

INTERVIEW

Oil Companies Behave Better When the Law and Enforcement Agencies Require Them to Do So,

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

- ▶ There is a need for more effective regulation of the extractive industries in West Africa
- ▶ National governments must be determined to conduct inquiries and prosecute cases where companies' operations have a negative impact abroad
- ▶ Amnesty International is not asking for lots of new laws. Often they exist but they are not enforced

(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 and currently head of its Africa Program – see following page for her biography. Amnesty International has been looking at the activities of the **extractive industries** – oil, gas and mining – for several years, carrying out studies and recently publishing reports on the impact of oil and gas production operations on the environment and human rights in the **Niger delta** region of Nigeria and on the dumping of toxic waste in **Ivory Coast**.)



*Arab Oil & Gas: Amnesty International (AI) and Greenpeace International recently published a report on the dumping of toxic waste in Abidjan in August 2006. According to these two NGOs **Trafigura**, the world's third largest independent oil trading company, has very important responsibilities in the health tragedy which followed. At the same time you are going on with your work on oil pollution and human rights violations in the **Niger Delta** and **Royal Dutch Shell** is here particularly under the spotlight. Why is Amnesty International targeting the oil industry now and in the recent past?*

■ **Audrey Gaughran:** Amnesty International's work on business and human rights focuses on the oil, gas and mining sector because we receive so many reports of human rights abuses associated with this sector. Often the abuses are related to pollution and environmental

damage and the victims are whole communities, whose rights to health, livelihood, food and water can be seriously undermined.

AOG: *The human rights abuses linked with these industrial activities took place in two African countries, Ivory Coast and Nigeria respectively. You do not seem to think that this is a pure coincidence.*

■ **A.G.:** There is a need for more effective regulation of the oil, gas and mining sector in West Africa. Many West African countries are rich in natural resources or involved in the oil and gas industry – but we have seen that when companies, particularly big multi-national companies, are involved, laws are not enforced and ordinary people suffer the consequences.

Often it is the poorest communities who are exposed to pollution and environmental degradation. Their relative lack of power compared to the companies is exploited. They can find it very hard to secure the protection of the law, and face great difficulties when it comes to getting compensation for damages done to them.

**Impact of extractive industries:
poor people suffer the greatest harm
and then have to struggle
to get justice**

In the case of Ivory Coast and Nigeria we have seen that it is poor people who have suffered the greatest harm and then had to struggle to get justice. Amnesty International's work is about helping to level the playing field between powerful companies and the communities whose lives are damaged by corporate operations.

> Audrey Gaughran

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

Audrey Gaughran has been Director of the Global Thematic Issues Programme at Amnesty International's International Secretariat since April 2010 and is currently leading Amnesty's Africa Programme. She has previously worked for the International Secretariat as Director of the Research Unit, Head of the Business and Human Rights Unit and as a researcher in Amnesty's Africa Programme where she worked on a range of countries including Zimbabwe and Nigeria.

Prior to joining AI in 2003, Audrey Gaughran held a variety of posts in non-governmental organizations and the UN, 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.

Some recent Amnesty International (AI) reports on business and human rights

- *The Toxic Truth. About a company called Trafigura, a ship called the Probo Koala, and the dumping of toxic waste in Côte d'Ivoire* (AI and Greenpeace International), 25 September 2012.
- *Oil Spill Investigations in the Niger Delta*, memorandum, September 2012.
- *Another Bodo Oil Spill - Another Flawed Oil Spill Investigation in the Niger Delta*, 3 August 2012.

Website: www.amnesty.org

We also find that companies operate to different standards in some cases - in developed countries where companies have less influence on the regulatory system we have seen the impact on human rights can be quite different. Think, for example, of the **BP Gulf of Mexico oil spill** - the way the government of the U.S. reacted, the fact that they insisted on a compensation fund, and transparency around clean up - this all helped the affected communities get justice. The oil company would not have done it all voluntarily. There is a sharp contrast to the Niger Delta here where the oil companies are not well regulated. Companies behave better when the law and the enforcement agencies of the law require them to do so.

AOG: *What are your main demands towards Trafigura and about this company as far as the toxic waste issue is concerned?*

■ **A.G.:** In the case of the toxic waste dumping in Abidjan our main demands are to the countries where key decisions took place - decisions that ultimately resulted in the tragedy that unfolded in Abidjan in 2006. We have made specific recommendations to: **Ivory Coast**, the **Netherlands** and the **UK**. This is because we believe it is important for the States to act to ensure justice for the victims.

Trafigura brought the toxic waste to Abidjan from Europe on board a ship. Even though Trafigura knew the waste was dangerous it handed it over to a small Ivorian company that did not have the capacity to deal with it – the waste was then dumped in various locations around Abidjan. We have only one demand of Trafigura – to disclose all of the studies and information it has on the waste that was dumped in Abidjan in 2006. All the data should be in the public domain so it can be scrutinized by experts and so the people of Abidjan can get answers.

AI has called on the UK to investigate whether Trafigura breached UK law, given that many of the company's key decisions were made by its office in the UK. We have called on the Netherlands to review its approach to the investigation and prosecution of companies for actions that have an impact abroad, particular where the starting point of the action occurs in the Netherlands - as it did in this case. The waste was in Dutch jurisdiction, the Dutch let it leave. Trafigura was prosecuted in the Netherlands for illegal export of the waste, but the prosecutor did not consider the case beyond this point and whether illegal actions had occurred in Ivory Coast.

It is very important that countries are willing to investigate and - where there is credible evidence of wrongdoing - to prosecute cases where there are impacts abroad. International law allows States to do this, within certain recognized parameters. In the case of the Ivory Coast, AI has asked the government to disclose information to the public including on how compensation paid by Trafigura to the State of Ivory Coast was used.

AOG: *What are you expecting from Shell, other foreign oil companies working in the Niger Delta, the Nigerian National Petroleum Corporation (NNPC) and the Federal government in Nigeria?*

■ **A.G.:** We expect Shell and other oil companies - whether foreign or national - to clean up the pollution they have caused and compensate anyone whose livelihood or health was affected. This

**Niger Delta: we expect oil companies
to clean up the pollution they have caused
and to compensate affected persons**

is vital – pollution has occurred over decades in Nigeria and much of it has not been properly cleaned up. We also call on companies to disclose the age and condition of their infrastructure in the Niger Delta and to upgrade their infrastructure to ensure that leaks do not occur. This includes making their infrastructure tamper-proof to prevent illegal bunkering and sabotage.

The government of Nigeria must enforce the laws and set up independent oversight mechanisms for the oil industry. This has been a long-standing call by human rights and environmental groups but the regulation of the oil industry in Nigeria is weak. Laws exist but they are not enforced.

AOG: *Is there a dialogue between AI and Trafigura and between AI and Shell about these issues? And, if this is the case, how do you assess the results of these exchanges?*

■ **A.G.:** Amnesty International shared the findings of its investigation into the dumping of toxic waste in Abidjan with Trafigura and received a short written response from them, which stated that the report issued by Greenpeace and Amnesty International contained inaccuracies – however, Trafigura did not name any specific inaccuracies and AI and Greenpeace stand by their in-depth investigation and findings. Amnesty International has had no further engagement with Trafigura and our focus is on securing action by the States involved.

Amnesty International has had many discussions with Shell over many years. Amnesty has shared its research findings with Shell in advance of publication and invited them to comment. While dialogue is important, in Amnesty International's view it is only useful if it leads to real change on the ground, and in this regard the organization has been disappointed by Shell. Shell repeatedly says the company wants to look to the future – but Shell cannot move forward until it addresses the past. The people of the Niger Delta have to live with the effects of past pollution and until Shell addresses this, it is not meaningful to say 'look to the future'. The way forward lies in dealing with the past.

AI also talks to the government of Nigeria about the pollution issues in the Nigeria Delta – in particular the need to implement the recommendations of the **United Nations Environment**

Programme (UNEP) report. The government of Nigeria is ultimately responsible for the human rights impacts of the oil industry in the Niger Delta. They need to take action to prevent pollution by insisting that certain standards are met with regard to the condition and maintenance of infrastructure. This includes the necessity to make oil infrastructure tamper proof from sabotage. They also need to take far stronger action to fine companies, and hold them to account when oil spills and other pollution do occur.

Again, if we look at what the U.S. government did after the spill in the Gulf of Mexico in 2010 this is the kind of action Nigeria should be taking. Even though there was some criticism of the U.S. government for not doing more, the fact is, in the Niger Delta, we have not seen in 50 years as much action to remedy oil spills as we saw in the Gulf of Mexico case in six months. The issue is more complicated because the government is a partner in oil ventures, but the government's first responsibility is to protect the people.

AOG: *Beyond these two cases what do you expect broadly from the oil industry and from oil-producing countries in the near and mid-term future?*

■ **A.G.:** The most important issue is the enforcement of laws and regulations to protect the environment and people. Amnesty International does not look for lots of new laws – often the issue is that the laws exist but are not enforced. In too many cases the companies have great influence over the government or the regulators and this has to stop.

**Responsibilities of host countries
and home countries of oil
and mining companies
are complementary**

Amnesty International is also looking for much greater transparency for oil companies – not just financial transparency but non-financial reporting on human rights and environmental risks and impacts.

AOG: *According to AI oil and energy-consuming countries also bear some part of the responsibility. Could you elaborate on this point?*

■ **A.G.:** The home countries of oil, gas and mining companies have a responsibility, in our view, to regulate the companies in relation to their global operations. This is a vital element of the protection of human rights because in some respects the home state is best placed to regulate on certain issues. This does not take away the responsibility of the host state – the two are complementary.