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Richard Ivey School of Business
The University of Western Ontario

Royal Dutch Shell in Nigeria: Operating in a Fragile State

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ROYAL DUTCH SHELL IN NIGERIA: OPERATING IN A FRAGILE STATE

In July 2005, Benjamin Aaron, a distinguished conflict resolution and public policy consultant, received a folio of materials from one of his most important and demanding clients, the chief executive officer (CEO) of a leading European-based, multinational mining corporation with a major operating presence in Africa, the Middle East and Central Asia. Aaron was aware that his client had recently been approached about joining the board of Royal Dutch Shell.

The covering memo included the following:

> Will be meeting with some friends in late September to discuss Shell's Niger Delta situation. Want you to develop some approaches on how Royal Dutch Shell might best handle its actions and performance in Nigeria. Ben, "think outside the box." Shell is doing a commendable job in Nigeria, but, alas, public perceptions differ markedly from the facts. Royal Dutch Shell has a significant investment stake in Nigeria; it faces continuing political risks, and the level of criticism at the local and global levels is increasing the political costs of doing business in many of its other key regions of operations. Enclosed are some materials as background reading. You probably are familiar with this material. There is much more. Don't get bogged down. I want your creative input! Confident you will come up with some solid insights and helpful suggestions. Look forward to getting your brief in four weeks' time. Diana will call you to arrange a suitable meeting time so that we may explore your views and thoughts.
> Cheers!
>
> Matt

CORPORATE STIGMA

Aaron attended the January 26, 2005, "Public Eye on Davos" press conference at which the Shell Petroleum Development Company of Nigeria (SPDC) was named villain of the Nigerian environment. The unwelcome award was made on the opening day of the World Economic Forum (WEF).

Friends of the Earth, a non-governmental organization (NGO), charged:

> the Shell Company has laid its fangs and maintained a firm grip on the politics and economy of Nigeria thereby distorting its core values and impoverishing the people...
>
> A former Nigerian Minister of Petroleum Resources, Dan Etete, in frustration decried that Shell and the other oil companies in Nigeria were short-changing the government and people of Nigeria.[1]

To be named an irresponsible company was a bit hard to take, given the stakeholder consultative actions Royal Dutch Shell in Nigeria had taken in recent years so as to be seen and in fact to have behaved as a socially responsible corporation. It was especially frustrating for Royal Dutch Shell board members and corporate executives that the unwelcome award announcement was being played out on an international stage before the world's media, given the attendance of the world's most powerful political and business leaders, in addition to the many NGO representatives.

The Royal Dutch Shell Group took great pride in its corporate history and was flummoxed by its Nigerian travails. At the June 28, 2004, Annual General Meetings of Royal Dutch Petroleum Company and the Shell Transport and Trading Company, p.l.c., management acknowledged that:

> The Niger Delta is a very difficult and sometimes violent place in which to operate. So, as well as investing to develop Nigeria's resources, we are working with others to support community development and promote a safer and more peaceful environment. We don't always succeed. But we do keep trying.[2]

Shell's goal was not altruistic. Shell's Nigerian investment, operations and future prospects loomed large in its overall quest for competitive sustainability and profitability in the oil industry. Conducting business in zones of conflict was difficult at best of times, and the 2005 situation in the Niger Delta was hardly a peaceful operating environment.

The past year had been especially challenging for the Royal Dutch Shell Group. Sir Philip Watts, chairman of the company, was pressured into resigning on March 3, 2004, after an internal organization investigation revealed that the Royal Dutch Shell Group overstated its oil and natural gas reserves by 20 per cent. Criticism from investors over the discrepancy and especially over the company's handling of the restatement was severe. Walter van de Vijver, the chief executive of the Group's exploration and production and potential successor to Sir Philip Watts, also submitted his resignation.

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[1] *Godwin Ojo, "The Public Eye Award 2005 in the Category Environment Goes to: Royal Dutch/Shell Group," Friends of the Earth, Davos, January 26, 2005, http://www.evb.ch/publiceyeondavos.htm, accessed April 17, 2005.*
[2] *Jeroen van der Veer, Speech, Annual General Meetings of Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c., June 28, 2004, p.2.*

Certain industry, financial and investment circles viewed the Royal Dutch Shell Group's corporate organization structure as byzantine, one that fostered a conservative and less than transparent management approach to business, including relations with shareholders and stakeholders generally:

> The recalculation was also a result of overstating reserves in Nigerian on-shore oil projects. Analysts and investors said that was unusual because estimating on-shore reserves is generally a much more exact science than determining those off-shore. Sir Philip [Watts] was chief executive of Shell's Nigerian operations from 1991 to 1994.[3]

On June 28, 2005, investors in the Hague and London voted in support of the unification of the Royal Dutch Petroleum Company and Shell Transport and Trading. The newly created Anglo-Dutch group became known as Royal Dutch Shell p.l.c. A major effect of the merger was its impact on the group's corporate governance structures. Most importantly, Royal Dutch Shell moved to the more traditional single-board structure with one chairman and one chief executive. This new structure replaced the dual-board arrangements based in Britain and the Netherlands. The single board of directors was to be chaired by a non-executive chairman. The first chief executive officer was Jeroen van der Veer, (formerly President of Royal Dutch Petroleum) and Jorma Ollila, chairman and CEO of Nokia, was appointed as the company's non-executive chairman.

At the time the Royal Dutch Shell Group was undergoing a change in leadership, SPDC was being drawn into a local political quagmire of violence and abuses around Warri in the oil-rich Niger Delta. The clashes involved the Ijaw and Itsekiri communities and members of the government security forces. Shell employees and contractors were also among the victims of the Warri clashes.

On April 7, 2003, Human Rights Watch, a major NGO, appealed in letters to the managing directors of the three main oil-operating companies in the area, Royal Dutch Shell, ChevronTexaco and TotalFinaElf:

> to publicly state that the response of government security forces must not be disproportionate to the threat. . . that their operation should be conducted in a manner that ensures respect for due process and fundamental human rights. . . . Such a statement would be consistent with the commitments the company has made under the Voluntary Principles on Security and Human Rights in the Extractive Industries. . . . [4]

Shell viewed itself as being in the vanguard of multinational corporations (MNCs) when it came to advancing and practicing sound principles of corporate social responsibility (CSR), specifically with respect to human rights:

> In 1996, the Shell Group publicly stated its support for the Universal Declaration of Human Rights. The Declaration had existed since 1948. It addresses "all organs of society" which obviously includes business. But Shell was the first energy company and one of the first multinationals to take a public stand in support of it. . . .[5]

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[3] *Heather Timmons, "UK: Shell's Top Executive is Forced to Step Down," New York Times, March 4, 2004, http://www.corpwatch.org/article.php?id=10248, accessed April 17, 2005.*

[4] *Letter from Arvind Ganesan, executive director, Business and Human Rights and Peter Takirambudde, director, Africa Division to Ron van den Berg, managing director, Shell Petroleum Development Company of Nigeria, Ltd, Shell Petroleum Development Company of Nigeria, April 7, 2003.*

[5] *Letter from Robin Aram, vice-president External Relations, Policy and Social Responsibility, Shell International Limited, to Mr. Dzidek Kedzia, chief, Research and Right to Development Branch, United Nations High Commissioner for Human Rights, September 24, 2004.*

MILITARY DICTATORSHIPS AND HUMAN RIGHTS

Nigeria came into existence in 1914 when Britain amalgamated two colonial protectorates into one territorial unit, the Colony and Protectorate of Nigeria. This form of nation creation was not uncommon in Africa. Europe's former colonial powers formed countries out of territories where the population included numerous distinct ethnic and political groups, each with its own language, culture, customs and traditional types of government.

Nigerian nationalism and demands for independence pressured Britain into granting the country full independence in October 1960. Three years later, in October 1963, Nigeria altered its relationship with the United Kingdom by proclaiming itself a federal republic and promulgated a new constitution.

Nigeria's history was one of successive military dictatorships, secessionist pressures, civil war (Biafra), violations of human rights and failed attempts at holding democratic elections. Probably the most corrupt and worst of the military governments was headed by Sani Abacha (1993-1998) who assumed power on November 17, 1993, by forcing the resignation of Ernest Shonekan, a prominent businessman. It was Abacha's government that prosecuted prominent author, journalist and Ogoni political activist Ken Saro-Wiwa and others for their alleged roles in the killings of four prominent Ogoni politicians in May 1994. "Saro-Wiwa and 14 others pleaded not guilty to charges that they procured and counseled others to murder the politicians."[6] The trial was seen as a sham by many in Nigeria and in the West. The Ogoni Civil Disturbances Special Tribunal, established by the Abacha administration, sentenced Saro-Wiwa and eight others to death by hanging. The sentence was carried out on November 10, 1995.[7]

The Saro-Wiwa episode was a major blight on Shell's corporate reputation. The controversy surrounding Saro-Wiwa's execution and the alleged complicity involving Royal Dutch Shell in Nigeria, specifically its support of, if not acquiescence to, the brutal Abacha dictatorship was a millstone around Shell's corporate neck in oil-rich Ogoni and Nigeria generally.

Indeed, Friends of the Earth, in advance of the 10-year remembrance of the execution of Ken Saro-Wiwa and eight others, issued a press release signaling their intention to protest "Shell's record of human rights abuses and environmental damage around the world,"[8] at Shell's June 28, 2005 annual general meeting. At what was described as a heated meeting, Shell attempted to fend off criticism by the Friends of the Earth, who had flown in community leaders from countries including Nigeria, South Africa and the Philippines. They "attacked Shell for not doing enough to clear up pollution."[9] Friends of the Earth documented their case in a report entitled, "Lessons Not Learned: The Other Shell Report 2004," released on June 28, 2005.[10]

The Saro-Wiwa cause célèbre was being kept alive in U.S. courts as well. Under a little known American law, the Alien Tort Claims Act (ATCA), a suit was filed against Shell [Ken and Owens Wiwa v. Royal Dutch Petroleum Company].

[6] *"Background Note: Nigeria," p. 5, http://www.state.gov/r/pa/ei/bgn/2836.htm, assessed August 1, 2005.*
[7] *Ibid.*
[8] *Friends of the Earth, "Shell Faces Community Rebellion at AGM," Press Release, June 28, 2005, http://www.foe.co.uk/resource/press_releases/shell_faces_community_rebe_27062005.html, accessed August 16, 2005.*
[9] *Terry Macalister, "Rowdy Meeting Ends Shell's 100-year Split," The Guardian, June 29, 2005, http://www.guardian.co.uk/oil/story/0,11319,1517070,00.html#article_continue, accessed August 18, 2005.*
[10] *Friends of the Earth, "Lessons Not Learned: The Other Shell Report 2004," June 2005, http://www.foe.co.uk/resource/reports/lessons_not_learned.pdf, accessed August 18, 2005.*

> The plaintiffs, including non governmental organization Earthrights International, have alleged that the defendant, Royal Dutch/Shell, was complicity [sic] involved in an effort by the Nigerian government to try and ultimately execute Mr. Saro-Wiwa for his actions relating to organizing protests against Shell/Nigeria's business activities in the mid 1990s. Royal Dutch/Shell has consistently denied the plaintiffs' allegations . . . .
>
> In effect, the defendants have argued that the action should not be heard in a U.S. court. However, in a major victory for the plaintiffs, on Feb. 28, 2002, U.S. Federal District Court Judge Kimba Wood, ruled that the plaintiffs' allegations met the requirements of the ATCA in that the alleged actions of Royal Dutch/Shell "constituted participation in crimes against humanity, torture, summary execution, arbitrary detention, cruel, inhuman, and degrading treatment, and other violations of international law."[11]

General Abdusalami Abubakar assumed control upon General Abacha's death in June 1998. During his short tenure, Abubakar allowed for an increase in freedoms, paving the way for local, federal and presidential elections. The presidential election was won by former military head of state Olusegun Obasanjo, who ran as a civilian candidate. Obasanjo was released from prison by Abubakar. Not surprisingly for Nigeria, irregularities marred the vote. In spite of the irregularities, the Obasanjo administration ushered in a "comparatively" democratic government in May 1999, after 16 years of consecutive military rule.

However, communal violence, ethnic conflict, and private and public sector corruption were still pervasive in Nigeria. Despite the magnitude of the problems, the Obasanjo administration was viewed as an improvement over previous military regimes. Obasanjo's win in 1999 marked the first relatively successful election of a civilian government since 1960 when Nigeria gained independence from the United Kingdom.[12] In 2003, Olusegun Obasanjo was re-elected president.

President Obansanjo in February 2005 initiated a "national political reform conference" with the goal of addressing tensions, frequently violent that characterize the geographic, ethnic, cultural and religious differences among the various Nigerian communities. These differences collided when delegates from the oil-producing Niger Delta walked out of the June conference. This action was taken when other delegates, especially from Nigeria's Muslim-dominated north, balked at concessions that would allow for an increase in the proportion of oil revenues to be transferred to the Delta State governments.[13]

Another significant initiative by President Olusegun Obasanjo was to appoint, in May 2005, Father Matthew Hassan Kukah as facilitator of the Ogoni reconciliation, which was to be a structured process involving the Rivers State government and the Movement for the Survival of the Ogoni People.

> Basil Omiyi, managing director of Shell Petroleum Development Company of Nigeria Limited, said: "We warmly welcome the statements today by the President, the Rivers State Governor, and the Movement for the Survival of the Ogoni People. We will continue to do everything we can to ensure that a lasting reconciliation amongst and between Ogonis and Shell is achieved, to the benefit of all stakeholders. We look forward to

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[11] *"Human Rights Violations Based on U.S. Alien Tort Claims Act May Subject Multinationals to Liability in U.S. Courts," International Journal of Corporate Sustainability, March, 2003, pp. 6-3 & 6-4, http://www.cesjournal.com/pages/alerts/ref/100306003s.pdf, accessed May 14, 2005.*
[12] *Background Note: Nigeria, op. cit., pp.6 & 7.*
[13] *"Nigeria: A Troubled but Lingering President," The Economist, August 6-12, p.38.*

working with Father Kukah, the federal and state governments, and Ogoni leaders in making the president's vision of reconciliation a reality."

Shell was forced out of Ogoniland in January 1993 following threats to its staff and contractors.[14]

SHELL COMPANIES IN NIGERIA

Nigeria was Africa's largest oil producer and the eleventh largest in the world. In spite of its oil wealth, Nigeria was one of the world's poorest countries with more than 70 per cent of the population living in abject poverty. The country's economy was heavily dependent on oil-sector revenues, which represented nearly 80 per cent of Nigerian government revenues and 95 per cent of its export earnings. Europe and the United States were Nigeria's major trading partners. Nigeria's oil resources were estimated at almost 32 billion barrels. Nigeria also had major gas reserves even greater than the country's oil reserves when translated into energy-equivalent terms.

The Royal Dutch Group of companies, one of the world's largest oil and gas multinationals, had sales of approximately $265 billion in 2004 and a workforce of some 112,000.[15] The company's vision for its Nigerian operations was "to be one of the world's leading oil and gas operating companies contributing to the sustained development of Nigeria and its people."[16] Its mission statement was "To find, produce and deliver hydrocarbons safely, responsibly and economically for the benefit of all stakeholders."[17]

Shell had pioneered the Nigerian oil and gas industry, having proven more than 50 per cent of the country's oil and gas reserves. Shell had operated in Nigeria for more than 60 years, since pre-independence, and employed more than 10,000 people, 95 per cent of whom were Nigerian. As the major MNC in Nigeria's oil and gas industry, Shell recognized that it played a key role in the Nigerian economy and was committed to describing its operations in full, to all its stakeholders, and to providing evidence of its commitment to the sustainable development of Nigeria's energy resources.

Most of the oil in Nigeria came from the Niger Delta. There were five major oil companies. The largest was operated by Shell Petroleum Development Company of Nigeria Ltd., (SPDC). It was majority-owned by the Nigerian National Petroleum Corporation (NNPC) and produced nearly half of Nigeria's crude oil, with average daily production of approximately 1.1 million barrels per day. The others included ExxonMobil, ChevronTexaco, Agip and TotalFinaElf. All operations were joint ventures with the government holding a majority share of between 55 and 60 per cent. NNPC and its subsidiaries were senior partners in all major upstream ventures. In addition to its extensive downstream domestic operations, NNPC owned large reserves of oil and gas, and enjoyed a monopoly in refining and petrochemicals.[18]

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[14] *"Shell Welcomes Progress in Ogoni Reconciliation Process," Shell Nigeria Press Release, May 31, 2005, http://www.shell.com/home/Framework?siteId=nigeria&FC2=/nigeria/html/iwgen/news_and_library/press_releases/2005/zzz_lhn.html&FC3=/nigeria/html/iwgen/news_and_library/press_releases/2005/2005_3105_31051718.html, accessed July 16, 2005.*

[15] *http://www.hoovers.com/free/co/factsheet, accessed April 18, 2005.*

[16] *Shell Nigeria website, "Shell's Role in the Nigerian Oil and Gas Industry," http://www.shell.com/home/Framework?siteId=nigeria&FC2=&FC3=/nigeria/html/iwgen/about_shell/what_we_do/dir_what_we_do.html, accessed April 18, 2005.*

[17] *Ibid.*

[18] *"Nigeria Country Analysis Brief," http://www.eia.doe.gov, accessed April 18, 2005.*

Shell companies included Shell Petroleum Development Company of Nigeria Ltd. (SPDC), Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), Shell Nigeria Gas Ltd. (SNG), Shell Nigeria Oil Products Ltd. (SNOP) and Nigeria Liquefied Natural Gas Company Ltd. (NLNG).[19]

SPDC

SPDC was the operator of a joint venture involving the NNPC, which held 55 per cent, Shell (30 per cent), TotalFinaElf (10 per cent) and Agip (five per cent). The partners funded the operations in proportion to their shareholdings. The company's operations were concentrated in the Niger Delta and the adjoining shallow offshore, where it operated in an oil-mining lease area of about 31,000 square kilometres. It had more than 6,000 kilometres of pipelines and flowlines, 87 flowstations, eight gas plants and more than 1,000 producing wells.

Shell Nigeria Exploration and Production Company Ltd. (SNEPCO)

SNEPCO was established in 1993, and later that year it signed production sharing contracts with the NNPC to operate two deep-water and three onshore licenses. SNEPCO made the first major deep-water discovery (Bonga) in Nigeria in 1995.

Shell Nigeria Gas Ltd. (SNG)

This company was incorporated in March 1998 to promote gas utilization as a cheaper, more reliable and cleaner fuel alternative and feedstock for industry. SNG was driven by the vision that natural gas would overtake liquid fuel as the fuel of first choice for Nigerian industries by 2010.

Shell Nigeria Oil Products Ltd. (SNOP)

SNOP was incorporated in Nigeria during the last quarter of 2000. The company was expected to develop and maintain the market for Shell-branded products and services to customers in Nigeria. The company's vision was to become the largest supplier of refined petroleum products in the country.

Nigeria Liquefied Natural Gas Company Ltd. (NLNG)

Shell had a 25.6 per cent shareholding in NLNG and was also the technical adviser. Its partners in this company were NNPC (49 per cent), TotalFinaElf (15 per cent) and Agip (10.4 per cent). The company supplied liquefied natural gas to markets in Europe and the United States.

Shell Companies in Nigeria (SCiN)

Shell Companies in Nigeria (SCiN) were part of the Shell Group. While SCiN enjoy significant autonomy, they shared a set of "Business Principles" enunciated worldwide. "The core values of the Shell Group as

[19] *Shell Petroleum Development Company of Nigeria Ltd., Annual Report 2003, People and the Environment, May 2004, p.32.*

laid out in our Business Principles were honesty, integrity and respect for people."[20] According to Shell, meeting the expectations of Nigerian society, in an honest and transparent way was essential to its mode of operations. "We adhere to the group's Business Principles as the bedrock of our business dealings and are enforcing zero tolerance of bribery, corruption and unfair trade and competition."[21] But to do so realistically, Shell acknowledged "it has to do business in the real world with all its complexities."[22]

The Niger Delta, where Shell's operations were mainly situated, covered an area of 70,000 square kilometres. Shell Companies in Nigeria used approximately 400 square kilometres of this land, which was acquired in accordance with the law, in negotiation with the land-owning families and communities or their accredited representatives. While most of this land was acquired for long-term use, some was required only on a short-term basis. The population of the Niger Delta was estimated to be seven million. According to Shell's management, "To ensure that our operations have a positive impact on the people whose lives we touch, we engage in continuous dialogue with the communities of the Niger Delta region and with many other important groups at an international, national, and local level."[23]

CORRUPTION AND THREATS

Multinational corporations operating in zones of conflict and/or emerging economies tended to underestimate the challenges and costs of conducting business in such environments. Local politics were frequently characterized by shifting coalitions involving community leaders, political parties, union leaders and tribal leaders. Religious and ethnic rivalries, warlords and local bullies were known to seize on opportunities in such circumstances to advance their own goals. This was certainly the case in Nigeria. As a broad generalization, power vacuums tended to create potentially lethal uncertainty, especially when the rule of law and legal order was absent. What made the Nigerian situation even more troublesome was the inability or unwillingness of the national government to provide the necessary protection to its citizenry and economic enterprises.

Transparency International's (TI's) Corruption Perception Index 2004 ranked a record 146 countries. The list was publicly released on October 20, 2004, in London. TI declared that "most oil-producing countries are prone to high corruption" and urged Western governments "to oblige their oil companies to publish what they pay in fees, royalties and other payments to host governments and state oil companies." TI Chairman Peter Eigen believed that "access to this vital information will minimize opportunities for hiding the payment of kickbacks to secure oil tenders, a practice that has blighted the oil industry in transition and post war economies." Eigen acknowledged:

> Many of the areas in which the issues of sustainability are neglected are areas where it is more expensive for companies to behave in a socially responsible manner. It is, for example, expensive to give up corruption when everybody else is bribing in a certain market. It is more expensive and if there are not enabling environments which force governments and enterprises alike to live up to these standards of social responsibility, then it becomes a prisoner's dilemma, facing many companies because they know if they are the first ones to behave better than their competitors they will lose business and could

[20] *Shell Nigeria website, "Shell's Role in the Nigerian Oil and Gas Industry," http://www.shell.com/home/Framework?siteId=nigeria&FC2=&FC3=/nigeria/html/iwgen/about_shell/what_we_do/dir_what_we_do.html, accessed April 17, 2005.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*

> go bankrupt. In that sense, unfortunately, there is an [incentive] for many companies driven by shareholder value to violate these ethical standards.[24]

Nigeria was ranked on the TI index as one of the most corrupt countries of the world, well ahead, on the corruption scale, of other oil-rich corrupt countries such as Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Iraq, Kazakhstan, Libya, Russia, Sudan, Venezuela and Yemen.[25] Not surprisingly, Shell's Nigerian companies faced a bewildering range of challenges and threats.

SHELL ADMITS FUELING CORRUPTION[26]

On June 11, 2004, BBC News reported that Shell "admitted it inadvertently fed conflict, poverty and corruption through its oil activities in Nigeria." The news headline emerged out of a report commissioned by Shell, which was carried out by three internationally known conflict resolution experts. The report "warned that Shell could eventually be forced to withdraw from the West African country if violence in the Niger Delta escalates." To address the issues, Emmanuel Etomi, Shell's community development manager in Nigeria stated:

> Government and local communities must take the lead [but] as part of an industry inadvertently contributing to the problem, we are prepared to help.

The company acknowledged that operating with integrity in zones of conflict was challenging. Dismissal of career and contract staff for corrupt practices was not unusual. Another Shell spokesperson, London-based Simon Buerk, on the issue of corruption, explained:

> To prevent money earmarked for community projects being siphoned off, Shell's Nigerian operations introduced "13 Big Rules" to tighten internal spending controls. . . . When we go to a community and offer development projects, some actually demand cash instead. Obviously once you put cash into a community it's hard to know where it goes.

Other contentious issues identified included those related to the need to clean up oil spills, and the charge that Shell supports corrupt regimes. Chris Finlayson, chairman of Shell Companies in Nigeria, observed "We recognize that our development activities in the past have been less than perfect." The findings of the commissioned report were incorporated into The SPDC 2003 Annual Report, *People and the Environment* (April 2004). The "13 Big Rules" and Shell's sustainable community development strategies were listed in its 2003 Annual Report (see Exhibit 1).

CHALLENGES

Shell was beset with increasing challenges. It was being challenged on two fronts: operational viability and institutional legitimacy. Labor unrest triggered by rising domestic fuel prices certainly aggravated the situation. On October 11, 2004, Nigerian unions declared a four-day strike to protest against rising fuel

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[24]Peter Eigen, panelist, "Competition and Cooperation - The State and 'Foreign Policy' by Companies and NGOs," in Beyond the State?, 21st Sinclair House Debate, Herbert-Quandt-Siftung, Bad Homburg v.d. Höhe, August 2004, p.35.
[25]Transparency International, Corruption Perception Index 2004, p.5, http://www.icgg.org/corruption.cpi_2004.html.
[26]Material drawn from BBC News "Shell Admits Fuelling Corruption," Friday, June 11, 2004, http://news.bbc.co.uk/1/hi/business/3796375.stm, accessed February 18, 2005.

prices. The unions described this development as a warning strike, one the government had to address by cutting fuel prices or face a nationwide strike. Adams Oshiomhole, head of the Nigerian Labour Congress (NLC), met with Nigerian President, Olusegun Obasanjo, to try to resolve the fuel price issue in order to stave off a national strike, which potentially could have had a deleterious impact on the Nigerian economy. The fuel price increase resulted from the removal of fuel price subsidies as part of the government's economic reform package.

The major MNC oil producers had contingency plans to allow oil to flow should a national strike materialize. The "warning strike" contributed to student unrest and militancy in Lagos, the commercial capital of Nigeria. Many businesses were shuttered. Various segments of the local population heeded the unions' warnings to stay home. Of special import, the warning strike was yet another major blow to Nigeria's oil industry.

During September, fighting between Nigerian troops and ethnic militia in the Niger Delta forced many oil workers to evacuate, negatively affecting daily oil production. The relationship between the NLC and the government was a confrontational one, so much so that the government tabled a law to outlaw the NLC. On October 21, 2004, Nigeria's union leaders declared Royal Dutch Shell "to be an enemy of the Nigerian people." Adams Oshiomhole charged that Shell sided with the Nigerian government, "a government intent on oppressing its own people." This development was proof enough for the NLC to accuse Royal Dutch Shell of interfering in the internal politics of Nigeria. A union threat to call a general strike was in the offing.

Disputes and conflicts between multinational corporations, governments and communities in the Niger Delta were an ongoing problem. This vast region pumped most of Nigeria's 2.3 million barrels a day. Armed conflict, occupations, hostage taking, extortion and sabotage were not uncommon. In early December 2004, for example, hundreds of Kula residents, including women and children, took control of three oil platforms operated by Royal Dutch Shell and ChevronTexaco, cutting off oil supplies and briefly trapping more than 100 workers. The Kula residents were peaceful protesters, however similar situations have been known to turn violent because of the opportunistic involvement of armed pirates and ethnic militants.

The Nigerian government managed to contain the dispute by promising to send a high-powered delegation to help resolve the issue. The issue that led to the protest was a long simmering one; namely, the Kula people's concern with the need for local jobs and development. The Kula people, much like other Niger Delta villagers, contended they received few benefits from the significant oil wealth being pumped from their traditional tribal lands. The Nigerian government contended that the state and local governments in the Niger Delta in fact were provided with a larger share of oil revenues than neighboring regions because of their larger contribution to the Nigerian economy. Then why the difference in perspective? Certain NGOs and civil society groups had complained that the Niger Delta region's leaders were known to be looting the money rather than allocating the funds for the purpose of enhancing local services and infrastructure, which would have benefited the local population. Human Rights Watch, an NGO, released a briefing paper that examined the violence in Nigeria's oil-rich region and presented a number of recommendations to interested parties and stakeholders on how they might best address the problems and issues (see Exhibit 2).

In December 2004, SPDC suspended exports totaling 114,000 barrels of oil per day (another 20,000 barrels involved ChevronTexaco) due to unrest in the Niger Delta. Royal Dutch Shell declared a "force majeure," informing customers it would not be able to meet export contracts from its Bonny Terminal. A Shell spokesperson voiced the view that restarting production and lifting the "force majeure" probably would not take place until the more central dispute between the Kula community and Nigerian authorities was addressed. "Political and ethnic strife in the Niger Delta region, including violence, kidnapping, sabotage and the seizure of oil facilities, often disrupts Nigerian oil production."[27]

Brokering talks to convince Kula protesters to vacate Shell facilities merely tackled a symptom. The much deeper problem had to do with the allocation and distribution of the foreign direct investment benefits in the oil industry, and the less than transparent, equitable and socially responsible behavior of Nigerian government authorities, local Niger Delta government officials and community leaders.

Battering Shell in Nigeria was an ongoing pre-occupation. Local organizations, groups, tribal leaders, politicians, lawmakers and guerrilla leaders who had differences with one another became united when it came to targeting Shell. Not surprisingly, Shell expatriates suffered from a siege mentality and perceived their company and themselves as scapegoats for whatever ailed Nigeria. In 2004, for example, the Nigerian senate demanded Shell pay US$1.5 billion in damages for polluting Niger Delta communities. In addition, there were many outcries resulting from violent outbreaks that involved militant protesters and armed gangs who stormed and seized Shell facilities and were met by armed Nigerian military called in to protect the Shell platforms.

Underlying the charges and grievances was the deeper issue that, in spite of the oil wealth, the minority tribes in the delta waterways — Ijaw, Ekwere, Ogoni, Itsekiri and others — continued to live in extreme poverty. There was massive unemployment among the young, and many villagers lacked such basic amenities as clean water and electricity.

NIGERIA'S OIL INDUSTRY ROLLER COASTER RIDE

CNN reported on January 14, 2005, that Shell's dispute with the Kula community was resolved on January 4, 2005. Shell facilities were reopened in Nigeria, including pipelines damaged by vandalism at Egbema and at the Odeama flowstations. However, stability in the Nigerian oil industry and Shell's operations was short-lived. Some 12 days later, CNN reported that labor unrest was again threatening Nigeria's oil industry.[28]

Indeed, it would not be an exaggeration to describe operating in Nigeria's oil industry as an economic-politico-socio roller coaster experience. The Nigerian operating environment was highly complex, threatening and generally explosive. But at the same time, its oil and gas resources were too rich for Shell to walk away from, or for that matter too tempting not to further explore and commercialize (i.e. exploit). In this context, Shell was no different from other major foreign oil companies in Nigeria, be they private or state-controlled, and headquartered in Europe, the United States or the People's Republic of China, for example.

Shell's participation in the Bonga Deepwater Project in the Niger Delta was indicative of the company's long-term commitment in Nigeria. "Bonga lies 120 kilometres south-west of the Niger Delta, in water more than 1,000 metres deep. The areal extent of the Bonga field is some 60 square kilometres. After acquiring and processing 3-D seismic in 1993/94, the first Bonga discovery well was drilled between

[27] *Nigeria Country Analysis Brief, op.cit., p.5.*

[28] *Material drawn from, "All Shell Facilities Reopen in Nigeria," CNNMoney, January 14, 2005, http://money.cnn.com/2005/01/14/news/international/nigeria_shell.reut, and "Labor Unrest Threatens Nigeria's Oil Industry," CNN.com, January 26, 2005, http://www.cnn.com/2005/world/AFRICA/01/26/nigeria.oil.unrest.ap, accessed January 30, 2005.*

September 1995 and January 1996. Recoverable reserves have been put at 600 million barrels (bbl) of oil."[29] Shell Nigeria Explorations and Production Ltd. held a 55 per cent share in the joint venture. The other partners were Esso (20 per cent), TotalFinaELF (12.5 per cent) and Agip (12.5 per cent). The US$3.9 billion development was Shell's first deepwater offshore project in Nigeria, with Shell's investment share totaling US$2.1 billion. The estimated output was more than 200,000 barrels of oil and 150 million standard cubic feet (SCF) of natural gas per day.[30] Production was projected to begin in 2004, but because of operational delays, industry analysts had moved the date to 2006. Cost overruns had also swelled the Bonga budget.[31]

THE TASK AT HAND

Benjamin Aaron's task was a formidable one, and he could not help but be amused by the irony of the consulting assignment. Royal Dutch Shell, after all, pioneered and was a major advocate of the system of scenario planning that was designed to anticipate dramatic changes. During his January 2005 participation at the World Economic Forum in Davos, he attended the new Shell Global Scenario 2005 presentation by Dr. Albert Bressand, vice president, Royal Dutch Shell Group of Companies. Exploring the future and collaborating on public interests was a stated commitment and mainstay of Shell's strength, akin to a core competency. One of the more interesting Shell pieces of information received from Matt was entitled "Case Study: Nigeria."

The material included the following information:

- The Nigerian government and Shell are leading supporters of the U.K. Government's Extractive Industries Transparency Initiative (EITI) that encourages public disclosure of the revenues received from natural resources.
- In 2003, [SPDC] became the first company to disclose the revenues it paid the Nigerian government. The publication of these figures, for the years 2001 and 2002 in the company's annual People and the Environment report, was made with the permission and full support of the Nigerian government.
- SPDC (operator of a joint venture involving [NNPC], Shell, Total and Agip) in 2003 contributed US$1.2 billion in petroleum profit tax, US$668 million in royalties and paid a signature bonus of $210 million.
- Nigeria is one of a number of developing countries that have already agreed to join the EITI initiative. Speaking at the 10th birthday celebrations of Transparency International, Olusegun Obasanjo, president of Nigeria, said: "The administration will seek to encourage a private sector and civil society check on the exercise of power by government, by providing information about its actions, receipts and expenditures in the oil sector."
- The position as at today is that Nigeria is resolutely committed to the "Publish What You Pay" and "Publish What You earn [sic]" initiative.
- The Nigerian government, with the assistance of the World Bank, launched the initiative with a multi-stakeholder conference in February 2004 that involved participants from government, civil

[29] Shell Off-Shore Technology website, "Bonga Deepwater Project, Niger Delta; Nigeria," http://www.offshore-technology.com/projocuftngal, accessed March 11, 2005.
[30] Ibid.
[31] Carl Mortished, "Shell's Woes Mount as It Admits Cost Overruns, and Delays," Times Online, July 29, 2005, http://business.timesonline.co.uk/article/O,,9072-1712974,00.html, accessed August 3, 2005.

> society and industry. A multi-stakeholder steering committee has been appointed to agree the practical steps necessary for full disclosure from both the government and the oil companies (including the state oil company: the [NNPC]). Shell is committed to supporting this process.[32]

The World Bank's involvement was consistent with its Low Income Countries Under Stress (LICUS) initiative that sought a new approach to engage fragile states such as Nigeria — countries sharing a specific set of development challenges linked to weak policies, weak institutions and poor governance. These challenges were particularly apparent in the Nigerian oil industry where local activists viewed the foreign multinationals not only as visible symbols of economic wealth and political power, but as convenient proxies for a federal government that was distant and insensitive to local needs and exploited local resources for its own benefit and gain.

[32] *Shell website, "Case Study: Nigeria," http://www.shell.com/home/Framework?siteId=royal-en&FC2=&FC3=/royal-en/html/iwgen/environment_and_society/key_issues_and_topics/issues/payments_to_governments/nigeria_case_study_05072005.html, accessed December 23, 2005.*

Exhibit 1

THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED ANNUAL REPORT: 2003 PEOPLE AND THE ENVIRONMENT (APRIL 2004) EXCERPTS

MESSAGE FROM THE CHAIRMAN

... of major concern is the level of violence in the Niger Delta region. The availability of arms, the theft of crude oil, inter-communal conflicts, social disintegration and other factors have contributed to the level of insecurity and tension in the area. As this state of affairs does not present a safe environment for our staff, our contractors and the communities in and amongst whom we work, we are committed to seeking ways by which, with other stakeholders, we can contribute towards promoting peace and reducing conflict in the area.

...We remain committed to corporate social responsibility, one aspect of which is our contribution towards the development of the Niger Delta and the reduction of poverty, but recognise that our development activities in the past may have been less than perfect. Our community development spend has gone down this year for various reasons. But we are committed to improving our processes for delivering future projects, examining our impact on communities and the environment in which we operate and taking corrective action. We believe that one way of improving the delivery of community development projects is through partnership, which will allow the sharing of resources and knowledge, the harnessing of expertise and should lead to the achievement of better results...

...There are many ways in which businesses can contribute to sustainable development. For SPDC, and other Shell companies in Nigeria, our most significant contribution comes from carrying out our direct business activities efficiently, profitably and to high standards. It also comes from the sizeable investments we make. These create wealth for the nation, through the substantial amounts of taxes and royalties generated...

PARTNERING FOR COMMUNITY DEVELOPMENT

New Directions

Meeting basic developmental needs is a huge challenge. SPDC's approach initially reflected a traditional philanthropic or grant-making approach and concentrated on education (scholarships), agriculture, infrastructure-type projects, and health care. But by mid-1997, an internal review reported that though the majority of these projects were functional, some were poorly executed, poorly maintained and lacked sustainability...

Sustainable Community Development

During 2003, we began to lay the groundwork for a further major shift in our CD strategy. This followed another comprehensive review of our community interface activities (that is, CD and community relations) conducted in 2002. The review concluded that, whilst our current CD approach demonstrates a number of best practices, there were also critical shortcomings in some areas of our interaction with communities. In particular, it identified the need for a coordinated approach to enhance community ownership and sustainability of CD programmes, and recommended the development of strategies to address current and emerging issues in a manner that will:

Exhibit 1 (continued)

- Promote sustainable social and economic development of the communities
- Partner and work with government, NGOs and development agencies in capacity building efforts
- Improve our internal processes related to CD
- Secure SPDC's licence to operate and grow, and ultimately, maximise Nigeria's oil and gas development revenues.

Based on these recommendations and subsequent preliminary work, we established in April a new Sustainable Community Development (SCD) strategy, aimed at improving the management of all community interfaces within Shell. A team was also established to undertake the detailed study, design and development of the new strategy. The team completed its work in December, following which SCD is now the next phase in our journey from CA to sustainable social development...

The SCD strategy places greater emphasis on partnerships, not just with the communities themselves, but also with government and strategic local and international development organisations and non-governmental organisations (NGOs). Such partnerships complement our own efforts, and enable solutions to be developed that we may not be able to achieve on our own, thereby accelerating developmental and employment-generating opportunities across the region. Two such partnerships were entered into during the year: with USAID — a five-year $20 million agreement that will develop Nigerian capacity in agriculture, health and business enterprise; and with Africare – a three-year $4.5 million partnership that will focus on reducing deaths from malaria...

SCD Policy

In order to improve the quality of life and maintain a mutually beneficial relationship with communities in the Niger Delta, SCiN shall:

- operate an efficient and cost-effective sustainable community development programme which applies world standard of practice to serve communities in its area of operations.
- enhance partnerships with all segments of the community and where appropriate with governments, donors, non-governmental organisations, and other relevant stakeholders.
- encourage full participation and ownership of projects by communities through participation in planning, implementation, monitoring and evaluation.
- develop and maintain communication with all segments of the communities in order to integrate their concerns and contributions and bring these to the attention of the appropriate authorities.
- identify and promptly manage issues arising from company operations in communities in accordance with approved procedures and statutory provisions.
- focus intervention on sustainable community development programmes that have high impact and broad benefits for the wider population...

SUSTAINABLE COMMUNITY DEVELOPMENT "BIG RULES"

Big Rules are defined and agreed as clear principles for managing community interfaces in SCiN[33]. These rules form the key to, and basis of, leadership commitment and role modelling for SCD's operating and compliance framework. The Big Rules are the basis for the prescription and documentation of processes to effect the SCD strategy. Deviation from the Big Rules will have undesired consequences on both external and internal stakeholders and jeopardise the legitimacy of the SCD operating model. They must be adhered to, to ensure commitment, integrity and accountability of all parties.

[33] *Shell Companies in Nigeria (SCiN).*

Exhibit 1 (continued)

The BIG RULES are:

1. SCD sets the corporate direction and strategy of community interactions and manages corporate CD activities in the SciN.
2. All community development projects/programmes must be in accordance with the agreed/approved five-year rolling SCiN community development plan, which is aligned to the Niger Delta master plan where appropriate.
3. All community budget and expenditure must be approved and accounted for in accordance with SCD procedures.
4. SCD programmes/projects must have a sustainability plan and exit strategies and must be subjected to independent verification.
5. All new projects must have a baseline community survey and all existing projects must have a social evaluation review.
6. All community MoUs must conform to SCD guidelines and be approved by the Asset and SCD Managers.
7. Area teams are accountable for the implementation of SCD projects in line with agreed plans and SCD guidelines.
8. There shall be **no** payments to communities other than those specified for legitimate business reasons.
9. No payment for ghost workers or stand-by employment.
10. Contractors/sub-contractors working under contract with SCiN must strictly adhere to the SCD policy and procedures for community interaction.
11. SCiN must deliver on SCD commitments.
12. SCiN will strictly adhere to SCD guidelines/policies at all times, even when operational continuity is threatened.
13. The Sustainable Community Development Controls Committee (SCDCC) must approve any deviation from the above rules.

Source: 2003 Annual Report, http://www.shell.com/static/nigeria/downloads/pdfs/annualreport_2003.pdf, accessed April 17, 2005.

Exhibit 2

VIOLENCE IN NIGERIA'S OIL RICH RIVERS STATE IN 2004 A HUMAN RIGHTS WATCH BRIEFING PAPER FEBRUARY 2004 EXCERPTS

THE EMERGENCE OF ARMED GROUPS IN RIVERS STATE

Since oil exploration began in Nigeria in the 1950s, the nine states that constitute the Niger Delta have been sites of intense violence, from the Biafran war of succession in the 1960s to the Ogoni uprising in the early 1990s. From 1997, Delta State, primarily in and around the capital Warri, has been the main site of violence in the delta. In late 2003, the center of violence shifted to Rivers State, principally in and around the "oil capital" of Port Harcourt.

Although the violence across the Niger Delta has manifested in different forms -- in Warri it is seen as a conflict between Ijaw and Itsekeri ethnic militias, in Rivers State as a battle between Ijaw groups -- it is essentially a fight for control of oil wealth and government resources. The violence in Port Harcourt has been perpetrated by two rival armed groups and their affiliates who battled to control territory and lucrative oil bunkering routes. Oil bunkering is the illegal tapping directly into oil pipelines, often at manifolds or well-heads, and the extraction of crude oil which is piped into river barges that are hidden in small tributaries. The crude is then transported to ships offshore for sale, often to other countries in West Africa but also to other farther destinations.

Both Asari's NDPVF and Tom's NDV are primarily comprised of young Ijaw men from Port Harcourt and nearby villages. In addition to these two groups, there are, according to the state government, more than 100 smaller armed groups, locally known as "cults." Many of these "cult" groups, with names such as the Icelanders, Greenlanders, KKK, Germans, Dey Gbam, Mafia Lords, and Vultures, were originally formed in the early 1990's as university fraternities, but later largely evolved into criminal gangs. In late 2003, in an effort to increase their access to weapons and other resources, many of the "cult" groups formed alliances with either Asari's or Tom's armed group as the two leaders fought for control of oil bunkering routes. Although the smaller groups retained their names and leadership structures, Asari and Tom assumed command and control responsibilities over the militant actions of these smaller groups.

The militarization of what started out as non-violent youth and "cult" groups in the 1990's and the later emergence of large, well organized armed groups like the NDPVF and NDV can be attributed to several key factors:

Violence In Nigeria's Oil Rich Rivers State in 2004

1. The manipulation of youth groups by local politicians
2. Payments made to communities by multinational oil companies and their impact on fomenting conflict over traditional leadership positions
3. Poverty, underdevelopment and widespread youth unemployment
4. The use of youth groups by conglomerates involved in the illegal theft and sale of crude oil, or illegal oil bunkering
5. Widespread availability of small arms and other weapons
6. The prevailing culture of impunity in Nigeria

Exhibit 2 (continued)

The Agreement to End the Violence in Rivers State

The federal government initiative, headed by President Obasanjo to bring Asari and Tom to the negotiating table resulted in the signing of the October 1, 2004 agreement between the two armed groups. This agreement called for an immediate ceasefire, the "disbandment of all militias and militant groups" and total disarmament. Since then there have been several meetings between government officials, leaders of the various armed factions, and civil society representatives. The parties drafted a more comprehensive agreement which addressed two major issues: the disarmament of Asari's NDPVF, Tom's NDV, and their affiliated "cult" and youth group members, and the re-integration of these groups into society. In addition, numerous local committees have been established to monitor progress on these issues and examine the underlying causes of violence. . . .

Human Rights Watch commends the government's effort to address the violence that dramatically escalated in 2004 but two issues of concern remain about the agreement:

1. The granting of amnesty to individuals responsible for serious human rights abuses, including killings, will contribute to the culture of impunity and jeopardize the prospects for peace in Rivers State. To effectively establish the rule of law and ensure lasting peace, all individuals, including government officials, responsible for murder and other serious crimes must be held fully accountable.
2. The agreement fails to address the root causes of the violence, in particular the sponsorship and manipulation of youth groups by political leaders, traditional elites, and networks of "oil bunkerers," as well as the tensions created by the impact of oil company payments to communities. As the 2007 elections draw closer and local politicians jostle for positions, it is likely that frustrated youth will be easily re-mobilized unless these underlying issues are addressed.

RECOMMENDATIONS

To the Nigerian Federal and Rivers State Governments:

- Promptly investigate the 2003-2004 violence around Port Harcourt by the NDPVF and the NDV, including allegations of the role of state government officials in sponsoring armed groups. Independent investigations must also be undertaken into alleged abuses and excessive use of force by state security forces. Prosecute any individuals alleged to be responsible for serious human rights abuses, including murder and wanton destruction of property, in accordance with international fair trial standards.
- Take prompt and effective measures to ensure that families who suffered loss of lives and property as a result of human rights violations committed by government agents, including government complicity in abuses committed by the armed groups, receive appropriate reparation. Work with international donors and multinational oil companies to obtain financial and logistical assistance to assist all those who have been internally displaced, and had homes and property destroyed during the violence in late 2003 and 2004
- Deploy adequate numbers of police in Rivers State, in particular to the riverine communities, to protect the local population from potential acts of violence by armed groups. Ensure that members of the police force deployed act professionally, impartially and in accordance with international standards.
- Take measures to stop the flow of small arms into the Niger Delta, such as the strengthening of controls over government-controlled weapons and the improvement of border security with neighbouring countries. Take the lead in pressing for the implementation of a binding regional convention on small arms to replace the ECOWAS small arms moratorium. Establish more robust mechanisms for monitoring the disarmament process.

Exhibit 2 (continued)

- Provide to the public, reports on payments of oil companies to the government and government revenues derived from the extractive industries sector, as recommended by the Extractive Industries Transparency Initiative, signed onto by the Nigerian government in 2003.
- Establish a comprehensive strategy for investigating illegal oil bunkering activities, and for ensuring that such investigations and resulting arrests and prosecutions are not affected by political considerations. Explore the possibility of oil certification as a means of eliminating the role of illegal oil bunkering in fuelling the violence, by reducing the income that can be made from the illegal sale of oil.

To donor governments and international financial institutions:

- Urge the federal and state government to investigate responsibility for the 2003 and 2004 violence around Port Harcourt and to hold perpetrators of serious human rights abuses accountable.
- Provide assistance for government and civil society initiatives to assist internally displaced persons.
- Provide technical and financial assistance for initiatives to curb the flow of small arms in the Niger Delta and the wider sub-region.
- Encourage full implementation by the Nigerian government of the Extractive Industries Transparency Initiative and support the international campaign - commonly known as the "Publish What You Pay" campaign - calling for the mandatory disclosure of all taxes, fees, royalties and other payments made by companies to governments for the extraction of natural resources.

To intergovernmental institutions, including the United Nations, the African Union and ECOWAS:

- Urge the federal and state government to investigate responsibility for the 2003 and 2004 violence around Port Harcourt and to hold perpetrators of serious human rights abuses accountable.
- Take measures to stop the flow of small arms into the Niger Delta, such as the improvement of border security with neighbouring countries. Press for the implementation of a binding regional convention on small arms to replace the ECOWAS small arms moratorium.

To oil companies operating in the Niger Delta:

- Publicly and privately urge the federal and state government to investigate responsibility for the 2003 and 2004 violence around Port Harcourt and to hold perpetrators of serious human rights abuses accountable.
- Encourage full and swift implementation by the Nigerian government of the Extractive Industries Transparency Initiative.
- Publish details of all fees, royalties, contracts and other payments made to all levels of the Nigerian government and to local communities, including compensation payments and community development funding.
- Ensure credible third party audits of community development assistance, including payments that are given to community representatives to disburse or spend on community projects and employment agreements with local communities. Results of such audits should be made public to ensure that all funds are used for their stated and intended purpose.
- Explore the possibility of oil certification as a means of stopping illegal oil bunkering.

Source: Human Rights Watch website, http://hrw.org/backgrounder/africa/nigeria0205/2.htm, accessed August 19, 2005.