

Nigeria: Ogoni Land after Shell

I. OVERVIEW

The Nigerian government's 4 June 2008 decision to replace the Shell Petroleum Development Company (SPDC) as operator of oil concessions in Ogoni areas offers an opportunity for ending one of the longest-running conflicts between a multinational oil company and a local community in the Niger Delta. But to ensure that new friction does not develop between the Ogoni and Shell's successor company, it must be followed by a comprehensive program of consultations with local populations to address the remaining issues involved in oil production in this area, including environmental protection and distribution of revenues.

The Shell-operated subsidiary, in which the company has a minority share, has been inactive in the area for fifteen years, while the federal government has tried to no avail to broker a truce between the oil giant and community leaders and representatives. Announcing the decision, President Umaru Yar'Adua said he believed the Ogoni would now "calm down". Both in Nigeria and the diaspora, the Ogoni at first celebrated the move as a victory for non-violent struggle and local communities over a multinational oil company. They suggested the result might persuade other Delta communities to adopt less violent tactics in their campaigns for greater control of the region's oil and gas resources. Subsequent developments, however, have dampened that optimism.

The federal government's early indication that any new operator of the concession would have to be acceptable to the Ogoni raised hopes that local communities would be involved in its selection. But the government soon announced that the operating concession would be taken over by the Nigerian Petroleum Development Company (NPDC), the upstream subsidiary of the state-owned Nigerian National Petroleum Corporation (NNPC). As Ogoni leaders sought clarification, industry analysts reported first that Addax Petroleum of Canada would run the operation in the Ogoni oil fields, then that Gazprom, the giant Russian company, had signed a preliminary agreement to do so. It is not yet clear whether Gazprom will also get a management share in the venture, how it will relate to

NPDC and whether additional companies may also have some role.

The Ogoni consider the government's unilateral engagement of a new operator or operators a further attempt to deny their stakeholder rights. If it insists on proceeding without consultations on operations and local communities' participation and benefits in the process, it will provoke hostility and almost certainly resistance. A working relationship between any new oil companies and the local people has to be defined. Indeed, communities across the Delta are increasingly insistent in their demands for agreements that grant them rights in the exploitation of oil and gas reserves on their land.

Additionally, very little has been done either to clean up environmental pollution resulting from over three decades of SPDC operations or to compensate the communities most adversely affected. Yar'Adua stated that agreements have been reached on compensation, but Ogoni leaders say the issue has not even been discussed. A clean-up initiative involving the United Nations Environment Programme (UNEP) has stalled.

Beyond SPDC's withdrawal, the peaceful resumption of oil operations on Ogoni land requires a comprehensive approach for addressing these and other inter-related issues that have fuelled the Ogoni's conflict with the company and the federal government. In particular, the federal government should:

- take the lead in negotiating a tripartite agreement with the new oil company or companies and the Ogoni representatives on the benchmarks that must be met before operations begin, to include details and modalities for reinvesting a portion of oil revenues in Ogoni land; concrete socio-economic measures to be implemented to revamp basic infrastructure and increase local training and employment; precise processes to control pollution levels and determine reparations/compensation for oil spills and other degradation; and clear commitments from community leaders on the security of oil company staff, installations and equipment;
- agree to a credible and effective program with UNEP and Ogoni leaders to clean up old spills and pay appropriate compensation to all communities

adversely affected by pollution and other oil damages; and

- consult on and implement urgently the required constitutional amendment and legislative reforms to guarantee more equitable allocation of state resources to benefit all communities in any given federal state, guarantee fair representation of minority groups in those states' administration and increase those states' democratic governance through the strengthening of checks and balances on the governor's powers.

II. CHRONICLE OF CONFLICT AND FAILED RECONCILIATION

A. GENESIS OF THE CONFLICT¹

The origins of the conflict between the Ogoni² and Shell/SPDC date back to the company's discovery of oil in this part of the Niger Delta in 1958.³ Nigeria was still under British colonial rule, and the Ogoni, like all other minority ethnic groups in the Delta, had no say in the exploitation agreements. Even after independence in 1960, they were not accorded a real stake in oil production. Until 1993, when SPDC ceased production, Ogoni land yielded 634 million barrels of oil worth \$5.2 billion according to the company, but more than \$30 billion according to the Ogoni.⁴

¹For background on conflicts in the Niger Delta, see Crisis Group Africa Reports N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006; N°118, *Fuelling the Niger Delta Crisis*, 28 September 2006; and N°135, *Nigeria: Ending Unrest in the Niger Delta*, 5 December 2007.

²The Ogoni, a minority group, number approximately 500,000 and live in what is commonly referred to as Ogoni land, an area of 650 sq. km in Rivers State.

³The first discovery of oil in the Niger Delta was in Oloibiri, Bayelsa State, in 1956. Shell originally operated in Nigeria on its own. The government first acquired a share in activities in 1973; the SPDC name was created in 1979; the current joint venture share allotments date from 1993. See www.shell.com/home/content/nigeria/about_shell/who_we_are/history/history.html.

⁴For the estimate by Shell, see Alan Detheridge and Noble Pepple (Shell), "A Response to Frynas", *Third World Quarterly*, vol. 19, no. 3 (1998), pp. 479-486. Claims by Ogoni activists differ considerably. Note that as NNPC is the majority shareholder and Shell and the other private shareholders paid taxes, royalties, etc., the majority of these earnings went to the Nigerian government.

There were more than 100 oil wells, mostly operated by SPDC.⁵

As elsewhere in the Delta, the environmental effects of oil exploration and production in Ogoni territory were severe. Land and water pollution from spills played havoc with the ecosystem.⁶ Villagers lived with gas flares burning 24 hours a day (some for over 30 years) and air pollution that produced acid rain and respiratory problems. Above-ground pipelines cut through many villages and former farmland. In his submission to a presidential fact-finding team touring the area in 1994, the Ogoni writer and environmental activist Ken Saro-Wiwa stated: "Thirty-five years of reckless oil exploration by multi-national oil compa-

⁵Royal Dutch/Shell (here referred to simply as Shell) operations onshore in Nigeria are carried out through the Shell Petroleum Development Company (SPDC), an unincorporated joint venture between Royal Dutch/Shell, and the Nigerian National Petroleum Corporation (NNPC). The Ogoni public often does not distinguish between Shell and the SPDC. Royal Dutch/Shell holds a 30 per cent share; NNPC has 55 per cent, ENPL (a subsidiary of Total) 10 per cent, and Agip (subsidiary of Eni) 5 per cent. The Nigerian state-owned NNPC has effective control of the entity, though it does not manage day-to-day operations. Hence, the federal government and the international oil companies (IOCs) share responsibility for SPDC actions, though the operator has a particular responsibility as manager of day-to-day operations. According to SPDC, about 12 per cent of Shell's global production came from Nigeria in 2007. Written response by SPDC to Crisis Group inquiry. Shell is the largest onshore operator in the country in terms of production, though this can temporarily change when there are large outages. Despite losing operating rights in Ogoni land, there has been no indication so far that Shell will also lose ownership of its 30-per cent equity holding in SPDC activities throughout the country. Shell is confident that it will maintain this share regardless of decisions about a new operator or other possible restructuring of the Ogoni land concession. Presumably, if Shell is not the operator in Ogoni land, but the company retains its share, the name of the joint venture in Ogoni land will have to change, for public relations reasons if nothing else. See section III.B. below.

⁶Between 1976 and 1991, almost 3,000 oil spills, averaging over 600 barrels each, were reported in the Niger Delta. See "Factsheet on the Ogoni Struggle", available at www.ratical.org/corporations/ogoniFactS.html; and Charles Edoigiawerie and Jeffery Spickett, "The environmental impact of petroleum on the environment", *African Journal of Health Sciences*, vol. 2, no. 2 (May 1995), pp. 269-276. Response typically was slow and often caused further damage. A major spill at Ebubu in 1970 was set alight, causing severe harm to the ground. Shell has said the area has been cleaned, but the Ogoni maintain the land remains unusable, and oil still leaks into nearby water. MOSOP Statement to Office of the UN Working Group on Indigenous Populations, Geneva, 7 August 2006, available at www.unpo.org/content/view/5062/86/.

nies has left the Ogoni environment completely devastated...[These oil installations] have spelt death for human beings, flora and fauna. It is unacceptable".⁷

As early as 1970, seven Ogoni chiefs sent a memorandum to SPDC and the military governor of Rivers State complaining of environmental degradation from the company's operations.⁸ These first protests were dismissed, and for over two decades SPDC refused to accept responsibility for environmental repercussions and largely denied there was an issue. As late as 1995, for example, an SPDC document insisted that: "Allegations of environmental devastation in Ogoni, and elsewhere in our operating area, are simply not true. We do have environmental problems, but these do not add up to anything like devastation".⁹

In response to criticism of its community relations practices, SPDC insisted that most of the Ogoni demands for social benefits and infrastructural development were the responsibility of the government, not an oil company.¹⁰ It maintains that it has responded "promptly, fairly, and completely" to community complaints in Ogoni land but that many, such as those articulated in the Ogoni Bill of Rights, are of a political nature and thus beyond its competence.¹¹ Facing what they considered an inflexible organisation with a profit-driven corporate culture and feeling they lacked the resources to fight it on an equal basis in the legal system, the Ogoni resolved to resist SPDC's operations on Ogoni land until the environmental damage and other issues had been addressed. To achieve their goals and also protest against government indifference, they founded in 1992 the Movement for the Survival

of Ogoni People (MOSOP), led by Ken Saro-Wiwa.¹² From the start it adopted a policy of non-violence.

The year 1993 proved decisive in Ogoni-SPDC relations. On 4 January, about 300,000 Ogoni staged a peaceful mass protest against the company and the environmental degradation of their land.¹³ Relations deteriorated further when, in response to the beating of an SPDC worker that month, the company withdrew its staff from Ogoni land. On 30 April, when 10,000 Ogoni protested the laying of new SPDC pipelines by a U.S. contracting firm, Willbros, SPDC requested military protection. The soldiers fired at the protesters, wounding ten.¹⁴

The next months saw increased harassment of Ogoni leaders by military and other security operatives, amid growing restiveness elsewhere in the Delta. In January 1994, Shell and other major oil companies in the region were reported to have lost some \$200 million in 1993, due to "unfavourable conditions in their areas of operation" and called for urgent measures.¹⁵ In April, Dauda Komo, Rivers State military administrator, reportedly disclosed that soldiers had been directed to deal with restive communities and if needed shoot trouble-makers. A leaked memo that month from the Rivers State police commissioner called for "the Nigerian Army, the Nigerian Air Force, the Nigerian Navy and the Nigerian Police ... [to] restore and maintain law and order in Ogoni land".¹⁶

⁷ Ken Saro-Wiwa, "Address to Presidential Fact-Finding Team to Oil Producing Areas", 1994; see Mudiaga Ofuoku, "Why They Seethe", *Newswatch*, 9 November 1998, p. 14.

⁸ Ken Saro-Wiwa, *Genocide in Nigeria: The Ogoni Tragedy* (Port Harcourt, 1992).

⁹ Quoted in "Factsheet on the Ogoni Struggle", op. cit., referring to the 1995 publication "The Ogoni Issue".

¹⁰ The Ogoni and other groups in the Niger Delta perceived that SPDC, through its dominant position in the country's oil industry, was a highly significant economic player, with political influence such that whenever it asked, it received help, often with brutal force, from the authorities to put down protesters. The Ogoni believed that a company that was so influential and had benefited so much from the Nigerian state ought to be more active in helping that state fulfil its responsibilities to its people.

¹¹ SPDC written communication to Crisis Group, 5 September 2008. SPDC also asserted that "where access is denied for proper investigation of a complaint in the community, it can be difficult to resolve a complaint quickly and adequately". Ibid. For more on the Ogoni Bill of Rights, see section IV.C.

¹² Explaining the formation of the movement, Saro-Wiwa said "the Ogoni people have now decided to make a last-ditch stand against the government and against Shell that have ripped them off for the last 35 years". "The Drilling Fields", documentary, Catma Films, first aired on Channel 4, UK, May 1994, viewable at www.booserver.com/projects.php?ProjectID=3178.

¹³ This protest, timed to coincide with the start of the UN International Year of Indigenous Peoples, was highly effective in drawing international attention to the Ogoni cause.

¹⁴ One of the protestors, a Mrs Korgbara, whose land was being bulldozed to lay the pipeline, lost her arm in the incident. Four days later, Agbarator Otu was killed when he was shot in the back by soldiers while protesting work on the pipeline at Nonwa. Two weeks later, Ken Saro-Wiwa had his passport seized when trying to leave for London. On the eve of the 12 June 1994 presidential elections, the security services again seized his passport, as he tried to attend a UN conference in Vienna. "Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria", Unrepresented Nations and Peoples Organisation, June 1994, app. 8, available at www.unpo.org/images/reports/ogoni1995report.pdf

¹⁵ Ibid; "Factsheet on the Ogoni Struggle", op. cit.

¹⁶ Ibid; also quoted in "Nigerian government to use armed force against Ogoni", press release, Unrepresented Nations

This mobilisation was intended “to ensure that ordinary law-abiding citizens of the area, non-indigenous residents carrying out business ventures or schooling within Ogoni land [were] not molested”.¹⁷ The implication was that the military government was prepared to use force to ensure that Shell and the other companies continued operations unimpeded. Another security memo, dated 12 May 1994, referred to Shell directly: “Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence”.¹⁸ Signed by Lt. Col. Paul Okuntimo, commander of the Rivers State Internal Security Task Force, it further recommended the “wasting” of Ogoni activists as a means of pacifying the region.

Meanwhile, divisions had emerged between hardline and moderate Ogoni leaders. In May 1994, a youth mob loyal to the hardliners lynched four prominent moderates. Saro-Wiwa and fifteen others were arrested and tried by a special tribunal, whose procedures were riddled with irregularities; nine, including Saro-Wiwa, were sentenced to death on 31 October 1995. Their execution on 10 November provoked an international outcry.¹⁹

Most Ogoni saw Shell as the architect of the events. The company strongly denied any complicity in the military repression of the Ogoni and claimed “there may be reasons for doubting” the authenticity of the May 1994 memo from Col. Okuntimo linking it to the military actions.²⁰ However, it never proved forgery, so the impression persisted that it had a hand in the repression. The Ogoni thus resolved never to allow SPDC to resume operations on their land. Many regarded its pledge not to use armed escorts and only to resume operations with host communities’ consent as mere posturing. Relations between SPDC and the Ogoni have remained tense ever since.

and Peoples Organisation, 29 April 1994, available at www.cwis.org/fwdp/Africa/ogoni.txt.

¹⁷ Ibid.

¹⁸ Rivers State Government House Facts Sheet signed by Lt. Col. Paul Okuntimo, commander of Rivers State Internal Security Task Force, 12 May 1994, attached as appendix 4 to “Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria”, op. cit.

¹⁹ “Nigeria: Human Rights Developments”, Human Rights Watch World Report 1996, available at www.hrw.org/reports/1996/WR96/Africa-07.htm.

²⁰ Quoted in “The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities”, Human Rights Watch, January 1999, available at www.hrw.org/reports/1999/nigeria/Nigew991-10.htm, which further details the role of Shell in Ogoni land.

B. THE FAILURE OF MEDIATION EFFORTS

An effort at reconciliation was initiated by the Methodist Church in 1998. At the instance of Rev. Brian Brown, former African Secretary of the British Council of Churches, and the Methodist Church in London, Shell officials and Ogoni leaders held discreet meetings, first in the Netherlands, then in Nigeria. Despite agreement on confidence-building processes to advance the talks, the initiative soon collapsed, following an incident which MOSOP saw as a breach of trust on Shell’s part.²¹

The transition to democratic rule in the country in 1999 was accompanied by renewed efforts at resolving the standoff. In 2000, the Human Rights Violations Investigation Commission (HRVIC, the Oputa Panel), established by the federal government,²² directed Shell to resume negotiations with the Ogoni. However, as it lacked binding power, its directives had no effect. Moreover, the Ogoni were offended by SPDC’s insistence it had no need to apologise for its impact on the region’s environment.²³ Later that year, SPDC claimed it had agreement from some local government chairmen and other leaders in Ogoni land to

²¹ It was decided that church representatives and officials of both parties should jointly inspect projects Shell claimed it had carried out in Ogoni land to support local livelihoods. On the first day, inspectors found land designated for a project listed as completed was still being cleared. On the second day, MOSOP officials were attacked and brutalised by thugs after waiting at an agreed meeting point for several hours. MOSOP claimed Shell was responsible and pulled out of the mediation process in protest.

²² In response to national and international pressure, President Obasanjo set up the HRVIC in 1999 to investigate the human rights abuses and injustices individuals and groups, including the Ogoni, had suffered under past regimes, and so promote justice, forgiveness and reconciliation. It was chaired by Supreme Court Justice Chukwudifu Oputa. The Ogoni were active participants in the process, submitting more than 8,000 of the 10,000 petitions the commission received. The government said it never published its report because, on the basis of the Supreme Court judgment in *Fawehinmi vs Babangida* (2003), the commission’s directives could not be enforced. The Ogoni and others strongly condemned this inaction, because they had expected the report to provide an opportunity to address injustices they had suffered at the hands of Shell and the government. An editorial in the *The Guardian* (Lagos), 10 December 2004, described the non-publication as “one of the most unfortunate actions taken by this administration”.

²³ Crisis Group interview, senior MOSOP official, 9 July 2008. According to the MOSOP official, a Nigerian SPDC official, Ergbert Imomoh, had said at the time, “if they [the Ogoni] are looking for an apology, they will have to wait till the cats come home”.

resume community development projects.²⁴ It later claimed it also had the approval of some communities to deal with major oil spills that had occurred since 1993. These claims, however, did not translate into negotiations with MOSOP and the mainstream Ogoni leadership.

The most vigorous effort to break the impasse was at federal government insistence. In May 2005, President Olusegun Obasanjo appointed a respected clergyman, Reverend Father Matthew Hassan Kukah, to facilitate a new reconciliation process.²⁵ He was aided by two international conflict resolution organisations; Shell invited the International Centre for Reconciliation (Coventry Cathedral);²⁶ MOSOP brought in Kreddha (International Peace Council for States, Peoples and Minorities), a Dutch-based NGO.²⁷ Initially, both sides welcomed the initiative. By the end of 2005, Kukah had held extensive preliminary consultations, seeking to lay the foundation for face-to-face meetings expected to begin in 2006. The process, however, soon encountered considerable obstacles. The first arose from differences in the proposed agendas. The Ogoni wanted negotiations to cover:

- ❑ environmental degradation and rehabilitation, including implementation of UN recommendations for an environmental audit on Ogoni land;
- ❑ apology for past injury;
- ❑ political marginalisation and greater Ogoni control over their own affairs;
- ❑ economic issues, including the share and allocation of oil revenues;
- ❑ compensation of victims of human rights abuses, including implementation of the same set of UN recommendations;
- ❑ human resource development, including jobs, scholarships and training; and
- ❑ sustainable development, including improved electricity and water supplies, roads and telecommunications and implementation of the UN recommendations for a development audit.²⁸

Shell's proposed agenda was limited to the following:

- ❑ environmental study of Ogoni land by a reputable independent organisation acceptable to both parties;
- ❑ SPDC inspection of its facilities to make them safe and prevent future environmental and safety accidents;
- ❑ assessment of past community projects and undertaking of new, sustainable community development projects;
- ❑ regular inspection of SPDC facilities for safety and environmental purposes; and
- ❑ the future of SPDC operations in Ogoni land.

Common to the proposals was an environmental study of Ogoni land, followed by clean-up of all oil spills, whether due to SPDC negligence or community sabotage. In addition, both sides seemed to agree on the need to assess the social and community development requirements of Ogoni land and for a follow-up program to meet them. However, some items on the Ogoni agenda were clearly beyond what Shell or any company could be expected to negotiate meaningfully. Issues such as revenue allocation and political recognition would require extensive negotiation not only with the federal government but probably also with other ethnic groups. On the other hand, Shell's proposals were perceived by many Ogoni as too narrow, suggesting that the company sought to make a

²⁴ "Ogoni Reconciliation, People and the Environment", Shell Nigeria Annual Report, 2005, p. 25.

²⁵ Kukah, a forthright commentator on public issues, is an experienced conflict manager. He was already very familiar with Ogoni issues through membership on the Oputa Panel, which investigated conflicts and human rights violations in Ogoni land under the military regime.

²⁶ The International Centre for Reconciliation (ICR), one of the world's oldest religious-based centres for reconciliation, was established after the 1940 destruction of Coventry Cathedral. It is committed to reconciliation in violent conflict situations, whether related to religious disputes or not. In addition to short-term reconciliation work, it coordinates the Community of the Cross of Nails, an international network of over 150 organisations in 60 countries committed to reconciliation, which also gives it a practical and spiritual support base. ICR is the principal organisation for the Diocese of Coventry's international work, including its formal partnerships with the Anglican Diocese of Kaduna (northern Nigeria) and the Syrian Orthodox Diocese of Jerusalem.

²⁷ Kreddha is a non-profit organisation guided by a council of eminent persons from around the world and dedicated to prevention and sustainable resolution of violent conflicts between population groups and their governments. Started as an informal initiative of concerned eminent persons who gave time and resources to prevent and help resolve intra-state conflicts, it was originally known as the Peace Action Council (PAC). It was incorporated and institutionalised as a non-profit organisation in the U.S. and the Netherlands in 2000 and re-named Kreddha. It limits its activities to intra-state conflicts.

²⁸ "Draft Concept Paper from the Facilitator – Rev Fr Kukah", as reproduced in "Ogoni and Shell Reconciliation: The Journey So Far", MOSOP, January 2006, pp. 6-7.

minimal response to Ogoni concerns.²⁹ Reconciling these divergences so as to establish a clear framework for negotiations proved extremely difficult.

The second obstacle for the mediation concerned the framing of the Ogoni crisis. Kukah had been appointed to resolve what the government saw as a conflict between the Ogoni and Shell. The Ogoni, however, considered the government Shell's ally in the conflict and contended that their grievances were against both and were inter-related and inseparable; that Shell's responsibilities overlapped with the government's in several areas; and that failure to include the government as a party in the talks would enable Shell to deflect some issues with the excuse they were a government responsibility. After much haggling, the negotiations were expanded to include the federal and Rivers State governments.

A third major stumbling block was Ogoni factionalism. The events of 1993-1995 had created deep chasms: hardliners versus moderates, youths versus elders, the families of the four chiefs lynched in May 1994 versus those of the nine MOSOP leaders executed in November 1995. While MOSOP had once been the umbrella organisation and authentic voice of the people, it had been weakened by the events of the mid-1990s and was being challenged by others claiming to represent Ogoni interests. Kukah's recognition of this reality and decision to expand the negotiation beyond MOSOP soon earned him the wrath of the movement's leadership.³⁰

The final development that derailed the process was the announcement in February 2007 that the UN Environment Programme (UNEP) was to begin an environmental assessment of Ogoni land, with SPDC sponsorship. MOSOP had not been fully involved in the discussion and charged it was an attempt to return Shell to Ogoni land under a new guise. UNEP had in fact been invited by President Obasanjo as part of the peace process, and, according to SPDC, MOSOP preferred UNEP to other international organisations that could potentially perform such an assessment.³¹ But

MOSOP dismissed the initiative as "a huge joke", claiming there had been no true discussion with Shell and the government, on the Ogoni question broadly or the specific environmental clean-up issues and Shell's return. It said the Ogoni had lost confidence in the Kukah-driven peace process and declared it dead.³² While President Yar'Adua asked Kukah to continue with the peace process after he assumed office in 2007,³³ the replacement of SPDC seems to have overtaken the mediator's original mandate of reconciling the Ogoni with the company.

C. THE DECISION TO REPLACE SHELL

The decision to replace Shell was informed by both legal and political considerations. The legal basis was a clause in the oil laws stipulating that once a company failed to operate its concession for ten years, it risked termination. Shell's operation of the Ogoni concession ceased in 1993, so the government could have withdrawn its right to operate in the area as early as 2003. In August 2006, the Department of Petroleum Resources (DPR), the regulatory agency for the oil industry, announced that SPDC risked losing its Ogoni concession.³⁴ The then minister of state for petroleum, Edmund Daukoru, warned at a conference in Vienna that the concession would be revoked in October if the company had not resumed operations.³⁵ SPDC could not meet the deadline.

Secondly, while announcing the removal of operatorship during a meeting with the Nigerian community in South Africa, President Yar'Adua said it was clear that "there is a total loss of confidence between Shell and the Ogoni people. So, another operator acceptable to the Ogoni will take over [all oil operations]. Nobody

²⁹ SPDC asserts that its proposed agenda was virtually the same as that of the Ogoni, except on things that are outside of SPDC's control. SPDC written communication to Crisis Group, 5 September 2008.

³⁰ Jimitota Onoyume, "MOSOP accuses Kukah of Plot to Divide Ogoni", *Vanguard* (Lagos), 24 April 2007.

³¹ President Obasanjo set up an implementation committee to oversee the assessment that included three Ogonis (out of eight members), including MOSOP President Ledum Mitee, to try to involve Ogonis in the process, though it seems that Mitee did not or could not participate in the end.

³² An information officer, Bari-ara Kpalap, said MOSOP had continued to insist that while it was not opposed to a genuine process for resolving the Ogoni question, it must be transparent, honest, credible and participatory. Shell's approach, he said, sought to give the impression of success, though nothing concrete had been tried and smacked of desperation. "If the idea was an attempt to deceive unsuspecting Ogoni people and the general public that the Ogoni issue is about to be resolved, MOSOP insists that there has not been even one single attempt of a meeting between the contending parties", press release, 27 February 2007. SPDC claims that MOSOP did not declare the process dead until somewhat later, after a proposed spiritual cleansing of Ogoni land by Kukah that MOSOP opposed.

³³ Crisis Group interview, Rev Father Matthew Hassan Kukah, Abuja, 16 August 2008.

³⁴ "Whither Ogoni-Shell Reconciliation?", MOSOP, November 2006, p. 20.

³⁵ *Ibid.*

is gaining from the conflict and stalemate, so this is the best solution".³⁶ MOSOP had affirmed repeatedly, particularly after the Kukah peace process, that it no longer recognised Shell, and if the federal government wanted oil exploration and exploitation resumed in Ogoni land, it should consider allocating the concession to a new operator.³⁷

The decision was also taken in the context of preventing the spread of violence from other parts of the Niger Delta and wooing leaders and militants to agree to the then proposed summit to end the Delta insurgency. According to Anyakwee Nsirimovu, director of the Institute of Human Rights and Humanitarian Law (IHRHL) in Port Harcourt, "the federal government probably didn't want an inflamed Ogoni land, at a time when it is already faced with insurgency elsewhere in the region".³⁸

After the 4 June 2008 announcement, some Shell sources said the company initially considered that decision a breach of contract, but the possibility of suing the government was soon ruled out. Precious Okolobo, Shell's Nigeria spokesman, said, "Shell will not challenge this in court. If this action will bring peace in Ogoni land, we will support it".³⁹ Shell has informed Crisis Group that Shell/SPDC will not seek to return to being the operator unless all factions and sides in Ogoni land agree to it.⁴⁰

³⁶ Golu Timothy, "Nigeria: Shell to leave Ogoniland by December", *Leadership*, Abuja, 5 June 2008.

³⁷ As indicated in fn. 5 above, it is still unclear whether the government wants to replace/change Shell's share as well as its position as operator. Shell has communicated to Crisis Group that it assumes it will retain its 30 per cent share, even though it no longer operates the concession. SPDC written communication to Crisis Group, 5 September 2008.

³⁸ Crisis Group interview, Anyakwee Nsirimovu, Institute of Human Rights and Humanitarian Law, Port Harcourt, 9 July 2008.

³⁹ Quoted in Chika Amanze-Nwachukwu, "Shell: We'll remain shareholders in Ogoniland", *This Day*, 18 June 2008, p. 8. The previous day Shell had insisted it had yet to receive an official communication from the government. "Canada's Addax tipped to take over Ogoni oil fields in Nigeria; Shell says still no official word on losing operatorship", *Platts Oilgram News*, 17 June 2008. In written communication to Crisis Group on 8 September, SPDC said it had not yet taken any decision regarding legal action.

⁴⁰ Crisis Group telephone interview, Shell manager, The Hague, 18 September 2008.

III. IMPLICATIONS OF SHELL'S EXIT

A. VICTORY FOR NON-VIOLENCE?

The announcement of the decision to replace Shell/SPDC provoked a variety of responses from the Ogoni community. For many, it marked a victory for their cause. On 9 June 2008, thousands marched through the streets of Port Harcourt to Government House, where they delivered a message to Yar'Adua via Governor Chibuike Amaechi, calling the sacking of the company an inspiring message that non-violence pays.

Some Ogoni consider their victory over Shell/SPDC a demonstration of their leadership in the Niger Delta struggle. Marvin Yobana, president of the Ogoni Youth Congress (OYC), viewed it not only as "the triumph of non-violence", but also as providing "a framework for resolving conflicts in other parts of the Niger Delta".⁴¹ MOSOP's president, Ledum Mitee, said, "as usual, the Ogoni have blazed the trail. The Niger Delta thing everybody is talking about is nothing but an extension of the Ogoni struggle; but the violence that has come with it is a bastardisation of what the Ogoni struggle stands for....[The Ogoni experience provides] a tremendous opportunity for conflict transformation, not only in Ogoni land but indeed throughout the Niger Delta".⁴²

But not all share this sense of triumph. The more cautious argued that Yar'Adua's declaration of such an important decision in faraway South Africa raised questions about how seriously it should be taken.⁴³ Others insisted that the decision was not the product of consultation. The government did not even notify the Ogoni ahead of the announcement to the international community. Indeed, Yar'Adua could have scored some points if he had made the announcement in the Delta. There are also reservations about what exactly the decision means. Yar'Adua said in South Africa that by the end of 2008 Shell would abandon all its operations in Ogoni land so a new firm could come in. However, Shell maintains that it still retains its shares in the joint venture.⁴⁴

⁴¹ Crisis Group interview, Marvin Yobana, president, Ogoni Youth Congress, Port Harcourt, 7 July 2008.

⁴² Crisis Group interview, Ledum Mitee, president, MOSOP, Port Harcourt, 8 July 2008.

⁴³ Crisis Group interview, Patrick Naagbantou, Centre for Environment, Human Rights and Development (CEHRD), Eleme, Rivers State, 10 July 2008.

⁴⁴ Amanze-Nwachukwu, "Nigeria: Shell – We'll Remain Shareholders in Ogoniland", op. cit.

Others believe it has been at best “a pyrrhic victory”.⁴⁵ Many Ogoni and others conceded that they paid a high price to have SPDC replaced. Professor Mark Anikpo, director of the Centre for Ethnic and Conflict Studies, University of Port Harcourt, said, “the stand-off has taken a serious toll on the Ogoni”,⁴⁶ particularly through the loss of their community leaders, the human rights violations suffered under military rule and the depression of their economy. It is also doubtful whether the federal government would have finally ordered the withdrawal from Ogoni land if not for the sustained militancy of armed groups elsewhere in the Niger Delta.

Many of those whose livelihoods are directly at stake do not welcome the prospect of a new operator on Ogoni land, noting that a major gain from the prolonged standoff has been the recovery of the area’s ecosystem. Despite its high population density, the Delta’s extraordinary fertility has historically allowed the Ogoni to make a good living from subsistence farming and fishing. This lifestyle was threatened by the environmental impact of SPDC’s activities, but the absence of production over the last fifteen years has allowed some recovery of local agriculture.

What happened to SPDC’s installations on the ground is a warning for other companies. In 1993, when SPDC abandoned its nine oil fields in Ogoni land, their 96 production wells were capable of producing at least 28,000 barrels per day (bbl/d).⁴⁷ Over the fifteen years it has not been able to operate, SPDC has lost an estimated 153.3 million barrels.⁴⁸ Its five flow stations at Bodo, Bomu, Ebubu, Korokoro and Yorla were extensively vandalised. Even wire used to fence off intruders was stripped and stolen. At Yorla station, six giant electricity-generating plants and hi-tech communication equipment were fully stripped, and even building materials were stolen. A 100-m high

communication tower and its mast were likewise dismantled and taken away.⁴⁹ By 1998, it was estimated that SPDC had lost equipment worth over \$100 million to theft and vandalism.⁵⁰ Shell’s stature was also damaged by association in the public’s eye with the government’s repression of civil protests in the Delta and particularly the hanging of Saro-Wiwa.

Many hope the Ogoni experience, particularly the eventual exit of Shell, will send positive signals to other groups in the Delta to refrain from violence. The government and local leaders alike are already holding up the case as a model which other Delta activists and communities should emulate. For instance, Isaac Kekemeke, secretary to the State Government (SSG) in Ondo State, said, “the Ogoni people did not use arms or violence. It was an intellectual struggle ... but it now has worldwide appeal”.⁵¹ However, factors peculiar to the Ogoni situation may dilute the message, and other groups working or fighting for change in the region will likely view the case differently:

For all genuine civil society groups in the Niger Delta, the Ogoni experience is inspiring, a model to copy and to sustain. But for the armed militants, it may not necessarily be so. For them, it may in fact be that it was Saro-Wiwa’s adoption of a non-violent strategy that enabled the military dictatorship to arrest and execute him as they did. So, in spite of the Ogoni triumph, the militants may not be persuaded by the philosophy of non-violence and will therefore continue to fight.⁵²

The non-violent stance of the Ogoni also may not appeal to other communities in the region, since it was adopted within a context that is not necessarily shared or applicable to them. First, the policy reflected the disposition of the founders and leadership of MOSOP; Saro-Wiwa was a man of letters and his right-hand man, Ledum Mitee, a lawyer. Wisdom Dike, executive director of the Port Harcourt-based Community Rights Initiative (CRI), said, “more than any other factor, it was the commitment of the MOSOP leadership, first Ken Saro-Wiwa and later Ledum Mitee, to non-

⁴⁵ Crisis Group interview, Chief B. M. Wifa, senior advocate of Nigeria, Port Harcourt, 7 July 2008.

⁴⁶ Crisis Group interview, Port Harcourt, 8 July 2008.

⁴⁷ See Crisis Group Report, *The Swamps of Insurgency*, op. cit., p. 5. Production of 28,000 bbl/d is not a large amount by global or Nigerian standards, but with prices in excess of \$100 per barrel, potentially represents considerable revenue for an impoverished community. Other production estimates are as high as 50,000 bbl/d; see “Canada’s Addax tipped to take over Ogoni oil fields in Nigeria; Shell says still no official word on losing operatorship”, op. cit.

⁴⁸ This is assuming that production could have been maintained at the same rate. The loss of revenue this represents depends on price, which varied during the period, and on inflation. Assuming for the purposes of a rough estimation a \$25 per barrel real price average over the period, the loss would be in the neighbourhood of \$3.8 billion.

⁴⁹ Sam Olukoya, “At the mercy of thieves”, *Newswatch*, 26 September 1994, p. 18.

⁵⁰ Yemi Adebowale, “Colossal Losses”, *Newswatch*, 9 November 1998, p. 13.

⁵¹ Thomas Aimuwu, “No single person can solve Niger Delta problem”, *The Port Harcourt Telegraph*, 25 August 2008.

⁵² Crisis Group interview, Anyakwee Nsirimovu, director, Institute of Human Rights and Humanitarian Law, Port Harcourt, 9 July 2008.

violence that made the difference”.⁵³ Some leaders of militant groups elsewhere in the region, coming from different backgrounds and orientations, clearly do not subscribe to this philosophy.

Secondly, the Ogoni realised that, being a small ethnic group, they could not hope to challenge the state by force, particularly as their land is conducive to the kind of conventional military operations for which the Nigerian armed forces are trained. The Ogoni also have no access to the sea from which to import weapons, unlike the Ijaw-led Movement for the Emancipation of the Niger Delta (MEND). The Ogoni adoption of non-violence, therefore, was both a reflection of the philosophical conviction of the MOSOP leadership and a strategy of self-preservation, informed by real limitations. Groups in the Delta otherwise situated, particularly the Ijaw, who are masters of the creeks, are unlikely to be persuaded by the experience.

B. THE RISK OF FUTURE CONFLICT

In the wake of Shell’s imminent exit, several issues need to be properly addressed, so as to minimise the risk of future conflict and illustrate the government’s goodwill and new approach to the Niger Delta. These include selection and engagement of a new operator of the concession; compensation for and restoration of the degraded environment; response to the wider socio-economic and political issues behind the Ogoni agitation; and the processes of communal reconciliation and healing. The federal government’s selection of a new company to operate the Ogoni oil fields without consulting local community leaders about future operations has increased Ogoni mistrust and bodes ill for the fair management of the new venture.

In his announcement in South Africa, President Yar’Adua implied that the Ogoni would be consulted in the selection process to ensure that the new operator enjoyed their confidence. But they were neither informed before the announcement nor subsequently involved in choosing a successor. Instead, responding to questions during a state visit to France on 12 June 2008, Yar’Adua revealed that the Nigerian National Petroleum Corporation (NNPC) would take over the oil-production operating license. On 16 June, Minister of State for Petroleum Odein Ajumogobia confirmed that the Nigerian Petroleum Development Company (NPDC), the upstream subsidiary of NNPC, would

operate the Ogoni land oil fields.⁵⁴ He explained that a clause in the Joint Venture Agreement between NNPC and foreign oil companies provides for NNPC to take over any field a company can no longer operate or is stopped from operating. He added that the decision not to invite a major oil company to replace SPDC stemmed from interest in building NPDC’s upstream capability.⁵⁵ But NNPC has conceded privately that NPDC lacks the capacity to run the fields.⁵⁶

In fact, the choice of NPDC is contrary to the preference of the Ogoni, who say they doubt the company is up to the task. NPDC operates some productive fields but is at best a minor player. In January 2007, it became the joint operator of the offshore Okono and Okpoho fields (along with Eni subsidiary Agip), from which it now produces about 50,000 bbl/d. It also extracts about 20,000 bbl/d from the Oredo, Oziengbe South, Abura and other fields in the Delta, making its overall total about 70,000-75,000 bbl/d.⁵⁷ This level of operation does not inspire confidence among the Ogoni that it has the technical skill and experience to operate in the region. MOSOP’s Mitee said, “we’ve sacrificed so much, so we must expect better”.⁵⁸

The government received initial expressions of interest in the operating concession from several Chinese

⁵⁴“Upstream” refers to exploration and development of crude oil; “downstream” refers to refining and marketing. Obinna Ezeobi, “NPDC replaces Shell in Ogoni Oil fields – Ajumogobia”, *Punch*, Lagos, 17 June 2008. The minister dismissed local media reports that Russian and Chinese firms were scrambling for Ogoni land, saying no such overtures had been made to his office and that possible expressions of interest in Nigeria did not mean they would replace Shell. NNPC’s general manager, public affairs, Dr Levi Ajuonuma said NNPC was also not aware of any major oil company lined up to replace Shell.

⁵⁵He also said it is “worrisome that after 50 years of oil exploration in the country, the bulk of upstream activities is still in the hands of foreign oil companies. They can decide to leave any moment and therefore put the country in trouble. So, government is thinking about improving the ability of NPDC to drive the upstream, and it is not inviting any foreign company”. *Ibid.*

⁵⁶“Canada’s Addax tipped to take over Ogoni oil fields in Nigeria; Shell says still no official word on losing operatorship”, *op. cit.*

⁵⁷See www.nnpcgroup.com/npdc.htm. NPDC also took over the operation of six smaller, shallow offshore fields that had been developed by Shell and Chevron: Aroh, Oghareki, Yorla, Egbema South and East, Utapake and Orogho. According to NPDC, targeted production for 2008 is 76,793 bbl/d. www.npdc-ng.com/index.php?option=com_content&task=view&id=25&Itemid=3.

⁵⁸Crisis Group interview, Ledum Mitee, president, MOSOP, Port Harcourt, 8 July 2008.

⁵³Crisis Group telephone interview, Wisdom Dike, executive director, Community Rights Initiative, Port Harcourt, 15 July 2008.

companies, Gazprom of Russia and Addax Petroleum, a Canadian multinational.⁵⁹ NNPC was originally said to favour Addax because of its experience with dormant fields.⁶⁰ However, in July Gazprom reportedly struck a preliminary deal with the government to take over the Ogoni land operating concession.⁶¹ A company with much more experience in natural gas than oil production, it may be eager to develop the reputedly large natural gas reserves in the area as much as the remaining oil.⁶² For the Ogoni, a significant difference is that Gazprom would likely be far less sensitive to public relations, given its upstream focus and Russian base of operations, than North American/European companies. However, there still does not appear to be a final and comprehensive decision by the Nigerian government/NNPC on the successor to Shell as operator.⁶³

⁵⁹ Chika Amanze-Nwachuku, and Davidson Iriekpen, "Russian, Chinese Oil Firms Jostle for Ogoni", *This Day*, 16 June 2008.

⁶⁰ "Canada's Addax tipped to take over Ogoni oil fields", op. cit.

⁶¹ "Nigeria: Gazprom in Ogoniland", *Stratfor Today*, 8 July 2008.

⁶² Gazprom has in recent years undertaken to diversify by expanding outside of Russia. The Nigerian government may favour Gazprom because the company has reportedly agreed to construct a much-needed national gas pipeline system. Potential oil production after restart is difficult to specify before a company has a chance to thoroughly examine current conditions, but achieving production levels like those just before it was halted in 1993 would be a realistic goal. There has been speculation that gas reserves in the concession are very large, prompting the interest of the gas-focused Gazprom. One source put it at 10 trillion cubic metres, though this seems high, even for gas-rich Nigeria. See "Nigeria: Gazprom in Ogoniland", *Stratfor Today*, 8 July 2008. It is difficult to assess at this point Ogoni land's gas potential relative to the rest of the Delta given uncertainty of reserves, but if one assumes, with current best practices and sufficient investment, that oil production of around 50,000 bbl/d is likely after restart, that would be 2.5 per cent of a conservative estimate of onshore production potential of approximately 2 million bbl/d.

⁶³ If NNPC decides to award operating rights not to its own subsidiary, NPDC, but rather to a new company such as Gazprom or Addax, that company will presumably want an equity share rather than just a service fee. This could create issues if NNPC sought to satisfy it by awarding it some of the share of Shell and/or one of the other two foreign shareholding companies. Even if equity shares of NNPC, Shell, ENPL (Total) and Agip (Eni) remain the same as that in SPDC (by using NPDC as the operator or using a fee-for-service operator), some kind of new organisation will replace SPDC. It is even possible that NNPC could decide to give two (or more) companies responsibility to operate the concession cooperatively, or partition the concession, though there has been no indication of this.

Some community leaders say they would prefer a completely new company from abroad. Others propose that the arrangement for resumed operations should no longer give a monopoly to any single company but split the concession between two or three, one of which must be owned by an Ogoni. If the government proceeds against the wishes of the people, it would not only break its own promise, again undermining local confidence, but also risk conflict between the local people and an unpopular new company. The risk is increased by Shell's insistence that it will remain a shareholder in Ogoni land operations, even as NPDC or a new company become the active operator.⁶⁴

At a stakeholders meeting of the Ogoni in early August 2008, the communities adopted fresh conditions articulated by the Ogoni Consultative Forum⁶⁵ for the operations of any Shell replacement:

- site its headquarters in Ogoni land;
- share utility services such as water and electricity and other infrastructure with host communities;
- maintain international standards in the provision, development and maintenance of social infrastructure; and
- develop a human capital development plan for the Ogoni and train the local population for technical and managerial positions.

MOSOP's Mitee said, "it does not matter to us where the company will come from, [but] the new company must become one of us, co-owned and co-managed by the Ogoni, and therefore in a position to develop, advance and protect the interests of the people".⁶⁶

The government has left unaddressed the environmental problem. Although the stoppage of oil operations has allowed some recovery of the land's agricultural

⁶⁴ Amanze-Nwachukwu, "Shell: We'll remain shareholders in Ogoniland", op. cit. For background on the equity holding of the Ogoni land concession, see fns. 5 and 38 above. Given the combination of community dissatisfaction with Shell, the fact that 30 per cent is an unusually large equity share for a non-operating company within the context of onshore Nigerian joint ventures and the possible need to award equity to a new operator or even to the Ogoni people, it seems likely that Shell's equity holding in the Ogoni land concession will at least be reduced.

⁶⁵ The Ogoni Consultative Forum is a broad-based assembly involving politicians, traditional rulers, youth leaders, women, academics and others.

⁶⁶ Chibisi Ohakah, "Ogoni set fresh conditions for New Oil Company", *BusinessWorld Intelligence*, 11 August 2008, p. 1.

potential, the communities will resist any new oil production activities unless credible steps are taken to clean up pollution.

In 2006 UNEP started an environmental assessment of Ogoni land to determine the extent of oil spillage and the necessary clean-up operation. It visited Ogoni land that December, held town meetings with communities and was scheduled to commence field work for an environmental assessment. On the basis of the assessment findings, UNEP was expected to make recommendations for appropriate remediation activities by the first quarter of 2007.⁶⁷ This has not yet happened, however, because UNEP cannot bring in the expatriates it needs until Nigerian security services curb the kidnapping of foreign workers.

IV. TOWARDS A COMPREHENSIVE RECONCILIATION PROGRAM

Achieving sustainable peace in Ogoni land requires a reconciliation strategy that goes beyond both the consultative selection of a successor company and environmental clean-up and compensation to address the wider issues that first triggered agitation in the early 1990s.

A. ENSURING HOST COMMUNITY PARTICIPATION IN OPERATION OF JOINT VENTURES

The first focus must be to prevent conflict between the Ogoni and Shell/SPDC's successor. This can be achieved by ensuring the Ogoni are consulted on the establishment of operations and guaranteeing local communities will at least partially benefit from revenue and job opportunities. As noted, Ogoni communities have already articulated the benchmarks which they expect any new operator to meet if it is to enjoy the social license to operate in the region. The federal government should consult the people and allow their priorities to inform the negotiations with a new operator.

Lack of a sense of ownership, participation and benefit from the oil industry has been a major source of the anger, alienation and aggression throughout the Niger Delta. The Ogoni, like all others in the region, are increasingly demanding to be active stakeholders in exploitation of resources in their territories. "Political

consciousness in the Niger Delta today is much higher than it was in the past. The objective of all communities is to be real stakeholders in oil exploitation. That's our own definition of resource control. We want to be co-owners".⁶⁸

Indeed, it is now only a matter of time before the Ogoni and local communities elsewhere in the Delta become involved in oil operations. Whether equity allocation or shared profits, new arrangements have become inevitable. Dr Ben Naanen of the University of Port Harcourt insisted that "basically, it can never be business as usual again. If the people have waited for fifteen years in order to achieve a settlement that would be acceptable to them, then they surely can wait longer if that is what it would take to achieve what we've been fighting for all these years".⁶⁹ The federal government has an interest in arranging local participation in oil and gas exploration and production agreements. By being directly involved, communities would be better able to drive their own development and more committed to protecting oil company assets and personnel within their territories.

The international community, which has played an important role in sustaining attention to the Ogoni crisis, should now press both the Nigerian government and oil companies to explore tripartite agreements with host communities from the outset. The memorandum of understanding (MOU) and global memorandum of understanding (GMOU) frameworks, in which host communities are at best treated as marginal partners in oil exploitation agreements, will no longer do.⁷⁰ The federal government needs to introduce a new framework within which local communities become full partners and thus enjoy a sense of ownership and participation in the oil industry. Such a tripartite arrangement with the government and Shell's successor appears to be the minimum expectation of the Ogoni.

⁶⁸ Crisis Group interview, Dr Ben Naanen, history department, University of Port Harcourt, Port Harcourt, 19 July 2008. Naanen was the first general secretary of MOSOP.

⁶⁹ Ibid.

⁷⁰ The MOUs are agreements oil companies negotiate with communities in which they commit to fund and develop projects on a community-by-community basis. They have been widely criticised as ad hoc and weak on delivery. Shell introduced GMOUs as an improvement in 2006. In line with the efforts of state governments and the Niger Delta Development Commission (NDDC), they involve clusters of communities for which Shell offers to fund development projects in a five-year plan. Shell began delivering on the first two agreements in 2007.

⁶⁷ "The UNEP Mission in Ogoniland", <http://postconflict.unep.ch/ogoniland/mission/html>.

B. CLEANING UP THE ENVIRONMENT

A second major issue that has to be dealt with in the context of reconciliation is environmental clean-up. No significant study has been conducted to determine reliably the precise impact of oil industry-induced environmental degradation on human livelihoods in the area, but there are indications of severe damage. A preliminary field survey conducted from a SPDC helicopter on 18 April 2006 reported among other observations 27 oil spill locations in Ogoni land and significant alteration of the mangrove swamp, now restricted to very thin lines along the waterways and substantially smaller than its 13.8 per cent coverage in the 1990s.⁷¹ UNEP's preliminary assessment identified over 300 sites that may have been adversely impacted by oil operations. A 2002 study, based on two pilot communities, found that farm yields per unit in Ogoni land had declined by about 20 per cent over twenty years. The African Commission on Human and Peoples' Rights held that "the pollution and environmental degradation in Ogoni was to a level unacceptable and has made living in Ogoni land a nightmare".⁷²

Many Ogoni with whom Crisis Group spoke said the environmental clean-up should ideally be completed before oil exploitation resumes. Patrick Naagbantou, the leader of a local environmental and human development NGO, said, "restoring the damaged ecology should be the foremost priority at this point".⁷³ International development partners must support UNEP's initiative. But even more importantly, Ogoni communities must cooperate with security agencies to ensure a secure atmosphere in which the clean-up program can go ahead. International organisations and offices that have focused constructively on the Ogoni issue over the years, such as the Unrepresented Nations and Peoples Organisation (UNPO) and the UN Permanent Forum on Indigenous Issues (UNPFII) should exert pressure on the Ogoni to ensure a secure environment for the clean-up program.

SPDC policy, according to the company, is to clean up environmentally-damaging incidents related to its operations regardless of cause, but only to pay com-

penensation if the incident occurred as a result of its own operational failure.⁷⁴ When environmental damage occurs as a result of sabotage (a common occurrence according to SPDC), the company is forbidden by Nigerian law from paying compensation. SPDC continues to pledge cooperation with the proposed UNEP environmental assessment, though it has not promised that it will pay any damages related to UNEP findings.⁷⁵

C. ADDRESSING THE WIDER ISSUES UNDERLYING Ogoni AGITATION

The Ogoni confrontation with SPDC over its environmental and community relations practices was only part of a much wider range of demands and grievances that led to the crisis of the mid-1990s. The withdrawal of SPDC, therefore, significant as it is, does not address the roots of the conflict. The 1990 Ogoni Bill of Rights, which the Ogoni adopted as the manifesto of their struggle, articulates demands for political autonomy, economic empowerment and the preservation of Ogoni cultural identity.⁷⁶ An enduring resolution must respond to these wider issues with broad engagement from the government, particularly since many of them are beyond the scope of what any commercial company could reasonably take on.

1. Political demands

Historically, Nigerian politics have been dominated by three large ethnic groups: the Hausa-Fulani, the Yoruba and the Ibo. The smaller ethnic groups such as the Ogoni have been systematically excluded from power. The Ogoni are a minority even within Rivers State, considerably limited in access to and participation in government policy- and decision-making. The federal government must pursue constitutional and legislative reforms to better accommodate minority interests and give the Ogoni a greater say in their own governance. The constitutional review process that the National Assembly is initiating should accord greater priority to the demands of the Ogoni and other minority ethnic groups for autonomy within the Nigerian federation.

⁷¹ "Shell's Clean Up Proposal: Post Impact Assessment of Ogoniland and Its Environs", Appendix 4 to Agenda Items submitted by SPDC to the facilitator of the Presidential Initiative on Ogoni-Shell Reconciliation.

⁷² Communication 155/96, 15 June 2002, para. 58. The Social and Economic Rights Action Centre and Centre for Economic and Social Rights, Nigeria, www.ccsr.org/ESCR/africancommission.htm.

⁷³ Crisis Group interview, Patrick Naagbantou, coordinator, CEHRD, Eleme, Rivers State, 10 July 2008.

⁷⁴ SPDC written communication to Crisis Group, 5 September 2008.

⁷⁵ Ibid. SPDC maintains that UNEP's mandate is "to identify potentially polluted sites in Ogoniland and recommend appropriate measures to remediate such sites". This does not necessarily mean that areas damaged because of operations, rather than operational failures, will receive compensation.

⁷⁶ "Ogoni Bill of Rights; Presented to the Government and People of Nigeria with an Appeal to the International Community", MOSOP, Port Harcourt, December 1991.

Some Ogoni demand the creation of an Ogoni state as a means for greater political autonomy. Ikpobari Senewo, president of MOSOP in the U.S., said, “the answer is to give Ogoni and other groups a state each...It will be a big mistake for any state-creation process to leave out the Ogoni people”.⁷⁷ However, the process of creating a new state under the 1999 constitution is very difficult, and state-creation as such has never guaranteed better governance in Nigeria. Proper decentralisation and representation of minorities at state level require enforcement of the “federal character principle”, which encourages equal opportunity for access to administrative positions,⁷⁸ as well as genuine checks and balances on the state governor’s powers and constitutional guarantees on equitable allocation of resources between communities across the state.

2. Economic demands

Despite the many years of oil exploitation on their land, the Ogoni remain largely impoverished. Senewo of MOSOP lamented that “the situation in Ogoni land against which the people protested in 1993 has not changed for the better in spite of regime changes in Nigeria. Ogoni remain impoverished and alienated”.⁷⁹

In their 1990 Bill of Rights, the Ogoni people demanded control of “a fair share of [their] resources for the development of Ogoni land”.⁸⁰ The leaders and spokesmen with whom Crisis Group talked did not offer a uniform view of what they would consider a fair share. However, current revenue-sharing provisions need to be rigorously renegotiated country-wide. There is a growing consensus that the percentage of mineral revenue returning to the oil-producing states needs to be raised from the current 13 per cent, but there is no agreement on what the new rate should be. While Ogoni and other Delta groups demand between 50 per cent and total control of all revenues derived from the region, the rest of the country will not easily accept this.

For now, the federal government could at least adopt the increase to 18 per cent which was agreed at the National Political Reform conference in 2005-2006. It should then initiate serious and likely lengthy negotiations between the Delta and the rest of the country, and between minority and majority groups for more equitable distribution of revenues. Crisis Group considers a fair approach would be to institute a derivation formula of between 25 and 50 per cent of mineral resources, including oil and gas, to all Nigerian states, phased in over five years to avoid budgetary shock to non-oil producing states and encourage exploration and production of other mineral resources throughout the country.⁸¹

Furthermore, in the short to medium term, governments and agencies – including the federal, Rivers State and local governments, the Niger Delta Development Commission (NDDC), the newly created Ministry of Niger Delta and international agencies – should acknowledge Ogoni land as one of the most impacted areas and work towards its economic transformation. The Ogoni have articulated a development blueprint, which clearly lays out their economic needs, particularly for physical infrastructure, manpower development and land use. The challenge is for partners to buy into it.

Unemployment is not only an immediate and widespread problem across the area but also feeds into conflict and criminality. In the absence of jobs, many Ogoni youth have migrated to urban centres in search of better opportunities. But others have resorted to more sinister ways of self-preservation. Some who lost faith in non-violence have joined MEND and other armed groups in the creeks. Others have resorted to illicit oil activities. Crisis Group observed many youths hawking petrol and diesel in small plastic jerry-cans on the roadside. Most of this is derived from crude petroleum, stolen and then refined in the many cottage refineries in the forests.⁸²

⁷⁷ “IkpoBari: Why Ogoni is demanding own state”, *The Port Harcourt Telegraph*, 14 August 2008.

⁷⁸ The federal character principle is the provision in the Nigerian constitution that political and administrative appointments as well as distribution of socio-economic benefits should reflect the constituent units of the federation, or of each state and local government. A federal character commission was established in 1996 to monitor and enforce compliance with this constitutional provision but has been largely dormant.

⁷⁹ “Message to Ogoni people on 15th anniversary of the Ogoni demonstrations of 4 January 1993, by IkpoBari Senewo, President of the United States branch of MOSOP”, *The Port Harcourt Telegraph*, 14 August 2008.

⁸⁰ “Ogoni Bill of Rights”, op. cit.

⁸¹ See Crisis Group Report, *The Swamps of Insurgency*, op. cit., executive summary and recommendations.

⁸² Groups operating the refineries obtain their crude oil by tapping supply pipelines. The refining process is crude, relies entirely on local technology and involves the use of drums filled with crude oil and heated with firewood. The products, premium motor spirit (PMS), diesel and condensate, are supplied to illegal marketers throughout the region. Lt. Col. Sagir Musa, spokesman of the Joint Task Force in the region, says the operation is “big, massive, and seems to be expanding, with new entrants into the business”. Ahametula Ogbu, “Again, JTF uncovers illegal refinery, arrests 12”, *This Day*, 10 August 2008, p. 1.

Security forces should step up efforts to counter the spread of these illegal production facilities, but government must be aware of the need to provide alternative means of income for those who depend on them. On 10 August 2008, the military Joint Task Force (JTF) uncovered an illegal refinery along the creeks between Dere community in Gokana Local Government Area and Bolo community in the Ogu/Bolo Local Government Area.⁸³ When the Rivers State governor, Chibuike Amaechi, ordered its destruction, it was decided to transform the site into a catfish farm. Under a partnership arrangement, the state government will provide 60 per cent funding and local councils 40 per cent.⁸⁴ The state and local governments, as well as private companies, need to invest in such small- and medium-sized projects, which by stimulating the local economy, providing jobs and improving incomes can turn youths away from armed militancy and organised, oil-related crime.

The Rivers State government and local governments in Ogoni land should develop micro-finance schemes to support the establishment and growth of cottage industries, for which the area has a wealth of raw materials. The NDDC must also provide more infrastructure.⁸⁵ The state government should rehabilitate the Rivers State Polytechnic, Bori, the only tertiary institution in Ogoni land, and revise its curriculum to equip graduates with technical and entrepreneurial skills for employment in the petroleum sector and other relevant enterprises.

D. ADVANCING COMMUNAL HEALING

The process of reconciling the bereaved families and aggrieved groups among the Ogoni began in 2000 with the work of the Human Rights Violations Investigation Commission (HRVIC). Considerable progress has since been made thanks to government and local initiatives, as well as shared perceptions of a common external adversary and the need to pull together in the struggle for development. Old wounds, however,

still linger, and government must do more to assuage grievances and make amends for past injustices.

Building on the momentum created by the HRVIC, the federal government authorised in 2002 the bodies of Saro-Wiwa and the eight with whom he was executed to be exhumed from the Port Harcourt cemetery, where they had been buried unceremoniously in 1995, and to be reburied in their Ogoni homeland. After exhaustive tests by the international forensic program of the Physicians for Human Rights in Canada, the remains of Saro-Wiwa and six others who could be identified were returned and re-buried by their families in November 2004.⁸⁶

The families welcomed this gesture, but it did not fully meet their expectations for closure.⁸⁷ In particular, the government did not satisfy their demand that the convictions be quashed. Hence, Saro-Wiwa's family declined to participate in a meeting of Ogoni stakeholders convened by President Obasanjo in November 2004. Dr Owens Wiwa, the family's spokesman, said, "that conviction, that illegal, false conviction, has to be overturned.... Without overturning that conviction, I do not see how the Ogoni people will depart from or leave their leader as a convicted murderer and go and negotiate with his murderers".⁸⁸

In 2005, Rev Kukah focused on reconciliation among the Ogoni as a key prerequisite for direct negotiations with SPDC and other external parties. Supporting this process, the MOSOP leadership proposed a program to publicly demonstrate commitment to intra-Ogoni reconciliation. Kukah endorsed and supported the proposal actively. As part of the program, a public lecture in the state capital, Port Harcourt, was followed by the laying of the foundation stone for a memorial in honour of all Ogoni leaders killed by mobs or executed by the government. On 21 May 2006 President Obasanjo dedicated this at the Peace and Freedom Centre in Bori, the traditional Ogoni headquarters.⁸⁹ The event publicly brought together, for the first time, the families of the four chiefs killed in May 1994 and of the nine MOSOP leaders, including Ken Saro-Wiwa, convicted and executed by the military government. The Rivers State government's compensation package for victims' offspring, which included jobs and five

⁸³ Ibid.

⁸⁴ Kelvin Ebiri, "Amaechi orders destruction of illegal refining site", *The Guardian*, 12 August 2008, p. 7.

⁸⁵ Some MOSOP leaders and other Ogoni activists allege that Ogoni land has suffered discrimination by NDDC on the grounds that it had long ceased to be oil-producing. NDDC denies this. Crisis Group could find no proof, but the NDDC has been the target of various allegations of corruption and incompetence, and at the least, its effectiveness must be questioned. See Crisis Group Report, *The Swamps of Insurgency*, op. cit., section III.B.1, for more on this.

⁸⁶ Kelvin Ebiri, "10 years after, families get remains of Saro-Wiwa, others", *The Guardian*, 1 December 2004, pp. 1-2, 4.

⁸⁷ The families regretted that the government gave no financial or other aid for the expensive forensic tests used to identify the bodies. Two bodies could not be identified, and a third could not be found at the cemetery.

⁸⁸ Kelvin Ebiri, op. cit.

⁸⁹ The date was the twelfth anniversary of the killing of the four Ogoni leaders.

million naira (about \$43,000) per family of those killed, also went a long way to assuage grief.

According to Dr Ben Naanen, the Port Harcourt academic and first MOSOP general secretary, the Ogoni reconciliation process has been aided by a common understanding that the conflict was not fundamentally between families or communities within the region but with SPDC and the military regime, and that the feuds arose from differences over how to fight the external adversaries. In its mobilisation campaigns, MOSOP was able to instil in every Ogoni the notion that the real enemy was outside the community. Moreover, it took active steps to foster reconciliation, for instance, by banning the use of such derogatory terms as “vultures”, which had been used to stigmatise moderates. Rapid reconciliation has also been driven by “the hunger for development”.⁹⁰ According to Yobana of the OYC, “Bori had been stagnant for almost twenty years, so the people basically realised that they had to be united for development and progress”.⁹¹

There is no doubt that reconciliation between groups and communities has advanced considerably. “We’ve done marvellously well in terms of communal healing”, MOSOP’s Mitee said.⁹² Even so, bitterness lingers in the Ogoni community, and government needs to do more to heal old wounds. In their petition to the Oputa Panel in January 2001, the families of the Ogoni Four (the four chiefs killed) demanded the following from the federal government:

- ❑ release of the bodies of the Ogoni Four for a decent burial;
- ❑ 100 million naira (about \$847,000 at the current exchange rate) compensation for each Ogoni Four family; and
- ❑ 50 million naira (about \$424,000) compensation to an individual, Alhaji Mohammed Kobani, who suffered serious injuries in the attack on the Ogoni Four on 21 May 1994.⁹³

⁹⁰ Crisis Group interview, Dr Ben Naanen, history department, University of Port Harcourt, Port Harcourt, 9 July 2008.

⁹¹ Crisis Group interview, Marvin Yobana, president, Ogoni Youth Congress, Port Harcourt, 7 July 2008.

⁹² Crisis Group interview, Ledum Mitee, president, MOSOP, Port Harcourt, 8 July 2008. He recalled that in 1999-2001 there were no marriages between the opposed groups and sometimes no exchange of greetings or passage through each others’ territories.

⁹³ Petition published by several Nigerian newspapers; see Ise-Oluwa and Sam Onwuemeodo, “Saro-Wiwa was a killer, Ogoni Four allege”, *Vanguard*, 23 January 2001, pp. 1, 9.

As the report of the Oputa Panel was never published and its recommendations never implemented, these demands were ignored. The federal government should now give them proper consideration.

To ensure the healing process is comprehensive, the issue of redress for the families of the Ogoni Nine (Saro-Wiwa and the eight who died with him) must also be dealt with. As the UN fact-finding team noted when it visited Nigeria in 1995, the trials that led to their conviction and execution were marked by several irregularities: the defence attorneys were obstructed, leading to their withdrawal from the case; relevant evidence was disallowed; a verdict was given without a chance for the accused to defend themselves; and the sentences were confirmed without following the procedure laid down even in the military regime’s laws.⁹⁴ The government should pardon the Ogoni Nine to rid their families of the stigma of being relatives of convicted men. It should also initiate a judicial review, through the National Judicial Council, to determine whether the trial, convictions and executions followed due process.

The memorial intended as a tribute to the late Ogoni leaders remains uncompleted. Some locals are pained that no work has been done since the foundation stone was laid in 2006. As an observer commented, continued neglect could transform it into a symbol of the long neglect of the Ogoni people. The federal government must ensure the monument is speedily completed, so as to bring dignity to the dead and comfort to their families.

V. CONCLUSION

The exit of Shell/SPDC from Ogoni land, an event much anticipated by the people, will draw the curtain on one of the most contentious relationships between an oil company and a local community in the Niger Delta. It also provides an opportunity for the government to show greater goodwill and sensitivity to the ethnic minority groups of the region. If handled carefully, this transition could persuade some of the Delta’s armed groups that non-violence can produce progress on their demands. If handled poorly, it will not only intensify the Delta insurgency but also set the stage for a new crisis between the Ogoni and SPDC’s successor company.

⁹⁴ Odiya Ofeimun, “Our Own Ken”, *The News*, 16 November 1998, p. 28.

The government must avoid unilaterally imposing a new operator and instead involve the Ogoni in the selection process and give proper consideration to the conditions already set out by the Ogoni communities. Beyond this, it must quickly address environmental clean-up and compensation for impacted communities and respond to the wider issues of political marginalisation and economic deprivation, which have been central to the Ogoni protests since the early 1990s.

Dakar/Abuja/Brussels, 18 September 2008

APPENDIX A

MAP OF NIGERIA



APPENDIX B

MAP OF THE NIGER DELTA



RIVERS STATE

Ogoni Land
Boundaries approximate