



Platform  
7 Horselydown Lane  
London, SE1 2LY

Royal Dutch Shell Plc  
Shell Centre  
London  
SE1 7NA

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### **To the Boards of Royal Dutch Shell Plc and Shell Companies in Nigeria**

Today the US Supreme Court hears *Kiobel v Shell*, a case that alleges Shell aided and abetted human rights violations and crimes against humanity committed by the Nigerian military against the Ogoni people from 1992 onwards. Twenty years later, Shell's operations in the Niger Delta continue to be linked to human rights violations committed by government forces and other armed groups, as well as result in extensive environmental devastation.

As the Nigerian government increases military spending and deploys more forces in the Delta and across Nigeria,<sup>1</sup> there are clear risks that Shell will repeat the same mistakes, become complicit in human rights violations and fail to resolve some of the underlying issues of ongoing repression and pollution.

A recent report by Platform recommends that Shell and other stakeholders address the root causes of conflict by cleaning up pollution, de-militarising the Delta and providing adequate remedies to the individuals and communities affected. In this letter, we, the undersigned, hold Shell accountable for its conduct and its inaction on these issues; challenge Shell's stated commitments to human rights and "high ethical standards" and emphasise the need for urgent action.

#### **1. Shell's complicity in recent human rights abuses in the Niger Delta:**

Independent investigations by Shell security consultants WAC Global (2003),<sup>2</sup> Amnesty International (2005),<sup>3</sup> the Financial Times (2006),<sup>4</sup> and Platform (2011)<sup>5</sup> have all highlighted that

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<sup>1</sup> Reuters reported in January 2012 that "More than a quarter of Nigeria's 2012 budget has been allocated to security spending." <http://graphics.thomsonreuters.com/12/01/Nigeria.pdf>

<sup>2</sup> WAC Global (2003): *Peace and Security in the Niger Delta*, p 5, [http://shellnews.net/2007/shell\\_wac\\_report\\_2004.pdf](http://shellnews.net/2007/shell_wac_report_2004.pdf)

<sup>3</sup> Amnesty International, (2005): *Ten Years on: Violence and injustice haunt the Delta*, p19-22, <http://www.amnesty.org/en/library/asset/AFR44/022/2005/en/63b716d6-d49d-11dd-8a23-d58a49c0d652/afr440222005en.pdf>

<sup>4</sup> Dino Mahtani and Daniel Balint-Kurti, Financial Times, *Shell gives Nigerian work to militants' companies*, <http://www.ft.com/cms/s/0/0237da00-d58a-11da-93bc-0000779e2340.html>, April 2006.

<sup>5</sup> Platform, (2011): <http://blog.platformlondon.org/2011/10/03/counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta/>

Shell has exacerbated conflict by awarding contracts to groups responsible for or linked to human rights abuses in the Niger Delta. Platform's report details several examples of how Shell's conduct has exacerbated recent armed conflicts in the eastern Delta region, in particular the town of Rumuekpe, where it is estimated at least 60 people were killed. Across the Delta, corporate practices similar to those employed by Shell in Rumuekpe have led to "the killing and displacement of thousands of local people" in ethnic and communal conflicts.<sup>6</sup>

Similarly, Shell's over-reliance on government forces has contributed to systematic violations of human rights, widely documented by Amnesty International, CEHRD and Platform. Shell routinely pays substantial amounts of money to the Nigerian army, navy and Mobile Police Force and provides transportation and accommodation for soldiers notorious for their record of human rights abuses. Platform's report identifies a number of communities in the eastern Delta region where Shell's operations and those of its contractors have led to military and police repression (for example in Ogoni, Otuasega, Oru Sangama, Ogu, Ogonu, Uzere and Elemenwo amongst others).

This is the thin end of the wedge. Many further cases of human rights abuse are associated with Shell's operations in the western, central and outer Delta regions. As the militarisation of the Delta continues, a growth in human rights violations is likely, as is Shell's involvement in them.

### **1.1. Fuelling conflict**

Shell is regularly exposed to complicity in human rights violations through the financial relationships it maintains with government forces and other armed groups in the Delta. Ongoing contracts and one-off payments exacerbate conflict, contribute to cycles of violence and establish patterns of dependency between the company and communities.

Managing Director of Shell Nigeria, Mutiu Sunmonu has "acknowledged that the legitimate payments we make to contractors, as well as the social investments we make in the Niger Delta region, may cause friction in and between communities."<sup>7</sup> The company is notably silent on the effect of the illegitimate payments made to communities. Despite Mr. Sunmonu's generalized acknowledgment, Shell has downplayed its role and denied responsibility for general and specific incidents of conflict and human rights abuses.

### **1.2. Rumeukpe:**

Between summer 2005 and November 2008, Shell's conduct in Rumuekpe exacerbated a conflict in which at least 60 people were killed, the entire town was destroyed and thousands were driven from their homes.

An official investigation by the Nigerian House of Representatives in October 2011 summoned Shell to answer to Platform's allegations about its role in the Rumuekpe crisis.<sup>8</sup> In its testimony to the House, Shell took a defensive line. However, the company made the following statements:

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<sup>6</sup> Professor Kenneth Omeje, (2004): *The State, Conflict and Evolving politics in the Niger Delta*, Nigeria, Review of African Political Economy, No. 101 p 436. As quoted in Groves, (2008): p 27, <http://www.e-ir.info/?p=1488&article2pdf=1>. Also see a recent study by the Wilson Centre (2011) which stated that: "these contracts often end up in the hands of the very groups responsible for attacks on oil facilities". The Wilson Centre, (2011): *Securing Development and Peace in the Niger Delta: A Social and Conflict Analysis for Change*, [http://www.wilsoncenter.org/sites/default/files/AFR\\_110929\\_Niger%20Delta\\_0113.pdf](http://www.wilsoncenter.org/sites/default/files/AFR_110929_Niger%20Delta_0113.pdf), p62 – 63.

<sup>7</sup> <http://www.guardian.co.uk/world/2011/oct/03/shell-accused-of-fuelling-nigeria-conflict>

<sup>8</sup> [http://www.nigeriancompass.com/index.php?option=com\\_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594](http://www.nigeriancompass.com/index.php?option=com_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594)

“the records show that bar isolated incidents connected with rival youth factions there was a perfectly workable relationship between SPDC [Shell Nigeria] and the communities throughout this difficult period”

...

“We are not directly involved in killings in the areas. We focused on education, we promote skill acquisition.”<sup>9</sup>

Mutiu Sunmonu, Managing Director, Shell Nigeria

These statements can be taken as admissions that Shell:

- Was aware of the conflict in Rumuekpe;
- Had knowledge of the actors involved in that conflict; and
- Monitored specific incidents during the conflict.

While Shell claims it was not “directly involved in killings”, the company does not dispute the allegation made in Platform’s report that Shell was indirectly involved in the conflict.

Shell was aware that by awarding ongoing contracts worth thousands of dollars and one-off payments worth \$57,989 in Rumuekpe, it was fuelling the violence. Shell workers visited the community on a regular basis.<sup>10</sup> Even if Shell’s central management was somehow unaware of the violence despite monitoring the situation, local media reports were publicly available.<sup>11</sup> Members of the community reportedly wrote to Shell to request that the company stop awarding contracts to gang leaders.

Shell appears to have disregarded the consequences of its actions in Rumuekpe. Once the company awarded ongoing contracts to local youth groups, a Shell manager in Nigeria stated that the company was “afraid to carry out compliance monitoring to find out who is on duty and who is not on duty. But they were given benefit of the doubt.”<sup>12</sup> It appears that the reason Shell personnel were “afraid” is because they had knowledge of the conflict. Shell ought to have known that the contracts were going into the wrong hands. The Shell manager interviewed by Platform admits that the company kept “ghost workers” in Rumuekpe, and paid the workers salaries despite the fact that they were no longer performing their contracts.<sup>13</sup>

There is a tangible link between Shell’s actions and the human rights abuses which occurred. The armed groups depended on Shell to provide them with the resources “to eat and to sustain the war”.<sup>14</sup> Shell’s payments triggered violent rivalry between the different youth factions, a problem which has been well documented across the Delta.<sup>15</sup> Shell has admitted to awarding contracts in Rumuekpe throughout the three years of conflict and Shell’s payments were inextricably linked to the commission of acts of violence.

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<sup>9</sup> [http://www.nigeriancompass.com/index.php?option=com\\_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594](http://www.nigeriancompass.com/index.php?option=com_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594)

<sup>10</sup> Platform interview with Matthew Chizi, Rumuekpe youth leader, in Port Harcourt, 24 September 2010.

<sup>11</sup> See Vanguard, *P-Harcourt - Army Alleges Fresh Terror Plot*, <http://allafrica.com/stories/200708270070.html>, 27 August 2007; Vanguard, *20 Feared Killed in Fresh Onslaught in Rivers*, <http://allafrica.com/stories/200708240016.html>, 24 September 2007; This Day, *JTF Arrests 11 Cultists, 4 Pirates*, <http://allafrica.com/stories/200709270926.html>, 27 September 2007.

<sup>12</sup> Platform interview with Shell manager, (name withheld), 8 September 2011.

<sup>13</sup> See note 12.

<sup>14</sup> Platform interview with Chukwu Azikwe, Port Harcourt, 14 October 2010.

<sup>15</sup> See footnote 6.

The United Nations Framework for Business and Human Rights states that companies have a heightened duty to avoid human rights violations in conflict-zones like the Delta.<sup>16</sup> Shell has disregarded this duty, and failed to take preventative measures to ensure that its contracts and payments did not fuel conflict.

In its testimony to the House of Representatives, Shell laid the blame on the Nigerian politicians who also funded the gangs. Yet this does not relieve Shell of responsibility. Shell's conduct exacerbated the conflict. Without Shell's payments and contracts, the abuses would have occurred on a smaller scale or with less frequency. The company provided practical assistance to the perpetrators of violence and made a substantial contribution to the commission of human rights violations.

In its defense, Shell firstly claim that its conduct was intended to "create jobs for communities".<sup>17</sup> Yet in an interview with Platform, a Shell manager in Nigeria gave a different view. He described the one-off contracts in Rumuekpe as:

"just something to keep the youths busy during the Christmas period so that they will not be wanting to create jobs for themselves by vandalizing Shell or Elf facilities."<sup>18</sup>

These "stay-at-home" payments do not generally create sustainable forms of employment for locals. The widespread use of such contracts in the Delta has been condemned for strengthening the perpetrators of violence and worsening conflict.<sup>19</sup>

Secondly, in its testimony to the House, Shell stated it spent \$60 million on community development projects in the Niger Delta in 2010. This is irrelevant to the question of Shell's role in the Rumuekpe conflict between 2005 and 2008. Community development cannot absolve Shell of responsibility for human rights violations. Furthermore, Shell has not provided any information about what steps, if any, it has taken to remedy the impact of oil-related conflict in communities like Rumuekpe, Odioma and Joinkrama 4 (Edagberi) to name a few examples. When Platform interviewed a Shell manager in 2011 on what the company has done for Rumuekpe, he said:

"For now, nothing is happening. The contractors among them are still working. They are getting payment on a monthly basis. Most of them have embraced amnesty and they are getting training. Then a few of them who have nothing doing, there are some youths, we gave them sports kit at the beginning of the year. We went through our Grants and Donations Board to buy [and] obtain permission. So that when they play football together they will, it will quicken their reunion."<sup>20</sup>

Rumuekpe has endured over three years of conflict and displacement and decades of pollution and economic marginalisation. In light of this, Shell's donation of sports kit to the community is utterly inadequate.

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<sup>16</sup> UN *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Point 23, p 21, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>. Andrea Shemberg, *New Global Standards for Business and Human Rights*, presentation at Herbert Smith LLP, 7 July 2011.

<sup>17</sup> [http://www.nigeriancompass.com/index.php?option=com\\_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594](http://www.nigeriancompass.com/index.php?option=com_content&view=article&id=7503:shell-links-politicians-to-niger-delta-killings&catid=54:nigeria-today&Itemid=594).

<sup>18</sup> Platform interview with Shell manager, (name withheld), 8 September 2011.

<sup>19</sup> *Corporate Social Responsibility and the Niger Delta conflict: issues and prospects*, Uwafiokun Idemudia in Obi and Rustad, (eds), (2011): p 220.

<sup>20</sup> Platform interview with Shell manager, (name withheld), 8 September 2011.

## 2. Is Shell listening?

There is significant public concern about Shell's human rights abuses in Nigeria. Almost half a million people worldwide have signed a petition by Amnesty International calling on Shell to clean up oil spills and compensate those affected.<sup>21</sup> Platform's report on Shell's role in the conflict led to widespread media coverage and a petition urging President Goodluck Jonathan to hold Shell accountable which attracted an additional 18,744 signatures.<sup>22</sup>

Shell claims to be committed to a culture of open debate, transparency and dialogue. Yet Shell's lack of concern and inaction on the issue of conflict and human rights violations in Nigeria is unacceptable. Shell has not taken the necessary steps to de-militarise its operations in the Delta, nor to resolve long-standing grievances over human rights abuses, oil spills and gas flaring.

These issues are not new. Shell has continually been aware of the human rights abuses linked to its operations from the Ogoni crisis in the 1990s to the multiple investigations from 2003 onwards. Shell has had ample opportunity to analyse Platform's 2011 report and recommendations. Yet despite the urgent need for action and several decades worth of awareness about the problem, Shell still claims to be studying the issue.

“we have said we'll carefully examine the report's recommendations.”<sup>23</sup>

Jonathan French, Shell Senior Spokesperson, 6 October 2011.

In a TV interview on 5 October 2011, Dick Benschop, CEO of Shell Netherlands, went further and made three assurances to investigate the matter:

“there is now that report, we're looking into the accusations made in it, in Nigeria we're also assessing which lessons we need to learn.”

...

“we've said that we will look again at what is written in that report, and respond to it.”

...

“we will investigate what exactly happened there and what is and isn't true of the accusations made.”<sup>24</sup>

Despite these public assurances by Shell executives, the real measure of Shell's response is action. Shell has not made clear what actions it has taken and it has failed to provide substantial answers to the allegations, questions and recommendations in the report. It is unclear whether or not the company has acted on any of the issues or plans to do anything at all.

This raises a number of questions and concerns, including:

- What has Shell done to address the structural problem of its over-reliance on Nigerian government forces notorious for systematic human rights violations?
- What has Shell done to eliminate corporate practices which fuel conflict and human rights abuses in the Delta?

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<sup>21</sup> <http://www.amnesty.org/en/appeals-for-action/shell/clean-up>, as of 14 February 2012.

<sup>22</sup> <http://www.thepetitionsite.com/takeaction/182/733/728/>, as of 28 February 2012.

<sup>23</sup> Jonathan French, email to journalist, 6 October 2011.

<sup>24</sup> <http://ooginoog.kro.nl/seizoenen/2011/afleveringen/05-10-2011>, transcript translated from original Dutch, 5 October 2011.

- If there is an internal investigation following the recent allegations, as Dick Benschop and others have claimed, what is the status of the investigation and when will the results be disclosed?
- What steps, if any, did Shell take to prevent the known risk of conflict from materialising in Rumuekpe?

### 3. Shell's comments:

In response to Platform's report Shell provided a media statement of five paragraphs, which adds little to the debate. Shell claimed that:

“Suggestions in the report that SPDC directs or controls military activities are therefore completely untrue.”<sup>25</sup>

Shell press statement, 3 October 2011.

This illustrates a lack of understanding on Shell's part. There are no suggestions that Shell “directs or controls the military” in the report. Platform describes Shell's relationship with Nigerian government forces in the following terms:

“Shell and other oil companies depend on government forces which they cannot effectively control.”

...

“Shell plays a decisive role in the allocation and organisation of military personnel.”<sup>26</sup>

Platform, *Counting the Cost*, 3 October 2011

In other words, Shell exerts influence over the process of military allocation to its facilities, but it does not “control” the military. Platform's report does not suggest otherwise.

Shell also claimed that:

“It is unfortunate that Platform has repeated several old cases, some of which are unsubstantiated and some proven inaccurate.”<sup>27</sup>

Shell press statement, 3 October 2011

Shell did not specify which “old cases” it is referring to, but on request, Shell's Senior Spokesperson clarified that Shell is referring to allegations that the company made payments to Lieutenant-Colonel Paul Okuntimo in the 1990s.<sup>28</sup>

Firstly, this is not a “case” in the report. The allegation is referred to in a sentence which provides historical context.<sup>29</sup> Secondly, the evidence against Shell is based on the sworn deposition of a reliable witness in the *Wima v Shell* case, as described in a detailed investigation by The Independent.<sup>30</sup> Although Shell did not admit liability in *Wima v Shell*, the evidence was substantial enough to compel Shell to settle out of court for \$15.5 million.

<sup>25</sup> <http://www.reuters.com/article/2011/10/03/nigeria-shell-idUSL5E7L33Q720111003>

<sup>26</sup> Platform, (2011): p 13 and 21, <http://blog.platformlondon.org/2011/10/03/counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta/>

<sup>27</sup> <http://www.guardian.co.uk/world/2011/oct/03/shell-accused-of-fuelling-nigeria-conflict>

<sup>28</sup> Jonathan French, Senior Spokesman, Global Media Relations, 6 October 2011.

<sup>29</sup> See Platform, (2011): p 12.

<sup>30</sup> <http://www.independent.co.uk/news/world/africa/ken-sarowiwa-was-framed-secret-evidence-shows-2151577.html>

Platform's report is based on detailed research. Platform visited the Niger Delta in September - October 2010 and conducted over 50 interviews with women, youth, elders, community leaders, ex-militants and human rights defenders. Platform interviewed the families, victims, witnesses and perpetrators of human rights abuses, oil company employees, contractors and academic experts. Where available, hospital records, contracts, court documents, photographic evidence and other forms of documentation have been relied on. Media articles, academic publications, company records and NGO reports have also been used for reference.

If Shell disputes any facts in the report, it has had ample opportunity to say what they are and set the record straight.

Sincerely,

Ben Amunwa, Platform (UK)

Nnimmo Bassey, Environmental Rights Action / Friends of the Earth Nigeria

Legborsi Saro-Pyagbara, Movement for the Survival of the Ogoni People, MOSOP (Nigeria)

Emem J. Okon, Kebetkache Women's Development and Resources Centre (Nigeria)

Asume Osuoka, Social Action (Nigeria)

Andy Rowell, Spin Watch (UK)

Stakeholder Democracy Network (UK & Nigeria)

Paulinus Okoro, Researcher (Nigeria)

Alice Ukoko, Women of Afrika (UK)

Steve Kretzmann, Oil Change International (US)

Geert Ritsema, Milieu Defensie / Friends of the Earth Netherlands

Dr Ike Okonta, Coordinating Fellow, New Centre for Social Research, Nigeria

Advocates for Human Dignity (UK)

Gary Foxcroft, Stepping Stones Nigeria (UK/Nigeria)

Elena Gerebizza, CRBM, Campagna per la Riforma della Banca Mondiale, Italy

The Corner House UK

Danielson Dukor, Auditor, (US)

Ben Ikari, African Cultural and Fundamental Rights Council, AFCRC, (US)

Baridakara Sunday, National Union of Ogoni Students, (US)

Samson Npimnee, National Union of Ogoni Students, (US)

Professor Rick Steiner, Oasis Earth, Anchorage Alaska (US)