

Response to Shell: brief for sections to send to activists

Many Amnesty International supporters have received letters from Shell in response to postcards and other actions taken in campaign for human rights in the oil-producing areas of the Niger Delta. The information in this briefing addresses the issues raised in those responses.

The situation in the Niger Delta is complex; Amnesty International has not adequately reflected this, ignoring the realities and root causes

Amnesty International's report, *Petroleum, Pollution and Poverty in the Niger Delta*, focuses on some of the root causes of the complex conflict situation in the Niger Delta. These include: the impact of half a century of pollution and environmental damage on the people of the delta; the lack of effective accountability and redress for harm to the environment and human rights; and a lack of transparency and information in relation to the impacts of the oil industry. These factors have been key drivers of conflict and poverty in the Niger Delta.

Shell repeatedly refers to the complexity of the situation in the Niger Delta. It seems to be a stock response of Shell to use complexity as a way to avoid responsibility. Shell blames the communities and militants for oil spills, and then blames them again for not allowing access to clean up. However this is only *part* of the picture. Shell's own poor practice is also a fundamental part of the problem. Moreover, the communities' actions, while not condoned by Amnesty International, have emerged after years of Shell's poor practice, including failure to prevent and clean up pollution, and a lack of transparency in investigation of oil spills and payment of compensation.

- For example, at Kira Tai in Ogoniland, where an oil spill occurred on 12 May 2007, the community told Amnesty International that Shell had accepted that corrosion was the cause of the spill, but the company had not properly cleaned up or paid compensation. Amnesty International subsequently obtained the investigation report, which was signed by five Shell representatives, as well as the regulatory agency and the community. This confirmed the community's account. However, when Amnesty International representatives took the case to Shell they were told it was a case of sabotage, notwithstanding the official investigation report. Amnesty International subsequently asked for evidence to back up why Shell changed the finding of the investigation. We did not receive this information.

When Amnesty International visited them, the community at Kira Tai had no idea Shell had changed the cause of the spill, and they were still waiting for compensation. When Shell talks about needing to understand the complex nature of the situation in the Niger Delta, the company must face up to the fact that it is this kind of behaviour that feeds community distrust and anger, and in turn fuels conflict.

Amnesty International's starting point is the need for Shell to adapt its approach to the realities experienced by communities whose rights have been abused in the context of oil industry operations. In pointing to complexity and the actions of other actors Shell is simply shifting the spotlight off its own bad practice and failures. In reality this exacerbates the problems of the Niger Delta.

85% of the oil spillage is caused by attacks and sabotage

The proportion of oil spills caused by sabotage, as opposed to corrosion and equipment failure, cannot be determined objectively because the causes of oil spills in the Niger Delta have not been subject to any independent assessment or verification. In many cases the oil company has significant influence on determining the cause of a spill . even when a regulatory representative is present. As the company is liable for compensation payments if the spill is found to be due to corrosion or equipment failure, the practice of allowing companies so much control over the designation of oil spill causes creates a deeply troubling conflict of interest. Amnesty International's report provides examples of cases where Shell claimed the cause of a spill was sabotage, but this claim was subsequently called into question by other investigations or the courts.

- For example, in the case of a major oil spill at Batan in Delta State in 2002, Shell wrote to the Governor of Delta State claiming the spill was caused by sabotage. The letter was written two days *before* the oil spill investigation was done. Moreover, video footage of the investigation . and the follow-up by a local non-governmental organization . does not correspond with Shell's statements on causality. Independent investigation shows the cause of the spill to be equipment failure. The video is available on Amnesty International's web site.

It is generally acknowledged that the majority of the oil spills prior to the mid-1990s were due to infrastructure problems. For example, most of the oil spilt by Shell (the major operator on land) between 1989 and 1994 was, by their own admission, due to corrosion or operational problems. Of the volume spilt, only 28 per cent was attributed to sabotage. In 2007 Shell's estimates had risen to 70 per cent. In response to Amnesty International's report, the figure now given by Shell has increased to 85 per cent (of the volume of oil spilt). While Amnesty International acknowledges that sabotage and vandalism are serious problems, the organization is now aware of any credible evidence to support these data.

Finally, it is important to underline that sabotage is only an issue in relation to *one* form of oil industry pollution - oil spills. As Amnesty International's 2009 report points out, there are many other ways that the oil industry has caused pollution and harmed the environment in the Niger Delta over the past half century. These include discharge of waste, dredging of creeks and rivers, disposal of drilling waste, seismic activities and road construction that has blocked water systems. Sabotage is not a factor in any of these forms of pollution or environmental damage.

Disclosure of social and environmental impact assessments

While Shell asserts that Environmental and Social Impact Assessments have been and are being made public, the company did not provide any Environmental Impact Assessments to Amnesty International despite repeated requests made in the context of researching our report. Environmental and Social Impact Assessments are . theoretically . made available at government offices in the Niger Delta. Amnesty International has underlined that this is not the same as making the documents available to the affected communities. Although Amnesty International tried to obtain Environmental Impact Assessments from a local government office in the Niger Delta, we could not do so. Office staff were afraid to provide copies of the documents but did not say why.

In its Business Principles Shell makes a commitment to *reporting of our performance by providing full relevant information to legitimately interested parties, subject to any overriding considerations of business confidentiality.*"

In June 2009 Amnesty International along a number of our partners in Nigeria including the Africa Centre for Corporate Responsibility, the Centre for Environment, Human Rights and Development, the Centre for Social and Corporate Responsibility, Environmental Rights

Action, Kebekache Women Development and Resource Centre, the Movement of the Survival of the Ogoni People, the Nigerian Conservation Foundation and the Social and Economic Rights Action Centre, petitioned the Chief Executive of Shell to disclose information, including

- All of Shell's Environmental Impact Assessments for the Niger Delta
- A list of all the studies or surveys that Shell has carried out on the impacts of its operations in the Niger Delta on the environment and people of the delta. In particular any information on the impacts on fisheries, agriculture, livelihoods, health; any studies on oil spills, gas flaring or waste disposal
- Copies of these reports, studies or other data . or the reason why Shell considers they should not be made public
- A list of all oil spills that are yet to be fully remediated, including volume of oil spilt, cause and location.
- The Niger Delta Environment Survey

The company did not provide any of this information.

If the Environmental Impact Assessment documents are public, Amnesty International does not understand why Shell will not simply provide copies (electronic or hard copies) to interested parties.

Shell does not believe Amnesty International has adequately acknowledged the company's contribution to Nigeria's economy and community development in the Niger Delta.

Amnesty International's report acknowledges that Shell has made some positive contributions in Nigeria, including provision of employment. However, we have pointed out to Shell that, in human rights terms, positive action in one area does not absolve any actor of responsibilities for human rights harms elsewhere. Human rights abuses cannot be offset. The funds spent by Shell on education, health and capacity-building activities, as well as infrastructure, do not reverse the damage done to communities as a result of Shell's core business activities in the Delta. Shell's social programmes are not a remedy for victims of human rights abuses, nor do they address the problems that are likely to lead to future abuses.

Amnesty International focuses on the integration of respect for human rights into core activities of the company, which in essence means that the company needs to exercise adequate human rights due diligence. In his report of 2009 to the UN Human Rights Council, the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises elaborates the concept of due diligence to avoid infringing on the rights of others as a central element of the corporate responsibility to respect human rights. Disclosure of all relevant information and integration of human rights impact assessment into its operational practices in the Niger Delta are two core Amnesty International recommendations to Shell and are . we believe - in line with the UN Special Representatives framework on business and human rights.

In short, Amnesty International finds Shell's response to the organization's report, *Petroleum, Pollution and Poverty in the Niger Delta*, and to the campaign to clean up its operations in the Niger Delta, very disappointing. Shell appears to want to talk about the complex issues in the Niger Delta as if they were an onlooker . but do not acknowledge that the company's operations are a contributing factor.