

INTERVIEW

We Need to Put More Pressure on Companies' Home State Governments About the Abuses They May Commit Abroad,

Audrey Gaughran, Director of the Global Thematic Issues Program at the International Secretariat of **Amnesty International**, tells AOG

- ▶ The victims of abuse should be able to take legal action in the companies' countries of origin.
- ▶ Oil companies are coming under growing pressure to disclose more information about the impact of their activities.
- ▶ There are real obstacles to justice in the Niger Delta, and we need to see more action by the Nigerian government.

(Following is the text of an interview conducted with Audrey Gaughran, Director of the Global Thematic Issues Program at the International Secretariat of **Amnesty International** in London - see following page for her biography. AOG last published an interview with Audrey Gaughran on 16 November 2012).

Arab Oil & Gas: *Between December 2012 and April 2013 three different courts ruled on various aspects of the responsibility of oil companies, especially **Royal Dutch Shell**, as regards environmental damage and human rights violations in the **Niger Delta** in Nigeria. There was first the **Economic Community of West African States (ECOWAS) Court**, then a Dutch court and finally the **U.S. Supreme Court** in *Kiobel v. Royal Dutch Petroleum* about the reach of the **Alien Tort Statute**, which was adopted in 1789. What is **Amnesty International's** (AI) assessment of these three important but very different rulings?*



■ **Audrey Gaughran:** Amnesty International strongly welcomed the **ECOWAS Court** ruling, which requires the government of Nigeria to hold oil companies operating in the Niger Delta to account and to prevent them from causing further harm to human rights. This Court decision explicitly linked the environmental damage caused by oil pollution to human rights abuses, including people's right to a safe and healthy environment. The ruling sets an important precedent, and is an important step forward in holding companies accountable for decades of pollution.

The case brought in the **Netherlands** by four Nigerian farmers who had seen their livelihoods damaged by oil pollution from Shell's operations exposed a number of issues facing victims of corporate-related human rights harm.

On the positive side, we welcome the fact that the Dutch court accepted that it had jurisdiction in this case. Amnesty International argues that people whose rights have been undermined by corporations should be able to take civil claims forward in the companies' home states, especially when the abuses may be linked to or a consequence of decisions or failures at the company headquarters level.

The Court awarded compensation to only one of the four farmers, stating that **Shell Nigeria** had breached its duty of care in that case by failing to take reasonable action to prevent third parties tampering with oil wells and causing oil spills.

While sabotage of oil pipelines in the Niger Delta is one cause of pollution, it is not such a major issue as Shell's public relations machine likes to make out. Many spills are caused by leaks from pipelines that are old and poorly maintained, and Shell's claims about the extent to which sabotage causes pollution have been strongly challenged by communities and NGOs, including Amnesty International.

The Dutch court ruling means Shell can no longer point to sabotage as if the company has no responsibility for this problem, and it should have wider ramifications for Shell's Nigeria operations. The extent to which the company has acted to prevent sabotage must now be closely monitored, with particular scrutiny given when oil spills are attributed to sabotage.

The court ruling was, however, a blow for the three farmers whose claims were

> Audrey Gaughran

Director of the Global Thematic Issues Program, **Amnesty International**

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Prior to joining AI in 2003, Audrey Gaughran held a variety of posts in non-governmental organizations and the **United Nations**, focusing primarily on human rights, environmental protection and socio-economic development. She has worked in southern Africa, Sri Lanka and Indonesia, as well as the UK. Amongst the major projects she has worked on are juvenile justice issues in southern Africa, workers' rights on tea estates in Sri Lanka, the socio-economic impacts of extractive industries, projects on health delivery, education and food security in southern Africa and south Asia and environmental protection and livelihoods in Indonesia.

As a policy adviser Audrey Gaughran has considerable experience working on international financial institutions, development aid policies and issues related to trade and the World Trade Organization. She has done substantial research and policy work on the impacts of economic policies and economic actors on human rights and the environment in developing countries.

Source: Amnesty International.

dismissed, and exposes the formidable obstacles facing the people of the Niger Delta in their ongoing struggle to get justice after more than half a century of pollution.

All of the plaintiffs in this case were faced with an almost impossible task in proving their cases. They alleged the oil spills were due to operational failure, and not sabotage, a crucial distinction for determining the extent of the company's liability. However, in considering the four farmers' claims the Dutch court had to rely on Shell's own oil spill investigation reports.

Research by Amnesty International has exposed serious flaws in the oil spill investigation process in Nigeria. Shell itself leads investigations into spills from its facilities, creating an obvious conflict of interest. Although community members in theory are part of the investigation process, in practice if the community disagrees with the oil company's assessment, Shell simply overrides them. Nigerian communities have no access to independent assessments of the cause of oil spills or the associated environmental damage.

The outcome in the Dutch court case is one battle in the far greater fight for justice in the Niger Delta. Despite the challenges, the case is significant because it shows how one victim has managed to overcome at least some of the obstacles, get into a European court and achieve a measure of redress.

Finally, the *Kiobel* case considered by the **U.S. Supreme Court** earlier this year was focused not on the substance of the alleged abuses, but on a point about jurisdiction - and whether the US courts, under the Alien Tort Statute, had jurisdiction over a case involving alleged events that occurred in Nigeria. The Court's decision - that the case could not proceed as the events occurred outside the territory of the United States and there were not sufficient grounds to rebut what is known as the presumption against extra-territoriality - was a great disappointment for the plaintiffs and for human rights activists. The decision reduces access to the U.S. courts for survivors of human rights abuses committed abroad and runs counter to the trend to increase access to justice for victims of corporate-related human rights abuses; however, several issues were left open in the court decision, and it is likely further efforts will be made to use the Alien Tort Statute to seek some measure of justice for victims of abuse.

AOG: *Will these rulings or one of them lead AI to modify its strategy and campaigning as far as the **responsibility of companies in extractive industries** is concerned?*

■ **A.G.:** Amnesty International calls for companies to be held to account when they cause or contribute to human rights abuses and for victims of such abuses to have access to effective remedies, including access to courts. Multinational companies operate across borders and - often - the headquarters of a company has a significant role in decisions or actions of its subsidiaries or supply chain. If a corporate headquarters is aware of a subsidiary acting in a manner that is causing or contributing to human rights abuses it should act to remedy the situation.

Victims of abuse should be able to bring court actions in the company's home country. Amnesty International argues that **home countries have a responsibility** to both regulate a company in relation to its global operations and to enable victims of abuse to bring claims in the home country courts. The court cases referred to earlier highlight the challenges facing victims, and it is to reduce and remove these challenges that Amnesty International campaigns, and will continue to campaign. In future, there is a need to put more pressure on the home state governments to defend the rights of the victims of corporate abuse above the interests of companies domiciled in their territory.

Ultimately, people who have suffered human rights abuses must be able to go to court to get justice – and the court that is the most effective may be in a country other than the one where the harm was experienced.

Amnesty International will continue to campaign for changes in law and practice to open up more avenues for justice and ensure companies are held accountable for human rights abuses. The court cases described earlier both give us hope – because there are some good precedents – but also underline the challenges.

AOG: *In AI's "Demand Dignity" campaign launched in 2009 you have targeted Shell and other oil companies working in the Niger Delta as well as the Nigerian federal government to ask them to stop violating human rights. After about four years of action on this issue did you get some positive results?*

■ **A.G.:** Amnesty International's campaign for the oil industry in Nigeria to "come clean and clean up" has definitely had impact – both inside and outside Nigeria. Increasingly companies are under pressure to disclose more information on their impacts, and as a result of Amnesty International's work Shell now publishes all its oil spill investigation reports since 2011 on its website. There is more pressure and scrutiny on the major oil companies and this in turn is changing practices.

**Amnesty International's campaign
on oil pollution in the Niger Delta
has definitely had impact both
inside and outside Nigeria**

But we are not there yet – there are real obstacles to justice in the Niger Delta, and we need to see more action by the Nigerian government. The kind of action taken by the **U.S. government** following the **BP** Gulf of Mexico spill – with the direct involvement of President Obama as well as several federal agencies - has never been taken in Nigeria. But the Nigerian government is under increasing pressure to act, both from internal campaigning and as a result of the court actions in various parts of the world which are highlighting the problems.

We have also seen some limited action from the **Netherlands** – a key home state of Shell. A parliamentary hearing in 2011 brought needed attention to the impact of the company; however, the follow-up by the government since the hearing has not been strong.

Communities with whom Amnesty International is working, along with our partner NGO in the Delta, the **Center for Environment, Human Rights and Development (CEHRD)**, are also seeing that international attention and pressure are helping them to demand action, transparency and accountability in individual spill cases – which is important. In particular, Amnesty International and CEHRD have played an important role in supporting the community of **Bodo** in Ogoniland in their campaign for justice following two major oil spills in 2008 near the town from a Shell pipeline. A legal action against Shell brought in the UK on behalf of the community is currently proceeding.

But this is a long-haul campaign for change and Amnesty International will continue to work on this issue.

AOG: *Following a report by the United Nations Environment Program (UNEP) in August 2011 discussions were held between oil companies and the Nigerian government about the possible setting up of a fund to finance the depollution of part of the Niger Delta. Is there anything new on this issue?*

■ **A.G.:** Unfortunately there has not been significant movement on this issue. Amnesty International and many others have called for the Fund to be established in order that companies – and their home state governments – can begin to allocate money for the clean up process. It is not clear why the Federal Government of Nigeria has not set up the Fund, and we continue to urge them to do so. We believe a number of actors should then contribute to the Fund and ensure it is a sustainable approach to dealing with the terrible legacy of oil pollution in the Delta.

**We are continuing to urge the
government of Nigeria to set up a fund
for the depollution of the Niger Delta**

We are also concerned that, although UNEP found that water that people use for drinking is polluted, sufficient alternative water is not being provided to affected communities.

