FUELLING THE NIGER DELTA CRISIS

Africa Report N°118 – 28 September 2006

International Crisis Group

WORKING TO PREVENT CONFLICT WORLDWIDE

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Less than a year before Nigeria holds its third national elections since the end of military rule in 1999, tensions are running high in the southern Niger Delta. A number of militant groups have begun allying themselves to local politicians with electoral aspirations. These groups and others continue to use legitimate grievances, such as poverty, environmental destruction and government corruption, to justify increasingly damaging attacks against government and oil industry targets. Removing the incentives for violence will require granting a degree of resource control to local communities. Engaging Delta groups in sustained, transparent dialogue also remains critical to finding a solution to the militant puzzle. Equally important, credible development efforts must be supported and stiff penalties for corruption imposed upon those who embezzle and squander funds.

Crisis Group's first report on the Niger Delta[1] examined the historical and societal underpinnings of the growing insurgency. This report focuses on more recent developments. It examines the often hazy overlap between the militant Niger Delta cause and criminal and political motives, and identifies the steps required to defuse the conflict.

Demands from militants have included the creation of additional states for Ijaws, amenities and jobs for rural communities, contracts and oil concessions for faction leaders and even calls for independence. The spokesman for the Movement for the Emancipation of the Niger Delta (MEND), the most vocal and best organised of the militant organisations to emerge in 2006, says his group's goal is to achieve resource control concessions or wreak "anarchy".

Attacks since December 2005, including a spate of oil worker kidnappings, have at times forced oil production shutdowns of up to 800,000 barrels per day, threatening Nigerian government plans to nearly double production to four million barrels a day by 2010. Only some of those production losses have been offset by recent offshore developments. Two companies with foreign shareholders signalled in August 2006 that they would be withdrawing from the Niger Delta due to security concerns.

The most potent weapon in the militants' arsenal is the growing anger among the region's twenty million inhabitants. In more than seven years of civilian rule, functionaries at the local, state and federal levels are perceived to have failed to deliver tangible economic benefits for impoverished residents. Militant groups have largely ignored the incremental administrative reforms begun since 2003 and are succeeding in drawing upon anger against a pervasively corrupt system of governance inherited from the military era. Militant groups have managed to win sufficiently broad popular support to operate openly in many communities and have not been weakened by the imprisonment since September 2005 of publicity-seeking warlord Alhaji Dokubo-Asari. To date, militants have not been sufficiently organised or united to mount a viable separatist insurgency. Most fighters would concede that winning independence for the Niger Delta remains highly unlikely, although support for such a movement is growing.

Community groups in the Niger Delta complain they have few incentives to protect oil infrastructure from militant and criminal groups. For impoverished locals, government officials and even oil company staff, oil theft offers significant rewards. Since a government crackdown on oil theft began in mid-2005, piracy and kidnappings have been on the rise. Oil facilities and workers are difficult to defend, nowhere more so than in the Niger Delta's tangle of swamps and rivers.

Environmental claims are increasingly incorporated into the rhetoric of insurgency and need to be independently addressed. Locals have long complained that spilled oil from deteriorating decades-old pipelines has devastated fishing, although overfishing is also to blame. Oil companies insist that the vast majority of spills that have occurred in recent years are the result of sabotage by oil thieves and other groups trying to extort compensation payments.

National elections scheduled for 21 April 2007 are causing major concern, especially in the Niger Delta. A repetition of the widespread ballot fraud of 2003 risks aggravating

[1] Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006.

an already tense political climate. Many Nigerians fear President Olusegun Obasanjo's anti-corruption campaign launched in 2003 may be too little, too late. Others have dismissed reforms as a weapon wielded against political enemies of the country's ruling elite. Although some Western analysts have touted the merits of a recent package of promised infrastructure development in the Niger Delta under the umbrella of a centrally-controlled Consolidated Council on Social and Economic Development, few people in the Delta have faith that this will be any more effective than the failed, federally-controlled development mechanisms of the past.

Resolving the Niger Delta crisis will require far greater commitment on the part of the federal government and corporate stakeholders in ensuring the oil industry operates fairly and transparently in the region, with visible benefits to the local population. Without serious and sustainable reforms, all parties stand to lose.

RECOMMENDATIONS

To the Nigerian Federal Government:

1. Engage in negotiations with a broad-based delegation of Niger Deltans from the region's ethnic councils, religious groups and other civil society organisations. The terms of reference for the talks should focus on expanded local resource control as called for by the Special Committee on Oil Producing Areas in 2002; further, the venue for negotiations should be a location within the Niger Delta to allow for greater transparency and local participation, and if talks need to break off into smaller groups to address problems of individual communities, efforts should be taken to keep the process transparent.

2. Institute, while this dialogue is proceeding, a derivation formula of between 25 and 50 per cent of mineral resources, including oil and gas, to all Nigerian states, and phase this in over five years in order to avoid budgetary shock to non-oil producing states and to encourage exploration and production of other mineral resources throughout Nigeria.

3. In the short to medium term, until state and local governments are demonstrably representative of and answerable to Niger Delta communities, allocate any additional monetary resources beyond current statutory state and local government payments directly to locally-controlled foundations willing to accept the assistance and oversight of qualified, independent, international development professionals.

4. Repeal or reform legislation such as the Petroleum Act and the Land Use Act that effectively deprive local residents of an ownership stake in land and resources.

5. Consider a constitutional provision to abolish criminal immunity for the president and state governors, and encourage law enforcement bodies such as the Economic and Financial Crimes Commission (EFCC) to prosecute cases of local and state government corruption.

To Nigeria's Senate and House of Representatives:

6. Pass the proposed Nigerian Extractive Industries Transparency Initiative (NEITI) bill to entrench recent oil and other mineral industry reforms.

To the State Governments of the Niger Delta:

7. Implement economic reforms and ensure that state government allocations are spent on projects that focus on health services and safe drinking water, education, job training and transportation.

8. Where state and local government development capacity is lacking, partner with reputable development professionals who have a demonstrated commitment to community participation in planning and implementation.

To the UN, International Community and Donor Governments:

9. Provide resources for and support an independent environmental impact assessment (EIA) of the Niger Delta as well as a credible, independent judicial mechanism to adjudicate compensation claims, taking steps to ensure that the credibility of such an environmental assessment is not damaged by funding from or association with government and energy companies, and that compensation is distributed transparently in a manner that benefits communities rather than "benefit captors" such as politicians and militant and traditional leaders.

10. Press the Nigerian government to reform legislation such as the Petroleum Act and the Land Use Act that effectively deny local control of resources.

11. Discourage heavy-handed military operations and and encourage negotiations between the federal government and Niger Delta groups.

12. Make budget and expenditure transparency a condition for aid to federal, state and local governments and end relationships with local and state administrations that have failed to address corruption.

13. Offer the good offices of a neutral country without oil interests in Nigeria to mediate between the

federal and state governments and Niger Delta parties, based on the proposal already accepted in principle by several Delta activist and militant groups.

To the Energy Companies:

14. Make individual company project environmental impact assessment (EIA) studies more transparent and accessible to community groups. Obtain community assent before proceeding with infrastructure and other developments.

15. Abide by the rulings of independent arbitration and court decisions looking into environmental claims. Both the federal government and companies should ensure that they pay their share of pollution compensation awards.

16. Encourage corporate transparency by releasing detailed, public reports of expenditures, including costs of development and payments to governments, community groups and contractors.

17. End illicit and semi-illicit payments to both militants and paramilitary security forces deployed to protect oil installations.

18. Abolish the host-community system of payments to communities in favour of a system that deals with communities more holistically through ethnic and regional councils.

19. Refashion joint venture partnerships to include local participation and ownership and, to this end, enter into talks with government and local groups.

To the Energy Companies' Home Countries:

20. Legislate to require companies with overseas operations to publicly disclose all payments to foreign governments. This initiative should be synchronised through the Group of Eight to provide additional credibility to extractive transparency efforts in developing nations.

Dakar/Brussels, 28 September 2006

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FUELLING THE NIGER DELTA CRISIS

I. INTRODUCTION

During military rule, which ended seven years ago, Nigeria's generals operated the Niger Delta oil industry as if it was their personal cash cow.[2] With just months to go before Nigerian President Olusegun Obasanjo's second and final term is expected to end, his legacy as a reformer is threatened by continued maladministration and systematic corruption in the region's oil industry. The legacy of the junta-era generals continues to inflict a steady toll on national unity.

Obasanjo, himself a former general who, in the late 1970's, became the only Nigerian military ruler ever to voluntarily hand over power to civilians, used his first term in office as a civilian to address political party reform and fend off challenges from legislators more interested in kickbacks than responsible opposition. Serious reforms only began after Obasanjo was reelected in 2003. Anti-corruption efforts by the Finance Ministry, the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices Commission (ICPC) and the Nigerian Extractive Industries Transparency Initiative (NEITI) are important but not sufficient.

For the 20 million residents of the 70,000 square kilometre Niger Delta, a region of swamps, rivers and tropical forests, alienation is increasing, not only because civilian rule has so far failed to bring about expected improvements in average standards of living, but also because many people continue to suffer the negative impacts of oil: violence, environmental degradation and poverty.

Nigeria's federal system indirectly encourages violence in the Niger Delta by rewarding those who pose the greatest threats to oil facilities with juicy oil contracts and government positions. Heavy-handed punitive missions by the Federal government will further alienate the population at large. Those who abide by the rules are ignored. Removing the incentives for violence will require granting a measure of resource control to local communities while also imposing harsher penalties on those who steal and kill – whether the perpetrators are government or civilian.

[2] For an overview of Nigeria's history, see Crisis Group Africa Report N°113, *Nigeria: Want in the Midst of Plenty*, 19 July 2006.

II. OIL AND POWER

A. THE PERILS OF CIVILIAN RULE

Government officials tend to explain away the Niger Delta crisis as an expected by-product of the country's difficult transition to democracy. Yet civilian rule has its own perils that have exacerbated and, in some cases, sparked conflict. More than seven years after the country's 1999 elections, democratic institutions remain weak and law enforcement structures are prone to manipulation by national and regional political figures. Legislation that prevents communities from having a legal stake in the oil pumped from their back yards has remained intact and security forces have often reacted to violence with a form of brutality reminiscent of military rule. Civilians bear the brunt of the crisis, caught variously between rival gangs, militias and security forces.[3]

By the third quarter of 2003, several months after Nigeria held its second post-military rule elections, only 14 per cent of those who responded to an independent survey in the Niger Delta, or south-south as it is commonly referred to, said they were relatively satisfied with Nigerian democracy. This compared with 35 per cent of Nigerians as a whole who were relatively satisfied. The only region with a higher level of dissatisfaction was the Igbo-speaking southeast where just 12 per cent expressed relative satisfaction.

Although 59 per cent of Niger Deltans (and 68 per cent of Nigerians) said they still preferred democracy to non-democratic government, that number was a dramatic drop from three years earlier, when 87 per cent of Niger Deltans (and 80 per cent of Nigerians as a whole) said they preferred democracy.[4] Such growing disillusionment

[3] See Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest,* 3 August 2006.

[4] Peter Lewis and Etannibi Alemika, "Seeking the Democratic Dividend: Public Attitudes and Attempted Reform in Nigeria", AfroBarometer Working Paper N°. 52, October 2005. In the survey, the Lagos-based firm Research and Marketing Services interviewed 2,428 Nigerians of voting age in 29 of Nigeria's 36 states. The survey, directed by Peter Lewis of American

is the direct result of persistent poverty, escalating crime and violence and a high level of perceived government corruption.

1. The Ijaw-Itsekiri crisis

Violence between Ijaw and Itsekiri militias in Delta and Ondo states during the last decade has killed thousands and destroyed scores of towns and villages, some of them multiple times. Human rights abuses have gone unpunished and, in many cases, the victors of conflicts have been rewarded with government and oil company contracts.

The first major flare-up occurred in March 1997 in the oil city of Warri, ostensibly over the decision by military authorities to relocate local government headquarters from the Ijaw town of Ogbe-Ijaw to the Itsekiri community of Ogidigben.[5] Hundreds are believed to have been killed on either side during three months of fighting.[6] Six Shell flow stations were seized by community groups and 127 Shell staff were held hostage. A seventh flow station was later shut down, together cutting Shell's Nigeria output by some 210,000 barrels of oil per day for more than a week.[7] Later in April, other youths seized flow stations at Ogidigben, forcing another temporary production shutdown. A Shell official was reported as saying that the company had paid community members the equivalent sum of $1,100 [8] to "look after the flow stations".[9] Shell stressed it was not involved in the dispute and that "invading oil installations was seen as a good way of bringing attention to protesters' demands". [10]

Large numbers of military troops were subsequently deployed to the western Niger Delta and a curfew was imposed in Warri, although violence continued to erupt periodically. An outbreak of violence in May and June 1999, during the handover from military to civilian government, reportedly left as many as 200 people killed in raids by ethnic Ijaw and Itsekiri militia. In a report on the conflict, Human Rights Watch concluded that the "continued impunity for years of brutal violence" was a fundamental reason why fighting continued.[11]

The next major flare-up occurred around the 2003 elections, when perceptions of oil company favouritism and broken promises contributed to a serious outbreak of inter-ethnic violence. Clashes involving Ijaw, Itsekiri, Urhobos and Nigerian security forces left hundreds dead and thousand homeless.[12] Some 40 per cent of the country's oil industry was shut down for weeks and some areas still have not returned to production. Chevron suffered $500 million in infrastructure damage in addition to significant oil production losses. For a select few militant leaders – some of whom were front-line fighters in the attacks of 1997 and 2003 – the rewards were lucrative. In 2004, several key Ijaw and Itsekiri militants were appointed to state and local government positions. In 2006, President Obasanjo's government reserved an oil block drilling license for a company linked to members of the Federated Niger Delta Ijaw Communities (FNDIC), which actively coordinated and led Ijaw fighters during deadly conflicts in 1997, 1999 and 2003.[13] Shell has also admitted giving service contracts to FNDIC members.[14]

2. Gangs, guns and ballots

Armed gangs and militia groups have begun forging alliances with politicians ahead of elections in April 2007. An early sign of the potential for violence was the reported July 2006 killing of fourteen people in disputes linked to the electoral aspirations of rival ruling party politicians in Rivers state.[15]

A pattern of electoral violence has taken root since the country's 2003 elections. Presidential and gubernatorial voting that year was deeply flawed and many results were influenced by local kingpins, often referred to as "godfathers", who backed aspiring politicians with money and armed support. The European Union Observer Mission reported "serious irregularities and fraud – in

University, Etannibi Alemika of University of Jos and Michael Bratton of Michigan State University along with Derek Yul Davids of IDASA South Africa, stated a margin of sampling error of plus or minus 2 per cent.

[5] Ogbe-Ijaw is also spelled Ogbe-Ijo or Igbe-Ijoh and Ogidigben as Ogidigbe.

[6] "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", Human Rights Watch, January 1999.

[7] The production estimate was cited in "Shell Nigerian output back to normal", *Lloyd's List,* 1 April 1997.

[8] Dollars are U.S. dollars throughout, unless noted otherwise.

[9] "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", Human Rights Watch, January 1999.

[10] "Shell Nigeria staff held as dispute turns ugly", Oil and Gas Journal, 31 March 1997.

[11] "The Warri Crisis: Fueling Violence", Human Rights Watch, November 2003.

[12] See Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest"*, 3 August 2006.

[13] Interviews with Ijaw and Itsekiri youth and militants by Crisis Group researcher in a former and current capacity, 1998-2006.

[14] See Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006.

[15] "At least 14 dead in Bodo, Ogoni & Emohua in Rivers state…" email from Stakeholder Democracy Network, 28 July 2006.

a certain number of states, minimum standards for democratic elections were not met".

Among the states singled out for criticism by the EU team were the Niger Delta states of Delta, Rivers and Cross River, where "many instances of ballot stuffing, changing of results and other serious irregularities" were witnessed by the observers. A lesser number of similar irregularities were reported in the regional states of Imo and Edo.[16] Some regions showed "improbable turnout figures, up to 100%, while actual voter participation was visibly lower". At one polling station in Delta state, where the ruling party had over 90 per cent of the vote count from several ballot boxes, EU observers watched a dispute between party agents from different parties concerning "payment of promised bribes". In Rivers, EU observers reported "fighting between party supporters on the one hand and voters and polling staff on the other". A coalition of civil society groups with 40,000 observers across the country concluded that Nigeria's electoral commission "cannot seriously claim that elections have been successfully conducted" in Rivers and Delta states. In several other states, including Imo, election results were also "willingly falsified", the coalition said.[17]

Before and during the 2003 elections, hundreds were killed throughout Nigeria, many in the Niger Delta. In these areas, ruling Peoples Democratic Party (PDP) governors used violence to resist opposition politicians. Bands of "political thugs", many armed by the ruling party while a few received support from opposition groups, fought for physical control of localities. In Nembe (Bassambri), a town in Bayelsa state, clashes allegedly resulted in at least a dozen fatalities.[18] At least ten people were killed in a clash between PDP and opposition All Nigeria Peoples Party (ANPP) supporters in Oporoma, headquarters of Bayelsa's Southern Ijaw local government. In Delta state, ruling party agents were seen by foreign journalists transporting stuffed ballot boxes in private vehicles.[19] In Rivers state, there was little or no voting in many areas.

The 2003 vote provided ammunition for Ijaw militant leaders who forged temporary alliances of convenience with local and state politicians. Alhaji Mujahid Dokubo-Asari and Ateke Tom were among the militant leaders alleged by local activists to have provided muscle to politicians in return for arms and financial compensation. Militants vied for politicians' attention by carrying out vicious attacks. "The stronger the boys are the more they think they will be used" by politicians, said a community leader in Buguma, Rivers state, where elections were particularly bloody.[20] Ateke and Asari accused each other of being paid thugs yet both denied accusations against them.[21] Following the 2003 vote, Asari was reported to have placed an advertisement in Port Harcourt newspapers that accused Rivers state Governor Peter Odili of arming rival groups and fixing elections, charges which Odili denied.

3. Alhaji Mujahid Dokubo-Asari's challenge to the Nigerian Federation

In the wake of the public falling out between Asari and Odili – some activists have alleged that Asari had been backed by the governor for a period in return for armed support against Odili's rivals and that Odili reacted strongly to Asari's advertisement – the warlord's supporters fought violent clashes with rival militia factions and security force troops. The latter raided Asari's bases by air and water and Asari's supporters lauched hit-and-run raids against rival groups and security forces in the city of Port Harcourt. On 27 September 2004, his Niger Delta People's Volunteer Force (NDPVF) declared "all-out war" against Nigeria's government. After this announcement world oil prices passed $50 a barrel for the first time.[22]

Asari is a complicated figure. Born Dokubo Melford Goodhead Jr. in the early 1960s to a Christian family, he dropped out of the University of Calabar in 1990 and later the Rivers State University of Science and Technology, citing problems with university authorities who apparently disapproved of his activism. He converted to Islam and changed his name, spending much of the 1990s in failed

[16] "EU Election Observation Mission (EOM) to Nigeria - 2003 … Second Preliminary Statement - Abuja, 22nd April 2003", http://ec.europa.eu/comm/external_relations/human_rights/eu.
[17] "Nigerian Civil Society statement on the General Elections of April 12th and 19th 2003", 1 May 2003. Signing the statement were representatives of observer coalitions including the Electoral Reform Network, the Transition Monitoring Group, the Labour Election Monitoring Team, the Muslim League for Accountability and the Justice, Development and Peace Commission.
[18] "Nigeria's 2003 Elections: The Unacknowledged Violence," Human Rights Watch, June, 2004.
[19] Interview by Crisis Group researcher in a former capacity, April 2003.
[20] Interview by Crisis Group researcher in a former capacity, Buguma, July 2005.
[21] Interviews by Crisis Group researcher in a former capacity, Okrika, 8 July 2005, and interview by a Crisis Group researcher in a former capacity, Port Harcourt, March 2005.
[22] In nominal terms, as opposed to real (i.e. inflation adjusted) terms.

attempts to win regional political positions. As a member of the Movement for the Survival of the Ijaw Ethnic Nationality (MOSIEN), which remains a militant activist organisation today, fellow activists say he was already vocal about what he regarded as the need for an independent Ijaw nation. Asari claims to have been influential in founding the Ijaw Youth Council (IYC), the pan-Ijaw group that has tried to coordinate activist and militant efforts to force greater political and economic rights for the ethnicity. Yet he was not present during the IYC's Kaiama Declaration of December 1998, which asserted that all land and natural resources within Ijaw territory belong to Ijaws and warned oil companies they would be considered "enemy" if they relied on military protection. The declaration resulted in a military crackdown against the organisation. Asari was elected vice president of the IYC in 1999, just days after Odili was himself elected governor of Rivers state. Although rivals have said Asari was politically backed by Odili then, Asari has refuted this, reportedly saying "Odili was clearly not strong enough then to influence my election".[23]

During the early 1990s, Asari spent a brief period in Libya where he claims to have received basic military and political training. He came away from that experience with a negative view of Libya's government, which he felt understood and cared little about Nigeria and less about the Niger Delta. Attempting to dispel rumours that he was being supported by Libya's President Muamar Qaddafi, Asari said he also did not have a positive impression of the Libyan leader: "He is inconsistent. He should not start something he cannot finish".[24]

In 2001, Asari was declared the winner of elections for IYC president. However, the organisation's spokesman, Isaac Osuoka, contested the legitimacy of the vote, claiming that there had not been a valid voter's list. For a time thereafter, Asari and his predecessor, Felix Tuodolo, both claimed the IYC presidency, a standoff that turned briefly violent, with several people wounded, reportedly including both Asari and Tuodolo.[25]

Asari's leadership was considerably more radical than moderates in the IYC were comfortable with and he made a number of enemies who subsequently tried to oust him. In or around 2003, Asari increasingly focused his attention on his own organisation, the Niger Delta People's Volunteer Force, its name modelled on the late Ijaw rebel Isaac Boro's Niger Delta Volunteer Force (NDVF) of 1966.

Shortly after the militant leader's public falling out with Odili in 2003, Asari claims the governor retaliated by launching a violent campaign by proxy through Ateke and his supporters, who attacked Asari's camp. Officials in Odili's government have refuted this, saying they regarded both Ateke and Asari as gangsters, although the Rivers state information commissioner later conceded that Asari at one point "worked with us" prior to the 2003 elections.

From mid-2003 to late 2004, Asari and Ateke Tom engaged in a turf war that killed hundreds and left tens of thousands homeless. The sizeable, centuries-old towns of Buguma, Bukuma and Tombia were badly damaged and areas of the Rivers capital Port Harcourt also razed. Some residents have alleged that the fighting centered around control of areas noted for their oil theft. The conflict also allegedly revolved around competing bids for control of tribal chieftaincy titles in Buguma and Okrika and other positions with access to government and company oil revenues.[26]

By mid-2004, Asari was living in riverine hideouts, while also meeting with journalists. By the time he issued his declaration of war against the Nigerian federation in late September 2004, his bases had been the target of Nigerian military air raids on several occasions and Asari's supporters and allied cult group members had managed to cause panic in Port Harcourt with targeted attacks against members of Ateke's Niger Delta Vigilantes (NDV).

Advisers to President Olusegun Obasanjo recognised the destabilising effect the conflict was having on the oil industry and responded in early October 2004 by flying both Asari and Ateke to meet the president in Abuja. Obasanjo gave amnesty to the militant leaders and their supporters and reportedly made payments of more than $1,000 for each rifle and $10,000 for each machine gun handed in to the government.[27] The president is said to

[23] Jonathan Elendu, "Obasanjo governs with blackmail: Asari Dokubo", *Elendu Reports*, 15 November 2005, http://elendureports.com/.
[24] Interview by Crisis Group researcher in a former capacity, April 2005.
[25] Tuodolo's injury was reported in "Ijaw Youth Council: can the centre hold?", *The Channel*, September 2001. Asari told a Crisis Group researcher in March 2005 that a long, jagged scar on his arm was the result of an attack during the feud over the IYC presidency. He declined to elaborate.
[26] Interviews by Crisis Group researcher in a former capacity with residents of Buguma and Okrika, 2004 and 2005.
[27] Jonathan Elendu, "They paid for our guns: Asari Dokubo", *Elendu Reports*, 14 November 2005, http://elendureports.com. Article cites Asari as saying he was promised 250,000 naira ($1,800) for each AK-47 semi-automatic rifle, 150,000 naira ($1,100) for each FN and G3 rifle and 1,800,000 naira ($12,850) for general purpose machine guns. Asari claims that although some of this was paid, the NDPVF never received the 137 million naira (approximately $1 million) it was owed.

have told them he would crush them if they did not accept.[28]

Although Asari claims he did not make a profit from the weapons submission and amnesty program, he soon afterwards moved into a comfortable villa in Port Harcourt and acquired several SUVs to accompany his fleet of speed boats. Some of his more radical supporters began accusing Asari of having used the struggle to enrich himself with payoffs from the government and oil companies.

Asari continued to anger the Nigerian government by joining other separatist leaders from the southeast and southwest under the banner of the Pro-National Conference Coalition (PRONACO), who publicly demanded a sovereign national conference of elected representatives to debate the future of the federation. Addressing rallies of supporters, Asari sharply criticised the federal and state governments as being illegitimate, urging civilians not to be afraid to support the separatist militancy and claiming that once civil war began the government would retaliate against all Niger Deltans regardless of whether they supported the rebel cause or not.[29] Asari also accused the Nigerian government of plotting to arrest or kill him, on one occasion telling journalists he would be honoured to share the fate of the late Ijaw rebel leader Isaac Boro and the executed Ogoni activist Ken Saro-Wiwa.

On 20 September 2005, nearly a year after his amnesty deal, Asari was arrested and subsequently charged with treason, conspiracy and unlawful assembly. Evidence provided by police included a newspaper interview in which Asari was cited as threatening to wage armed separatist struggle.[30] Asari's lawyer was also arrested and detained for a short period when he came forward to represent the rebel leader. Asari's supporters declared the arrest was on dubious grounds and a betrayal of the amnesty conditions agreed upon nearly a year previously, while Ijaw militants held street protests and briefly occupied two Chevron oil platforms. Yet after initially threatening to destroy oil installations, Asari's NDPVF announced a unilateral ceasefire, explaining later that they believed to do otherwise would further jeopardise their leader's fate. In April 2006 a member of the NDPVF sent an email to journalists signalling the group was re-engaging in the armed struggle,[31] although members of its political wing, the Niger Delta People's Salvation Front, said they had not been involved in the decision.[32]

4. MEND: An evolving insurgency

The arrests of Asari and other Nigerian separatist leaders[33] were interpreted by militants as a signal to go underground.[34] Whereas Asari relished his public persona as leader of the NDPVF and openly flaunted his lifestyle both as a bush fighter and a well-heeled descendent of Niger Delta elites, the leaders who have gained prominence since his arrest have revealed little about their identities, preferring to communicate with intermediaries by email using false names. These groups issue frequent and often virulent threats, some of which have been carried out. The threat of internal conflict between militant groups is high.

Foremost among the new groups is the Movement for the Emancipation of the Niger Delta (MEND), which has plausibly claimed responsibility for many of the hostage-takings and deadly armed clashes with security forces between December 2005 and June 2006. The group has made similar demands to those of Niger delegates at a government-convened National Political Reform Conference in 2005, namely that 25-50 per cent of oil revenues be dedicated to communities in oil-producing areas of the Niger Delta. The group has asked that the money be channelled through foundations controlled by communities rather than through corrupt state and local governments, a reasonable request until greater transparency can be brought to local and state government institutions. Another key demand has been for the release of Dokubo-Asari, although MEND's spokesman insisted that "were he to be around and willing to fight for our cause, he would have been a regional leader in our movement at the most".[35]

Among MEND's first attacks was a strike against a facility in Shell's EA field some fifteen kilometers offshore on 11 January 2006. The rebels fired on Nigerian navy troops guarding the facility and machine-gunned a Shell-chartered support boat, kidnapping four foreign contractors. Gunmen also blew up a Shell pipeline in a

[28] Interview by Crisis Group researcher in a former capacity with a participant in the talks, April 2005.

[29] He argued this at several rallies, including a gathering in Obuama, Rivers state, in April 2005.

[30] "Nigerian separatist activists charged for unlawful assembly", Agence France-Presse, 7 October 2005.

[31] Email correspondence from Sunny Tari of the Niger Delta People's Volunteer Force with Crisis Group, 15 April.

[32] Press conference held by members of the Niger Delta Salvation Front, Port Harcourt, 29 April 2006.

[33] In October 2005, police arrested Odu'a People's Congress (OPC) faction leaders Frederick Faseun and Gani Adams as well as Ralph Uwazuruike, leader of the Movement for the Actualisation of a Sovereign State of Biafra (MASSOB). They have been charged with treasonable offences.

[34] To a lesser extent, the arrest of then Bayelsa governor Diepreye Alamieyeseigha was also regarded by some militants as the sign of a government campaign against Ijaws. MEND and other militant groups initially demanded Alamieyeseigha's release although the demand has subsequently been dropped.

[35] Email correspondence with Crisis Group, 12 March 2006.

separate attack the same day. The two incidents were immediately followed by a $1 a barrel jump in world oil prices. Several days later, MEND claimed responsibility for an attack that killed fourteen soldiers and two civilian oil company contractors at Shell's Benisede flowstation, with insurgents close to the group saying later that the attack was partly in response to a shooting a year earlier during a community protest.[36]

The hostages were released at the end of January but fighting again surged two weeks later, when Nigeria's military bombarded what it said were barges being used by oil smugglers in Delta state's Gbaramatu kingdom.[37] Militants and activists claimed the attack targeted civilians in four villages and initial news reports quoted community leaders as saying civilians had been killed. Yet when Crisis Group visited two of the villages – Seigbene and Ukpogbene – the few residents who remained there said no one had been killed, although all were driven to hide in the swamps for several days.[38] Corrugated iron shack homes in these villages showed signs of being sprayed by shrapnel or bullet holes and residents showed Crisis Group what appeared to be large shell fragments.

MEND responded by threatening to destroy Shell's Osubi airstrip which it deemed a "military facility" because the military had used it as a staging base for the airstrikes. The airport, on the outskirts of Warri, is used by oil companies as well as Nigerian government planes and private airlines. Military aircraft are frequently seen there.[39] Several days after the military strikes, heavily armed fighters carried out a series of attacks around Shell's Forcados oil terminal, blowing up two pipelines, setting fire to a tanker and seizing nine expatriate staff of the American contractor Willbros.[40] The kidnappers reportedly threatened some of the hostages with death, although all were eventually released, the final three on 27 March, more than a month after they were captured.

Using the pseudonym Jomo Gbomo, the group's self-declared spokesman has sent emails to journalists with pictures of hostages and, sometimes, brazen warnings divulging times and even rough locations for attacks on pipelines, kidnappings and releases of expatriate hostages. The group has also carried out two car bombings – believed to be Nigeria's first ever: one killed several civilians outside a military barracks in Port Harcourt and the other exploded in a queue of petroleum tanker trucks outside a refinery in Warri. Less than an hour before the second of the two blasts went off on the evening of 29 April, Gbomo sent the following email to tip off journalists about what he described as the "symbolic" attack:

> Today April 29, 2006, our operatives in the Niger Delta were given authorisation to carry out the promised final warning car bomb attack…After this, attacks will be directed at individuals and soft oil industry targets such [as] petroleum storage facilities, bridges, offices and oil workers…complemented by conventional attacks on platforms and residential quarters for field based oil workers. This attack is expected to be carried out tonight before midnight barring unforseen cancellations. Details will follow…[41]

Although Gbomo's knowledge of militant activities would seem to indicate closeness to the command structure, the extent of his influence remains difficult to gauge. Gbomo has asserted that his group collaborates with several other militant groups, including the FNDIC and the NDPVF. Two other groups, the Coalition for Militant Action in the Niger Delta (COMA) and the Martyr's Brigade – an apparent offshoot of Asari's NDPVF – also claimed involvement in several armed attacks in collaboration with MEND, although Gbomo has dismissed Martyr's Brigade as an "imaginary" organisation and says he has no knowledge of COMA.

In a July message, Gbomo said MEND would no longer "waste resources on warning the oil community as they have been significantly warned". When MEND was ready, it would begin executing oil workers repairing pipelines that the militant group had destroyed. "We have decided to issue no further warnings and will execute any one found in such locations…They, like the Nigerian government, probably believe this will one day blow away without a just and conclusive resolution".[42]

MEND is trying to position itself as an umbrella group uniting the region's militants that have fought with Asari's NDPVF, FNDIC and other groups. Gbomo has asserted that MEND has refused to take some militants "of dubious character" into the fold. Yet he admits the organisation has assented or looked the other way on

[36] For discussion of this incident see Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006.

[37] The four hostages, Milko Nichev of Bulgaria, Harry Ebanks of Honduras, Nigel Watson of the United Kingdom and Patrick Arnold Landry of the United States were released on 30 January. The military attacks on the Gbaramatu kingdom villages of Ukpogbene, Seigbene, Seitorububor and Perezuouweikoregbene occurred between 15 and 17 February 2006.

[38] Crisis Group visited the villages of Seigbene and Ukpogbene in Gbaramatu kingdom in southern Delta state in late March 2006.

[39] "Shell in cahoots with army?", *African Energy Intelligence*, 22 February 2006.

[40] MEND's attacks against Forcados came on the weekend of 18 February.

[41] Email correspondence with Crisis Group, 29 April 2006.

[42] Email correspondence with Crisis Group, 11 July 2006.

occasions when these outsiders carry out operations that contribute to MEND's cause.[43] While fighters shared the common goal of fighting for "resource control" for the Niger Delta, Gbomo concedes that individual fighters have different interpretations of how to achieve this:

> In any struggle, there are bound to be several versions as seen through the eyes of different participants. Some are fighting for a car, some for pride, some for a job or even food to eat; the more ambitious with the hope that they may someday be governors or local government chairmen, legislators etc in new states. This is normal. In the United States or Canada, what percentage agrees with government policies? These individuals for now, are as leaves adrift and will go where we take them. For them, anywhere is better than here.[44]

Another militant interviewed by Crisis Group had a differing interpretation of the structure of anti-government groups in the Delta. The militant, a former member of Asari's NDPVF, claimed to have personal knowledge of MEND's operations and said that since Asari's arrest, fighters were organising themselves in cells of five to fifteen individuals, with limited communication between units to prevent outside infiltration. These cells have considerable latitude in choosing what kind of operations they carry out and how they execute them, the militant said. Some of the most radical groups favoured executing expatriate oil workers while others feared provoking a heavy-handed government reaction.

The militant described COMA as a small group of particularly radical fighters who, he said, had been approached by al-Qaeda-linked Islamist groups from the Middle East in late 2005 to cooperate in training, weapons and violent operations. While a few of the more radical Niger Deltans had deemed the option worth exploring, the proposal had been rejected by the majority, the militant said.[45] MEND's spokesman denied the group had been approached by Islamist militants and said it had no interest in such a collaboration:

> Without a doubt it will be in the interest of countries such as Iran if we persist in our attacks…as the pressure resulting from increased oil prices will deter the international community from imposing sanctions which may cause Iran to employ oil as its first choice weapon. We are not Muslims in the south and do not share the ideology of these radical Islamists. We have nothing in common besides our quest for justice. As far as they are concerned, we are infidels. Why should we have anything to do with this kind? As the struggle in the Niger Delta prolongs, without a doubt you will come across all kinds of people who for whatever motives are interested in elongating the conflict. What we need is justice and control of our resources. We have no intention now or in the future to align with Islamists. Those propagating such rumours are liars. We have certainly been approached by a number of parties with different requests but no Islamic militants. Don't ask what parties or requests.[46]

Several militant leaders told Crisis Group that they believed their ranks had been infiltrated by Nigerian government agents but that the decentralised nature of their operations had so far impeded official efforts at squashing militant groups. A militant leader in Rivers state said some of the most senior leaders have remained wary of uniting too closely: "We would have been destroyed by now if we were united", the militant leader said. "Our strength is in our disunity".[47] Although MEND's spokesman insisted his movement wielded influence over other Delta groups, he compared the structure of groups to a hydra, the mythological many-headed Greek serpent which grew two heads back for every one cut off.[48]

Recent technological advancements have helped militant groups proliferate faster than they were previously able. The arrival of GSM-format cell phones in late 2001 – Nigeria was late to introduce mobile phone technology – has been cited by some militants as having improved communication in remote and underdeveloped riverine areas of the Niger Delta where the fastest direct method had previously been by speedboat. Oil installations and even remote coastal towns such as Brass and Bonny now have GSM towers that allow unprecedented cell phone access in surrounding communities. Satellite television has also become widely available in Port Harcourt and Warri, with militant leaders acknowledging it has spread their awareness of the role of oil and conflict in other parts of the world.

Such technological developments have allowed militants to cooperate in new ways, forming short-term alliances to carry out operations against oil companies and government targets and sharing lessons from previous missions. Freelance fighters are said to offer their services for hire to kidnap expatriate oil workers on behalf of aggrieved communities in return for a share of ransom payments.

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[43] Email correspondence with journalists and Crisis Group, April-July, 2006.
[44] Email correspondence with Crisis Group, 13 July 2006.
[45] Crisis Group interview, Port Harcourt, April 2006.
[46] Email correspondence with Crisis Group, 11 August 2006.
[47] Crisis Group interview, April 2006.
[48] Email correspondence with Crisis Group, 11 August 2006.

The militants' media savvy combined with their demonstrated ability to deliver on at least some of their threats has contributed to periodic spikes in world oil prices, rattled major companies and placed the Niger Delta on the radar of international diplomats and analysts. Increasing attacks by groups like MEND are among the reasons the U.S. Navy stepped up its presence in the Gulf of Guinea in the summer of 2006.[49]

B. The Spoils of Violence

1. Illegal bunkering

A Scotland-sized maze of creeks and rivers transected by pipelines is an ideal place for criminal syndicates to steal crude oil and other hydrocarbon liquids.[50] The dangerous practise of siphoning and transporting stolen fuel is known in the Niger Delta as "illegal bunkering", after the maritime expression for a vessel taking on supplies while in port.

Industry experts have estimated that Nigeria loses anywhere from 70,000 to 300,000 barrels per day to illegal bunkering,[51] the equivalent output of a small oil producing country. In its latest annual report, released in late August 2006, Shell Nigeria estimated illegal bunkering losses at 20,000 to 40,000 barrels per day in 2005, down from 40,000 to 60,000 in 2004.[52] In a December 2005 report, the Washington-based Council on Foreign Relations Independent Task Force calculated that a loss of just 70,000 barrels a day at a price of $60 a barrel "would generate over $1.5 billion per year – ample resources to fund arms trafficking, buy political influence, or both".[53] Put another way, "one day's worth of illegal oil bunkering in the Niger Delta (at 100,000 barrels and $15/bbl) will buy quality weapons for and sustain a group of 1,500 youths for two months", according to a report in 2003 by a consultancy group contracted to Shell. (Oil prices during the first half of 2006 were more than four times higher than the estimates used in the consultancy's report).[54]

Illegal bunkering has been a key source of funds for anti-government militant groups. Several militant warlords have either publicly or privately admitted involvement and others have said they consider the practise a defensible means of providing income for aggrieved and impoverished residents of oil producing communities.[55] While local residents interviewed by Crisis Group also largely agreed with this assessment, many expressed reservations over the violence and accidental deaths that frequently accompany illegal bunkering. Thousands have died in explosions on lines tapped by oil thieves. In the best known case in October 1998, at least 1,200 people were killed when a ruptured pipeline from which villagers were scooping oil exploded.[56] In one of numerous similar disasters, in early May 2006, more than 200 people were killed when a pipeline exploded outside of the commercial capital of Lagos.[57]

Criminal syndicates that steal oil have been compared by some observers to drug cartels in South America and rebel diamond smuggling rings in Sierra Leone. In 2002, a report by Nigerian security forces, government officials and multinational oil company executives, spoke of a "cartel or mafia" of "highly placed and powerful individuals" who "run a network of agents to steal crude oil and finished products from pipelines in the Niger Delta region. They operate in similar fashion to drug barons and their activities are purely criminal, with financial benefits as their motive… The activities of these cartels have become a serious threat to the economy of the nation".[58]

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[49] Donna Miles, "U.S. increasing operations in Gulf of Guinea", *American Forces Press Service*, 7 July 2006, http://www.c6f.navy.mil/.

[50] These include condensate, a natural gas liquid consisting mostly of pentanes with properties roughly comparable to gasoline.

[51] Shell Petroleum Development Company (SPDC) managing director Basil Omiyi estimated in November 2004 that 70,000 barrels a day were lost to bunkering. ("Nigeria loses 70,000 bpd crude through theft", *ThisDay*, 29 November 2004). The figure of 300,000 bpd has been cited by the Council on Foreign Relations' Independent Task Force No. 56 Report (January 2006) and subsequently by the Commander of U.S. Naval Forces in Europe and Africa, Adm. Harry Ulrich, in a speech on May 30, 2006, available at http://www.c6f.navy.mil.

[52] Shell did not say if its figures were country-wide totals or limited to its own facilities. See also "Shell Nigeria Annual Report 2005; People and Environment", www.shell.com/

[53] "More than Humanitarianism: A Strategic U.S. Approach Toward Africa", Independent Task Force Report No. 56, *Council on Foreign Relations*, January 2006.

[54] "Peace and Security in the Niger Delta; Conflict Expert Group Baseline Report Working Paper for SPDC", WAC Global Services, December 2003.

[55] In a May 2004 interview with a Crisis Group researcher in a former capacity, Alhaji Dokubo Asari defended bunkering as "the people taking back what is ours". He also claimed his militant group had a makeshift "refinery" that was able to process crude for local consumption.

[56] "Four charged in Nigeria pipeline fire", Associated Press, 29 December 1998. See also Adekunbi Ero and Edegbenro Adebanjo, "More than 1,200 people died last month…", *The Guardian*, 7 November 1998.

[57] Crisis Group interviews, Rivers, Delta and Bayelsa state, March-May 2006.

[58] "Volume I Report of the Special Security Committee on Oil Producing Areas Submitted to the President of the Federal

Yet there are important differences between oil bunkering and other illegal smuggling trades. As MEND's spokesman Jomo Gbomo pointed out in an email to journalists in February 2006, drugs and diamonds are easily hidden in baggage or cargo containers whereas oil is transported in slow-moving barges and ships that are difficult to hide.[59] Whereas diamonds and drugs "offer greater marginal benefits to weaker combatants",[60] oil requires a sophisticated security and transportation infrastructure to collect, transport and sell when sold in large quantities.

Militant leaders interviewed by Crisis Group have insisted that medium- and large-scale bunkering depends on at least the inattention or collusion and, more often, the active participation of Nigerian law enforcement authorities.[61] Stolen oil is loaded onto barges and tugboats and transported by river and creek – sometimes in broad daylight – to tanker trucks and ships for resale to regional refineries and as far afield as South America, Europe and Asia. Military personnel frequently provide escorts to these ships or allow them to pass established river checkpoints.[62]

The complicity in oil bunkering, by necessity, goes far beyond Nigeria's borders. Border and port officials as well as purchasers in both neighbouring states and distant destinations are to a greater or lesser extent involved, even if it is only wilful ignorance. The official statistics of the International Energy Agency (IEA) show at times implausibly sized imports into OECD countries from Nigeria's southeastern neighbour Cameroon. Discrepancies in non-OECD imports are less well documented but of equal or greater concern.

During a boat trip through Bayelsa state in mid-2005, a Crisis Group researcher[63] counted more than twenty vessels that his local travel companians identified as illegal bunkering barges. In another case, the same researcher watched suspected smugglers pump crude from barges into awaiting tanker trucks in full view of area residents and a small group of army soldiers guarding Bomadi bridge in Delta state. Several people approached the researcher's local guide to ask whether he was a foreign buyer of the oil.

In 2004, two Nigerian navy admirals were convicted of involvement in the disappearance of an oil bunkering tanker and its Russian crew from military custody. The officers were dismissed from their posts. Three months later, a House of Representatives committee recommended Nigeria's chief of naval staff, Vice Admiral Samuel Afolayan, be sanctioned for "lying on oath" about the ship's disappearance. Afolayan rejected the charge, resigning his position several months later. This all supports suspicions that oil theft activity infiltrates the highest echelons of the Nigerian navy and possibly of other parts of the Nigerian government.[64]

While illegal bunkering has gone on for years, it was first recognised publicly as a major problem in the late 1990s. Chris Finlayson, then managing director of Shell Petroleum Development Company (SPDC), told journalists in 2003 that Shell had long been forced to tolerate small-scale theft of crude by impoverished locals. Finlayson stressed, however, that large-scale operations bore little resemblance to the activities of "disaffected youths" of the past. Shell had "proof" that bunkering funds were being "funnelled into arms to support local groups", he added.[65]

Finlayson and other industry officials have proposed combating sales of stolen crude through the adoption of a process known as gas chromatography which can map crude oil's unique chemical "fingerprint" and trace its origin. Other analysts have suggested that with an investment of $100 million, Nigeria could put in place the necessary surveillance equipment and training to detect oil theft, intercept offenders, track vessels, and maintain port security.[66] Nigeria's pipeline metering systems are antiquated and in many cases, companies lack the ability to measure the flow of oil – and the difference in flow between the point of extraction and

Republic of Nigeria, Chief Olusegun Obasanjo, GCFR on Tuesday 19th February 2002.

[59] Email to journalists, 20 February 2006.

[60] Michael Ross, "What Do We Know About Natural Resources and Civil War?" *Journal of Peace Research*, 6 August 2003.

[61] Interviews, including with a Crisis Group researcher in a former capacity, with militant leaders, May 2004 to May 2006.

[62] Interviews with Alhaji Mujahid Dokubo-Asari in 2005 and emails from Jomo Gbomo, 2006.

[63] At that time working in a previous capacity.

[64] "More than Humanitarianism: A Strategic U.S. Approach Toward Africa", Independent Task Force Report No. 56, *Council on Foreign Relations*, January 2006. At times former and current oil company employees are also involved in the illegal bunkering process, including welder/divers who break into pipes in a process known as "hot-tapping", according to several oil company officials interviewed by Crisis Group. Prior to his resignation, Vice-Admiral Afolayan asserted that bunkering was controlled by a Nigerian cartel with "foreign collaborators". He claimed that the navy was investigating allegations Nigeria's Department of Petroleum Resources had falsified exports. "We will insist that appropriate vessels are used to lift the quantity of oil specified for them". "Cartel, foreigners behind bunkering, says Chief of Naval Staff", *ThisDay*, 2 December 2004.

[65] Chris Finlayson made the comments during an interview with foreign journalists including a Crisis Group researcher in a former capacity, in Port Harcourt, December 2003.

[66] "More than Humanitarianism: A Strategic U.S. Approach Toward Africa", Independent Task Force Report No. 56, *Council on Foreign Relations*, January 2006.

Nigerian ports.[67] Another idea is to simply increase awareness of the problem and its costs to society by a publicity campaign, as a means of mobilising public disapproval and local resistance to such acts. Such a public relations move, however, would seem to have little chance of success until government significantly advances its credibility by improving its dismal record of providing basic services, lowering unemployment and improving local standards of living. As the situation stands, Nigerians still widely perceive government coffers to be de facto personal bank accounts for the country's elite.

Complicating efforts to eradicate oil theft is the premise accepted by some local and state government officials that illegal bunkering provides income to impoverished and unemployed young men who may otherwise engage in piracy, banditry and other attacks for financial gain. Oil industry officials have admitted that paying off militant and criminal groups is a cheaper option than dealing with the costly bunkering-related shutdowns and repairing physical damage caused by the practice.[68] Local and state governments have been accused of turning a blind eye to oil theft in hopes of satisfying restive groups that would otherwise demand the government provide support. Following a security force crackdown on illegal bunkering in the second half of 2005, incidents of piracy on the creeks of Delta, Bayelsa and Rivers state rose dramatically to the point that passenger traffic ceased to some communities for a short period, according to residents of these states. "When the boys are able to do bunkering they are quiet. There is restiveness when the bunkering stops and they have nothing to do", said one Bayelsa state official.[69] Of course, the high price of oil means that thieves (private or public sector) do not have to smuggle as much as in previous years in order to reap profits.

There are, however, indications that some bunkering activities may have received the tacit approval of some relatively senior company staff. In July 2004, an expatriate Shell engineer said that pipeline "outlet" points for small-time local bunkerers were well known to company officials and, in some cases, marked on company maps. "It is to keep the locals happy", he explained.[70] Shell officials have officially denied such knowledge of bunkering activities.

Several taxation implications of bunkering must also be considered. If the producing companies are accurately taxed on production at the wellhead, then there is no loss in revenue for the government in terms of royalties. However, to the extent that theft reduces profitability, then the Nigerian government would presumably be losing potential income from the Petroleum Profit Tax. Another taxation implication is that companies could potentially be taxed at a higher rate, without loss in investment, if the firms' earning potential was not diminished by massive resource theft.

2. Oil rent and cash payments

It is common to talk of the so-called "Dutch disease" that afflicts oil-rich nations – the phenomenon whereby an increase in revenues from a natural resource raises the exchange rate, making other export industries uncompetitive and possibly leading to deindustrialisation. In Nigeria, however, some commentators have argued that an even more serious problem is rent-seeking behaviour that fosters corruption in business and government, depressing non-petroleum exports and distorting the allocation of resources and reduces both economic efficiency and social equity.

Nigeria's over-dependence on oil is well recognised. Government oil revenues in 2005 amounted to about \$45 billion. Per capita GDP was estimated at \$694 and inflation was 11.6 per cent.[71] The oil sector contributes 95 per cent of export revenues, 76 per cent of government revenues, and about a third of gross domestic product (GDP).[72] In 2004, the architects of Nigeria's much-praised National Economic Empowerment and Development Strategy (NEEDS) recognised that oil had transformed the institution of government into an "instrument for instant acquisition of wealth and therefore distorted the incentive to work and to create wealth in the private sector. With government as the major source of patronage and rent-seeking, the fight for public office became a matter of life and death".[73]

Yet the prevalence of cash payments by oil companies and government has compounded problems. Due in part to instability in the country's banking sector, many daily

[67] David Goldwyn, "Using Energy as a Weapon", a speech made to the Committee on House Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, 16 May 2006.
[68] Interviews conducted by a Crisis Group researcher in a former capacity with oil industry officials, Port Harcourt, November 2005.
[69] Crisis Group interview, April 2006.
[70] Interview with Crisis Group researcher in a former capacity, May 2004.
[71] "Background Note: Nigeria", U.S. Department of State, July 2006, http://www.state.gov/r/pa/ei/bgn/2836.html.
[72] "Country Brief", World Bank, April 2006, http://web.worldbank.org/.
[73] "NIGERIA: National Economic Empowerment and Development Strategy NEEDS", NEEDS Secretariat, Abuja, March 2004.

transactions by Nigerian individuals and businesses are done mainly with cash. Although several oil companies have instituted voluntary codes of conduct that forbid such payments, in the absence of clearly established standards and prescribed penalties for non-compliance even some oil company staff have conceded that such voluntary measures have had only mixed success.[74]

Oil companies have argued correctly that they cannot be expected to replace effective government, whether it be by policing corruption or fostering local development. Less well articulated by the companies is the argument that the Niger Delta's pattern of "rent-seeking" has been encouraged by nearly half a century of oil company practices that have only recently been recognised to be unsustainable.

The company practise of making ad hoc – and often trifling – payments to communities and individuals is as old as the Niger Delta oil industry itself. In Oloibiri, the host community to Nigeria's first oil well, the failure of government and industry to deliver up to local expectations has produced bitterness and distrust.[75] Drilled in 1956, Oil Well Number One has been capped since the mid-1970s, when Shell says quantities of oil were no longer commercially viable.

Two elderly residents of Oloibiri recall when British, Dutch and other foreign oil employees of Shell D'Arcy Petroleum first came to their town in the 1950s. According to their accounts,[76] the oil company gave jobs to a few locals and paid a small amount of rent – one British pound per acre for 2.138 acres– to be shared among several families deemed to be the owners of the land immediately surrounding the well.[77] Initially, residents welcomed the presence of the oil workers because "we didn't know what oil was at the time and we didn't understand that it was valuable", said one of the elderly men, Chief Osobere Inengite, a traditional leader in the town. "They used the ignorance of our people and cheated us".

Local residents point to a stone monument that commemorates a 2001 visit by Obasanjo and the laying of a foundation stone for an Oloibiri Oil and Gas Research Institute. The institute was never built. Many of the amenities, including water taps and two water towers built by oil company and government departments, do not function. Many residents use the nearby river as a place to bathe, drink and go to the toilet.

The sense of betrayal expressed by Oloibiri residents has translated into overt hostility towards oil companies and the federal government. A resident said young men in the town spend their time trying to force Shell to pay compensation because "we know they can pay". Another young man bragged that he had "kidnapped white men before and I can do it again".[78]

[74] Crisis Group interview, Port Harcourt, April 2006.

[75] Although Oloibiri has officially been named the host community to Nigeria's first oil well, the community of Ogbia has also laid claim to the site.

[76] A Crisis Group researcher visited Oloibiri and Ogbia in 2004, 2005 and March 2006, on the first two occasions in a former capacity.

[77] The amount promised to the local residents is stated in what Oloibiri residents assert is the original 11 January 1956 land lease agreement between Shell and the local community. The document calls for one pound per acre to be paid for 2.138 acres for a period of five years. Shell has said it has no information about the agreement and says it lost copies of some of its documents during Nigeria's 1967-70 civil war.

[78] Interviews conducted by Crisis Group researcher in a former capacity, July 2004.

III. THE NIGER DELTA'S PLACE IN NIGERIA

A. RESOURCE CONTROL AND THE DERIVATION DEBATE: IS AGREEMENT POSSIBLE?

Three years after the end of military rule, a government-constituted panel of Nigerian military officers and police chiefs, international oil company executives, and senior government officials issued sweeping recommendations for reform in the Niger Delta that, in many respects, mirror the demands of militant groups today.

The report by the Special Committee on Oil Producing Areas is both an ambitious roadmap for potential change and an admission of government failures.[79] The report, which was never publicly released and only leaked to the press in early 2006, is as notable for its high-powered authors as for its far-reaching recommendations, most of which have not been implemented. The committee was chaired by then chief of army staff, Lt. Gen. A.O. Ogomudia, himself from Delta state. Members included the managing director of the national petroleum company and his counterparts from the subsidiaries of five major foreign oil companies – Shell, Chevron, ExxonMobil, Total and Eni (Agip).[80]

The report has been cited in some Niger Delta activist circles as at least a partial vindication of community complaints. Whereas under Nigerian law, "no less than thirteen percent" of all oil and gas revenues is allocated by the federal government to the states from which it derived,[81] the committee recommended the immediate "upward review of the minimum thirteen per cent derivation to not less than 50 per cent". [82] It also called for the repeal of legislation including the 1978 Land Use Act, [83] and the Petroleum Act of 1969 – laws which the committee said "dispossess oil producing areas of their land".[84]

Niger Deltans frequently point out that when Nigeria gained independence in 1960, 50 per cent of revenues from oil and minerals were officially allocated to areas from which those resources were derived. Yet as Nigeria's oil industry boomed and the government increasingly relied on oil income from the Delta, military administrators reduced derivation payments to 45 per cent in 1970, 20 per cent in 1975 and by the time then military ruler Lt. Gen. Olusegun Obasanjo handed over power to civilians in 1979, the derivation principle had been abolished.[85] In 1982, under President Shehu Shagari's civilian administration, still regarded as one of Nigeria's most corrupt, 1.5 per cent was allocated directly to oil-producing states.[86] In the final part of the Babangida

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[79] The Report of the Oil Security Committee on Oil Producing Areas was submitted to President Obasanjo on 19 February 2002. The committee was chaired by Lt. Gen. A.O. Ogomudia. Security force members on the committee were then-chief of naval staff Vice Adm. S.O. Afolayan, chief of air staff Air Marshal Jonah Wuyep, police Insp. Gen. M.A.K. Smith, Dir. Gen. State Security Service L.K.K. Are and Ben Obi, a representative of the National Security Advisor. Other government officials were Nigerian National Petroleum Corporation group managing director Jackson Gaius-Obaseki, Department of Petroleum Resources director M.A. Ofurhie, secretary to Abia state government C.S.L. Nwosu, secretary to Akwa Ibom state Grace E. Ekong, secretary to Bayelsa state F. Oboro, secretary to Cross River state Walter P. Eneji, secretary to Delta state J.B. Erhuero, secretary to Edo state Matt Aikhonbare, secretary to Imo state Nze Imo Umunna, secretary to Ondo state Wunmi Adegbonmire and secretary to Rivers state A.S.P. Sekibo. Transnational oil company executives were Shell Petroleum Development Company managing director Ron van den Berg, ExxonMobil managing director Mike J. Fry, ChevronTexaco managing Directory Jay Pryor, Nigeria Agip Oil Company managing director Antonio Vella, TotalFinaElf managing director G. Buresi. The secretary to the committee was C.L. Laseinde.

[80] A copy of the 86-page first volume of the report, acquired by Crisis Group, shows signatures next to twenty of the 23 names on the committee with the three exceptions being the managing director of ExxonMobil, President Obasanjo's national security advisor and the secretary to the Edo state government.

[81] Resource control is a catch all term used by Niger Deltans and Nigerians to refer to the region's economic demands relating to oil revenues, including variously: increasing allocations from the federal government to states and local governments, calls for local ownership stakes in companies and even a demand made by some militants including Asari that all oil revenues accrue directly to the states, which would then ostensibly pay tax to the federation – similar to the Canadian federal system. The latter suggestion stands little chance of being accepted by the leaders of Nigeria's majority tribes in non-oil producing states.

[82] See "Volume I Report of the Special Security Committee on Oil Producing Areas Submitted to the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR on Tuesday 19th February 2002".

[83] The Land Use Act vests all land to the State to be held in trust on behalf of the people. The rights of residents and traditional landowners are reduced to those of occupants.

[84] The Petroleum Act vests all ownership and control of all petroleum in the State, which has sole control over exploration and production licenses.

[85] Although the derivation formula was abolished, the share of revenues allocated to states as a whole – including non-oil producers outsider the Niger Delta – was raised in 1999 to 21 per cent, benefiting both oil and non-oil producing states. See also "Intergovernmental Fiscal Relations: The Nigerian Experience", Akpan H. Ekpo, August 2004.

[86] Although 1.5 per cent was set aside for oil producing areas, a further 1 per cent was to be spent on compensation and rehabilitation for environmental damage and 2 per cent for oil producing states. Also in 1982, revenues for all Nigerian states, whether oil-producing or not, were raised to 30.5 per cent. These

military administration in 1992, the share of revenues specifically allocated to oil producing states was doubled to 3 per cent.[87] After President Obasanjo won elections in 1999, but arising from the recommendations of a 1995 constitution review conference, derivation payments were increased to 13 per cent, where they currently stand.[88]

Although some recommendations are vague – "industrialisation of the area" – or authoritarian – "communities should be made to diversify into agricultural production unique to their environment" – the Special Committee on Oil Producing Areas made a number of practical suggestions, including, in the short term:

- hiring local youth for community development and training them for employment by oil companies;
- building a trans-coastal highway; and,
- providing a marine mass transit system.

In the medium term:

- financing public works programs to control erosion and sand fill swamps to create viable new towns; and,
- providing infrastructure including electricity, water and roads.[89]

Problems of the oil producing areas require two broad approaches: simultaneously improving services and infrastructure and increasing the effectiveness of law enforcement. The report argued that implementation of the former would facilitate the latter.

The report included a note of caution, warning:

> Oil producing areas of the Niger Delta region are not the only backward and under-developed parts of Nigeria. Hence, while addressing their peculiar needs, Government would have to find ways and means of tackling the problems of unemployment and lack of infrastructure, in general, all over the country, so as not to create a new problem of marginalisation, while trying to solve one.[90]

A source close to the committee said the report stalled after it was given to the presidency.[91] Neither the president nor his spokespeople have so far commented publicly on it. The federal government has consistently rejected the region's resource control demands. At the National Political Reforms Conference in July 2005, Niger Delta delegates asked that the federal government increase derivation payments to 25-50 per cent of revenues, an offer that was countered by an unofficial offer of 17 per cent. Niger Delta delegates left the conference in anger after a group of influential northern leaders – the Arewa Consultative Forum – derided the 17 per cent offer as an "excessive generosity".[92] The delegates also demanded the repeal of the Land Use Act,[93] and the Petroleum Act.[94]

It is noteworthy that the Niger Delta Development Commission (NDDC), the regional development agency established by the Obasanjo administration in December 2000, and its newer counterpart, the provisionally-named Consolidated Council on Socio-Economic Development of the Coastal States of the Niger Delta (which has been nicknamed by some in the local media as the "Niger Delta Marshall Plan") have pledged to carry out infrastructural projects that resemble those raised in the 2002 report although Niger Deltans have complained that little progress has been made.

So far, there has been no repeal of the legislation as demanded by Niger Delta delegates. An irony that has not been missed by Niger Delta activists is that

development attempts, and others, are widely perceived to have failed. For further discussion, see Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest,* 3 August 2006.

87 A panel appointed by Babangida's military government in 1992 also called for the creation of an Oil Mineral Producing Areas Development Commission (OMPADEC) which came into effect the following year in 1993.

88 Opponents of raising derivation payments have argued that revenues have been allocated to oil-producing states under various other mechanisms, although it is widely acknowledged that these have been poorly administered and in some cases marred by corruption.

89 See "Volume I Report of the Special Security Committee on Oil Producing Areas Submitted to the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR on Tuesday 19th February 2002".

90 Ibid. The report further warned that "the Nigerian economy faces enormous challenges and a bleak future if fundamental steps are not taken to redress the legacies of the past". The federal government secretary was cited as expressing concern that instability in oil producing areas might "create the impression that the entire country was insecure and portray the Government as being incapable of protecting its most valuable resources".

91 Crisis Group interview, April 2006.

92 Emma Amaize, "Resource control: Anger everywhere", *Vanguard*, July 3, 2005.

93 The Land Use Act vests all land to the State to be held in trust on behalf of the people. The rights of residents and traditional landowners are reduced to those of occupants.

94 The Petroleum Act vests all ownership and control of all petroleum in the State, which has sole control over exploration and production licenses.

implementing the recommendations of the country's security chiefs and top oil company officials would meet many of the demands made by MEND. "The cause of the Niger Delta's problems is widely known by government", said one activist. "Implement the Ogomudia report and we are on the way to solving it".[95]

B. THE NEED FOR CREDIBLE NEGOTIATIONS

Nigeria has improved its international standing through its role in facilitating talks and providing peacekeeping troops in regional conflicts in Liberia, Sierra Leone, Darfur and Cote D'Ivoire. President Obasanjo has a unique opportunity to improve his government's public standing in Nigeria's most turbulent region, the Niger Delta, by encouraging sustained and transparent dialogue on this internal crisis.

Niger Delta activists have long complained that past negotiations have been closed affairs involving delegates chosen by the federal and state governments that, at best, have limited public credibility. This was the case with the National Political Reforms Conference in 2005 as well as a stake-holders meeting in April 2006 at which President Obasanjo announced a regional development plan which has so far been treated with scepticism by many Deltans. Militant leaders have termed these meetings "circuses" and accused the government of trying to purchase participants' loyalty with expensive hotel rooms and bribes. Federal government officials have countered by accusing militants and activists of being spoilers and criminals who are not interested in finding a solution to the Delta's problems.

In the case of both the 2005 and 2006 conferences, the federal government's chosen venue for the talks was Abuja, where, activists charge, officials were able to keep input from uninvited guests to a minimum. What militant groups have reasonably called for is sustained resource control negotiations with representatives of each of the Niger Delta's ethnicities. Talks could be held either in Port Harcourt, Warri or Yenagoa, rather than Abuja, which would allow for better communication between local delegates and ordinary Niger Deltans. While holding such a discussion in the region would not make it a neutral playing field, it could go some way to improve transparency in what will undoubtedly be a lengthy and complicated process, in which participants will need to be held accountable to their respective support bases. While moving forward with the talks, the government should institute a derivation formula of between 25 and 50 per cent of mineral resources, including oil and gas, to all Nigerian states, and phase this in over five years in order to avoid budgetary shock to non-oil producing states and to encourage exploration and production of other mineral resources throughout Nigeria.

1. Foreign mediation

Layers of distrust have accumulated over decades of strife in the Niger Delta, impeding the piecemeal efforts being made to address the lack of development in the region. Yet there would seem to be little reason why opponents in the Niger Delta could not learn from the lessons of other conflicts where neutral intermediaries have helped participants discover common ground and overcome a history of ill will.

It is crucial that mediation be de-linked from the oil industry. Ongoing foreign involvement in a smaller-scale, yet still potentially hopeful peace process has made only limited progress so far, due, in the view of some participants, to poor lines of communication between the parties and allegations by some local groups that the foreign parties assisting the mediation efforts have ties to oil interests. Since mid-2005 Ogoni groups and Shell have agreed on the broad outlines of a process aimed at resolving an impasse that forced Shell to abandon the area in 1993. The process has involved mediation efforts of a well-known Nigerian clergyman, Fr. Matthew Kukah, as well as conflict resolution experts from Coventry Cathedral's International Centre for Reconciliation. Some Ogoni participants have complained that there have been few if any face-to-face negotiations, while others have expressed scepticism over the involvement of Coventry Cathedral, which awarded its 2005 international peace prize to Obasanjo in a ceremony sponsored by Shell and NP Aerospace.[96]

A lack of trust between the parties has obscured results so far. Obasanjo was reported in July 2006 as saying Shell had agreed to pay compensation for oil pollution in the area, which is among the Ogonis' key demands, although Ogoni groups complain they have not been informed of such a development.[97] Some Ogonis have expressed concerns of a hidden agenda on the part of Shell to return to Ogoni and have used this to justify refusing permission for the company to clean its pipeline networks in a process known as "pigging". A Shell discussion paper leaked in April 2006 suggests that: "SPDC proposes to return to Ogoniland in line with its social performance policy of protecting the environment

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[95] Crisis Group interview, April 2006.

[96] http://www.coventrycathedral.org.uk/peaceprize05.html.

[97] Josephine Lohor, "Choice of successor will remain unknown, Obasanjo says", *ThisDay*, 18 July, 2006.

and causing no harm to people".[98] Shell, however, has publicly stated that it has no intentions of returning to Ogoniland until "the majority of Ogonis welcome its presence".[99] The company has welcomed the peace process as a whole, saying it is "committed to the restoration of peace in Ogoniland".[100]

2. The danger of inaction: worst case scenario

When the report of the committee chaired by Gen. Ogomudia was submitted to the president in 2002, the authors noted that "this may possibly be the last chance the government has to address the problem frontally. The expectations of communities are high, and the government may wish to seize this opportunity".[101] The opportunity to prevent conflict remains but may indeed be diminishing. President Obasanjo still has time to begin serious dialogue on the Niger Delta and initiate local resource control and other reforms before he is due to step down at the end of his second term in 2007.

A cohesive, engaging and ultimately successful Niger Delta peace process would be a significant achievement for the president and could help put his legacy and the future of Nigeria on a more secure footing. The alternative is to risk a spiralling insurgency that is still in its early stages but shows signs of strengthening. Although it is difficult to predict the outcome, some analysts have characterised the conflict as a separatist insurgency in its initial stages. Other Nigerian and international analysts have warned of the possibility that an upsurge of violence could result in a one- to two-year shutdown of oil operations in the Delta.

All but the most radical of militants say they still hope for government concessions that will allow them to put down their weapons. Some, including members of the Federated Niger Delta Ijaw Communities from the western Delta, say they are willing to give Obasanjo's development promises in April another chance. But periodic attacks have occurred throughout July and early August, including an incident on 3 August when five staff members of Survicom, a Shell contractor working on a topographical survey in Rivers state, were killed by "armed men suspected to be robbers".[102] Several other staff members were wounded. MEND denied responsibility for the killings yet did not rule out the involvement of "freelancers who fight with us".[103] With each lull in the fighting – there was one in early 2004 and again in 2005 – militant groups gain knowledge, contacts and the funds with which to shape a deadlier and more effective insurgency in the future.

[98] "Discussion Paper - First Draft; Post Impact Assessment of Ogoniland and its Environs", undated, as read by Crisis Group researcher in April 2006.
[99] Email to Crisis Group, 31 July 2006.
[100] Ibid.
[101] See "Volume I Report of the Special Security Committee on Oil Producing Areas Submitted to the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR on Tuesday 19th February 2002".
[102] Email from Shell International spokesperson, 9 August 2006.
[103] Email from Jomo Gbomo to Crisis Group, 7 August 2006. In a subsequent email on 28 August 2006, however, Gbomo called on Niger Delta groups to end kidnappings for ransom, saying "We understand the desire of all such groups in the delta to contribute to the struggle but will not accept such negative contributions that the put the genuine agitation of the oppressed Niger Delta peoples in bad light". Gbomo said future attacks would be aimed at neutralising oil infrastructure.

IV. CORRUPTION AND CULPABILITY

A. President Obasanjo's Anti-Corruption Platform

President Obasanjo's pledge to combat corruption gained little traction during his first civilian administration. In early 2003, nearly four years after the government took office, the auditor-general released a 300-page report of the 2001 financial year, warning that government expenditures were riddled with invented expenses, attempts at influence-buying and corruption.[104] Obasanjo dismissed the report as a document designed to embarrass his government.[105] Within weeks, the auditor-general was dismissed, with officials explaining it was because his six-month term had expired.[106]

After Obasanjo won his second term in April 2003, reform efforts showed some signs of progress. The president recruited a number of respected Nigerians to head an anti-corruption campaign. The team included Ngozi Okonjo-Iweala, a former World Bank official who was appointed finance minister, and Nuhu Ribadu, who was assigned to become chairman of the Economic and Financial Crimes Commission. Individually and as a group, these reformers took limited, yet important steps to improve transparency[107] and crack down on financial and other crimes, despite sometimes facing threats to their own personal safety.[108]

When the nation's previous police commissioner, Tafa Balogun, appeared in handcuffs in court on charges of looting more than $121 million, Nigerians cheered. He was convicted and sentenced to six months in prison – widely criticised as being too lenient – and was released in February 2006. Fabian Osuji, then minister of education, gave an indication of the extent to which corruption pervades the system when he told a Senate ethics committee that by delivering to the home of the senate president a "welfare package" of 55 million naira ($400,000) as an incentive to pass the president's education budget, he was merely doing what was "common knowledge and practice at all levels of government".[109]

The cohesiveness and sustainability of Obasanjo's reforms have been placed in serious doubt by recent personnel changes in the federal government hierarchy. In one high profile example in June 2006 Okonjo-Iweala was replaced as finance minister and shifted to lead the ministry of foreign affairs. In early August she was relieved of her position as head of a high-level government economics team. She resigned as foreign affairs minister a day later.[110]

And while Obasanjo has been praised by the international community for taking debt repayment seriously and increasing foreign reserves, his government's reform priorities have been criticised for being too slow and ineffectual. One Nigerian political analyst compared the government's reform strategy to a family being concerned about the breadwinner's retirement plan while their house is on fire.[111]

An ongoing public feud between Obasanjo and his deputy, Atiku Abubakar, in which both men have accused the other of diverting official funds for private purposes, also threatens to prove a further distraction to already flagging anti-corruption efforts and – even more worryingly – poses the possibility of enflaming an already tense political climate and provoking pre-electoral violence. [112]

In the Niger Delta, the lack of trust in state and local government officials who are thought to have been fraudulently elected has fuelled cynicism about the reforms. President Obasanjo and his reform team have been prickly in their reaction to this kind of criticism. Civil society groups have expressed serious concerns that in the absence of electoral reforms, widespread distrust of politicians and the political process will be perpetuated in 2007.

Until the anti-corruption drive becomes an entrenched element of government policy, this kind of nay-saying

[104] Michael Peel, "Nigeria shines light on corruption at the top: A report on public spending reads like an extended charge sheet", *Financial Times*, 7 February 2003.
[105] "Nigeria: President Obasanjo says auditor report done to 'embarrass government'", BBC, 30 January 2003.
[106] "Why acting auditor-general was Removed - Government", *Vanguard*, 28 February 2003.
[107] Under Okonjo-Iweala, the finance ministry has published its monthly allocations to states, although details of allocations to federal departments and spending patterns at all levels of government remain less than fully transparent.
[108] Ribadu as well as Dora Nkem Akunyili, head of the National Agency for Food and Drug Administration and Control (NAFDAC), have both alleged threats to their lives.
[109] "Wabara ruled for N50m, 'welfare package' is common practice", *This Day*, 12 April 2005.
[110] Although Okonjo-Iweala gave family reasons for her resignation, some Nigeran analysts have speculated that she was ousted by ruling party insiders eager to gain access to government coffers ahead of next year's elections. See also Katharine Houreld, "Analysts: Nigerian minister's resignation endangers economic reforms", Associated Press, 8 August 2006.
[111] Crisis Group interview, Abuja, May 2006.
[112] Crisis Group telephone interview, September 2006. See also Carmen J. Gentile, "Analysis: Nigerian spat threatens oil", UPI Energy, 20 September 2006.

will continue. For every person who has cheered when top officials are fired or charged, there are others who have pointed to continued allegations of gross negligence and graft within government. Some of those apprehended have managed to garner a measure of popular support by manipulating widespread public perceptions that the fight against corruption is a politically selective one, a plausible allegation that at the very least demands further examination.

After Bayelsa governor Diepreye Alamieyeseigha was arrested in London on 15 September 2005 and accused by British authorities of money laundering, he jumped bail and appeared in Yenagoa, the capital of Bayelsa state, telling a crowd of supporters that God brought him home. Although there was little question that Alamieyeseigha was corrupt – even his senior aides said they would not deny that he had embezzled[113] – he was defended by many Ijaw who accused President Obasanjo of colluding with British authorities to imprison Alamieyeseigha because he was a campaigner for Ijaw rights.[114] Some pointed to the fact that River state's Governor Peter Odili, a key Obasanjo ally, has not faced similar scrutiny even though he has often been accused of corruption[115].

Anti-corruption efforts have so far failed to improve the lives of average Nigerians. Bribes are required for citizens to get paperwork from civil servants or pass roadside police and military checkpoints – normally about fifteen cents for drivers of cars and 35 to 75 cents for trucks and minivan taxis, hefty sums in a country where despite the resource wealth the vast majority still live on less than $2 a day. Income taxes go largely uncollected and those who attempt to pay are urged by tax officials to give bribes in return for forms showing they have fulfilled their obligations.

Nigeria should consider a constitutional provision to abolish criminal immunity for the president and state governors; this would be a powerful step toward ending the present culture of impunity. The Nigerian administration should press law enforcement bodies such as the Economic and Financial Crimes Commission (EFCC) to prosecute cases of local and state government corruption. The international community can also play a useful role in combating Nigeria's corruption by making budget and expenditure transparency a condition of aid to federal, state and local governments and ending relationships with local and state administrations that have failed to address corruption.

B. OIL INDUSTRY TRANSPARENCY EFFORTS

Nigeria is one of the most challenging countries for oil companies do business in. Efforts by governments and industry to overcome what many activists in the Niger Delta regard as the "curse of oil" have often been hampered by the absence of a reliable paper trail. Reformers have complained that it has been difficult to verify how much revenue oil companies have paid the Nigerian government due to conflicting and insufficient documentation.

In 2003, President Obasanjo was praised when Nigeria became the first country to sign up to the British-backed Extractive Industries Transparency Initiative (EITI).[116] After a slow beginning, the Nigerian Extractive Transparency Initiative (NEITI)[117] has taken important first steps in revealing serious shortcomings in the country's system of accounting for revenues from the oil and gas industries since mid-2005.[118]

The British accountancy firm Hart Nurse, appointed to lead the probe in 2005, looked into discrepancies in accounts of the federation's petroleum-related income – crude sales, taxes, royalties, penalties and payments to the Niger Delta Development Commission from 1999 to 2004. During this period, the central ank had two accounts at JP Morgan in New York. Proceeds of oil exports, domestic government equity crude sales and government equity gas sales went into these accounts, from which funds were transferred to either the federation account, the Nigerian National Petroleum Corporation (NNPC) "cash calls account", which paid the

[113] Interview conducted by a Crisis Group researcher in a former capacity, November 2005.

[114] By the account of Alamieyeseigha's supporters, the governor was regarded as being close to Obasanjo when the two were first elected in 1999, Alamieyeseigha provoked the government's ire by vocally demanding greater resource control. The presidency has denied having any political agenda against him, insisting that an investigation into corruption was not influenced by politicians.

[115] In numerous interviews with a Crisis Group researcher, Delta activists have complained of exorbitant spending by Odili and his aides. The state's 2006 budget also reveals questionable spending priorities that deserve official explanation. See also Crisis Group Africa Briefing N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest,* 3 August 2006.

[116] The Extractive Industries Transparency Initiative (EITI) has been spearheaded by British Prime Minister Tony Blair to encourage oil and mining companies to disclose payments to governments in the developing world and ensure transparent spending. 22 oil and mineral producing countries in the developing world have joined the initiative, which has received support from several G8 nations.

[117] NEITI is chaired by Obiageli Ezekwesili, minister of education and formerly minister of solid minerals development.

[118] Crisis Group interview, Nigeria Extractive Industries Transparency Initiative official, April 2006. See also Daniel Balint Kurti, "'Millions missing' in Nigeria's accounts", *Financial Times,* 15 April 2006.

government's annual share of investment in the joint ventures, or the excess crude account, which Obasanjo established in 2003 to set aside money for paying off Nigeria's debts, increasing reserves and future savings. In April 2006, the auditors announced the discovery of a $232 million net gap between what oil companies said they paid Nigeria's government and receipts acknowledged by the Central Bank.[119] They have so far not publicly identified what happened to the money, if any went missing or whether other funds that were unaccounted for by the parties had illicitly exchanged hands.

The audit criticised the Department of Petroleum Resources (DPR) for regulatory shortcomings. Despite being "statutorily empowered to supervise the activities of the upstream companies" including assessing royalties, "no action" was taken on its assessments. Instead, during the period of the audit, production companies independently assessed "what they deemed as royalty payable and thereafter paid the amount" to the Federal Reserve account in New York. Although the DPR computed royalty liabilities, "these assessments were never filed on the upstream producing companies for payment...[and] were used mainly for memorandum as no action was taken on them". The audit warned against failures that it said "could be an abdication of statutory duties on the part of DPR." The Central Bank was being relied upon to provide government management information to the accountant general, even though the bank did not have "suitable systems" in place to collect such information. The Federal Inland Revenue Service (FIRS) was also found to have allowed oil companies "unregulated self assessment which is not appropriate considering the financial flows involved".[120]

President Obasanjo, who is also Nigeria's petroleum minister, was reported to have angrily interrupted the presentation of the audit report to the Federal Executive Council and asked auditors Hart Nurse as well as the Economic and Financial Crimes Commission to investigate before proceeding further.[121] "Where is this discrepancy? How did it occur?" he was cited as saying. "You should realise what society we are in. Before you know it they would say it is Obasanjo who has stolen the $250 million. We should follow up this to a logical conclusion".[122] Obasanjo reportedly gave these agencies three months to find the source of the discrepancies, a deadline which has since expired.[123]

Although a NEITI official told Crisis Group the initiative had not discovered sufficient evidence to establish fraud,[124] Oby Ezekwesili, the minister leading the initiative, warned prior to the report's release that accounting discrepancies revealed "weak systems of accounting control…which allow corruption".[125] A reform-minded official close to the audit went further, telling Crisis Group that the discoveries were symptoms of a system inherited from Nigeria's military era, which "allows for evil to flourish".[126]

Anti-corruption campaigners have welcomed the audit yet critics stress that it means little unless an investigation determines what happened to the missing money. Another challenge, critics say, is to extend NEITI's mandate to investigate how oil funds are allocated and spent after they enter the Central Bank. So far, NEITI has not looked into the controversy over oil block licensing. Government critics have alleged that block rights are routinely given to bidders with government connections, whether or not their bid is the highest or they have the proven capacity to carry out exploration.[127]

The pace of reforms has been slow and they have made little impact on the daily life of most Deltans. With

[119] "Nigeria Extractive Industry Transparency Initiative Financial Audit; Financial Flows 1999-2004 (revision 1)", presented to the National Stakeholder Working Group by Hart Nurse Ltd. in association with S.S. Afemikhe, 10 April 2006.

[120] The Hart Group noted that FIRS had informed auditors of a "welcome initiative" – an agreement with the Oil Producers Trade Group (OPTS) regarding new formats and content of presentation of Petroleum Profit Tax (PPT) assessments. See "Nigeria Extractive Industries Transparency Initiative Financial Audit Issues in Government Financial Systems", presented to the National Stakeholder Working Group by Hart Nurse Ltd. in association with S.S. Afemikhe, 10 April 2006. Another issue cited by the auditors is that the NNPC's Crude Oil Marketing Department (COMD) purchases domestic crude for federal government-owned refineries and is also responsible for selling equity oil obtained from the production sharing agreements with the foreign companies. This dual role as buyer and seller makes auditing control difficult. Onyebuchi Ezigbo, "AAGM: Audit: NEITI records N71bn tax underpayment by oil companies", *This Day*, 19 February 2006.

[121] Obasanjo has consistently refused critic's demands he appoint a petroleum minister. Edmund Daukoru is currently Minister of State for Petroleum Affairs, a junior position.

[122] "Account for $250m missing oil fund, Obasanjo tells audit firm", *Vanguard*, 4 May 2006.

[123] "Nigeria EITI: Oil cos, gps asked to find $250m oil revs", Dow Jones Newswires, 4 May 2006.

[124] Crisis Group interview, Abuja, April 2006.

[125] "Audit turns up serious flaws in Nigerian oil accounts", AFX International Focus, 13 January 2006. Crisis Group interview, Nigeria Extractive Industries Transparency Initiative official, April 2006.

[126] Crisis Group interview, Abuja, April 2006.

[127] Crisis Group interview, Nigeria Extractive Transparency Initiative official, April 2006. See also Daniel Balint Kurti, "'Millions missing' in Nigeria's accounts", *Financial Times*, 15 April 2006.

elections coming in 2007, transparency proponents fear the initiative's future may be in doubt, particularly unless legislators ratify a proposed bill entrenching it into law. Civil society groups in the Niger Delta have called for the inclusion in the pending Nigerian Extractive Industries Transparency Initiative bill of a provision for "certificates of transparency" to be issued to companies only after full compliance with NEITI provisions.[128] Failure to comply would lead to penalties such as forfeiture of license, stringent fines or prohibition from future bidding. Civic groups called for the bill to compel companies to comply with relevant environmental laws. The groups also highlighted the lack of transparency in the management of resources at the state and local government levels.[129] Ezekwesili has called on civil society groups to help pursue passage of the bill, and has promised to "set up mechanisms that will follow up the findings of the Audit Report to ensure than the recommendations are translated into positive action".[130]

C. POLLUTION AND CONFLICT

More than 50 years of oil industry activity in the Niger Delta has resulted in an unduly high level of air and water pollution, thousands of oil spills,[131] and more flared gas than any other country.[132]

When combined with incrementally rising sea levels in a region of seasonal flooding and the fact that an expanding population has speeded deforestation and depletion of fish stocks, Niger Deltans face significant challenges to their fragile and unique mangrove ecosystem. Oil companies have insisted that they are working as fast as possible to build facilities to liquefy gas for export and modernise the country's ageing oil infrastructure. Yet oil spills from pipelines – some more than four decades old – are common.

Shell, which operates nearly half of the Delta's onshore infrastructure, recorded 224 spills (11,921 barrels spilled) in 2005 compared to 236 oil spills (8,317 barrels) the previous year. Human error, corrosion and equipment failure accounted for 38 per cent of the incidents and 94 per cent of the volume spilled in 2005, Shell claimed. The remaining 62 per cent of incidents and 6 per cent of spilled oil were allegedly caused by sabotage.[133] Activists have disputed Shell's figures in the past, and say that communities have supplied evidence of inaccurate reporting.[134]

A side effect of oil production is excess water tinged with oil, which is often dumped into local rivers and streams.[135] Outside its flow stations, manifolds, pipelines and other facilities, Shell typically posts signs warning people not to swim, fish or drink the water, although residents of many affected villages say they have no alternative water source.[136]

Oil companies have argued that political and social factors out of their control have impeded efforts to improve their environmental record. Companies allege that communities and even government officials have obstructed efforts to modernise and repair infrastructure by insisting that sizeable compensation payments be made prior to these improvements. Activists, on the other hand, have contended that Nigeria's government – which holds a majority stake in the largest onshore joint

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[128] Communique issued at the end of the civil society-legislature interactive session on the Nigerian Extractive Industries Transparency Initiative (NEITI) bill, 30 June 2006, http://www.neiti.org/CISLAC-SenateNEITI%20Communique%20on%20NEITI%20Bill.pdf.

[129] NEITI did sign an MOU with the National Stakeholders Working Group, which includes the government, the oil companies, and civil society, in February 2006.

[130] Onyebuchi Ezigbo, "AAGM: Audit: NEITI records N71bn tax underpayment by oil companies", *This Day*, 19 February 2006.

[131] Emmanuel O. Emmanuel of the Port Harcourt-based Centre for Social & Corporate Responsibility (CSCR) has estimated more than 300 oil spills per year. See "Oil and Conflict in Nigeria", *The Corporate Examiner*, Vol.33, No.5, 15 April 2005. The website of the U.S. Energy Information Administration cites more than 4,000 spills in Nigeria between 1960 and 2003. (See "Nigeria: Environmental Issues", July 2003, www.eia.doe.gov/emeu/cabs/nigenv.html). Shell gives oil spill estimates in its annual Nigeria reports entitled, "People and the Environment". As of early August, Shell's 2005 report for Nigeria had not been released.

[132] Although reliable figures are difficult to come by, Franz Gerner, Bent Svensson and Sascha Djumena, energy specialists with the World Bank, estimated that Nigeria flared or vented between 18-20 billion cubic meters of associated gas annually. (See "Gas Flaring and Venting: A Regulatory Framework and Incentives for Gas Utilization", October 2004), http://rru.worldbank.org/Documents/PublicPolicyJournal/279-Gerner-Svensson-Djumena.pdf. See also Crisis Group Africa Report N°113, *Nigeria: Want in the Midst of Plenty*, 19 July 2006.

[133] "Shell Nigeria Annual Report 2005; People and Environment", http://www.shell.com/.

[134] Email correspondence with Niger delta activist, Port Harcourt, July 2006.

[135] A Crisis Group researcher in a former capacity in November 2005 saw black, oily liquid being expelled from Agip's terminal in Brass, Bayelsa state, into a nearby pond, the surface of which was also black and oily, which drained into a nearby creek.

[136] Interviews conducted by a Crisis Group researcher in a current and former capacity, 2001-2006. In one case in Delta state, a Crisis Group researcher in a former capacity saw children bathing and women washing clothes under one of Shell's no fishing/swimming signs.

ventures – has failed to enforce its own regulations, allowing companies to stall expensive upgrades and avoid costly clean-ups and compensation measures. A senior Shell official disagreed with this assessment, yet conceded that his company's environmental policies had been delayed by the failure of the Nigerian government to pay its full share of annual costs to the Shell Petroleum Development Company joint venture.[137]

With all the controversy surrounding the causes of oil and gas-related pollution, the need for a thorough, independent environmental impact assessment (EIA) is paramount. The United Nations Special Rapporteur to Nigeria in 1999 called for an independent agency to be established to conduct a thorough study of the Niger Delta environment. Four years earlier, Shell funded and initiated a Niger Delta Environmental Survey (NDES) to counter criticism in the wake of the trial and execution of Ken Saro-Wiwa and eight other anti-Shell activists. However, the survey failed to complete its work as a result of mismanagement, according to an expatriate oil industry expert with personal knowledge of the project.[138] Environmentalists also expressed scepticism about whether the survey was independent of oil company and government influence.[139]

Environmental and human rights activists have also expressed concerns about the quality and openness of the project-level environmental impact studies that oil and gas companies are required under Nigerian law to carry out prior to new infrastructure and project development. Shell carries out 20-30[140] of these studies each year. Emmanuel O. Emmanuel, of the Catholic-funded Centre for Social and Corporate Responsibility in Port Harcourt said community residents seldom have access to these reports,[141] an assessment confirmed in a Shell report.[142] An environmental engineer in Nigeria's oil industry stressed that companies have made steady improvements in the quality of their EIAs over the past fifteen years but allowed that there remained problems with the scientific procedure of some studies and that oil companies remained weak at following up on the environmental consequences of projects once they had been approved.[143]

Donor nations should resource and support an independent environmental impact assessment (EIA) of the Niger Delta as well as support efforts to establish a credible, independent judicial mechanism to investigate and handle compensation claims. Efforts should be made to ensure that the credibility of such an environmental assessment is not damaged by funding from or association with government and energy companies. Steps should be taken to ensure that compensation is distributed transparently in a manner that benefits communities instead of individual "benefit captors", including politicians, militant and traditional leaders.

Critics have argued convincingly that Nigeria's judicial process has so far proven unable to handle environmental complaints fairly or effectively. Residents of impoverished communities frequently complain that legal costs put lawsuits out of their reach and that, in any case, rulings are either tied up in appeals or ignored by the losing party.[144]

Shell failed to meet a Nigerian federal court deadline in May 2006 to pay $1.5 billion as compensation to communities in the Niger Delta state of Bayelsa for alleged environmental pollution. The payment had also been called for by an advisory panel of former supreme court judges and other legal experts to the house of representatives.[145] Rhetoric surrounding the case has infused fighting in the Delta and MEND has made payment of the fine one of its key demands. Shell spokesman Bisi Ojediran argued it would "not be appropriate to make the payment since we had appealed against the decision".[146] Another Shell official told Crisis Group the company believed the ruling had not been informed by scientific evidence. Shell also feared that if it paid, the Nigerian government would not pay its own share of the penalty as 55 per cent stakeholder in the joint venture.[147]

1. Gas flaring

In remote villages such as Iwherekan, Batan and Ebocha, the persistent glare caused by flaming gas is a reminder

[137] Crisis Group interview, Port Harcourt, April 2006.
[138] Crisis Group interview, Port Harcourt, April 2006.
[139] "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", Human Rights Watch, 1999.
[140] Crisis Group interview, Port Harcourt, April 2006.
[141] Email correspondence with Crisis Group, 12 June 2006.
[142] "2003 People and the Environment Annual Report", Shell Petroleum Development Company of Nigeria Limited, May 2004.
[143] Crisis Group interview, senior oil company environmental engineer, first half of 2006.

[144] Although Nigerian law has theoretical mechanisms to internalise the costs of environmental damage, insufficient resources and corruption have, in practice, arguably negated these mechanisms in many cases and made corporate and government producers (NNPC) the beneficiaries. Local communities that suffer from pollution and the global community that suffer the effects of flaring on climate change pay for this benefit.
[145] "Findings and Recommendations of the Legal Advisory Panel on the Investigative Hearing of Petition by the Ijaw Aborigines of Bayelsa State Against Shell Petrloleum Development Co. Ltd. (SPDC)", House of Representatives Committee on Public Petitions, 24 February 2006.
[146] Dulue Mbachu, "Shell misses Nigeria deadline for pollution payment, awaits appeal", Associated Press, 22 May 2006.
[147] Crisis Group interview, April 2006.

of the waste – and untapped potential – of Nigeria's energy industry. By World Bank estimates, Nigeria has annually burned into the air up to 75 per cent of the gas extracted from its wells.[148] By some estimates, the equivalent of 40 per cent of Africa's total natural gas consumption is flared in Nigeria.[149] These losses are worth an estimated $2.5 billion annually and have resulted in 70 million metric tons of carbon dioxide emissions a year, a "substantial proportion of worldwide greenhouse gas", according to a joint World Bank/United Nations Development Programme report.[150] Shell says it has reduced its output to 17 million metric tons of CO^2 and between 5.2 million and 6.3 million tons of gas hydrocarbons in 2005.[151]

Although Nigeria has long since passed legislation aimed at ending flaring, energy companies have until recently argued that the high costs of building infrastructure to capture, liquefy and export the gas outweighed the economic benefits. Modest penalties imposed for flaring have done little to help.[152] Yet since late 1999, companies have made steady progress in building liquefied natural gas (LNG) facilities. By some estimates, flaring is down to 40 per cent of what it was at its peak in the late 1990s.

Nevertheless, several firms, including Shell, have given notice that they will not be able to meet the government's 2008 deadline[153] to all companies to end the practice.[154] Communities are protesting.[155] Shell has argued that a lack of investment from the Nigerian government in its joint venture with Shell has impeded the necessary infrastructural development. The company says it has invested $2 billion in the past five years and needs a further $1.85 billion to end flaring by its latest target of 2009; it has also stated it will "shut-in" or end production from marginal fields where it is uneconomical to end gas flaring.[156]

2. Anatomy of an oil spill

Like many Niger Delta towns, Azuzuama, in Bayelsa state, is a place few outsiders visit. The ethnic Ijaw community is about two hours by speedboat from the nearest city, Yenagoa. Declining fish stocks in recent years have hurt the area's main industry – and source of dietary protein – to the point that residents are sometimes forced to buy from city traders whose fish comes from the deep waters off Nigeria's coast. Residents blame oil spills from a pipeline operated by Agip, the subsidiary of the Italian oil giant ENI, for "chasing our fish away". When Crisis Group visited the area, slicks of black crude were visible on the surface of the swamps and creeks that surround the town, the community's main source of drinking water.

Residents complain that their problems are ignored by oil company and government officials until they stage protests. According to one resident, growing anger has meant that ethnic militant leaders who visit from other communities are increasingly welcomed.

Residents said an oil pipeline associated with the decades-old facility is corroded and has burst five times between November 2003 and March 2006. In all but one case, Agip workers took weeks or months before repairing the leaking pipe.[157] An expatriate Agip official in Port Harcourt expressed surprise when told about the oil spills, saying he was unaware that any had occurred. After consulting with a colleague, he asserted that Agip had done – and was doing – everything necessary to clean up the spills. Later the same day, the official confirmed that corrosion was believed to have caused the spills but that the company was not ruling out the possibility that saboteurs had used acid to speed up pipeline deterioration in order to press for compensation.[158]

Unresolved pollution claims such as the one at Azuzuama have sparked protests, sometimes violent. Azuzuama leaders say that in mid-2005, they visited Agip's export terminal at Brass to protest that a compensation package

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[148] This "associated gas" is a by-product of oil. "World Bank Approves Funding For the West African Gas Pipeline in Benin, Ghana, Nigeria & Togo", World Bank, 23 November 2004, http://web.worldbank.org/.
[149] Crisis Group Africa Report N°113, *Nigeria: Want in the Midst of Plenty*, 19 July 2006.
[150] "Nigeria Strategic Gas Plan", Joint UNDP/World Bank Energy Sector Management Assistance Programme (ESMAP), ESM279, Report 279/04, February 2004.
[151] See "Shell Nigeria Annual Report 2005; People and the Environment", http://www.shell.com/.
[152] Penalties rose from 50 kobo (0.4 cents) per cubic foot to 10 naira (8 cents) per cubic foot of flared gas in 1998. The Nigerian government reportedly collected about 2.7 billion naira ($19 million) in gas flare penalties from companies in 2005. See "Oil companies pay n2bn gas flare penalties", *Daily Trust*, 9 May 2006.
[153] The 2008 deadline was originally set in 1996.
[154] "Nigeria Strategic Gas Plan", ESM279, Report 279/04 February, Joint UNDP/World Bank Energy Sector Management Assistance Programme (ESMAP).
[155] In neighboring Benin a court of appeal overturned an earlier federal high court decision to force Shell to stop flaring gas. Activist groups have launched an appeal against the decision.
[156] Thomas Pearmain, "Court of appeal overturns Shell's gas flaring verdict in the Niger Delta", *Global Insight*, 26 May 2006. See also "Shell Nigeria Annual Report 2005; People and Environment", http://www.shell.com/.
[157] Crisis Group interviews, community leaders, Azuzuama, 27 April 2006.
[158] Crisis Group interviews by telephone, Port Harcourt, early May 2006.

presented to them by the company was too small.[159] Several community members told Crisis Group that soldiers guarding the terminal gates turned the men away after forcing several community leaders to perform frog jumps, a common shaming tactic used by security forces. An Agip official denied any knowledge of the alleged incident.

"Agip wants us dead so they can take our oil freely", said Inatini Ayibanna, treasurer of Azuzuama's community development committee.[160] A militant faction leader from another Bayelsa community, meanwhile, told the community, in Crisis Group's presence that "we will do what we have to do to get justice".[161]

In early July 2006, Agip acknowledged two apparently unrelated spills, including one at Lagos Camp near Sangana, Akassa kingdom in Bayelsa state. Amid contradictory reports over whether or not the spills were caused by sabotage, the Akassa Development Foundation wrote a letter to Agip, enclosing photos of brown sludge-like crude spreading across the water surface and requesting that the areas be cleaned up.[162] In late July 2006, armed youths from Ogboinbiri, a town in neighbouring Azuzuama, stormed Agip's Ogboinbiri flow station, shutting down operations and briefly taking eight soldiers and sixteen Agip workers as hostages.[163]

3. Missing money?

A 24 March 2006 oil spill at Bomu well No.2 on the outskirts of the Ogoni village of K-Dere sheds light on the problems surrounding compensation for environmental damage. The spill was one of dozens that annually occur in the area. Shell operated the well and other oil facilities in Ogoniland until protests led by Ken Saro-Wiwa's Movement for the Survival of the Ogoni People (MOSOP) forced the company to withdraw in 1993.[164] Since then, "continuing sabotage and deterioration of facilities left behind have caused a number of crude oil spills and fire incidents, putting communities and the lives of people at risk", Shell said, adding that community groups had refused permission to the company to secure and safeguard facilities.[165]

Pending the results of an investigation into the cause of the spill, Shell gave five million naira ($35,700) as a "humanitarian gesture" to the Gokana local government chairman, Fred Alasia, for "transmission to the people affected by the spill". The Rivers state government announced its own relief package worth ten million naira, which Shell said Alasia was also charged with distributing.[166]

Local residents angrily complained the amount they received did not come close to covering their losses. Several residents raised troubling questions about how the aid money was distributed and whether it ended up with the intended recipients.[167] A number of farmers indicated that they each received a sum of $105 – not enough to cover the loss of a single season's crop, or future harvests that locals feared would be jeopardised by the blanket of frothy brown crude that covered substantial amounts of land. Each of the farmers said Alasia told them that Shell had provided the community with half as much as the company said it did. Alasia also declined to tell the farmers how much the state government had provided.[168]

[159] Both oil company and community leaders declined to say how much compensation Agip had paid.
[160] Crisis Group interviews, community leaders, Azuzuama, 27 April 2006.
[161] Ibid.
[162] Crisis Group has a copy of the letter, dated 13 July 2006.
[163] "No respite for people of the Niger Delta", UN Integrated Regional Information Networks, 26 July 2006.
[164] Shell's wells in Ogoni have been closed since 1993 although the company continues to have active pipelines running through the region. The company retains ownership of the disused oil infrastructure and legal rights to the Ogoni oil fields and has refused to sell these rights. Shell also still operates pipelines running through Ogoni from other oilfields. On occasion, Shell has issued modest compensation payments for spills in Ogoni that it deems accidental, sometimes explaining that it does so as humanitarian gestures to further its relationship with communities. Ogoni groups, including MOSOP, argue that these payments are trifling and do not amount to adequate compensation.
[165] Email statement to journalists dated 13 April 2006 from Joseph Ollor Obari, head of Media Relations, Eastern Division, Shell Petroleum Development Company of Nigeria Ltd. Shell has frequently complained that community disputes have prevented the company from carrying out badly needed repairs to abandoned wells and active pipelines in Ogoni. MOSOP has insisted that Shell's return to the area be preceded by a peace agreement.
[166] Email statement to journalists dated from Joseph Ollor Obari, head of Media Relations, Eastern Division, Shell Petroleum Development Company of Nigeria Ltd., 13 April 2006.
[167] Crisis Group interviews, 27 April 2006.
[168] Alasia could not be reached for comment. The deputy chairman, Anthony Vite, declined to say how much money had been allocated to the communities, asserting that "my chairman has the figures". Vite, however, showed Crisis Group several hand-written ledger sheets with a total of approximately 250 names, each of whom, he said, had received between 8,000 naira and 15,000 naira of Shell money and between 10,000 naira and 20,000 naira from the state government. The amount given depended, he said, on an assessment team verifying the claimants' land and the type of crops planted. In determining compensation, Shell and other companies in Nigeria use formulae that calculate the market value of vegetables, fruit or other crops damaged in a

V. BREAKING WITH THE PAST

A. JOINT VENTURES: EXCLUSIVE PARTNERSHIPS

The oil industry's relationship with the Nigerian government is unique. All petroleum assets are vested in the federal government, which grants two types of licenses to oil producers: Oil Prospecting Licenses (OPLs) for exploration, and Oil Mining Leases (OMLs) for production, with validity of three and twenty years respectively. Most of these agreements are long term and, to protect corporate investment, have no mechanism for renegotiation.[169] Confidentiality clauses shroud these deals in secrecy.

When President Obasanjo came to power in 1999, most of the country's 48 agreements were issued to "joint ventures", including the country's largest producers – Shell Petroleum Development Company, Mobil Producing Nigeria, Chevron, Total and Agip – all of which have majority government participation (55-60 per cent ownership by the Nigerian National Petroleum Corporation), although the foreign company is the operator in all cases. However, since the late 1990s, offshore oil partnerships have been in the form of "production sharing contracts" in which the government is not a formal partner and oil production companies are allowed to recoup their proportionally larger infrastructure investments before sharing profits with the federal government.

Under most of the joint ventures, multinational operators say they receive a "fixed margin" when oil prices are within a range of $15 and $19 a barrel, with the companies' profit capped when prices are above U.S. $30. Although details of the 2000 memorandum of understanding between the government and companies remain confidential, Shell says that when oil is priced at $19 a barrel, the government's take in taxes, royalties and equity share is $13.78, or 72 per cent. Of the remaining $5.22, "operating cost and future investment take the lion's share with about $1.22 left to be shared as a margin among the private shareholders".[170] At $30 a barrel, the government's take increases to $24.13, or 80 per cent, and the margin shared by private partners increases to $1.87. In May 2006, when oil prices were above $70 a barrel, Shell estimated the government was collecting 95 per cent of profits.[171] Other companies have given similar accounts.[172] Nigeria's finance ministry has declined to comment on the division of profits between government and multinationals. The most recent Memorandum of Understanding (MOU) signed with companies in 2000 remains a secret although the proposed Nigeria Extractive Industries Transparency Initiative (NEITI) bill has called for these documents to be published. The bill is before the Senate and House of Representatives. Terms of the MOU remain secret, a condition that, according to reform-minded officials familiar with the process, leaves open the possibility for government authorities and company officials to negotiate taxation amounts on an ad hoc basis and in a non-transparent manner.[173]

As part of NEITI, companies such as the Shell Petroleum Development Company have released how much they are paying in taxes and royalties to the Nigerian government in annual reports.[174] Nigerian lawmakers have frequently raised questions about whether company payments adequately cover taxes. Other industry stakeholders have queried the prevalence of bribes and other undocumented payments either solicited by government officials or offered by company employees.

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spill. Such formulae generally do not take into account future losses or land value. When Crisis Group tried to add the sums on the ledger sheets, Vite grabbed the papers back, explaining: "This may not be the same list as others have. Nigerians are too dishonest". Vite added that the local government had paid an undisclosed sum to "youths" who, he said, "can make trouble if we don't pay them". Crisis Group interview, Anthony Vite, Gokana, 26 April 2006. By Crisis Group's calculations, even if each of the estimated 250 farmers on the list received the maximum possible sum of 35,000 naira (15,000 naira from Shell and 20,000 from state government), the total would amount to 8.75 million naira, 6.25 million naira ($44,600) less than what Shell says was allocated. The actual disparity would be larger given the fact that many claimants did not receive the maximum amount. Alasia did not return several phone messages asking for his response. In his email to Crisis Group, MOSOP's Bari-Ara Kpalap commented that Nigeria's Land Use Act of 1978 had "deprived us of the right" to compensation for "damage to land".

[169] Oil mining leases are for three years with an option for another two years.

[170] Shell Petroleum Development Company is 55 per cent owned by the federal government's Nigerian National Petroleum Corporation (NNPC), 30 per cent by Shell, 10 per cent by Total and 5 per cent by Agip (Eni). See also "2004 People and the Environment Annual Report", The Shell Petroleum Development Company of Niveria Limited, 27 May 2005.

[171] Crisis Group email correspondence with Shell officials, 20-21 May 2006.

[172] In his July 2005 paper "Crisis in the Niger Delta", Chatham House fellow Michael Peel reported that ExxonMobil said the government collected "more than 93 per cent of revenues from its joint ventures".

[173] A source close to the NEITI process told Crisis Group that federal tax officials had, in several cases, assessed companies a lower amount tax than the companies' accountants had assessed themselves. This unusual practice raised questions as to whether undocumented payments had been sought or given.

[174] According to the annual report, SPDC paid. $2.2 billion in Petroleum Profit Tax and $904 million in royalties in the 2004 operating year. Mike Odunyi, "AAGM: Shell pays FG $3 bn oil tax", *This Day*, 14 August 2005.

The United Kingdom's Serious Fraud Office is investigating allegations that a subsidiary of the U.S. firm Halliburton was part of a consortium alleged to have paid $170 million in bribes in the 1990s to win work at a liquefied natural gas plant now operated by Nigeria Liquified Natural Gas.[175]

Save the Children UK, a participant in the global Publish What You Pay campaign, has called for "home" countries (those where major oil companies are based) to require firms to disclose how much they pay to governments in their areas of operation so that local citizens can access information that their own governments may be reluctant to publicise. The charity has noted that even in the West, few countries have mandatory requirements for disclosure of revenue on a country by country basis; most disclose revenue by continent only.[176] Transparency International, the anti-corruption watchdog, issued a June 2006 report which stated that only one third of OECD member states have taken significant action to enforce laws relating to the bribery of foreign public officials. Countries singled out for criticism included the Netherlands, the United Kingdom and Italy, each of which has substantial oil investments in Nigeria.[177]

Joint venture agreements make no provision for direct participation or ownership of communities near the areas of operation. In May 2006, Nigeria granted right of first refusal to a small oil block to interests linked to a Niger Delta militant faction. This was believed to be the first concession of its kind and could stoke further violent competition unless similar concessions are given even-handedly to other Delta groups. Another more complicated yet possible option suggested by some Delta observers is to refashion the joint ventures themselves to give individual Delta groups, organised at the community or clan level, an ownership stake in the partnership.[178] Granting community participation in joint ventures would require either reshaping the agreements or offering increased derivation payments, which could be administered by foundations led by community groups and with oversight and participation of companies, government and professional non-government actors with experience in community development. This would have to be negotiated, although it would be essential to have independent development expertise involved, according to militants, activists and oil company officials.

B. Oil Security and its Complications

Ensuring security for the network of terminals, flow stations, pipelines and manifolds that criss-cross the Delta is not an easy task. Nigeria's four onshore terminals – with large, exposed oil and gas storage tank farms and control facilities in close proximity to villages and creeks where militants can hide – are vulnerable targets. Shell's onshore joint venture, SPDC, has 3,000 kilometres of pipeline alone.[179]

Militants have demonstrated intimate knowledge of oil company activities and some have boasted of receiving information from oil men sympathetic to their cause as well as from company employees' wives and girlfriends, some of whom hail from Niger Delta villages. One militant leader from Yenagoa, Bayelsa state, who spoke to Crisis Group was himself a former employee in a foreign oil firm's security department.[180] Although he no longer carried out armed actions himself, he admitted that he continued to "advise" militants who were active. Another militant from Warri, Delta state, said he regularly visited Shell officials at the company's western Delta headquarters in Warri to "beg assistance".[181] Crisis Group met a third militant leader inside the Port Harcourt headquarters of an oil major, where the militant said he was soliciting officials for "assistance".[182]

A senior oil company official told Crisis Group that his company was considering expanding security contracts with militant groups as well as with Ijaw ex-military officers who, some in the company felt, had the necessary clout with Ijaw militants to pacify them. But there is a

[175] NLNG is 49 per cent owned by NNPC, 25.6 per cent by Shell Gas, 15 per cent by Total LNG Nigeria and 10.4 per cent by Eni International. For details on the investigation see "Money, politics and oil make murky mix; Nigeria case will put the UK's anti-corruption pledges to the test", *Financial Times,* 8 August 2006.

[176] Save the Children UK gave its assessment of government regulatory practise in ten countries: Australia, Canada, France, Italy, the Netherlands, Norway, Russia, South Africa, the United Kingdom and the United States. Of the ten, only Canada had some regulations requiring disclosure of payments to foreign governments. The charity has also given its assessment of 25 companies with operations in Angola, Azerbaijan, East Timor, Indonesia, Nigeria and Venezuela. See "Beyond the Rhetoric; Measuring Revenue Transparency: Company Performance in the Oil and Gas Industries", Save the Children UK, 2005.

[177] See also Transparency International, "2006 TI Progress Report: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials", http://www.transparency.org/news_room/in_focus/2006/oecd_progress.

[178] Crisis Group Africa Report N°113, *Nigeria: Want in the Midst of Plenty*, 19 July 2006. See also Crisis Group Africa Report N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006.

[179] "2004 People and Environment Report", Shell Petroleum Development Company, www.shell.com.

[180] Crisis Group interview, April 2006.

[181] Crisis Group interview, March 2006.

[182] This encounter occurred in May 2006.

risk that such moves, if not accompanied by a cohesive and comprehensive plan to develop the Niger Delta, will merely empower militants and intensify violence.

However, oil companies should resist the temptation to use security complications as an excuse for downsizing economic and development commitments in the Niger Delta. This would only further alienate locals and lessen the prospects of resolving the Delta's many problems.

Officials of the United States, United Kingdom and Nigeria have met in recent months under the aegis of a collaborative body known as the Gulf of Guinea Energy Security Strategy (GGESS)[183] to discuss possible technological assistance from Western nations to enhance the security capabilities of Nigeria and other West African energy producers. While the desire to improve the security of energy resources and industry personnel is understandable, addressing technological weaknesses will yield less than desirable results – and risk deepening public distrust towards Western oil interests – unless the root causes of the Niger Delta conflict are adequately addressed.

[183] The governments of Canada, Netherlands, Norway and Switzerland have been present as observers at a GGESS meeting although there is reportedly no timetable for their enhanced involvement. See also Thomas Pearmain, "U.S., U.K., and Nigeria convene to discuss security in Gulf of Guinea", *Global Insight Daily Analysis*, 1 Sept 2006.

VI. CONCLUSION

Militant groups in the Niger Delta are proliferating and mutating rapidly. Few have expressed goals beyond extorting lucrative payments from industry and government. Others are working on behalf of local politicians with electoral ambitions. Several groups appear at least loosely linked with MEND, the most cohesive and politically astute militant group to emerge so far. MEND's spokesman has both conceded giving tacit approval to groups that carry out sabotage and kidnappings for ransom and distanced his organisations from such activities. He insists his organisation is no longer interested in carrying out the kind of small-scale attacks that have been a staple of the Niger Delta for years, and is instead preparing to deliver a single, crushing blow to the region's oil industry unless the government agrees to sweeping economic and political reforms long sought by activists.

Regardless of whether MEND can or will deliver on such threats, few would dispute that the security situation is deteriorating, with consequences for the oil industry. Militants recognise that they do not have to capture ground or even win major battles to accomplish their goals. They also realise that Nigeria's military and police are insufficiently trained, unmotivated and ill-equipped to handle a full-fledged insurgency in the Delta's unforgiving terrain of swamps and creeks. Shutting down Nigeria's oil production would hurt the federal government more than any other party to the crisis and create what MEND hopes would be an environment for insurgency to flourish. President Obasanjo and his administration must urgently address the region's grievances before the security situation further degenerates.

Negotiations with representatives of the Niger Delta should begin immediately with a view to granting revenue concessions and partnering with local trusts that would use funds to improve education, health services and foster development. As far back as 2002, Nigerian security chiefs, government officials and international oil executives proposed a template for change that addresses many of the Niger Delta's problems, but most of these proposals have been ignored by President Obasanjo's administration despite a broad consensus in support of the measures.

International support for a comprehensive, independent environmental impact assessment of the Delta is also needed to restore public confidence and give Niger Deltans an outlet to vent long-held grievances without resorting to violence. In the waning months of his presidency, President Obasanjo could go a long way to consolidating his legacy – and the country's future – by commissioning a credible environmental assessment.

Ruling party politicians routinely demand that oil companies clean up the Delta's environmental messes and pay compensation to local groups. This kind of posturing fails to acknowledge the government's role as both national regulator and majority shareholder in joint venture partnerships. At current oil prices, the Nigerian government earns more than 90 per cent and possibly as high as 96 per cent of industry profits. Companies complain that the government is reluctant to invest its share of earnings in industry upgrades that could dramatically reduce gas flaring and oil spills – and help ease tensions. To this end, the energy companies and their home countries should play a stronger role in pressuring the Nigerian government to speed up reforms. Companies have been reluctant in the past to openly engage in this kind of political lobbying for fear of losing market share to each other – and, more recently, to companies from China and India. Yet Nigeria's oil industry is not a zero sum game. MEND has repeatedly indicated that militants will not discriminate in their attacks against the oil industry, whether the companies are from China, India or the West. Corporate stakeholders should recognise that the industry's future is at risk and all parties stand to lose if serious reforms are not implemented.

Dakar/Brussels, 28 September 2006

APPENDIX A

MAP OF NIGERIA

Map No. 4228 UNITED NATIONS
October 2004

Department of Peacekeeping Operations
Cartographic Section

APPENDIX B

MAP OF THE NIGER DELTA

APPENDIX C

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ANPP	All Nigeria Peoples Party
COMA	Coalition for Militant Action
COMD	Crude Oil Marketing Department
DPR	Department of Petroleum Resources
GSM	Global System for Mobile Communications; leading cell phone system
EFCC	Economic and Financial Crimes Commission
EIA	Environment Impact Assessment
EITI	Extractive Industries Transparency Initiative
EU	European Union
FIRS	Federal Inland Revenue Service
FNDIC	Federated Niger Delta Ijaw Communities
IEA	International Energy Agency
INEC	Independent National Electoral Commission
IYC	Ijaw Youth Council
PDP	Peoples Democratic Party
MEND	Movement for the Emancipation of the Niger Delta (MEND)
MOSIEN	Movement for the Survival of the Ijaw Ethnic Nationality
MOSOP	Movement for the Survival of the Ogoni People
NEEDS	National Economic Empowerment and Development Strategy
NEITI	Nigerian Extractive Industries Transparency Initiative
NDV	Niger Delta Vigilantes
NDPVF	Niger Delta Peoples Volunteer Force
NDVF	Niger Delta Volunteer Force
NNPC	Nigerian National Petroleum Corporation
OECD	Organisation for Economic Co-operation and Development
PRONACO	Pro-National Conference Coalition
SPDC	Shell Petroleum Development Company

APPENDIX D

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with nearly 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates thirteen field offices (in Amman, Bishkek, Bogotá, Cairo, Dakar, Dushanbe, Islamabad, Jakarta, Kabul, Nairobi, Pristina, Seoul and Tbilisi), with analysts working in over 50 crisis-affected countries and territories across four continents. In Africa, this includes Angola, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Liberia, Rwanda, the Sahel region, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Tajikistan, Turkmenistan and Uzbekistan; in Europe, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the Andean region and Haiti.

Crisis Group raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: Australian Agency for International Development, Austrian Federal Ministry of Foreign Affairs, Belgian Ministry of Foreign Affairs, Canadian Department of Foreign Affairs and International Trade, Canadian International Development Agency, Canadian International Development Research Centre, Czech Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union (European Commission), Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Foreign Office, Irish Department of Foreign Affairs, Japanese International Cooperation Agency, Principality of Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Republic of China (Taiwan) Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Royal Norwegian Ministry of Foreign Affairs, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, United Kingdom Foreign and Commonwealth Office, United Kingdom Department for International Development, U.S. Agency for International Development.

Foundation and private sector donors include Carnegie Corporation of New York, Compton Foundation, Flora Family Foundation, Ford Foundation, Fundación DARA Internacional, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, Hunt Alternatives Fund, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Moriah Fund, Charles Stewart Mott Foundation, Open Society Institute, Pierre and Pamela Omidyar Fund, David and Lucile Packard Foundation, Ploughshares Fund, Sigrid Rausing Trust, Rockefeller Foundation, Rockefeller Philanthropy Advisors, Sarlo Foundation of the Jewish Community Endowment Fund and Viva Trust.

September 2006

APPENDIX E

CRISIS GROUP REPORTS AND BRIEFINGS SINCE 2003

CENTRAL AFRICA

The Kivus: The Forgotten Crucible of the Congo Conflict, Africa Report N°56, 24 January 2003

A Framework for Responsible Aid to Burundi, Africa Report N°57, 21 February 2003

Rwandan Hutu Rebels in the Congo: a New Approach to Disarmament and Reintegration, Africa Report N°63, 23 May 2003 (also available in French)

Congo Crisis: Military Intervention in Ituri, Africa Report N°64, 13 June 2003

The International Criminal Tribunal for Rwanda: Time for Pragmatism, Africa Report N°69, 26 September 2003 (only available in French)

Refugees and Displaced Persons in Burundi – Defusing the Land Time-Bomb, Africa Report N°70, 7 October 2003 (only available in French)

Refugees and Internally Displaced in Burundi: The Urgent Need for a Consensus on Their Repatriation and Reintegration, Africa Briefing Nº17, 2 December 2003 (only available in French)

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