

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 RACKETEER 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).

#### JURISDICTION

5. This Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal question jurisdiction), 18 U.S.C. § 1964(c) (Racketeer Influenced and Corrupt Organizations Act), and 28 U.S.C. § 1350 (Alien Tort Claims Act). The Alien Tort Claims Act provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

6. In addition, Plaintiffs invoke the supplemental jurisdiction of this Court, 28 U.S.C. § 1367, over claims based upon laws of the State of New York.

#### PARTIES

7. Plaintiff Ken Wiwa brings this action individually and as executor of the estate of his father, Ken Saro-Wiwa, now deceased, who was a subject, citizen, and resident of Nigeria. Ken Wiwa presently resides in England and is a citizen of Great Britain.

8. Plaintiff Owens Wiwa is a resident of Canada and a citizen of Nigeria. He is the brother of Ken Saro-Wiwa.

9. Plaintiff Blessing Kpuinen brings this action individually and as administratrix of the estate of her husband, John Kpuinen, now deceased, who was a subject, citizen, and resident of Nigeria. Plaintiff Kpuinen presently resides in the United States and is a citizen of Nigeria.

10. Plaintiff Jane Doe is a citizen of Nigeria. She files anonymously out of fear for her safety if her identity were known.

11. Defendant Royal Dutch Petroleum Company is a corporation organized under the laws of the Netherlands. Its corporate headquarters are in The Hague, Netherlands.

12. Defendant Shell Transport and Trading Company, p.l.c., is a corporation organized under the laws of England. Its corporate headquarters are in London, England.

13. Defendants Royal Dutch Petroleum Company and Shell Transport and Trading Company, p.l.c. ("Royal Dutch/Shell"), are holding companies which, together, operate and control the Royal Dutch/Shell Group.

14. Royal Dutch/Shell, through their wholly owned subsidiaries, are major investors in Nigeria and explore for, produce and sell energy products derived from Nigerian oil and natural gas.

15. Royal Dutch/Shell wholly own Shell Petroleum, Inc., a holding company, incorporated and organized under the laws of Delaware with offices in Houston, Texas, which in turn wholly owns Shell Oil Company ("Shell USA"), a corporation incorporated in Delaware with offices in Houston, Texas, and doing business in New York, New York.

16. Royal Dutch/Shell maintain offices in New York City, staffed with its employees.

17. Shell USA was formed by Royal Dutch/Shell for corporate finance purposes to conduct its business in the U.S. and, as such, Shell USA is the agent of Royal Dutch/Shell.

18. Upon information and belief, Royal Dutch/Shell controls the activities of Shell USA, including the offices maintained in New York.

19. Royal Dutch/Shell wholly owns The Shell Petroleum Company, Ltd., a holding company which in turn wholly owns Shell Petroleum Development Company of Nigeria, Ltd. ("SPDC"), a corporation doing business in Nigeria.

20. Plaintiffs are informed and believe, and on that basis allege, that at all times herein material: (a) Defendants were the employers of and/or working in concert with the Nigerian military regime; and (b) the Nigerian military regime was acting as the agent of, and/or working in concert with Royal Dutch/Shell, and was acting within the course and scope of such agency, employment and/or concerted activity. To the extent that said conduct was perpetrated by the military regime, Defendants conspired in, confirmed, and/or ratified, the same.

21. Plaintiffs are informed and believe, and on that basis allege, that at all times herein material, Defendants Royal Dutch/Shell dominated and controlled SPDC and each was the alter ego of the other.

22. Plaintiffs are informed and believe, and on that basis allege, that at all times herein material, each Defendant conspired with his/her co-defendants and/or the military regime by entering into an agreement to commit wrongful and tortious acts contained

herein and each Defendant participated in or committed a wrongful act in furtherance of said conspiracy which resulted in injury to the Plaintiffs.

23. Whenever and wherever reference is made in this Complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly and severally.

24. Whenever and wherever reference is made to individuals who are not named as Defendants in this Complaint, but were employees/agents of Defendants, such individuals at all relevant times acted on behalf of the Defendants named in this Complaint within the scope of their respective employments.

#### 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**

94. The acts described herein were inflicted under color of law and under color of official authority, and/or in conspiracy with or on behalf of those acting under color of official authority.

95. The acts and injuries to Plaintiffs and their next-of-kin described herein were part of a pattern and practice of systematic human rights violations directed, ordered, confirmed, and/or ratified by Defendants and their agents and/or committed in conspiracy with the Nigerian military regime.

96. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered and will continue to suffer harm including pain and suffering, and extreme and severe mental anguish and emotional distress. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

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(xxii), 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.

### **FIRST CLAIM FOR RELIEF**

#### **(Summary execution)**

99. The allegations set forth in paragraphs 1 through 99 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

100. The deliberate killings, under color of law, of Ken Saro-Wiwa and John Kpuinen were not authorized by a lawful judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

101. The acts described herein constitute summary execution in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

102. Defendants Royal Dutch/Shell are liable for the killings in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the deaths of Ken Saro-Wiwa and John Kpuinen.

### **SECOND CLAIM FOR RELIEF**

#### **(Crimes Against Humanity)**

103. The allegations set forth in paragraphs 1 through 103 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

104. The acts described herein against Plaintiffs constitute crimes against humanity, in violation of customary international law which prohibits inhumane acts of a very serious nature such as willful killing, torture and arbitrary arrest and detention and other inhumane acts committed as part of a widespread or systematic attack against any civilian population or persecutions on political, racial or religious grounds. Leaders, organizers, instigators and accomplices participating in the formulation of these acts are responsible for all acts performed by any person in execution of such plan.

105. The acts described herein constitute crimes against humanity in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

106. Defendants Royal Dutch/Shell are liable to Plaintiffs for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the crimes against humanity committed against Plaintiffs.

### **THIRD CLAIM FOR RELIEF**

#### **(Torture)**

107. The allegations set forth in paragraphs 1 through 107 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

108. The tortures of Ken Saro-Wiwa, John Kpuinen and Jane Doe, as described herein were inflicted deliberately and intentionally for purposes which included, among others, punishing the victim or intimidating the victim or third persons.

109. The acts described herein constitute torture in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

110. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the Nigerian military regime in bringing about the torture of Ken Saro-Wiwa, John Kpuinen and Jane Doe.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Cruel, Inhuman, or Degrading Treatment)**

111. The allegations set forth in paragraphs 1 through 111 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

112. The acts described herein had the intent and the effect of grossly humiliating and debasing the Plaintiffs, forcing them to act against their will and conscience, inciting fear and anguish, breaking physical or moral resistance, and forcing them to leave their home and country and flee into exile.

113. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

114. All Plaintiffs were placed in great fear for their lives and forced to suffer severe physical and psychological abuse and agony.

115. Defendants Royal Dutch/Shell are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime to cause the cruel, inhuman or degrading treatment of Ken Saro-Wiwa, John Kpuinen, Owens Wiwa, and Blessing Kpuinen.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Arbitrary Arrest and Detention)**

116. The allegations set forth in paragraphs 1 through 116 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

117. The arbitrary arrests and detention of Ken Saro-Wiwa, John Kpuinen and Owens Wiwa were illegal and unjust, and in violation of customary international law.

118. Plaintiffs Ken Saro-Wiwa, John Kpuinen and Owens Wiwa were placed in fear for their lives, were deprived of their freedom, separated from their families and forced to suffer severe physical and mental abuse.

119. The acts described herein constitute arbitrary arrest and detention in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

120. Defendants Royal Dutch/Shell are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the arbitrary arrests and detention of Ken Saro-Wiwa, John Kpuinen and Owens Wiwa.

**SIXTH CLAIM FOR RELIEF**  
**(Violation of the Rights to Life,  
Liberty and Security of Person  
and Peaceful Assembly and Association)**

121. The allegations set forth in paragraphs 1 through 121 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

122. The beating and shooting of Plaintiff Jane Doe when she was peacefully demonstrating against the actions of Defendants constitute violations of her rights to life, liberty and security of person, and her rights to peaceful assembly and association.

123. The arrest, detention, and executions of Ken Saro-Wiwa and John Kpuinen were violations of their rights to life, liberty and security of person and peaceful assembly and association for which Defendants Royal Dutch/Shell are liable.

124. The arrest and detention of Owens Wiwa were violations of his rights to liberty and security of person and peaceful assembly and association for which Defendants Royal Dutch/Shell are liable.

125. The acts described herein constitute violations of Plaintiffs' rights to life, liberty and security of person, and to peaceful assembly and association, in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of New York, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described in paragraph 98 herein.

126. Defendants Royal Dutch/Shell are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the violations of the rights to life, liberty and security of person and peaceful assembly and association.

**SEVENTH CLAIM FOR RELIEF**  
**(Wrongful Death)**

127. Plaintiffs Ken Wiwa and Blessing Kpuinen on behalf of their deceased relatives, Ken Saro-Wiwa and John Kpuinen, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 127 as if fully set forth herein.

128. Plaintiff Ken Wiwa is the natural son of Ken Saro-Wiwa and his heir at law.

129. Plaintiff Blessing Kpuinen is the widow of John Kpuinen and his heir at law.

130. As a direct result of the Defendants' acts and omissions and as a result of the death of his father, Plaintiff Ken Wiwa has sustained pecuniary loss resulting from loss of society, comfort, attention, services and support of decedent Ken Saro-Wiwa.

131. As a direct result of the Defendants' acts and omissions and as a result of the death of her husband, Plaintiff Blessing Kpuinen has sustained pecuniary loss resulting from loss of society, comfort, attention, services and support of decedent John Kpuinen.

132. Defendants Royal Dutch/Shell are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the wrongful deaths of Ken Saro-Wiwa and John Kpuinen.

133. The acts described herein constitute wrongful death, actionable under the laws of New York, the United States and Nigeria.

#### **EIGHTH CLAIM FOR RELIEF**

##### **(Assault and Battery)**

134. The allegations set forth in paragraphs 1 through 134 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

135. As a result of these acts, Plaintiffs were placed in great fear for their lives and suffered severe physical and psychological abuse and agony.

136. Defendants' acts were willful, intentional, wanton, malicious and oppressive.

137. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the assault and battery of Ken Saro-Wiwa, Owens Wiwa, John Kpuinen, Blessing Kpuinen, and Jane Doe.

138. The acts described herein constitute assault and battery, actionable under the laws of New York, the United States and Nigeria.

#### **NINTH CLAIM FOR RELIEF**

##### **(Intentional Infliction of Emotional Distress)**

139. The allegations set forth in paragraphs 1 through 139 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

140. The acts described herein constitute outrageous conduct in violation of all normal standards of decency and were without privilege or justification.

141. These outrageous acts were intentional and malicious and done for the purposes of causing Plaintiffs to suffer humiliation, mental anguish and extreme emotional and physical distress.

142. As a result of Defendants' acts, Plaintiffs were placed in great fear for their lives and were forced to suffer severe physical and psychological abuse and agony.

143. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the intentional infliction of emotional distress of Ken Saro-Wiwa, John Kpuinen, Owens Wiwa, Blessing Kpuinen, and Jane Doe.

144. Defendants' outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of New York, the United States and Nigeria.

#### **TENTH CLAIM FOR RELIEF**

##### **(Negligent Infliction of Emotional Distress)**

145. The allegations set forth in paragraphs 1 through 145 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

146. The actions of Defendants, and each of them, constituted a negligent infliction of emotional distress upon said Plaintiffs.

147. Defendants, and each of them, carelessly and negligently inflicted said emotional distress through a wanton and reckless campaign of harassment and intimidation.

148. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the negligent infliction of emotional distress of Ken Saro-Wiwa, John Kpuinen, Owens Wiwa, Blessing Kpuinen, and Jane Doe.

149. As a direct and legal result of Defendants' wrongful acts, Plaintiffs have suffered and will continue to suffer significant physical injury, pain and suffering and extreme and severe mental anguish and emotional distress.

150. Defendants' conduct constitutes the negligent infliction of emotional distress and is actionable under the laws of New York, the United States and Nigeria.

#### **ELEVENTH CLAIM FOR RELIEF**

##### **(Negligence)**

151. The allegations set forth in paragraphs 1 through 151 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

152. Defendants failed to use ordinary or reasonable care in order to avoid injury to Plaintiffs. Defendants' negligence was a cause of injury, damage, loss or harm to Plaintiffs and their next of kin.

153. Defendants' conduct constitutes negligence and is actionable under the laws of New York, the United States, and Nigeria.

#### **TWELFTH CLAIM FOR RELIEF**

**(Violations of the Racketeer Influenced and  
Corrupt Organizations Act)**

154. The allegations set forth in paragraphs 1 through 154 of this Complaint are realleged and incorporated by reference as if fully set forth herein.

155. From not later than 1990 to the present, Defendants Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c., and their agents and co-conspirators formed a RICO "enterprise" within the meaning of 18 U.S.C. § 1961(4) engaged in foreign and interstate commerce.

156. Alternatively, Defendants and their agents and co-conspirators constituted an association in fact for a common purpose with a continuous existence separate and apart from the pattern of racketeering activity in which they engaged. This association in fact constituted an enterprise within the meaning of 18 U.S.C. § 1961(4).

157. Each Defendant is an "individual or entity capable of holding a legal or beneficial interest in property" and, as such, each constitutes a "person" within the meaning of 18 U.S.C. § 1961(3).

158. The Defendants are engaged in interstate acts of commerce and the acts alleged herein have a potential effect on commerce.

159. Over a period of years and continuing to the present, Defendants with their co-conspirators or agents, in violation of 18 U.S.C § 1962(b) through a pattern of racketeering activity, have acquired and maintained an interest in petroleum exploration and exploitation projects in Nigeria.

160. At all times relevant to this Complaint, the Defendants, and their agents and co-conspirators conducted, or participated directly or indirectly in the conduct of the affairs of the enterprise through a pattern of racketeering activity, within the meaning of 18 U.S.C. § 1961 (1) (5), in violation of 18 U.S.C. § 1962 (c).

161. At all times relevant to this Complaint, the Defendants Royal Dutch/Shell, in violation of 18 U.S.C. § 1962(d) combined and conspired together and with their agents and co-conspirators to commit conduct the affairs of the enterprise through a pattern of racketeering activity.

162. In furtherance of the conspiracy, and to effect the objects thereof, the Defendants committed overt acts as set forth more fully in paragraphs 1 through 162.

163. During 1992 and 1993, in violation of 18 U.S.C §§ 1962(c) and (d), Defendants, with their agents and co-conspirators, conspired to and did conduct the affairs of the enterprise through a pattern of racketeering activity.

164. The pattern of racketeering activity alleged in paragraphs 1 through 98 above included the following specific acts, all of which constituted and are defined as racketeering activity by 18 U.S.C. § 1961(1) and all of which are set forth in the specific numbered paragraphs herein which are realleged and incorporated here by reference as if fully set forth, as follows:

a) arson;

- b) murder;
- c) bribery;
- d) wire fraud, 18 U.S.C. § 1343;
- e) extortion, 18 U.S.C. § 1951.

165. It was the object of the extortion to force Plaintiffs Owens Wiwa and Jane Doe to surrender their property.

166. Defendants' acts alleged herein have substantial effect within the United States.

167. As a direct and proximate result of the Defendants' violations of 18 U.S.C. §§ 1962 (b), (c) and (d) Plaintiff Jane Doe has suffered an injury to her business or property.

168. As a direct and proximate result of the Defendants Royal Dutch/Shell's violations of 18 U.S.C. §§ 1962 (b), (c) and (d) Plaintiff Owens Wiwa has suffered an injury to his business or property.

169. The injuries suffered by each Plaintiff were reasonably foreseeable or anticipated by the Defendants as the natural consequence of Defendants' acts.

#### PRAYER FOR RELIEF

WHEREFORE, each and every Plaintiff prays for judgment against Defendant Royal Dutch Shell and Defendant

Shell Transport and Trading Company, p.l.c., in excess of \$50,000, as follows:

- (a) for compensatory damages;
- (b) for punitive damages;
- (e) for treble damages;
- (d) for costs of suit, attorneys fees and such other relief as the Court deems just and proper.

#### JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: April 29, 1997 Respectfully submitted,

New York, NY

By

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