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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. 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. They alleged that Shell was complicit in the deaths of the activists, and in the events that led up to the executions. 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.

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

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. 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. The raids left more than eighty villagers dead and over 495 homes destroyed. 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. 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. Saro-Wiwa, Kpuinen and other MOSOP leaders were hanged in 1995 amidst widespread protest from people throughout the world. 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.

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. The plaintiff’s asserted that the district court has jurisdiction to hear this case under the Alien Tort Claims Act. The amended complaint asserted thirteen complaints against Shell. The plaintiff’s contend that Shell conspired with the Nigerian government to intimidate, harass, jail, and ultimately execute MOSOP opposition leaders. 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.

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. Examples of these abuses include repeated oil spills, unchecked gas flares and placement of unlined waste pits in the middle of Ogoni villages. In June of 1993, a spill from one of Shell’s pipelines was allowed to flow uncontrollably into the surrounding villages for forty days.

After being filed in 1996, the case was immediately challenged on issues of personal jurisdiction and forum non conveniens. 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. 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. The Court of Appeals agreed with the plaintiffs’ argument and remanded the case back to the district court. Shell appealed to the United States Supreme Court, but certiorari was denied in March of 2001. 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/

FOR MORE INFO ON THE OGONI STRUGGLE:
HTTP://WWW.MOSOPCANADA.ORG/
ENDNOTES

WIWA v. ROYAL DUTCH PETROLEUM CO:
(CONTINUED FROM PAGE 3)

3 See id.
4 See id.
6 See id.
7 See id.
8 See id.
11 See id.
13 See Manby, supra note 9.
14 See id.
15 See id.
16 See EARTHIGHTS INTERNATIONAL, supra note 2.
17 See id.
18 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).
19 See id.
20 See id.
21 See id.
22 See id.
23 See id.
24 See Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 94 (2d Cir. 2000).
25 See id.
26 See id at 106-08.
27 See id.

ENVIRONMENTAL ENLARGEMENT IN THE EUROPEAN UNION:
(CONTINUED FROM PAGE 9)

34 See DESMOND DINAN, EVER CLOSER UNION: AN INTRODUCTION TO EUROPEAN INTEGRATION 418 (2d ed. 1999).
36 See EUROPEAN COMMISSION, 5 ENLARGING THE ENVIRONMENT (July 1997) (interview with Environment Commissioner Bjerregaard) (commenting that environment could be a stumbling block for accession).
37 See EUROPEAN COMMISSION, NEW EU INSTRUMENT TO ATTRACT FRESH FUNDS FOR ENVIRONMENTAL INVESTMENT, 15 ENLARGING THE ENVIRONMENT 1, 1-2 (Aug. 1999).
38 See JOHN PETTSON & ELIZABETH BOMBERG, supra note 17, at 54.
39 See DINAN, supra note 34, at 418.
40 See PETTSON & BOMBERG, supra note 17, at 54.
41 See Mccormick, DEEPENING AND WIDENING, supra note 2, at 201-02 (stating that it was expected that the EU would raise their environmental standards to the level of the new members, rather than having the new members lower their environmental standards to those of the Union).
42 See Nicole Lindstrom, Rethinking Sovereignty: The Politics of European Integration in Slovenia, 24 FLETCHER F. WORLD AFF. 31, 35 (Feb 2000).
43 See COMMISSION, APPROXIMATION GUIDE, supra note 14, at 8 n.2.
46 See GRABBE & HUGHES, supra note 32, at 1.
47 See GRABBE & HUGHES, supra note 32, at 30.
48 But see Alexander & Petkov, supra note 33, at 592 (stating that the Commission has ruled out accession after only partial adoption of the acquis. See also THE SWEDISH PRESIDENCY, CENTRAL CHALLENGES (commenting that applicant countries are requesting long transitional periods for environmental compliance), available at http://www.eu2001.se/static/eng/eu_info/utvidgning_utmanning.asp.
51 See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, supra note 35, at 6.
52 See EUROPEAN COMMISSION, HANDBOOK ON THE IMPLEMENTATION OF EC ENVIRONMENTAL LEGISLATION 7 (2000).
53 COMMISSION, APPROXIMATION GUIDE, supra note 14, at 1.
54 See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT, supra note 45.
55 See COMMISSION, APPROXIMATION GUIDE, supra note 14, at 40.
56 See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT, supra note 45.
57 See COMMISSION, APPROXIMATION GUIDE, supra note 14, at 11.
58 See COMMISSION, APPROXIMATION GUIDE, supra note 14, at 11.
59 See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, supra note 35, at annex 2 (declaring that some areas of the acquis will not be covered by existing legislation, making it necessary to create new authorities).
60 See Helen E. Hartnell, Subregional Coalescence in European Regional Integration, 16 Wis. INT’L L.J. 115, 167-68 (1997) (suggesting that it is easy to adopt legislation, but to make the legislation function requires more effort).
61 See e.g., COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, supra note 35, at 3 (commenting on progress made by the applicant countries in the fields of air, waste and water). Implementation plans to comply with air emissions had not been developed yet. The waste sector also requires significant work by the applicant countries.
62 See COMMISSION, APPROXIMATION GUIDE, supra note 14, at 140.
63 See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, supra note 35, at 10 (predicting benefits applicant countries will receive from compliance, including more efficient industries, healthier products, cost efficient products).
64 See MILIEU LTD. & THE REGIONAL ENVIRONMENTAL CENTER, PROGRESS MONITORING ON APPROXIMATION IN THE CANDIDATE COUNTRIES OF CENTRAL AND EASTERN EUROPE 14 (2000) (commenting that much of the acquis requires lengthy implementation periods, but a delay in implementation may result in delays in accession).
66 See ECOTEC RESEARCH & CONSULTING, ADMINISTRATIVE CAPACITY FOR IMPLEMENTATION AND ENFORCEMENT OF EU ENVIRONMENTAL POLICY IN THE 13 CANDIDATE COUNTRIES.