

Wiwa v. Royal Dutch Petroleum (Shell)

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This case charges Royal Dutch Petroleum Company and Shell Transport and Trading Company (Royal Dutch/Shell) with complicity in human rights abuses in Nigeria. The particular abuses at issue are the November 10, 1995 hangings of Ken Saro-Wiwa and John Kpuinen, two leaders of MOSOP (Movement for the Survival of the Ogoni People), the torture and detention of Owens Wiwa, and the shooting of a woman who was peacefully protesting the bulldozing of her crops in preparation for a Shell pipeline by Nigerian troops called in by Shell. These abuses were intended to suppress the Ogoni people's peaceful opposition to defendants' long history of environmental damage and human rights abuses in the Ogoni region. EarthRights International is co-counsel for the plaintiffs, along with Judith Brown Chomsky, the Center for Constitutional Rights, Paul Hoffman, and Julie Shapiro. [Read the Amended Complaint in this case.](#)

Plaintiffs' action was brought under the Alien Tort Claims Act and also alleges violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). Defendants moved to dismiss both the initial and the amended complaints on the grounds of lack of personal jurisdiction over Royal Dutch/Shell, forum non conveniens (defendants argued that the case should be heard in the Netherlands or England), and lack of subject matter jurisdiction (defendants argued, inter alia, that ATCA did not apply to a corporation and that the claim was precluded by the political question and act of state doctrines, as well as Nigerian law on corporate liability).

On September 25, 1998, Judge Kimba Wood concluded that personal jurisdiction was appropriate in New York, but also ruled that England was a more convenient forum, and therefore that defendants' motion to dismiss should be granted for forum non conveniens.

On appeal to the U.S. Court of Appeals for the Second Circuit, plaintiffs argued that a forum non conveniens dismissal would vitiate Congressional intent to allow plaintiffs' claims to be heard in U.S. courts. Defendants cross-appealed the ruling on personal jurisdiction. In a huge victory for the plaintiffs, the Court of Appeals on September 15, 2000 reversed the district court's forum non conveniens dismissal, concluding that the United States is a proper forum. The Court also upheld the district court's ruling that jurisdiction over the defendants was proper and remanded the case back to the district court to rule on defendants' other objections to the suit.

Royal Dutch/Shell petitioned the United States Supreme Court to review the Second Circuit's decision, but on March 26, 2001, the Court declined to do so, and let the Second Circuit's decision stand. Royal Dutch/Shell had argued to the Supreme Court not only that the Second Circuit erred in finding that a New York court has jurisdiction over it and that the case is properly heard here rather than in England, but also that the Supreme Court should overturn the Second Circuit's landmark 1980 holding in *Filartiga v. Pena-Irala* that the Alien Tort Claims Act allows suits by aliens for violations of customary international law. The Supreme Court's order did not address the merits of these arguments. Nonetheless, it was an important victory for the plaintiffs, because it rebuffed Royal Dutch/Shell's effort to end the litigation without a court ever hearing evidence of Shell's involvement in the egregious abuses at issue. Also in March 2001, the plaintiffs sued Brian Anderson, the former Managing Director of the Royal Dutch/Shell subsidiary Shell Nigeria. Royal Dutch/Shell and Anderson then made motions to dismiss the case, arguing that the plaintiffs had no legal claims.

Note: This is a compilation of amended materials. Complete material available at <http://www.earthrights.org/shell/index.shtml> (Accessed May 2004).

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually
and as Executor of the
Estate of his deceased father
KEN SARO-WIWA;
and

OWENS WIWA;

and

BLESSING KPUINEN,
individually and as
Administratrix of the
Estate of her husband,
JOHN KPUINEN;
and

JANE DOE,

Plaintiffs,

v.

ROYAL DUTCH PETROLEUM COMPANY;
And
SHELL TRANSPORT AND TRADING
COMPANY, p.l.c.,

Defendants.

96 Civ. 8386

(KMW)(HBP)

COMPLAINT FOR SUMMARY

EXECUTION; CRIMES AGAINST HUMANITY; TORTURE; CRUEL, INHUMAN OR
DEGRADING TREATMENT; ARBITRARY ARREST AND DETENTION; VIOLATION
OF THE RIGHTS TO LIFE, LIBERTY AND SECURITY OF PERSON AND PEACEFUL
ASSEMBLY AND ASSOCIATION; WRONGFUL DEATH; ASSAULT AND BATTERY;
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS; NEGLIGENCE; AND VIOLATIONS OF THE ACKETEER
INFLUENCED AND CORRUPT ORGANIZATIONS ACT
DEMAND FOR JURY TRIAL

Introduction

1. On November 10, 1995, internationally renowned author and human rights and environmental activist Ken Saro-Wiwa and youth leader John Kpuinen were hanged in Port Harcourt, Nigeria. Ken Saro-Wiwa was the leader of the Movement for the Survival of Ogoni People ("MOSOP") and John Kpuinen was the Deputy President of MOSOP's youth wing, the National Youth Council of Ogoni People ("NYCOP"). Saro-Wiwa and Kpuinen were among a group of activists falsely accused of murder and tried before a special tribunal in proceedings which violated international standards of due process.

2. The executions of Ken Saro-Wiwa and John Kpuinen by the Nigerian military junta and the campaign to falsely accuse them were carried out with the knowledge, consent, and/or support of Defendants Royal Dutch Petroleum Company and Shell Transport and Trading Company, p.l.c., ("Defendants" or "Royal Dutch/Shell") and their agents and officers, as part of a pattern of collaboration and/or conspiracy between Defendants and the military junta of Nigeria to violently and ruthlessly suppress any opposition to Royal Dutch/Shell's conduct in its exploitation of oil and natural gas resources in Ogoni and in the Niger Delta.

3. The circumstances under which Jane Doe was beaten and shot further illustrate Royal Dutch/Shell's effort to suppress any and all opposition to its activities in Ogoni. In April 1993, Jane Doe was shot for her participation in a peaceful demonstration against the efforts of Royal Dutch/Shell to bulldoze her farmland to construct a pipeline for their commercial venture.

4. Defendants Royal Dutch/Shell, together with the military regime governing Nigeria, acting through the Shell Petroleum Development Company of Nigeria Limited ("SPDC"), and acting with other agents and co-conspirators have, in the past and continuing through the present, used force and intimidation to silence any opposition to their activities in Nigeria which include the exploitation of the petroleum resources of the Delta and spoliation of the environment there. Defendants' conduct violates state and federal law, and international law, including the prohibitions against torture, summary execution, crimes against humanity, and the Racketeer Influenced and Corrupt Organization Act (RICO).

(...)

STATEMENT OF FACTS

General Facts

25. Ogoni is a densely populated rural area of approximately 404 square miles in southern Nigeria.

26. Royal Dutch/Shell began oil production in the Ogoni region in or about 1958.

27. Royal Dutch/Shell appropriated land used for oil exploitation through misrepresentation and coercion and without adequate compensation to the owners.

28. Upon information and belief, approximately 76 percent of the natural gas produced during the exploration and exploitation of the crude oil in Ogoni has been permitted to flare, thereby causing persistent air and noise pollution and reduced agricultural yields in the surrounding area.

29. The oil-related pollution caused by Royal Dutch/Shell's activities has contaminated the local water supply and agricultural land and killed fish; the local economies are based largely on subsistence farming and fishing.

30. Nigeria produces approximately 1.7 to 1.8 million barrels per day of oil. Approximately 90% of this yield is produced in the area of the Niger Delta, which contains the Ogoni region.

31. Approximately 40% of Nigeria's oil production is exported to the United States.

32. Royal Dutch/Shell conducts, and has conducted, its operations in Ogoni and the Niger Delta negligently and with reckless disregard for its effect on the population, wildlife and land of Ogoni. For example:

a. The manner of Royal Dutch/Shell's operation leads and has led repeatedly to oil spillage and gas flares.

b. In June of 1993, Royal Dutch/Shell permitted oil from its Bomu-Tai pipeline to spill into the neighboring villages and countryside for 40 days.

c. Royal Dutch/Shell dug and used unlined waste pits in the middle of Ogoni villages.

33. At all times relevant hereto, the Nigerian military regime was acting in conspiracy with, at the request of and/or on behalf of Defendants. In the alternative, the regime was acting at all times relevant hereto as an agent for Defendants. Upon information and belief, the acts of conspiracy include, but are not limited to, the following:

- a. Royal Dutch/Shell's payments, directly or indirectly, to the military, police (including supernumerary police), intelligence, and/or other personnel assigned to Royal Dutch/Shell installations in Nigeria;
- b. Royal Dutch/Shell's contracting for the purchase of weapons, directly or indirectly, from or for the Nigerian police (including supernumerary police), military, intelligence, and/or other security agencies or forces or individuals;
- c. The surveillance, monitoring and exchange of intelligence between Royal Dutch/Shell and the Nigerian military, police (including supernumerary police), intelligence, and/or other security agencies or forces or individuals;
- d. Royal Dutch/Shell's logistical support, directly or indirectly, to the Nigerian police (including supernumerary police), military, intelligence, and/or other security agencies or forces by the provision of transportation vehicles, patrol boats, ammunition and other materiel;
- e. Royal Dutch/Shell's participation in the planning and coordination of "security operations" including raids and terror campaigns conducted in Ogoni and the Niger Delta, through regular meetings between Royal Dutch/Shell, their agents, alter-egos, co-conspirators, and officials of the local security forces;
- f. The hiring by Royal Dutch/Shell of security personnel from the ranks of the Nigerian police to implement the operations referred to in subparagraph (e) above;
- g. The campaign to arrest and execute Ken Saro-Wiwa and John Kpuinen on fabricated murder charges, including Royal Dutch/Shell's bribery or attempted bribery of two witnesses to give false testimony against Saro-Wiwa;
- h. A coordinated media and public relations campaign by Royal Dutch/Shell and the Nigerian government to discredit MOSOP leaders, attributing to MOSOP and Saro-Wiwa airplane hijacking, kidnapping, and other acts of violence.

34. In late October, 1990, villagers in Umuechem, a neighboring community to Ogoni, held a demonstration against Royal Dutch/Shell's operation.

35. On or about October 29, 1990, on information and belief, SPDC, acting at all times as the agent of Royal Dutch/Shell, claimed that there would be an attack on October 30, 1990 on its camp site and requested that the Rivers State Commissioner of Police provide the Mobile Police Force for security protection.

36. SPDC specifically requested the assistance of the Mobile Police Force, although this force, popularly known in Nigeria as "kill and go," was widely reputed to commit massacres and other grave human rights violations.

37. On or about October 31, 1990 and November 1, 1990, the mobile police carried out massive scorched earth operations resulting in a massacre of 80 villagers. Over 495 houses were damaged or destroyed.

38. Upon information and belief, following the attack at Umuechem, Royal Dutch/Shell's general manager in Nigeria requested the continued police involvement for their ongoing operation.

39. By 1993, at least 300,000 Ogonis, more than half the population of Ogoni, supported the Movement for Survival of Ogoni People (MOSOP), a human rights organization aimed at protecting the rights of the Ogoni people, including protesting the effects of the oil exploitation on the Ogoni.

40. Upon information and belief, on or about February 15, 1993 through February 18, 1993, meetings of Royal Dutch/Shell and Nigerian officials were held in the Netherlands and England to formulate anti-MOSOP campaigns.

41. Upon information and belief, on or about April 28, 1993, SPDC, acting on behalf of Royal Dutch/Shell, together with Willbros West Africa, Inc. ("Willbros"), a pipeline contractor, and in the company of security troops, entered the Ogoni village of Biara to bulldoze farmland in preparation for the Rumuekpe-Bomu pipeline.

42. In reaction to the actions of SPDC and Willbros, villagers gathered to protest the bulldozing. Upon information and belief, SPDC personnel called in government troops who fired on villagers peacefully protesting the destruction of their farms. SPDC employees were present during these operations.
43. On or about April 30, 1993, Plaintiff Jane Doe was beaten and shot by the government troops while protesting the destruction of her property.
44. In early May, 1993, the Nigerian military took further actions against villagers at the behest of Defendants.
45. On May 4, 1993, in a letter to the Governor of Rivers State, the general manager of SPDC's eastern division requested that the Nigerian government provide "assistance as usual" so that work on the pipeline could continue.
46. Ken Saro-Wiwa was an outspoken critic of Royal Dutch/Shell's operation in the Ogoni region, charging that Royal Dutch/Shell was "waging an ecological war against the Ogoni."
47. In April and June, 1993, Ken Saro-Wiwa and other MOSOP activists were arrested and detained.
48. On or about June 21, 1993, during Saro-Wiwa's detention, Royal Dutch/Shell issued a press statement accusing Saro-Wiwa of organizing a secessionist movement and attacked his environmental protests as being a pretext used to build his political movement.
49. On or about July 6, 1993, while still in detention, Ken Saro-Wiwa was elected president of MOSOP.
50. John Kpuinen held various positions, including that of Deputy President of the National Youth Council of Ogoni People (NYCOP), MOSOP's youth wing. In that capacity, Kpuinen was active in NYCOP's environmental campaign against Royal Dutch/Shell and the Nigerian military regime.
51. Saro-Wiwa and Kpuinen supported and organized peaceful demonstrations in Ogoni.
52. On or about August 5, 1993, the Nigerian military led an attack which resulted in the deaths of at least thirty-five residents of the Ogoni village of Kaa.
53. Upon information and belief, from on or about September 1 through 15, 1993, Nigerian military troops, using Royal Dutch/Shell boats, attacked Ogoni villages on the Andoni border.
54. Upon information and belief, on the days of the attacks, a helicopter chartered by Royal Dutch/Shell reconnoitered the villages of Eeken, Gwara and Kenwibgara along the Andoni border. The military operations resulted in the massacre of over 1000 Ogonis and massive property devastation which left approximately 20,000 people homeless.
55. In September 1993, Ogoni villagers complained about the ongoing environmental contamination due to leaking from the Royal Dutch/Shell pipeline to Royal Dutch/Shell officials in Port Harcourt and local officials in Bomu-Tai.
56. Upon information and belief, on or about October 24, 1993, Royal Dutch/Shell, acting through SPDC, called the military police into the area near the Korokoro flow line; the military police arrived in vehicles supplied by Royal Dutch/Shell; and Royal Dutch/Shell staff were present. The military police shot a seventy-four-year-old man and two youths, killing one.
57. Royal Dutch/Shell paid "field allowances" to the police involved in the Korokoro attacks.
58. Upon information and belief, on or about December 1, 1993, SPDC Managing Director P.B. Watts requested approval by the Nigerian Police Inspector General for an increase in its security; promised to provide complete logistics, accoutrement and welfare support to the Nigerian police force; promised to fully support the cost of setting up and maintaining a police contingent of 550 men; and requested a quotation for the supply of semi-automatic rifles for vehicle and marine patrols.
59. Royal Dutch/Shell, acting through SPDC, publicly praised the co-operation and excellent working relationship developed over the years between the Nigerian Police Force and SPDC.
60. In April 1994, Nigerian security forces supported attacks on eight Ogoni villages and burned down the villages of Ledor on April 16 and Tumbe on April 18, 1994.

61. On or about April 21, 1994, Lieutenant Colonel Komo, the Head of Rivers State sent a memo to the head of the Internal Security Task Force detailing an extensive military presence and policy of military intervention in Ogoni, in order to ensure that those "carrying out business ventures...within Ogoniland are not molested."

62. On or about May 12, 1994, the Rivers State Internal Security Task Force, a military unit headed by Major Paul Okuntimo, reported that "Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence", and proposed that the Nigerian Police exert pressure on Shell for regular payments from Royal Dutch/Shell to support the operations.

63. On May 21, 1994, four Ogoni tribal leaders were killed.

64. Between May and August 1994, the Rivers State Internal Security Task Force mounted several months of nightly raids through at least sixty towns and villages in Ogoni, to punish entire communities for their support for MOSOP. During these raids, the military broke into homes, beating anyone in their path, including the elderly, women and children, raping, forcing villagers to pay "settlement fees," bribes and ransoms to secure their release, forcing the Ogonis to flee and abandon their homes, and burning, destroying or looting property. At least fifty Ogonis were killed.

65. Between May 1994 and August 1994, several hundred young Ogoni men were arrested, detained and flogged on a daily basis because of their real or imagined affiliation with MOSOP. a. On or about May 22, 1994, Ken Saro-Wiwa was arrested and detained without charges by the Nigerian military and the arrest of the entire MOSOP leadership was ordered by the Rivers State military administrator.

66. Ken Saro-Wiwa, John Kpuinen and others were arrested because of their non-violent opposition to the activities of Royal Dutch/Shell and the Nigerian military regime.

67. No charges were filed against them for eight months after their arrest and detention.

68. In November, 1994, a three-man tribunal ("Civil Disturbances Special Tribunal") was created and specially appointed by the Nigerian military regime to try Ken Saro-Wiwa, John Kpuinen, and other Ogoni leaders for the May 21, 1994 murder of four Ogoni tribal leaders.

69. On or about March 16, 1995, on information and belief, top Shell executives of Shell International Petroleum Company, Ltd. ("SIPC") met in Shell Centre, London with the Nigerian High Commissioner, top Nigerian military officers to discuss common strategy regarding Ken Saro-Wiwa and the Ogoni campaign, including a joint media campaign and other action.

70. On March 18, 1995, the Civil Disturbances Special Tribunal assumed jurisdiction over the cases of ten additional Ogoni leaders who were formally charged with murder on April 7, 1995.

71. The creation of the Civil Disturbances Special Tribunal and the conduct of the ensuing trial violated customary international law because, inter alia:

a. An edict creating the Civil Disturbances Special Tribunal and providing the death penalty was given retroactive effect;

b. the Civil Disturbances Special Tribunal's judgment was not subject to review by a higher court;

c. the accused met with their counsel only with the permission of and in the presence of a military officer.

72. Defense counsel for the accused were subjected to threats of beatings and Ken Saro-Wiwa's 74-year-old mother, as well as other family members, were beaten when attending the Civil Disturbances Special Tribunal hearing.

73. The accused were denied adequate food and medical care, beaten and subjected to other torture.

74. Royal Dutch/Shell promised bribes to at least two key witnesses to give false testimony against Saro-Wiwa.

75. On January 4, 1995, soldiers dispersed peaceful demonstrations protesting Royal Dutch/Shell's operation and the arrest of Saro-Wiwa, Kpuinen and the others with shootings, beatings and arrests, extorting money from those who they released.

76. Those incarcerated as a result of the January 4, 1995 protest were subjected to floggings and other torture.

77. In June 1995, the team of defense lawyers representing Saro-Wiwa and Kpuinen withdrew from the proceedings as a protest against the flagrant violations of international standards of due process in the two concurrent trials.

78. Upon information and belief, Royal Dutch/Shell held meetings with the Nigerian military regime to discuss strategies concerning the unlawful execution of Saro-Wiwa.

79. Brian Anderson, the Managing Director of SPDC, and on information and belief, an employee and agent of Royal Dutch/Shell, met with Plaintiff Owens Wiwa and offered to trade Ken Saro-Wiwa's freedom for an end to the international protests against Defendants.

80. On or about October 30 and 31, 1995, Ken Saro-Wiwa, John Kpuinen, and seven other Ogoni activists were condemned to death by the military-appointed special tribunal, in violation of international law and the laws of Nigeria.

81. Ken Saro-Wiwa, John Kpuinen and the others scheduled for execution were beaten, denied food, water or bedding for a period of days prior to their execution.

82. On November 10, 1995, Plaintiffs Ken Saro-Wiwa and John Kpuinen were hanged.

83. On November 13, 1995, Plaintiff Owens Wiwa, who had previously been arrested and detained without charges, fled Nigeria because he feared arbitrary arrest, torture and death.

84. Plaintiff Owens Wiwa was forced to leave his medical clinic and his work as a doctor.

85. On December 15, 1995, Royal Dutch/Shell signed an agreement to invest \$4 billion in a natural gas project in Nigeria.

86. Nineteen Ogonis remain in detention charged with murder in connection with the same allegations and before the same Civil Disturbances Special Tribunal that convicted Saro-Wiwa and Kpuinen.

87. Eighteen Ogonis, most held without trial since mid-1994, were charged in May 1995 on a "holding charge" of murder. Of those eighteen, one died in detention and two were released.

88. Four others were charged with murder in the magistrate's court on October 27, 1995.

89. Upon information and belief, Royal Dutch/Shell private police cooperated in the arrests, beatings and torture of some of the nineteen arrested.

90. The nineteen Ogonis continue to be detained without trial under conditions violative of minimum international standards.

91. Oil revenues provide 80% of Nigeria's federal government budget.

92. Oil from Nigeria accounts for approximately 14% of Royal Dutch/Shell's global oil production.

93. At all times relevant herein, Defendants Royal Dutch/Shell knew or should have known that the Nigerian regime, its army and police committed human rights abuses, including summary executions, in connection with the exploitation of oil in Ogoni and the Niger Delta.

General Allegations

(...)

97. Plaintiffs' causes of action arise under and violate the following laws, agreements, conventions, resolutions and treaties:

(a) Alien Tort Claims Act, 28 U.S.C. § 1350;

(b) Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968;

(c) Customary international law;

(d) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);

(f) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);

(g) International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

(h) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 1100, U.N. Doc. A/39/51 (1984);

(i) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);

(j) Common law of the United States of America;

(k) Statutes and common law of the State of New York, including but not limited to wrongful death, assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence;

and the

(l) Laws of Nigeria.

98. There is no independent functioning judiciary in Nigeria and any suit against Defendants there would have been and would still be futile and would result in serious reprisals.

(...)

(...)