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### Wiwa v. Royal Dutch Petroleum Co.

Dave Newman

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# LITIGATION UPDATE:

## *Wiwa v. Royal Dutch Petroleum Co.*

By Dave Newman

The Nigerian government executed environmental activists Ken Saro-Wiwa and John Kpuinen, along with seven other individuals, on November 10, 1995.<sup>1</sup> Family members of both Saro-Wiwa and Kpuinen brought suit against the Royal Dutch Petroleum Company and Shell Transport and Trading Company (“Shell”) in the United States District Court for the Southern District of New York.<sup>2</sup> They alleged that Shell was complicit in the deaths of the activists, and in the events that led up to the executions.<sup>3</sup> Following years of procedural delays and numerous attempts at dismissal, Judge Kimba Wood recently found that Shell could be held liable in United States court for actions committed abroad.<sup>4</sup>

The events that resulted in the executions of Saro-Wiwa and Kpuinen arose from increased protests by the Ogoni people during the early 1990’s against the polluting practices of Shell. Shell discovered oil in the Niger Delta in 1958, around the farms and villages of the Ogoni people.<sup>5</sup> Since this discovery, nearly 900 million barrels of oil have been extracted from the region.<sup>6</sup> Today, oil accounts for approximately 90% of Nigeria’s total exports – 40% of which is exported to the United States.<sup>7</sup> However, the wealth generated through the sale of oil has come at a great environmental and human cost for the region.<sup>8</sup>

When local community leaders began to voice their disapproval of Shell’s practices, the Nigerian government became more forceful in its suppression of the protests.<sup>9</sup> In the fall of 1990, the Nigerian Mobile Police Force responded to the rumor of an attack being planned against a Shell facility by raiding local villages.<sup>10</sup> The raids left more than eighty villagers dead and over 495 homes destroyed.<sup>11</sup> In response, the people organized the Movement for the Survival of the Ogoni People (“MOSOP”) and issued the Ogoni Bill of Rights to demand control over the natural resources in the region and the power of self-determination.

In 1993, protests forced Shell to cease oil production in the Ogoniland region of Nigeria.<sup>12</sup> In an effort to allow Shell to resume drilling, Nigeria’s dictatorial military regime continued to detain, arrest, and harass Saro-Wiwa, Kpuinen and the other local environmental activists.<sup>13</sup> Saro-Wiwa, Kpuinen and other MOSOP leaders were hanged in 1995 amidst widespread protest from people throughout the world.<sup>14</sup> Their executions followed a trial in which Shell and Nigerian authorities allegedly conspired to bribe witnesses to falsely testify. Although Shell denies any responsibility for these actions, there are many allegations of its complicity with the repressive military actions of the Nigerian government, in order to suppress and quash those organizing against Shell’s drilling

activities.<sup>15</sup>

This case was filed by family members of Saro-Wiwa and Kpuinen, as well as by an unnamed party representing a woman who was fatally shot at a 1993 MOSOP demonstration.<sup>16</sup> The plaintiff’s asserted that the district court has jurisdiction to hear this case under the Alien Tort Claims Act.<sup>17</sup> The amended complaint asserted thirteen complaints against Shell.<sup>18</sup> The plaintiff’s contend that Shell conspired with the Nigerian government to intimidate, harass, jail, and ultimately execute MOSOP opposition leaders.<sup>19</sup> They allege that Shell made direct payments to the Nigerian police force, shared intelligence information, helped to plan raids and “terror campaigns” against the Ogoni, bribed witnesses into asserting false charges against Saro-Wiwa and Kpuinen, and led a coordinated media campaign to discredit MOSOP and its leadership.<sup>20</sup>

The plaintiff’s further allege that that the Ogoni people have been the victims of severe and persistent ecological and public health abuses resulting from Shell’s negligent and reckless activities.<sup>21</sup> Examples of these abuses include repeated oil spills, unchecked gas flares and placement of unlined waste pits in the middle of Ogoni villages.<sup>22</sup> In June of 1993, a spill from one of Shell’s pipelines was allowed to flow uncontrollably into the surrounding villages for forty days.<sup>23</sup>

After being filed in 1996, the case was immediately challenged on issues of personal jurisdiction and forum non conveniens.<sup>24</sup> In September 1998, Judge Wood granted the defendant’s motion to dismiss, finding that although the court had jurisdiction over the defendant, the United Kingdom was a more convenient forum.<sup>25</sup> On appeal to the Second Circuit Court of Appeals, the plaintiffs claimed that granting the forum non conveniens motion was inconsistent with Congress’ intent in permitting individuals to seek redress against foreigners in United States courts under the Alien Tort Claims Act.<sup>26</sup> The Court of Appeals agreed with the plaintiffs’ argument and remanded the case back to the district court.<sup>27</sup> Shell appealed to the United States Supreme Court, but certiorari was denied in March of 2001.<sup>28</sup> Judge Wood’s decision of February 2002 will allow the litigation to proceed to discovery, making either trial or settlement much more likely. ○

(ENDNOTES ON PAGE 20)

FOR MORE INFO ON THE CASE:  
[HTTP://WWW.EARTHRIGHTS.ORG/SHELL/](http://www.earthrights.org/shell/)

FOR MORE INFO ON THE Ogoni STRUGGLE:  
[HTTP://WWW.MOSOPCANADA.ORG/](http://www.mosopcanada.org/)

# ENDNOTES

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## WIWA v. ROYAL DUTCH PETROLEUM CO:

(CONTINUED FROM PAGE 3)

<sup>1</sup> See Stephen Buckley, *Nigeria Hangs Playwright, Eight Activists; International Pleas for Mercy Ignored*, N.Y. Times A1 (Nov. 11, 1995).

<sup>2</sup> See *Wiwa v. Royal Dutch Petroleum Co.*, 2002 WL 319887 (S.D.N.Y. 2002).

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See EARTHRIGHTS INTERNATIONAL: RESOURCE CENTER, *Wiwa v. Royal Dutch Petroleum Co. (Shell): Complaint*, (last visited Apr. 9, 2002), available at <http://www.earthrights.org/shell/complaint.html>.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See Bronwen Manby, *The Role and Responsibility of Oil Multinationals in Nigeria*, J. INTL. AFFAIRS, Sep. 22, 1999, available at 1999 WL 32962017.

<sup>10</sup> See MOSOP CANADA, THE STORY OF SHELL AND THEIR INVOLVEMENT IN Ogoni (last visited Apr. 9, 2002), available at <http://www.mosopcanada.org/shell.html>.

<sup>11</sup> See *id.*

<sup>12</sup> See *Shell-Ogoni Meeting Setup*, OIL DAILY, July, 27, 2001, available at 2001 WL 14945987.

<sup>13</sup> See Manby, *supra* note 9.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See EARTHRIGHTS INTERNATIONAL, *supra* note 2.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* (listing the charges made in the complaint as: 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; negligence; and violations of the Racketeer Influenced and Corrupt Organizations Act).

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 94 (2d Cir. 2000).

<sup>25</sup> See *id.*

<sup>26</sup> See *id.* at 106-08.

<sup>27</sup> See *id.*

<sup>28</sup> See *Royal Dutch Petroleum Co. v. Wiwa*, 532 U.S. 941 (2001).