exhibit 118. A000589-595)

356. Deposition of George Ukpog, 23 October 2003, p. 138.

357. Deposition of George Ukpog, 23 October 2003, p. 279.

358. Deposition of George Ukpog, 23 October 2003, p. 478.

359. Deposition of George Ukpog, 23 October 2003, p. 293.

360. Deposition of George Ukpog, 23 October 2003, p. 294-5.

361. Deposition of George Ukpog, 23 October 2003, p. 138.

The closeness of the relationship between Shell managers and senior security officials raises serious questions about the extent to which Shell had detailed, advanced knowledge of planned operations by the security forces. It also suggests that information that Shell had gathered in relation to community protests and Ogoniland contributed to operations by the Nigerian military or security services, which resulted in serious human rights violations.

PROVIDING SECURITY FORCES AND OTHER GOVERNMENT AGENCIES WITH 'DAILY ALLOWANCES'

As well as its regular guard of SPY police, Shell repeatedly requested additional security assistance. When Shell requested additional security assistance it would pay the police or armed forces a small daily field allowance of a few dollars.

The payment of small field allowances to military could appear innocuous; but in a context where the military are implicated in serious and wide-ranging human rights violations, they could be read as tacit approval and therefore encouragement. On one documented occasion, this was Shell's own understanding, in fact, of such payments.

On 3 March 1994, Shell paid Major Okuntimo, and 25 of his men, an "*honorarium*", supposedly to cover the cost of lunches and a "special duty allowance" for five days work.³⁶² This related to the operation at Korokoro in October 1993, during which soldiers guarding Shell were attacked and showed restraint (MOSOP, however, reported one person was killed). The honorarium amount was 20,000 Nigerian naira (or \$909).³⁶³

An internal Shell memo that requested the payment explained that it was in fact a "*show of gratitude and motivation for a sustained favourable disposition towards [Shell] in future assignments.*"³⁶⁴

Shell made the payment just over a week after Paul Okuntimo and the ISTF were involved in serious human rights violations. On 21 February 1994, soldiers under his command shot at thousands of people who were peacefully demonstrating outside Shell's main compound. According to Human Rights Watch, "*The troops began throwing canisters of tear gas, shooting indiscriminately, beating demonstrators with the butts of their guns, and making arrests.*"³⁶⁵

In this context, Shell's payment to Okuntimo and the ISTF can only be seen as an endorsement of those actions.

SHELL'S LOGISTICAL SUPPORT FOR THE SECURITY FORCES

In addition to cash allowances, Shell provided Nigeria's police and armed forces with logistical support – mainly the use of the company's "boats, buses and helicopters," as a matter of policy.³⁶⁶

Brian Anderson explained this was also standard practice in relation to the military:

*"Any operational contact with the government requires financial and logistical support from Shell. For example to get representatives of the Department of Petroleum Resources to view an oil spill we often have to provide transport and other amenities. The same applies to military protection."*³⁶⁷ (emphasis added)

362. SPDC Inter Office Memo, 25 February 1994 (Exhibit 4. C0002292-94).

363. The official exchange rate was 22 Nigerian naira to the dollar, see Fewi Fawemni, 'A (not so) Brief History of the Fall and Fall of the Nigerian Naira', Quartz Africa, 6 December 2015, available at <https://qz.com/564513/a-not-so-brief-history-of-the-fall-and-fall-of-the-nigerian-naira/>

364. SPDC Inter Office Memo, 25 February 1994 (Exhibit 4. C0002292-94).

365. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

366. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

367. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (Vol. 3 Exhibit 11).

Reporting on a meeting on 11 May 1993 with the Inspector-General of Police, Alhaji Attah, to discuss their response to protests, Shell made a stark admission about their support to the police. A company report stated that: *"the opportunity was taken to stress the need for extra police presence in strategic locations and offer logistical support (since they are incapable of doing it themselves)."*³⁶⁸ (emphasis added)

Company records show that on another occasion Nigeria's internal security agency, the State Security Service (SSS), once asked Shell provide it with boat repairs, a photocopier, five air conditioners, 15 office tables, 30 office chairs and 80 tyres. This is according to an undated memo from the SSS Director to Shell staff, which was cited by lawyers in an interview with George Ukpog, ³⁶⁹ Shell's head of security in Port Harcourt from 1993-95, in the context of a US legal action. George Ukpog said he could not remember if Shell gave the SSS the assistance it had requested.³⁷⁰

Such demands appear to have been commonplace.³⁷¹ After one meeting with the police, former Shell Nigeria chairperson Brian Anderson complained to colleagues in March 1994, that *"all they are after is to blackmail us into paying for protection!"*³⁷² He explained further that:

*"They (the police) called a meeting on Friday in Port Harcourt at which most of the big contractors and manufacturers were told that the police need 100 cars, money and communications equipment to be provided otherwise they would not help very much to protect us!"*³⁷³

The memo does not state whether Shell agreed to go along with this specific request, but makes it clear that Shell's primary objection was financial, rather than ethical.

There is also evidence that, at least on two occasions when Shell provided logistical assistance to the security forces, the outcome of the security operation was serious human rights violations. In response to what the company said was an attack on its Bonny Island export terminal by local youths in November 1992, Shell airlifted 51 members of the Mobile Police to Bonny from Port Harcourt.³⁷⁴ On this occasion, the police reportedly shot one man dead and injured several others. Shell also provided the transport that took Paul Okuntimo and his men to Korokoro in Ogoniland in October 1993, after which they shot one man dead.³⁷⁵

MAKING PAYMENTS TO THE ISTF WHILE IT WAS CONDUCTING OPERATIONS IN OGOILAND

Shell has always said it paid Major Okuntimo and 26 of his men on one occasion only. This was after they accompanied a Shell team to inspect installations in Ogoniland in October 1993 (as described above). Brian Anderson claimed that this payment was the only occasion Shell had been "in contact" with Paul Okuntimo. However, there is evidence that this was not the case, and that Shell had a much closer relationship with this army commanding officer.

Environmentalist Oronto Douglas who went to visit Ledum Mitee, the MOSOP vice-president, in detention in the Bori Military Camp, on 26 June 1994

368. Urgent telex from the MD of Shell Nigeria (Brian Anderson) to Shell International Petroleum Corporation, 11 May 1993 (Exhibit 60. c004769-004771).

369. Deposition of George Ukpog, 23 October 2003, p. 297.

370. His exact words were: *"I cannot remember what was done."* Deposition of George Ukpog, 23 October 2003, p. 298.

371. Such payments could be considered corruption, according to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This explains that "it is...an offence irrespective of, inter alia, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage." See Commentary, Paragraph 7, P15, available at http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

372. Brian Anderson, *Nigeria Update*, 14 March 1994 (Exhibit 69. C004849-004854).

373. Brian Anderson, *Nigeria Update*, 14 March 1994 (Exhibit 69. C004849-004854).

374. Fax from SPDC to SIPC, *Community Disturbances*, 12 May 1993 (ex e).

375. Shell Nigeria, *Statement by Brian Anderson*, 20 December 1995, on file with Amnesty International (wiwa 4/11).

described how Okuntimo complained about how he and his men were risking their lives for Shell. According to Oronoto Douglas' account:

*"The major said Shell company has not been fair to him on these Operations. He said he has been risking his life and that of his soldiers to protect Shell oil installations. He said his soldiers are not paid as they were used to."*³⁷⁶

The claim that Okuntimo received payments from Shell has been backed up by three former members of the Nigerian security forces, who gave court depositions in the US legal action.

Boniface Ejiogu was Major Okuntimo's orderly from May 1994. He was based at the ISTF camp in Bori, Port Harcourt. Ejiogu testified that Shell provided the ISTF with logistical support. He said he saw Okuntimo transported in a Shell-operated helicopter,³⁷⁷ and soldiers ferried in buses³⁷⁸ and boats provided by the company.³⁷⁹ He said that when the ISTF planned "night operations", Okuntimo would call George Ukpog, the then head of security for Shell, to request the use of company pick-up trucks.³⁸⁰ He also saw the company provide the ISTF with regular food deliveries at its camp.³⁸¹

Ejiogu testified that he twice collected money from George Ukpog to give to Major Okuntimo. On one occasion, he collected seven sacks of cash from Ukpog's office at Shell's Industrial Area HQ in Port Harcourt, which he later delivered to Okuntimo.³⁸² He discovered that the bags, known locally as *Ghana Must Go* bags, contained money when one sack fell to the ground and spilled open.

Boniface Ejiogu's account of seeing Major Okuntimo receive *Ghana Must Go* bags from Ukpog was supported by Raphael Kponee, a police officer seconded to guard Shell (in the unit known as the SPY police). He sometimes worked on the main gate at the Shell Industrial Area. In his deposition, he described how George Ukpog telephoned him to expect a visit from Major Paul Okuntimo.³⁸³ Twenty minutes later the army officer arrived. Raphael Kponee said that George Ukpog's driver and Paul Okuntimo's driver then carried three *Ghana Must Go* bags into Paul Okuntimo's car, which then drove off. When he asked George Ukpog's driver what was in the bags, he was told they contained money. He could not remember the date of these events.

On a second occasion, Boniface Ejiogu testified that he was in Paul Okuntimo's car when Okuntimo collected sacks from George Ukpog's private residence, inside Shell's Residential Area.³⁸⁴ He could not remember the date. He recalled that Okuntimo and Ukpog spoke inside Ukpog's house for about an hour, then:

*"I saw Ghana Must Go bags, four, they were bringing it out of Ukpog's house, the cook, cook and his driver and other men in his house, they were bringing the things. My commander shouted: Driver, open the boot. He only called on the driver, he didn't call on me. The driver opened the boot. Those four young men and one lady, three young men and one lady, four of them they now [put it] inside. The lady cannot be able to...so the driver assisted the lady to put it in. Off we go."*³⁸⁵

376. Oronoto Douglas, *Ogoni: Four days of Brutality and Torture*, Liberty, May-August 1994 (on file with Amnesty International/archive).

377. Deposition of Boniface Ejiogu, Part I, 22 May, 2004, p. 34.

378. Deposition of Boniface Ejiogu, Part I, 22 May, 2004, p. 30.

379. Deposition of Boniface Ejiogu, Part I, 22 May, 2004, p. 73.

380. Deposition of Boniface Ejiogu, Part I, 22 May, 2004, p. 21.

381. Deposition of Boniface Ejiogu, Part II, 23 May, 2004, p. 218.

382. Deposition of Boniface Ejiogu, Part I, 22 May 2004, p. 100.

383. Deposition of Raphael Kponee, 26 May 2004, p. 22-4.

384. Deposition of Boniface Ejiogu, Part I, 22 May 2004, p. 104-5.

385. Deposition of Boniface Ejiogu, Part I, 22 May 2004, p. 43.

Boniface Ejiogu said that he also witnessed what he said was payment being made to Paul Okuntimo by Shell. In May 1994, he said he saw a “white” pilot of a helicopter with Shell markings, give an envelope that he believed contained cash to the ISTF commander.³⁸⁶

In a deposition, given in 2003, George Ukpog denied that he had paid Paul Okuntimo, and said he was “not aware of any special payment to Major Okuntimo as a person”.³⁸⁷ He also said he could not “recall” Shell providing the ISTF with food, arms or ammunition. But he did not issue flat denials, when questioned by lawyers:

“Q. Are you aware of any instance when [Shell] provided food to members of the internal security task force?”

A I can’t recall.

Q Are you aware of any instance when [Shell] provided arms to members of the internal security task force?”

A I’m not aware.

Q Are you aware of any instance when [Shell] provided ammunition to members of the internal security task force?”

A I’m not aware.”³⁸⁸

A third man, a former member of MOPOL, also testified to seeing Shell staff make payments to the security forces and Major Okuntimo. In his deposition, given in 2004, Eebu Jackson Nwiyon described a mission to Andoni, on the border with Ogoniland, in 1993. As described earlier, this was the location of attacks on Ogoni villages that the government falsely blamed on neighbouring communities. Eebu Jackson Nwiyon testified that he was flown there in a Shell operated helicopter.³⁸⁹ He also said that after

landing in Andoni his officer handed him a payment of 2,000 Nigerian naira. He believed that this money had been paid by a man he identified as a Shell staffer, whom he had earlier seen carrying a bulky envelope.³⁹⁰

Then, in December 1993, Eebu Jackson Nwiyon said he joined the military ISTF unit headed by Major Paul Okuntimo. He described a mission, on one occasion, to Imingri. After inspecting a Shell oil well and other infrastructure, Nwiyon alleged that Major Okuntimo received a payment from Shell staff. In a deposition taken by lawyers in the US, he revealed:

“He and the Shell staff got talking quite extensively, after which we went back. On our way back he gave us money in the vehicle.

Q. Someone gave you money in the vehicle?”

A. Paul Okuntimo gave us money in the vehicle.

Q. How much did he give you?”

A. I can’t remember how much, it was new notes of money.”³⁹¹

If such claims are true – and they deserve to be investigated further - then they point to a high degree of collusion between Shell staff and the Nigerian military unit directly responsible for serious human rights violations, many of which also amounted to crimes, such as murder, torture, rape, arson and the destruction of property.

Paul Okuntimo has himself twice told journalists that he continued to be in contact with Shell throughout the crisis, although these statements contradict one another. According to The Sunday Times, of 17 December 1995, Paul Okuntimo admitted to journalists that Shell had indeed paid him and his troops. He said that, “*Shell contributed to the logistics through*

386. Deposition Boniface Ejiogu, Part II, 23 May 2004, pp. 215-217

387. Deposition of George Ukpog, Volume 1, 23 October 2003, p. 22.

388. Deposition of George Ukpog, Vol. 1, 23 October 2003, p. 27-8

389. Deposition of Eebu Jackson Nwiyon, 24 May 2004, p. 17.

390. Deposition of Eebu Jackson Nwiyon, 24 May 2004, p. 41.

391. Deposition of Eebu Jackson Nwiyon, 24 May 2004, p. 222.

financial support. To do this, we needed resources and Shell provided these.”³⁹² In a televised interview in 2012, (by now Retired General) Paul Okuntimo denied receiving a “single penny” from Shell. But he said that Shell had been secretly in touch with him, encouraging him to take action in Ogoniland:

“They would only send that stupid man to me who will come even when I am worshipping in church and say that ‘there is trouble in Ogoni, go and, go and...and I warned him, do not talk to me of Shell, let that letter come from the Federal Government.’”³⁹³

Okuntimo did not reveal the name of the Shell employee whom he described as “that stupid man.”

2.5 COMPLICITY IN THE UNFAIR TRIAL AND EXECUTIONS

The culmination of the Nigerian military government’s campaign to crush the MOSOP protests was the execution of Ken Saro-Wiwa and eight other men on 10 November 1995. They had been found guilty, in October 1995, of involvement in the murder of four Ogoni chiefs who were opposed to MOSOP.

SHELL WAS KEPT CLOSELY INFORMED OF THE TRIAL

There can be no doubt that Shell knew that the trial was blatantly unfair. As noted earlier, this was widely reported on at the time.³⁹⁴ In addition, Shell had its own source of information. Documents released by the company as part of US legal proceedings reveal that it secretly observed the trial through its regular

lawyer in Rivers State and a former state Attorney General, O.C.J. Okocha. Shell has always claimed that a lawyer from his firm only attended the trial on the first day, but decided it was not necessary for them to continue as the case did not involve Shell.³⁹⁵

However, O.C.J. Okocha has since revealed that he continued to provide information about the trial to Shell afterwards.³⁹⁶ In a statement made in December 2003, O.C.J. Okocha, explained that after the first day, Shell “was never recorded as having made a formal appearance before the Tribunal.” However, “on further discussion with [Shell] my firm held a watching brief of the proceedings so that legal advice could be given when and if allegations should be made against [Shell].”³⁹⁷

According to documents that Shell released in connection with the US case, this “watching brief” involved passing on a large number of messages. Shell did not release the contents of these messages, which were covered by lawyer-client privilege, but provided a log of communications between O.C.J.’s law firm and itself. This log reveals that on 93 separate occasions, the law firm sent updates “regarding proceedings before the Ogoni Civil Disturbances Tribunal” to Shell executives, including Brian Anderson.³⁹⁸ Shell has never explained why it needed this information, and has never publicly acknowledged receiving it.

In fact, under questioning from lawyers for his deposition in the US case, Brian Anderson categorically denied that he received this information.

“A. I received a report the first day of the activities of the court.”

Q. After receiving a report of the activities of the court on the first day did you receive any other reports on the progress of the trial other than what you have learned through the media?

A. No.”³⁹⁹

392. The Sunday Times, ‘The Black Hole of Corruption’, 17 December 1995.

393. Interview by Global Broadcast TV, available at <https://www.youtube.com/watch?v=WENjJ4II34M>

394. E.g. Amnesty International, *Nigeria: The Ogoni Trials and Detentions* (Index: AFR 44/020/1995), p.13, Michael Birnbaum QC, *A Travesty of Law and Justice*.

395. Shell, *WCC Report: Ogoni – The Struggle Continues. Comments by Shell*, 15 September 1998.

396. Declaration of O.C.J. Okocha, 8 December 2003 (332 1.16.09 Decl of R. Millson Ex. 1-39).

397. Declaration of O.C.J. Okocha, 8 December 2003 (332 1.16.09 Decl of R. Millson Ex. 1-39).

398. October 2003 Privilege Log (exhibit 42).

399. Deposition of Brian Anderson, 13 February 2003, p. 126-7.



↑ Five of the defendants at the Ogoni Civil Disturbances Tribunal in Port Harcourt, Nigeria, 1995.
 From left: Ledum Mitee, Baribor Bera, Ken Saro-Wiwa, John Kpuinem, Barinem Kiobel.
 © Private

This statement is clearly at odds with what O.C.J. Okocha said, as well as the documentary evidence provided by Shell – the log (referred to above) which shows that the company received 93 updates from lawyers who were observing the trial. Although Amnesty International raised the discrepancy with both Shell and Brian Anderson (who left Shell in 1997), neither provided any explanation or response.

SHELL KNEW IN ADVANCE THAT KEN SARO-WIWA WOULD MOST LIKELY BE FOUND GUILTY

The day after the murders, the government announced that it considered Ken Saro-Wiwa and MOSOP to be responsible.⁴⁰⁰ This claim was made prior to any investigation and without any evidence. The men were then tried before a special tribunal. The stage was set for a miscarriage of justice.

On several occasions, Shell received its strong indications that Ken Saro-Wiwa would be found guilty, months before the verdicts were actually handed down.

On 16 March 1995, just one month after the trial had begun and seven months before the verdict, Shell executives met the Nigerian High Commissioner and representatives of Nigeria's armed forces in London.⁴⁰¹ The High Commissioner warned Shell that *"there is every chance that he (Saro-Wiwa) will be found guilty."*

On 6 April 1995, the British High Commissioner in Nigeria told Shell's Brian Anderson that he believed that *"the government will make sure that he (Ken Saro-Wiwa) is found guilty."*⁴⁰²

Finally, four months before the convictions, on 22 July 1995, Brian Anderson met Nigerian President, General Sani Abacha. Anderson concluded from what Abacha said that, *"he has no sympathy for Saro-Wiwa whatsoever, and we must therefore prepare ourselves for a conviction in this trial with all the difficulties that portends for us."*⁴⁰³ (emphasis added)

This should have left Shell in little doubt that the trial was unfair. Brian Anderson clearly understood that the president's personal lack of sympathy for

400. Footage of press conference on file with Amnesty International.

401. Alan Detheridge to Brian Anderson, *Meeting with Nigerian High Commission*, 16 March 1995 (Exhibit 126. C000225-26).

402. Brian Anderson, *Nigeria Update*, 6 April 1995 (Exhibit 55. A002945-002947).

403. Brian Anderson, *Nigeria Update*, 22 July 1995 (Exhibit 53. A002909-002917).

Ken Saro-Wiwa made it likely that he was to be convicted, and – given the charges – therefore executed. The question for Shell is to what extent did they encourage this situation? Executives knew that Ken Saro-Wiwa was being targeted and that the military authorities were going to ensure he was found guilty. They had asked for the government to help them deal with the “problems” of Ogoniland. These were problems created – from their perspective – by Ken Saro-Wiwa and MOSOP. As Brian Anderson noted at one point he himself asked Sani Abacha to help with *“a solution to the security (read political) problems there”*. The political problem (from Shell’s perspective) was MOSOP. MOSOP and its leader were now being dealt with. In addition, the arrest of Ken Saro-Wiwa and the other Ogoni leaders did not come out of the blue – it was the culmination of a series of attacks on the Ogoni which we now know followed a series of requests from Shell to the government and military.

SHELL’S OFFER OF A DEAL TO HELP KEN-SARO-WIWA

Ken Saro-Wiwa’s brother, Owens Wiwa, met Brian Anderson three times in 1995 to discuss the crisis. Owens Wiwa claimed that at a secret meeting at Anderson’s home in Lagos, Anderson offered to help have his brother released on condition that Ken Saro-Wiwa called off MOSOP’s protests. Owens Wiwa explained:

“When I asked him for his help to secure the release of my brother and other detainees, he had said that we should show goodwill. I said what is the goodwill? And he said three things: one, that I should write a press statement, have it published in Nigerian newspapers, that there are no environmental devastation in Ogoni; the second one was that we should call off the protest – I mean the campaign that was going on against Shell

*and the Nigerian Government internationally; third, the documentary which was about to be shown in London at that time on Channel 4 be withdrawn.”*⁴⁰⁴

Owens Wiwa claimed that the deal fell through because the two men were unable to agree on these conditions. His account is partly corroborated by Olisa Agbakoba, one of the lawyers for the Ogoni Nine, who was present at the first meeting. According to Olisa Agbakoba:

*“Brian Anderson offered us a deal. He made clear to us that the matter, meaning the trial, could be resolved if Ken would renounce his statements against Shell. I never forgot the arrogance of Brian Anderson during that meeting, he was not there to negotiate. His attitude was take it or leave it. Shell just wanted to have the international criticism off its back...There is no doubt in my mind that Shell could have influenced the outcome of the trial. Brian Anderson told us that the trial could end in several ways, and that he could have the case dropped.”*⁴⁰⁵

Brian Anderson provided a different account of these discussions. In an internal memo sent to his superiors in Europe, dated 22 August 1995, Anderson made no mention of offering to help release Ken Saro-Wiwa. This memo was sent before Owens Wiwa revealed in public his account of the conversations.

*“I offered Owens Wiwa the possibility that we would be prepared to put in some humanitarian aid (medical?) in exchange for the undertaking by his brother to soften their official stance on two key issues for us. 1. The outrageous claims...against Shell for royalties and reparations, and 2. The claim that we funded the military in its clean up operations or ‘to clear the way’ for our return.”*⁴⁰⁶

404. Deposition of Owens Wiwa, 2003, p. 247-8 (Exhibit 19. Owens Wiwa Vol. 1).

405. Statement by Olisa Agbakoba, 11 April 2017.

406. Interoffice Memorandum, Brian Anderson to Alan Detheridge, 22 August 1995 (ex x).

Even if one accepts Anderson's account of the meeting, it is still deeply problematic. First, Anderson admitted that he discussed an exchange of some kind with Owens Wiwa, with an inducement being offered if Ken Saro-Wiwa were "to soften" MOSOP's "official stance on two key issues [for Shell]". Second, by August 1995, Brian Anderson knew that Ken Saro-Wiwa had been severely mistreated while in detention, was suffering from health problems and was likely to be executed. Yet he felt it was an appropriate time to ask Ken Saro-Wiwa to change MOSOP's stance in return for some humanitarian aid. Third, it suggests that Shell, knowing that people were in need of humanitarian or medical aid and the company could provide it, that they were only willing to do so as part of a political trade.

SHELL'S PUBLIC RELATIONS AND DISSEMBLING

After the arrest of Ken Saro-Wiwa and the other men in May 1994, and until their executions on 10 November 1995, campaigners and the media exerted enormous pressure on Shell to use its influence on Sani Abacha and the Nigerian government to ensure the men were not subjected to an unfair trial and – following the sentencing – to prevent the executions. In response, Shell explained that it was indeed concerned by allegations that Ken Saro-Wiwa and the others had not received a fair trial (without discussing its merits). Yet the company said it would be wrong for it to intervene. According to a statement by Brian Anderson, released on 8 November 1995:

"We believe that to interfere in the process, either political or legal, here in Nigeria, would be wrong. A large, multinational company such as Shell cannot and must not interfere in the affairs of a sovereign state..."

*The very campaigners who are calling for us today to intervene may well be the first to criticise us in any other situation where intervention does not suit their agenda."*⁴⁰⁷

This is an extremely disingenuous argument. Shell, as discussed throughout this report, intervened constantly in the affairs of the Nigerian government and people. Shell had met officials as senior as the President of Nigeria to advocate for action to stop the Ogoni protests and enable Shell to operate in Ogoniland. The company had engaged with the security forces as well as politicians and civil servants to advance its own agenda. As Anderson himself conceded, *"the government and the oil industry are inextricably entangled."*⁴⁰⁸

In any case, on 7 November 1995, Shell said that it had in fact requested clemency for the nine condemned men, and the company made public a letter addressed to Sani Abacha from the then Chairman of Royal Dutch Shell, Cornelius Herkstroeter.⁴⁰⁹ This letter was sent one week after the convictions and just three days before the executions. The appeal reaffirmed Shell's commitment not to interfere in any country's judicial proceedings, but requested clemency for the men on humanitarian grounds.

Following the executions, on 19 November 1995, Shell published a statement in newspapers in the UK and elsewhere. This statement attacked the campaigners who had called for Shell to use its influence over the Nigerian government to have the men released. The statement, entitled *Clear Thinking in Troubled Times*, argued that Shell had been discretely working behind the scenes to help the convicted men.⁴¹⁰ It suggested this approach was much more likely to work than the campaigners who noisily attacked the Nigerian government:

407. Shell Nigeria, *Statement by Brian Anderson*, 8 November 1995.

408. Brian Anderson, *Nigeria Update*, 14 March 1994 (Exhibit 69. C004849-004854).

409. Letter from Shell to Sani Abacha, 7 November 1995 (Exhibit 106. A004268-4271).

410. SIPC, *'Clear Thinking in Troubled Times'*, 19 November 1995 (Exhibit 111. A002536-2537).

"Slogans, protests and boycotts don't offer answers...Our experience suggests that quiet diplomacy offered the very best hope for Ken Saro-Wiwa. Did the protestors understand the risk they were taking? Did the campaign become more important than the cause?"

Again, this is an extremely disingenuous statement – in that it effectively accused protestors who campaigned for Saro-Wiwa's release of provoking the Nigerian government to execute him, while suggesting that Shell was engaged in behind the scenes diplomacy. Amnesty International has seen no evidence in the documents made public by Shell records of the company doing anything to advocate for the release of Ken Saro-Wiwa and the other men. The only evidence that Shell did try to intervene was the letter sent on 7 November, which came too late to make a difference.

Indeed, one month after the executions, Brian Anderson reported back to Europe that he had actually received a message of thanks from President Abacha for the stance that the company had taken. This referred to the \$4 billion natural gas plant that Shell had announced was going ahead just five days after the executions.⁴¹¹ The message was passed on to Anderson by the former head of state and Shell executive Ernest Shonekan:

"The HoS [Head of State, Abacha] told S[honekan] that he was very happy that Shell

*had remained steady under pressure, and asked him to convey his thanks to me. [...] He was particularly happy about the NLNG Project."*⁴¹²

Shell's claims to have pursued "quiet diplomacy" appear to be little more than part of its slick PR campaign to defend its reputation.

Other Shell public statements repeatedly made the false claim that Ken Saro-Wiwa was accused and then hanged for the "murder" of the four chiefs. This was despite Shell knowing that his trial was unfair, and that the outcome was predicted by political actors well before the judicial process was completed. In fact, Ken Saro-Wiwa was (unfairly) charged with encouraging the murders (*"counselled and procured"*) rather than actually carrying them out.⁴¹³ At a press conference held after the executions, Brian Anderson stated that Ken Saro-Wiwa was executed *"for murder."*⁴¹⁴ A public document that Shell released in 1997, stated that Ken Saro-Wiwa had been executed for the *"murder"* of the chiefs.⁴¹⁵ All of these statements were wrong. By contrast Shell's current statement on Ken Saro-Wiwa more accurately states that he was executed *"for inciting the murder"*; however, it does not mention that this was based on a blatantly unfair trial and little or no credible evidence.⁴¹⁶

411. *The Independent, Day of Decision for Shell on Nigeria Project*, 15 November 1995, available at <http://www.independent.co.uk/news/world/day-of-decision-for-shell-on-nigeria-project-1582021.html?amp>

412. Brian Anderson, *Nigeria Update*, 8 December 1995. (Exhibit 138)

413. Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: report on the trial of Ken Saro-Wiwa and others*, Article 19, June 1995, p19.

414. Footage shown in *In Remembrance: Ken Saro-Wiwa*, by Catma Films for Channel 4, 1996.

415. Shell, *Nigeria Brief: Ogoni and Nigeria Delta*, 1997.

416. Available at <http://www.shell.com.ng/sustainability/environment/ogon-issue/ken-saro-wiwa.html>



↑ Creeks and vegetation in the Niger Delta devastated as a result of oil pollution, March 2013
 © PIUS UTOMI EKPE/AFP/Getty Images

2.6 SHELL'S PARENT COMPANY DIRECTED ITS NIGERIA OPERATIONS

The company documents released as part of the US legal proceedings show that responsibility for Shell's actions during the Ogoni crisis do not solely rest with staff based in the country. These documents provide a unique insight into the inner workings one of the world's largest multinational corporations at a time of crisis. They show that key strategic decisions were not taken in Lagos and Port Harcourt, where Shell's Nigeria subsidiary, Shell Petroleum Development Company, was based, but in the corporate headquarters of Royal Dutch/Shell in London and The Hague.⁴¹⁷

For example, soon after the crisis began, in February 1993, Shell Nigeria executives travelled to London to discuss the crisis with colleagues.⁴¹⁸ Minutes of the meeting show that they considered Ken Saro-Wiwa and the campaign he inspired as a risk to the group's overall international reputation. At a follow up meeting at Shell's headquarters in The Hague, the executives decided that the public affairs departments of Shell in Nigeria and Shell in the UK would monitor the activities of campaigners, and share information. They agreed to:

*"Keep each other more closely informed to ensure that movements of key players, what they say and to whom is more effectively monitored to avoid unpleasant surprises and adversely affect the reputation of the Group as a whole."*⁴¹⁹

417. Shell was formed in 1907 by the merger of Royal Dutch Petroleum Company, headquartered in The Hague, and the Shell Transport and Trading Company, headquartered in London. In 2005, these two companies formally merged into a single "Royal Dutch Shell Plc". See *Our Beginnings* on the Shell website, <http://www.shell.com/about-us/who-we-are/our-beginnings.html>

418. These were Emeka Achebe (General Manager, Business Development), Dozie Okonkwo (Manager for Health Safety and Environment, Security, Community Affairs in the Western Division, and Precious Omuku (Manager Health Safety Environment Public Affairs.)

419. Minutes of Meeting at Central Offices on Community Relations and Environment, 15-16, and 18 February 1993 (Exhibit 3. Decl of J. Green in Opp to Motion to Dismiss Ric).

Other documents include many faxes, letters and emails sent between these different offices, including the regular “Nigeria Updates” that Brian Anderson sent to his superiors to keep them closely informed. These updates outlined the latest news relating to the Shell’s businesses in Nigeria, detailed accounts of important meetings Anderson had had, as well as summaries of key political, economic and security developments in the country.⁴²⁰ They demonstrate that at all times, Shell’s directors based in The Hague and London were fully aware of what was happening in Nigeria and what the staff of Shell Nigeria were up to. The evidence also makes clear that staff in London and The Hague were not passive recipients of this information. A clear directing role is evident.

During the period of the events described in this report, Shell Nigeria was operating under the oversight of Royal Dutch/Shell partnership.⁴²¹ The body at the apex of Royal Dutch/Shell was the Committee of Managing Directors (CMD). From 1993-8, the Chairman of the CMD was Dutch national Cor Herkströter.⁴²² The CMD oversaw resource allocation and guided overall strategy and significant business policies and public affairs policies for subsidiary entities (including Shell Nigeria). The members of the CMD were themselves executive directors for the two parent companies (Royal Dutch Petroleum Company and the Shell Transport and Trading Company) in addition to being board members of the holding companies that sit just below the parent companies.⁴²³ The CMD oversaw the operations of the entire group until the company was reorganized in 2005.

It was the responsibility of the CMD to make major strategic and financial decisions relating to Shell’s business in Nigeria. For example, the documents show that Shell Nigeria presented its annual business plans to the CMD for approval. A memo sent by Shell’s London-based regional co-ordinator for Nigeria, John Detheridge, to Brian Anderson (in Lagos) on 1 February 1995 referred to the CMD’s approval of the 1995 Business Plan.⁴²⁴ The 1996 Country Business Plan specifically explained that it was up to the CMD to decide whether or not Shell should invest in new upstream assets⁴²⁵ if the Nigerian government chose to sell any, rather than executives in Lagos.⁴²⁶

The memo sent by John Detheridge also refers to the CMD’s approval of a detailed strategy drawn up by Shell Nigeria in December 1994 for how the company should respond to criticism in the wake of the Ogoni protests.⁴²⁷ This document also mentioned that staff in Nigeria would co-ordinate public communications with staff based in Europe.⁴²⁸

On 16 March 1995 Shell executives in London had a meeting with representatives of Nigeria’s armed forces in the Shell Centre in London. The two sides also agreed to “*meet from time to time to share perspectives and exchange any relevant information.*”⁴²⁹

Later that year, in October 1995, as the crisis worsened and the execution of the Ogoni Nine drew near, the CMD approved of the setting up a “*Nigeria Issue Contact Group*”, to be based in London. The task of this group was to co-ordinate Shell’s global response to the Ogoni crisis and the negative media coverage

420. For example, according to copies that were made public, Brian Anderson sent 24 of these “Nigeria Updates” in 1994. It is not possible to know if this was all of them.

421. A comprehensive analysis of Shell’s structure and the role of UK and Netherlands-based executives in response to the Ogoni crisis was provided by Professor Jordan Siegel, then of Harvard Business School, in a witness statement 5 February 2009, in support of the plaintiffs in the US case.

422. Cornelius Antonius Johannes Herkstroeter deposition, 2004, p16.

423. Declaration by Professor Jordan Siegel, then of Harvard Business School, 5 February 2009.

424. Exhibit 7.

425. “Upstream” refers to the exploration for and extraction of petroleum crude oil, which was Shell’s main business in the Niger Delta. The assets referred to likely mean oil fields.

426. Shell Nigeria Country Business Plan 1996, p. 23 (Exhibit 1. Decl of J. Green in Opp to Motion to Dismiss Ric).

427. Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, (Exhibit 5. Decl of J. Green in Opp to Motion to Dismiss Ric).

428. Shell, *Note for Information: Environmental and Community Relations Issues in Nigeria*, December 1994, (Exhibit 5. Decl of J. Green in Opp to Motion to Dismiss Ric).

429. Alan Detheridge to Brian Anderson, *Meeting with Nigerian High Commission*, 16 March 1995 (Exhibit 126. C000225-26).

that Shell had received due to the MOSOP protests. It was headed by Philip Watts, another British national who had preceded Brian Anderson as chairperson of Shell Nigeria.⁴³⁰

Documents released by Shell include minutes of meetings of the CMD. These show that shortly before and after the execution of the Ogoni Nine, Shell's Europe-based directors took on an even more direct role. At a meeting on 7 November 1995, just three days before the executions, the CMD decided to write to President Sani Abacha appealing for clemency.⁴³¹ After the hangings, on 17 November, the CMD met again, and took the decision to publish

a statement.⁴³² This statement, entitled *Clear Thinking in Troubled Times*, implied that activists around the world who had campaigned for Ken Saro-Wiwa's release were partly to blame for his death.⁴³³ During this same meeting, CMD members even directed Brian Anderson what to say at a news conference.⁴³⁴

The evidence shows that as the company was hit by a wave of negative media coverage surrounding the sham trial and subsequent execution of the Ogoni Nine in 1995, the company's directors took an ever-closer role in managing its response. It is clear that Brian Anderson did not act independently of his superiors.

430. Memo from Martin Christie (SIPC London) to Nigeria Issue Contact Group, 23 October 1995 (Exhibit 23).

431. Meeting of Committee of Managing Directors, 7 November 1995 (Exhibit 106. A004268-4271).

432. Meeting of Committee of Managing Directors, 17 November 1995 (Exhibit 27).

433. SIPC, *'Clear Thinking in Troubled Times'*, 19 November 1995 (Exhibit 111. A002536-2537).

434. Meeting of Committee of Managing Directors, 17 November 1995 (Exhibit 26).



Amnesty International activists clean up a Shell gas station in Gothenburg in protest against Nigeria oil, April 2010
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PART THREE: CORPORATE COMPLICITY

3.1 THE LEGAL FRAMEWORK

That Nigeria's military government was responsible for grave human rights abuses during its campaign to crush the largely peaceful Ogoni protests during the 1990s is not in doubt. These human rights abuses were carried out in response to community protests, and many occurred during armed attacks on defenceless Ogoni villages.

At the time of the events detailed in this report, Nigeria had ratified or acceded to several international and regional human rights instruments that contained

international law obligations relevant to public order and policing.⁴³⁵ These included the International Covenant on Civil and Political Rights (ICCPR – which Nigeria ratified in July 1993), The Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights.⁴³⁶ Rights that these instruments covered included:

- **Prohibition of arbitrary deprivation of life, including extrajudicial executions**

Extrajudicial executions are unlawful and deliberate killings carried out by order of a government or with its complicity or acquiescence. They violate the right to life, as guaranteed by the ICCPR (Article 6.1),⁴³⁷ and the African Charter on Human and Peoples' Rights (Article 4)⁴³⁸ In addition, the Charter prohibits torture and other ill-treatment (Article 5) and provides the right to liberty and security of person (Article 6).

435. UN OHCHR, *Ratification status for Nigeria*, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN
436. The African Charter was ratified and enacted by Nigeria in 1990, <http://www.nigeria-law.org/African%20Charter%20on%20Human%20and%20Peoples%20Rights.htm>.

437. UN OHCHR, *International Covenant on Civil and Political Rights*, 1966, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

438. UN OHCHR, *International Covenant on Civil and Political Rights*, 1966, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

– Prohibition of arbitrary arrests and detention

International law, including the ICCPR, prohibits arbitrary arrest and detention.⁴³⁹ An arrest or detention without a basis in law is per se arbitrary. In addition, an arrest or detention that is permitted under domestic law may nonetheless be arbitrary under international law. Arrest or detention is also arbitrary if it is a response to the exercise of human rights including the rights to freedom of expression, association and peaceful assembly.

International law and standards also set out clear procedural requirements for any detention. The ICCPR expressly stipulates that anyone who is arrested must at the time of arrest be told the reasons for arrest and must be promptly informed of any charges against them; they must also be entitled to take proceedings before a court which can decide on the lawfulness of the detention and order their release if it is not lawful. In any event, international standards require that a person must not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or similar authority which must be empowered to review as appropriate the continuance of detention.

Anyone charged with a criminal offence has the right to be given a fair trial before an ordinary civilian

court within a reasonable time, or released. Further, anyone whose rights or freedoms have been violated must have access to an effective remedy.⁴⁴⁰

– Freedom of expression and peaceful assembly

The right to freedom of expression is set out in Article 19 of the ICCPR and Article 9 of the African Charter on Human and Peoples' Rights.⁴⁴¹ The right of peaceful assembly⁴⁴² is protected by Article 21 of the ICCPR and by Article 11 of the African Charter on Human and Peoples' Rights. These rights can only be restricted if such restrictions are strictly necessary and proportionate for the protection of certain specified public interests, which include national security, public safety, and protection of the rights of others.

– Violence against women, including rape

Rape is an act of gender-based violence. In addition to being a crime, it constitutes "discrimination," prohibited under international human rights law, including under the Convention on the Elimination of All Forms of Discrimination against Women, to which Nigeria is a state party.⁴⁴³ Rape by state officials, which include soldiers and police officers, has been unequivocally defined as torture by international criminal tribunals,⁴⁴⁴ as well as by UN and regional human rights bodies.⁴⁴⁵

439. Article 9 of the Universal Declaration of Human Rights, Article 9(1) of the ICCPR, Article 37(b) of the Convention on the Rights of the Child, Article 6 of the African Charter on Human and Peoples' Rights.

440. See Amnesty International, *Fair Trials Manual*, second edition (AI Index: POL 30/002/2014).

441. It states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

442. An assembly is defined as "an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations." Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para 10.

443. See Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against women* (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), para. 1.

444. See, e.g., *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; *Prosecutor v. Zejnir Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

445. See, e.g., Interim Report of the Special Rapporteur on torture to the General Assembly, UN Doc. A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-36; *Aydin v. Turkey*, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3) (a); *Almonacid Arellano et al. v. Chile*, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

– Use of force during assemblies

Under the UN Code of Conduct for Law Enforcement Officials⁴⁴⁶ and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles),⁴⁴⁷ law enforcement officials (including military forces who exercise police powers) may use force only when strictly necessary and to the extent required for the performance of their duty. Basic Principle 9, which reflects the international law obligation to respect and protect the right to life, expressly stipulates that they must not use lethal force (firearms) unless it is strictly necessary – that is only when less extreme means are insufficient – to defend themselves or others against the imminent threat of death or serious injury or to prevent a grave threat to life; intentional lethal force should not be used except when strictly unavoidable in order to protect life. Firearms should never be used to disperse an assembly and indiscriminate firing into a crowd is always unlawful.⁴⁴⁸

– Accountability

Comprehensive internal and external accountability mechanisms are key to ensuring that policing, military and security operations are carried out in a professional manner which respects human rights. Under international law, governments are obliged to bring to justice all those who have been identified as having participated in extrajudicial executions and other unlawful killings. Moreover, this applies not just to those who are suspected of committing

killings, but also to those superior officers who knew or should have known that their subordinates “are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use”.⁴⁴⁹

A failure by a state to ensure such investigations may in itself constitute a violation of the right to life. Where an investigation reveals evidence that a death was caused unlawfully, the state must ensure that those suspected of criminal responsibility are prosecuted and, where appropriate, punished through a fair judicial process.⁴⁵⁰

REMEDY IN THE CONTEXT OF CORPORATE ACTORS

Under international human rights law, all states have a duty to protect against human rights abuses by all actors, including companies. States are required to take appropriate measures to prevent human rights abuses by private actors, including corporations, and to respond to these abuses when they occur by investigating the facts, holding the perpetrators to account and ensuring effective remedy for the harm caused. The duty to regulate the conduct of non-State actors in order to protect human rights is well established in international human rights law.⁴⁵¹

The duty of the State to protect from human rights abuses carried out by corporations is articulated in

446. UN OHCHR, *Code of Conduct for Law Enforcement Officials*, Adopted by General Assembly resolution 34/169 of 17 December 1979, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

447. UN OHCHR, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

448. Amnesty International has developed guidelines on principles of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These guidelines – *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* – provide a comprehensive overview of the considerations national authorities should take into account when developing a framework on the use of force and firearms. They also include, in Chapter 7, detailed instructions on how the policing of public assemblies should be approached. Available at www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force_0.pdf

449. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 24. Similarly, Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states: “Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts.”

450. See also UN Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN doc. E/CN.4/2005/102/Add.1, 8 February 2005.

451. Amnesty international, *Injustice Incorporated: Corporate Abuse and the Human Right to Remedy* (Index no. 30/001/2014) available at <https://www.amnesty.org/en/documents/POL30/001/2014/en/>

the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), a set of standards endorsed by the UN Human Rights Council in 2011.⁴⁵² According to Guiding Principle 1, this duty extends not only to state where the abuse takes place (i.e. territory), but also where the company is based (i.e. jurisdiction. In the case of Shell this is the Netherlands and the UK):

*“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”*⁴⁵³

States’ duty to ensure a remedy for corporate human rights abuses, including to investigate allegations or violations and to hold perpetrators accountable, is reflected in the UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law. According to this instrument, the duty to protect includes the duty to:

*“Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law.”*⁴⁵⁴

This obligation has also been reflected in core international treaties, including the ICCPR. Human rights monitoring bodies have also clarified that the state duty to prevent has an extra-territorial dimension and that a state should take measures, consistent with international law, to prevent a company headquartered in its jurisdiction from abusing human rights in another.⁴⁵⁵

NIGERIA’S FAILURE TO INVESTIGATE AND PROSECUTE

Following a complaint in 1996, the African Commission on Human and People’s Rights examined the extent to which the government of Nigeria was in breach of the African Charter in relation to its response to the Ogoni protests, as well as the environmental harm caused by the oil industry.⁴⁵⁶ In a decision, issued in 2001, the Commission ruled that the Nigerian government had indeed violated several articles of the African Charter. For example, in relation to the right of life, it ruled that:

*“The Security forces were given the green light to decisively deal with the Ogonis, which was illustrated by the wide spread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made it living in the Ogoni land a nightmare.”*⁴⁵⁷

452. OHCHR, *UN Guiding Principles on Business and Human Rights*, 2011, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR_EN.pdf.

453. OHCHR, *UN Guiding Principles on Business and Human Rights*, 2011, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR_EN.pdf.

454. UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, resolution 60/147 of 16 December 2005, Principle 3 (b).

455. For example see: Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 para 39 (11 August 2000); CESCR, *General Comment 15 on the right to water*, UN Doc. E/C.12/2002/1 para 31 (January 2003); Committee on the Rights of the Child, *General Comment 16 on State obligations regarding the impact of the business sector on children’s rights*, UN Doc. CRC/C/GC/16 paras 43 and 44 (April 2013); Committee on the Elimination of Discrimination against Women, *General Recommendation No.28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 para 36 (December 2010). See also *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, Principles 23-27, http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5B-downloadUid%5D=23.

456. African Commission on Human and Peoples’ Rights, *Decision on communication of The Social and Economic Rights Action Centre and the Centre 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>.

457. African Commission on Human and Peoples’ Rights, *Decision on communication of The Social and Economic Rights Action Centre and the Centre 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>.

The Commission issued a wide range of recommendations: it appealed to the government to stop attacks on Ogoni leaders and communities by the Nigerian security forces; to investigate human rights violations in the area and prosecute members of the security forces who were responsible for violations; and to ensure adequate compensation to victims, including relief and resettlement assistance and the clean-up of lands and rivers damaged by oil operations.

Despite these clear recommendations, no-one has ever been brought to justice in Nigeria for the human rights violations committed in Ogoniland and no reparations have been awarded to the victims.

Investigations by the Nigerian government have been limited to the Human Rights Violations Investigations Commission, known as the *Oputa Panel*. This was established in 1999 to investigate human rights violations committed by Nigeria's military governments between 1966 and the return

to civilian rule in 1999. The Panel's public hearings included sessions in Port Harcourt where the experiences of victims were documented. The former commander of the ISTF, Paul Okuntimo, and the former military administrator of Rivers State, Dauda Komo, were also given the opportunity to defend themselves, as were representatives of Shell Nigeria.⁴⁵⁸ The report of the Oputa Panel was submitted to the Federal Government in May 2002. It provided only a brief and partial summary of events in Ogoniland in the 1990s, and includes some information on human rights violations but does not examine in any detail the role of the Nigerian armed forces or Shell in the human rights violations or apportion blame.⁴⁵⁹ The transcripts of the hearings, and the testimonies of victims, were not published.

Meanwhile the people of Ogoniland continue to struggle for justice for the environmental damage that oil pollution has caused. This has never been cleaned up, and continues to harm the health and livelihoods of the Ogoni people to this day.⁴⁶⁰

458. The Oputa Panel, *Human Rights Violations Investigation Commission, Volume VI*, p. 182-3, 2002.

459. The Oputa Panel, *Human Rights Violations Investigation Commission, Volume IV*, Supplementary of the Ogoni Case, 2.12, p.61-3, 2002.

460. United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, available at: www.unep.org/disastersandconflicts/CountryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx.

CIVIL CLAIMS AGAINST SHELL

With no apparent chance of obtaining justice in Nigeria, some of the victims have filed civil claims in other jurisdictions instead, focussing on the alleged involvement of the company, but the results have been inconclusive.

In 1996, relatives of Ken Saro-Wiwa and others launched a civil case against Shell in a US court.⁴⁶¹ On the eve of the trial starting, in 2009, Shell settled out of court with the plaintiffs. Shell paid them \$15.5 million, but did not accept liability. Another set of litigants, including Esther Kiobel, the widow of Dr Barinem Kiobel, were part of a separate case against Shell, which the company did not settle. Instead it argued that the US should not have jurisdiction over the case. In 2013, the US Supreme Court ruled in Shell's favour on the jurisdiction issue.

On 29 June 2017, Esther Kiobel announced that she had filed a writ in the Netherlands, commencing legal action against Shell there, to pursue justice for her husband and herself.⁴⁶² The civil case accuses Shell of complicity in the unlawful arrest and detention of her husband; the violation of his personal integrity; the violation of his right to a fair trial and his right to life, and her own right to a family life. Esther Kiobel is bringing the case along with Victoria Bera, Blessing Eawo and Charity Levula, whose husbands were executed with Barinem Kiobel. The claimants are demanding damages for harm caused by Shell's unlawful actions, and a public apology.



↑ Esther Kiobel with a picture of her husband Barinem Kiobel, the District Court of The Hague, the Netherlands, November 2016.
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461. For details see the website of the Center for Constitutional Rights, <https://ccrjustice.org/home/what-we-do/our-cases/kiobel-v-royal-dutch-petroleum-co-amicus>

462. Amnesty International, *Nigeria: Shell complicit in the arbitrary executions of Ogoni Nine as writ served in Dutch court*, 29 June 2017, available at <https://www.amnesty.org/en/latest/news/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>

BUSINESS AND HUMAN RIGHTS

Shell - like all companies – has, and had, a responsibility to respect all human rights wherever it operates in the world. This is an internationally endorsed standard of expected conduct. It applies even when a company is operating through subsidiaries or sub-contractors, such as Willbros, the US engineering firm that lay Shell's pipeline through Ogoniland in 1993. This responsibility is articulated in the UN Guiding Principles. Although these were developed years after the events described in this report, they did not introduce any new legal obligations, and reflected pre-existing standards for corporate complicity.⁴⁶³ With regard to corporate complicity, the UN Guiding Principles note that:

*“Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party. As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases.”*⁴⁶⁴

A company may expose itself to liability under civil and criminal law if it causes a human rights abuse itself, or participates or is complicit in violations by other parties such as governments. For example, Article

4 of the UN Convention Against Torture requires all ratifying States *“to ensure that all acts of torture are offences under its criminal law”* and that *“the same shall apply to ... an act by any person which constitutes complicity or participation in torture.”*⁴⁶⁵

Many of the violations of international human rights law detailed in this report also amount to crimes under the national law of different jurisdictions. For example, Amnesty International sought the opinion of criminal lawyers in the Netherlands and UK, Shell's two home states. The Dutch lawyers stated that the following offences could arise from the facts as presented by Amnesty International: murder, manslaughter, criminally negligent homicide, torture, maltreatment or severe battery, rape, arson, destruction of property, threatening, public assault or act of violence in a public place, or incitement or complicity to commit such offences.⁴⁶⁶ According to the UK lawyer, potential offences identified could range from torture, murder and soliciting to murder, to conspiring or inciting to commit such offences.⁴⁶⁷

A person (including in some jurisdictions a “legal person”, e.g., a company) can be found guilty of the commission of a criminal offence either through direct or indirect actions (i.e. either as a principal or through their involvement as an accessory). In most jurisdictions an accessory is a person who aids, abets or in other ways contributes or participates in the offence by the principal (unless the offence precludes such a form of liability). An aider and abettor may be present giving active assistance to the principal; or may be some distance away. Aiding and abetting may include wider circumstances, such as the supply of equipment to be used in the commission of an offence.⁴⁶⁸ The question of whether a company or its

463. *UN Guiding Principles on Business and Human Rights*, page 1. Cases documenting instances of complicity by corporate actors dates back to the Nuremberg Trials: e.g. *United States v. Krupp (Krupp Case)*, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1948)* (*Trials of War Criminals*), Vol IX; *United States v. Carl Krauch (Farben Case)*, *Trials of War Criminals*, Vol. VIII; *United States v. Friedrich Flick (Flick Case)*.

464. *UN Guiding Principles on Business and Human Rights*, page 18-19.

465. OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

466. Prakken D'Oliveira, 18 August 2017, on file with Amnesty International.

467. Edmonds, Marshall, McMahon, 23 May, 2017, on file with Amnesty International.

468. A recent example is the conviction, in April 2017, by the Dutch appeals court of businessman Guus Kouwenhoven. He was found guilty of being an accessory to war crimes, for selling weapons, and providing logistical support, to Liberia's then president, Charles Taylor, during civil wars that involved mass atrocities, the use of child soldiers and sexual slavery. Kouwenhoven was the co-owner of two timber companies which operated in Liberia and Guinea during the civil wars. The court established that Kouwenhoven must have been aware of the reasonable chance that his actions would substantially contribute to third parties committing war crimes and that he had willingly accepted this reasonable chance when conducting the above acts. Dutch Court of Appeals, *Judgement on the Gus Kouwenhoven case*, 21, April 2017, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GH-SHE:2017:2650&showbutton=true&keyword=liberia>

individual representatives are liable to prosecution for their involvement in criminal offences may depend on the specific crime that was committed and the legal framing in a given jurisdiction.

It is well established in law that companies can be criminally liable for their involvement in crimes. Referring to prevalent criminal laws in various jurisdictions, the International Commission of Jurists has stated that:

A company should avoid conduct if:

First, by such conduct, the company or its employees contribute to specific gross human rights abuses, whether through an act or failure to act, and whatever form of participation, assistance or encouragement the conduct takes, it: 1. Enables the specific abuses to occur, meaning that the abuses would not occur without the contribution of the company, or 2. Exacerbates the specific abuses, meaning that the company makes the situation worse, including where without the contribution of the company, some of the abuses would have occurred on a smaller scale, or with less frequency, or 3. Facilitates the specific abuses, meaning that the company's conduct makes it easier to carry out the abuses or changes the way the abuses are carried out, including the methods used, the timing or their efficiency.

Second, the company or its employees actively wish to enable, exacerbate or facilitate the gross human rights abuses or, even without desiring such an outcome, they know or should know from all the circumstances, of the risk that their conduct will contribute to the human rights abuses, or are wilfully blind to that risk.

Third, the company or its employees are proximate to the principal perpetrator of the gross human rights abuses or the victim of the abuses either because of geographic closeness, or because of the duration, frequency, intensity and/or nature of the connection, interactions or business transactions concerned. The closer in these respects that the company or its employees are to the situation or the actors involved the more likely it is that the company's conduct will be found in law to have enabled, exacerbated or facilitated the abuses and the more likely it is that the law will hold that the company knew or should have known of the risk.⁴⁶⁹

Shell has always denied that the company was involved in the human rights violations and crimes that were carried out by the Nigerian state and armed forces. Yet there has never been a meaningful investigation into the company's conduct and responsibility in relation to these abuses.

3.2 THE CASE AGAINST SHELL

Summing up critical facts carefully laid out earlier in this report, the case against Shell could be set out as follows:

SHELL KNEW THAT THE SECURITY FORCES WERE COMMITTING GRAVE VIOLATIONS

There is irrefutable evidence that Shell knew that the Nigerian security forces committed grave violations when they were deployed to address community protests in the oil producing areas, and specifically in Ogoniland. Any deployment of the security forces, and in particular the Mobile Police and the army, put communities at risk. Shell was aware of this risk

469. <https://www.icj.org/wp-content/uploads/2012/06/Vol.2-Corporate-legal-accountability-thematic-report-2008.pdf>

since at least the events at Umuechem in 1990, and the company made public statements which clearly admitted knowledge of the risk. Umuechem put the company on notice and from this point, there was a heightened level of responsibility on Shell to ensure it did not request or encourage interventions by the security forces that would put those forces into contact with the communities.

Numerous other incidents in 1992-3, described in detail in this report, provided Shell with further confirmation of the serious risk to human rights that accompanied the engagement of the security forces in dealing with community protests.

After the ISTF launched raids in Ogoniland in May 1994, Shell executives knew that the armed forces were committing grave human rights abuses against civilians there. This information was passed by executives in Nigeria to those in London and the Hague (for example by the regular “updates” sent by Brian Anderson).

Shell workers inspect the site of an oil spill in Ogoniland, May, 2001.
© Reuters



SHELL ENCOURAGED THE GOVERNMENT OF NIGERIA TO STOP THE Ogoni PROTESTS

Shell, the most important company in the country, and the government, were business partners, running the highly profitable Nigerian oil fields as a joint

venture. Shell repeatedly informed the government of the economic damage caused by the protests. Shell executives reminded the authorities that they shared a common goal to end the Ogoni protests in order to allow oil production, to complete construction of a vital new pipeline and to deter similar protests by other communities.

For example, during his first discussion with President Sani Abacha (which took place on 30 April 1994, by which time the ISTF has already engaged in serious violations), Shell Nigeria's then chairperson Brian Anderson linked the MOSOP protests to damage to Shell's production infrastructure:

“I raised the problem of the Ogonis and Ken Saro-Wiwa, pointing out that Shell had not been in the area for almost a year. We told him of the destruction that they had created at our sites of which he was apparently unaware.”

Brian Anderson also explained that the protests in Ogoniland threatened both the “political stability” and attractive “economic terms of conditions” that Anderson had said that Shell wanted in Nigeria.

Shell repeatedly played down the significance of MOSOP's environmental and social concerns, in line with the government's own position. Shell downplayed or denied these concerns even while knowing that its operations had contributed to environmental damage in Ogoniland.

Shell helped the government's public response to the protests by providing it with information and co-ordinating with officials in Nigeria and London.

For example, in May 1994, having learnt that the UK's Channel 4 was due to broadcast a highly critical documentary, Shell executive Emeka Achebe travelled to Abuja to inform the head of the State Security Service (SSS). Shell was so concerned by the likely fallout of this film, that Brian Anderson also tried (and failed) telephoning General Abacha to warn him about it.

"I think that it is important that we are seen by him to be assisting the State by giving him the requisite intelligence as it comes to us," Anderson wrote in a memo to his colleagues in Europe.

At a meeting between Shell executives and the Nigerian High Commissioner and representatives of Nigeria's armed forces, held in London on 16 March 1995, the two sides agreed *"that it would be useful to meet from time to time to share perceptions and exchange relevant information."*

SHELL SOLICITED AND ENCOURAGED INTERVENTION AND ABUSE BY THE NIGERIAN SECURITY FORCES AND MILITARY AUTHORITIES

Shell encouraged and solicited intervention by the Nigerian security forces and the military authorities in order to deal with protests by communities. The company did so in the knowledge that serious human rights violations (including murder and torture) were almost inevitable. In 1993, Shell repeatedly asked the Nigerian government to deploy the army to Ogoniland to prevent protests from disrupting the laying the pipeline. It did so, even though a senior staff member had warned colleagues of a *"potential confrontation which may have catastrophic results."* At a meeting on 18 March 1993, Shell executives advised the Nigerian military not to release protestors it had detained unless the military received commitments from their community to stop protests. The army subsequently clashed with villagers at Biara village, shooting and injuring eleven people on 30 April and shooting to death of a man at Nonwa on 4 May. Shortly after the shootings at the pipeline, Shell executives travelled to Abuja to meet the government's top security officials and request the help of the police and army in exchange for unspecified logistical support in dealing with "community disturbances." On 23 October 1993, the army fatally shot one man and injured several more at Korokoro after Shell requested the military to retrieve two fire trucks from the community.

On 13 December 1993, following months of widespread violence in Ogoniland, in which the armed forces were implicated and more than 1,000 people were killed, Shell asked the new military authorities in Rivers State for assistance in "minimising disruptions" caused by community protests. Shell named the communities where these protests had occurred, including in Ogoniland. Shell solicited the intervention of the military and doing so in full knowledge of the serious risks. Within weeks of asking for this help the ISTF was formed, under the command of Major Paul Okuntimo. Almost from the start, this force carried out serious human rights violations. On 21 February 1994, soldiers under Paul Okuntimo's command shot at thousands of people who were peacefully demonstrating outside Shell's main compound in Port Harcourt.

Despite this, on 3 March 1994, Shell paid Major Okuntimo, and 25 of his men, an *"honorarium"*, supposedly to cover the cost of lunches and a "special duty allowance" for five days work. This related to the operation at Korokoro in October 1993, during which soldiers guarding Shell were attacked and, according to Shell, showed restraint (MOSOP, however, reported one person was killed). The honorarium amount was 20,000 Nigerian naira (or \$909). In fact, an internal Shell memo that requested the payment explained that the payment was a *"show of gratitude and motivation for a sustained favourable disposition towards [Shell] in future assignments."*

Shell continued to ask for military support to deal with Ogoniland, including in a meeting with Sani Abacha on 30 April 1994. Shortly after Shell asked Sani Abacha for help, the ISTF launched raids on Ogoni villages, ultimately leading to the deaths of many people, as well as many rapes, the destruction of houses and property, and the illegal detention and torture of many people.

Despite being aware of these grave violations, Brian Anderson asked the government to deploy a military unit to guard its pipelines in Ogoniland, in August 1994. Anderson admitted to his colleagues in London and The Hague that this request *"impinges on our 'no military protection' stance to a limited extent."*

However, as the evidence presented in this report makes clear, Shell's 'no military protection' stance was inconsistent at best, and at times appeared little more than a public relations fiction. The company repeatedly sought the intervention of military or security forces in Ogoniland, to protect its equipment and business operations. This was despite knowing the military was committing grave human rights violations and crimes against the Ogoni people.

Such requests by Shell, given its knowledge of the risks and likely outcomes, constitute acts of encouragement, solicitation, or approval of the human rights violations and criminal offences.

Throughout the period Shell failed to suggest to the government any meaningful alternatives to address the challenges in Ogoniland, or try to persuade the Nigerian military government to follow a less violent path.

SHELL LENT MATERIAL SUPPORT AND ASSISTANCE TO THE ARMED FORCES

Shell provided the security forces with logistical support and payments as a matter of routine during the 1990s. Shell itself says the practice was common, and it is clear that some specific operations did rely on Shell logistics: these include airlifting the rapid intervention force to Bonny in 1992, and the provision of bus transport for soldiers in October 1993. Given Shell's admission that it was company policy and common practice to provide logistical support, it is likely that Shell provided transport to police and military on the other occasions when it specifically requested their intervention, at the same time that Shell knew that the security forces were carrying out acts of violence.

Shell also helped the military, by passing on information. A senior executive has admitted to managing a police unit that conducted undercover intelligence gathering operations in the Niger Delta, including

Ogoniland and shared information with the security services on a daily basis.

Finally, there is evidence of Shell payments to Major Paul Okuntimo, at the time he was leading the military campaign against the Ogonis. Shell has admitted to paying Major Paul Okuntimo and his men, on one occasion, for conducting a patrol in Ogoniland in October 1993. Three former members of the Nigerian security forces gave depositions that they saw Shell staff hand over cash to Major Okuntimo. In a televised interview in 2012, (by now Retired General) Paul Okuntimo denied receiving a "*single penny*" from Shell. But he said that Shell had been secretly in touch with him, encouraging him to take action in Ogoniland.

COMPLICITY IN THE MISCARRIAGE OF JUSTICE AND EXECUTION OF THE Ogoni NINE

The culmination of the Nigerian military government's campaign to crush the MOSOP protests was the execution of the Ogoni Nine on 10 November, 1995. Shell knowingly provided encouragement and motivation to the military authorities to stop the MOSOP protests, even after the authorities repeatedly committed human rights violations in Ogoniland and specifically targeted Ken Saro-Wiwa and MOSOP. By raising Ken Saro-Wiwa and MOSOP as a problem, Shell was reckless, and significantly exacerbated the risk to Saro-Wiwa and those linked to MOSOP. Shell knew full well that the government regularly violated the rights of those linked to MOSOP and had targeted Saro-Wiwa. Following the arrests and during the blatantly unfair trial, the nature of the danger was clear. However, even after the men were jailed, being subjected to torture or other ill-treated and facing the likelihood of execution, Shell continued to discuss ways to deal with the "Ogoni problem" with the government, and did not express any concern over the fate of the prisoners. Such conduct cannot be seen as other than endorsement and encouragement of the military government's actions.



A Shell facility in KoroKoro,
Ogoniland, 1994
© Tim Lambon / Greenpeace

CONCLUSION

It is more than twenty years since the events described in this report took place. It is a scandal that in all this time, the Nigerian government has not launched a meaningful investigation, or brought any prosecutions against entities or individuals involved in the brutal military crackdown.

Allegations of Shell's involvement in the crimes that occurred are also over twenty years old. As early as 1993, MOSOP first accused Shell of providing logistical support to the army involved in attacks on defenceless Ogoni villages. In his closing statement to the tribunal that eventually convicted and sentenced him to death, Ken Saro-Wiwa predicted that one day, Shell's *"time will surely come,"* and it too would face trial.⁴⁷⁰ Notwithstanding the fact that Shell has always denied these allegations, neither the Nigerian

government, nor those of Shell's home states, the UK and the Netherlands, have ever launched any kind of investigation into its involvement with the Nigerian military at the time. This has been the case even after the release into the public domain of thousands of pages of internal Shell documents and witness depositions, related to the US civil claims cases.⁴⁷¹

On the basis of this evidence, there are credible grounds for investigating Shell, on the grounds that it knowingly contributed to and encouraged the human rights violations committed by the government of Nigeria as it attempted to stop MOSOP's protest movement. Many of these violations were also crimes. On the basis of the available evidence regarding Shell's knowledge and its actions, the company's potential criminal liability should be further investigated with a view to prosecution for its possible involvement in crimes of murder and other unlawful killings, torture, rape, destruction of property and unlawful detention.

470. Ken Saro-Wiwa, *Complete Statement*, 21 September 1995, available at <https://ratlcal.org/corporations/KSWstmt.html>,

471. These documents were made public by journalist Andy Rowell in 2009. The Independent, *Secret papers 'show how Shell targeted Nigeria oil protests,'* 13 June 2009, available at <http://www.independent.co.uk/news/world/americas/secret-papers-show-how-shell-targeted-nigeria-oil-protests-1704812.html>

ANNEX: SHELL RESPONSE



Amnesty International
International Secretariat
Peter Benenson House,
1 Easton Street London WC1X 0DW,
United Kingdom

Attention: Ms. Audrey Gaughran

Our Ref: SPDC-2017-06-00000417
Your Ref: TC AFR 44/2017.001

22nd June, 2017

Dear Ms. Gaughran,

We are in receipt of your letter dated 18 June, 2017 addressed to the Chief Executive of Royal Dutch Shell Plc (RDS) and the similar letter to Brian Anderson, former Managing Director of The Shell Petroleum Development Company of Nigeria Limited (SPDC), both regarding the operations of SPDC in the Niger Delta during the 1990s.

I would like to first say that the executions of Ken Saro-Wiwa and his fellow Ogonis in 1995 were tragic events that were carried out by the military government in power at the time. We were shocked and saddened when we heard the news of the executions. SPDC appealed to the Nigerian government to grant clemency. To our deep regret, that appeal, and the appeals made by many others within and outside Nigeria, went unheard.

The allegations cited in your letter against RDS and SPDC are false and without merit. SPDC did not collude with the military authorities to suppress community unrest and in no way encouraged or advocated any act of violence in Nigeria. In fact, the company believes that dialogue is the best way to resolve disputes. We have always denied these allegations, in the strongest possible terms.

I am proud to say that Shell has a history of nearly 60 years in Nigeria and has played a pioneering role in onshore, shallow and deep-water oil and gas exploration and production. In the past and today, Shell Companies in Nigeria have made many contributions to the Nigerian economy, not only through the energy they produce and the revenues and employment they generate for the country, but also via their extensive supply chain, local content and social investment.

Finally, I would like to reiterate that human rights is fundamental to Shell's core values of honesty, integrity and respect for people.

Yours faithfully,
The Shell Petroleum Development Company of Nigeria Limited

Osagie Okunbor
Managing Director / Country Chair

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Secretary: Nike Oyindola Olatimihan

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A CRIMINAL ENTERPRISE?

SHELL'S INVOLVEMENT IN HUMAN RIGHTS VIOLATIONS IN NIGERIA IN THE 1990S

This explosive report examines the role that the Anglo-Dutch oil giant, Shell, played in a brutal campaign by the Nigerian security forces to silence protests in Ogoniland, in the oil-producing Niger Delta region, in the 1990s. The protestors, led by writer and activist Ken Saro-Wiwa, said that the oil industry had had a devastating social and environmental impact. In early 1993, following mass protests, Shell withdrew from the area, citing security concerns.

The subsequent military campaign led to widespread and serious human rights violations, including the unlawful killing of hundreds of Ogonis, as well as torture and other ill-treatment, including rape, and the destruction of homes and livelihoods. Many of these violations also amounted to criminal offences.

Amnesty International researchers have analysed thousands of pages of internal company documents and witness statements, as well as Amnesty's own archives and other resources, to assess the extent to which company executives knowingly encouraged and/or facilitated the actions of the Nigerian military. The evidence raises serious questions about the extent of Shell's involvement not just in gross violations but also in criminal conduct.

Amnesty International is calling on the governments of Nigeria, The Netherlands and the United Kingdom to investigate, with a view to prosecution, Shell's potential involvement in crimes linked to human rights violations committed by the Nigerian security forces in Ogoniland in the 1990s.