IN THE DOCK

SHELL'S COMPLICITY IN THE ARBITRARY EXECUTION OF THE OGONI NINE

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Cover photo: *Five of the defendants at the Ogoni Civil Disturbances Tribunal in Port Harcourt, Nigeria, 1995. From right: Ledum Mitee, Baribor Bera, Ken Saro-Wiwa, John Kpuinem, Barinem Kiobel. All except for Ledum Mittee were convicted after a politically-motivated and unfair trial and then hanged, along with five other men.*
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INTRODUCTION

In November 1995, the Nigerian state arbitrarily executed nine men after a blatantly unfair trail. The executions led to global condemnation. The United States and the European Union imposed sanctions and the Commonwealth group of nations suspended Nigeria's membership. [1] Officially accused of involvement in murder, the men had in fact been put on trial because they had challenged the devastating impact of oil production by the Anglo-Dutch oil giant, Shell, in the Ogoniland region of the Niger Delta.

The executions were the culmination of a brutal campaign by Nigeria's military to silence the protests of the Movement for the Survival of the Ogoni People (MOSOP), led by author Ken Saro-Wiwa, one of the men executed. In January 1993, MOSOP declared that Shell was no longer welcome to operate in its area. [2] The Nigerian security forces' subsequent campaign in Ogoniland directly led to serious human rights violations, including the unlawful killing of hundreds of Ogoni people.[3]

This briefing examines the role played by the Shell in the unfair trial and arbitrary execution of the Ogoni Nine. Shell has always denied any involvement. However, Amnesty International's work at the time, as well as evidence being used in a new legal action in the Netherlands, brought by the widows of some of the men who were executed, paints a very different picture.

ESTHER KIOBEL SUES SHELL IN JUNE 2017

The events of the 1990s remain alive today because the people of Ogoniland continue to struggle for justice for the environmental damage that oil pollution has caused, which has never been cleaned up. [4] The quest for justice and reparations for the arbitrary executions of the Ogoni Nine also continues – driven by one woman who has pursued Shell over its role in the executions from Nigeria to the United States Supreme Court to a court in Shell's home country, the Netherlands.

Esther Kiobel is the widow of Dr Barinem Kiobel, one of the Ogoni Nine. She was forced to flee Nigeria after her husband's execution. She first filed a case against Shell in New York in 2002, but in 2013 the US Supreme Court ruled that the US did not have jurisdiction, without hearing the substance of the case.

On 29 June 2017 she announced that she had filed a writ in the Netherlands, commencing legal action there, to pursue justice for her husband and herself. The civil case accuses Shell of complicity in the unlawful arrest and detention of her husband; the violation of his personal integrity; the violation of his right to a fair trial and his right to life, and her own right to a family life.

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[1] Professor Michael Watts, Wiwa Plaintiffs' Expert Report, 2008, p41-2.
[2] Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, Verso, 2003, p119.
[3] See the following: Amnesty International, 9 August 1993, UA 268/93 - Nigeria: Extrajudicial Executions: At Least 35 Members Of The Ogoni Ethnic Group From The Town Of Kaa In Rivers State, Including Mr Nwiku And Three Young Children, available at https://www.amnesty.org/en/documents/afr44/011/1993/en/; Human Rights Watch, *Nigeria: a case study of military repression in South East Nigeria*, July 1995, available at https://www.hrw.org/reports/1995/Nigeria.htm , (hereinafter Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*); The Oputa Panel, *Human Rights Violations Investigation Commission, Volume IV, 2.12, p35,* 2002 (hereinafter The Oputa Panel); Karl Maier, *This House has Fallen: Nigeria in Crisis*, Penguin, 2000.
[4] United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, available at: www.unep.org/disastersandconflicts/CountryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx.

Esther Kiobel is bringing a civil case along with Victoria Bera, Blessing Eawo and Charity Levula, whose husbands were executed with Barinem Kiobel. The claimants are demanding damages for harm caused by Shell's unlawful actions, and a public apology for the role that Shell played in the events leading to the deaths of their husbands.

Esther Kiobel is suing Shell for its role in the arbitrary arrest, unfair trial and execution of her husband, Barinem Kiobel, 2017. Amnesty International.

MOSOP'S CAMPAIGN FOR RIGHTS IN OGONILAND

MOSOP began its campaign in 1990 with the publication of the "Ogoni Bill of Rights" which outlined the movement's grievances and demands.[5]MOSOP wanted the government to grant Ogoniland political autonomy and a much greater share of its oil wealth. MOSOP argued that oil had made others rich while condemning the inhabitants of the area, who mainly relied on farming and fishing, to poverty. Pollution from oil spills and gas flaring had, MOSOP said, "*led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster*."[6] In January 1993, the MOSOP campaign forced the oil company that operated in Ogoniland, the Anglo-Dutch firm, Shell, to announce its withdrawal from the area.[7] Shell said that this was because of a worsening security situation and attacks on members of staff. [8]

Although Ogoniland is only a small part of the Niger Delta, MOSOP's protests had potentially wide ramifications. The government's finances relied upon oil. In 1995, the year of the executions, oil made up 95.7 percent of Nigeria's total exports.[9] Nigeria could not afford for production to be disrupted by prolonged community protests, and the government was afraid that MOSOP's campaign would be copied by other disaffected communities.[10] Indeed, inspired by MOSOP, 23 other communities organised their own groups during the 1990s.[11] In 1993-4 alone, Human Rights Watch documented protests in four other oil-producing communities.[12] In each case, the security forces used violence to break up demonstrations. [13]

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[5] The Movement for the Survival of the Ogoni People, *The Ogoni Bill of Rights*, 1990.
[6] The Movement for the Survival of the Ogoni People, *The Ogoni Bill of Rights*, article 16, 1990.
[7] Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p3.
[8] Shell said it finally stopped all oil production in Ogoniland by mid-1993. Shell Nigeria, *Nigeria Brief: The Ogoni Issue*, 1995, p2.
[9] Jedrzej George Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*, Transaction Publishers, 2000, p25.
[10] Jedrzej George Frynas, *Political Instability and Business: Focus on Shell in Nigeria*, Third World Quarterly, Vol. 19, No. 3 (Sep., 1998), p 464.
[11] The Oputa Panel, *Volume IV, 2.12, p35*, 2002.
[12] In October 1992, members of the Ijaw community announced the establishment of the Movement for the Survival of the Izon Ethnic Nationality in the Niger Delta (MOSIEND). The Ogbia community in Oloibiri set up the Movement for Reparation to Ogbia (MORETO) in November 1992. The Council for Ikwerre Nationality was founded in 1993. Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.
[13] Human Rights Watch, *Nigeria: A Case Study of Military Repression in Southeastern Nigeria*.

Map of the Niger Delta region in Nigeria

THE ENVIRONMENT IN OGONILAND

MOSOP protested against the environmental damage caused by Shells operations. In 2011 a scientific study carried out by the United Nations Environment Programme (UNEP) exposed an appalling level of pollution, including the contamination of agricultural land and fisheries, the contamination of drinking water, and the exposure of hundreds of thousands of people to serious health risks. [14] Six years on little has been done to address UNEP's recommendations.[15]

Contaminated waters at the Barabeedom swamp, Ogoniland, September 2015. © Michael Uwemedimo/cmapping.net.

GOVERNMENT CRACKDOWN

In spite of MOSOP's call for Shell not to operate in Ogoniland, and despite Shell's claim in January 1993 that it was ceasing operations there, Shell's contractors continued work to lay a new pipeline through Ogoniland. On 30 April, 1993, Nigerian army troops guarding contract workers laying Shell's pipeline opened fire on protestors, injuring 11 unarmed villagers. Four days later, troops clashed with villagers again, shooting dead a protestor.[16]

The government took steps to suppress the MOSOP campaign. Nigeria's security agency, the State Security Services (SSS), arrested its leader, Ken Saro-Wiwa, on three separate occasions from April to June 1993.[17] On the first two occasions he was released after 24 hours, without having been charged. On the third

[14] United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011.

[15] Amnesty International's ongoing research on the Niger Delta and Ogoniland from the 1990s to the present time has repeatedly exposed Shell's failure to address community concerns about the environmental, social and health impacts of the oil industry. See, for example, Amnesty International, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta, June 2009, Index number: AFR 44/017/2009, available at https://www.amnesty.org/en/documents/AFR44/017/2009/en/; Amnesty International, Bad Information: Oil Spill Investigations in the Niger Delta, November 2013, Index number: AFR 44/028/2013, available at: https://www.amnesty.org/en/documents/afr44/028/2013/en/; Amnesty International, Clean It Up: Shell's false claims about oil spill response in the Niger Delta, Index number: AFR 44/2746/2015, available at: https://www.amnesty.org/en/documents/afr44/2746/2015/en/

[16] Amnesty International, *UA 163/93 - Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, And 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge Or Trial, AFR 44/04/93*, 18 May 1993, available at https://www.amnesty.org/en/documents/afr44/004/1993/en/.

[17] J. Timothy Hunt, *The Politics of Bones, Dr Owens Wiwa and The Struggle for Nigeria's Oil*, McClelland & Stewart, 2005 (hereinafter J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*).

occasion, he was charged in connection with his campaigning activities along with two other men.[18] Ken Saro-Wiwa twice collapsed in jail due to a heart condition. Amnesty International publicly campaigned for the men's release, considering them to be prisoners of conscience who were detained because of their political activities and who neither used nor advocated violence. The men were released on bail more than a month after they were originally detained.[19] Other members of MOSOP were also arbitrarily arrested and detained on numerous occasions.

Starting in mid-1993, the security forces incited and participated in a series of attacks on the Ogoni that the government sought – ultimately unsuccessfully – to blame on inter-communal tensions. An official report, published in 2002, found that these attacks resulted in the death of about 1,000 people, destroyed ten villages, and made 30,000 people homeless. [20] Survivors told reporters that some of the attackers wore army uniforms and used automatic weapons and grenades. [21]

Following these attacks, in October 1993, Shell tried to return to Ogoniland and inspected its sites with an army escort. Protests broke out again, and troops opened fire at Korokoro village killing one man. [22]

Soon afterwards, in November 1993 there was a change of government. Following a military coup, the defence minister General Sani Abacha seized power. Abacha banned all political activity, replaced civilian governors with military administrators, and jailed and executed hundreds of opponents. [23]

In January 1994 the military government created the Rivers State Internal Security Task Force (ISTF), made up of army, navy, security services and paramilitary police personnel. Ogoniland is part of the Rivers State. Almost immediately the ISTF engaged in excessive use of force and other human rights violations in response to community protests. For example, on 21 February 21 1994, security forces shot at thousands of people who were peacefully demonstrating outside Shell's main compound at Rumuobiokani in Port Harcourt. One eyewitness told Human Rights Watch that he heard the ISTF Commander, Major Paul Okuntimo, order his soldiers, "Shoot at anyone you see."[24] According to Human Rights Watch:

"The troops began throwing canisters of tear gas, shooting indiscriminately, beating demonstrators with the butts of their guns, and making arrests. P, a community elder, still has a scar on his head from the brutal beating to which he was subjected. Five people were shot, and more than ten people were arrested." [25]

In April 1994, the Rivers State military administrator ordered the ISTF, to "restore and maintain law and order in Ogoniland."[26] One of the force's missions was to ensure that "*those carrying out business activities…are not molested*." [27] The human rights situation in Ogoniland deteriorated further, as will be discussed below.

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[18] They were charged on six counts relating to unlawful assembly, seditious intention and seditious publication. Amnesty International, *UA 238/93 - Nigeria: Health Concern / Legal Concern: Ken Saro-Wiwa, N G Dube, Kobari Nwile,* 19 July 1993, Index number: AFR 44/007/1993, available at https://www.amnesty.org/en/documents/afr44/007/1993/en/

[19] Amnesty International, *Further Information On UA 238/93 (Afr 44/07/93, 20 July; And Follow-Up Afr 44/12/93, 16 August) - Nigeria: Health Concern / Legal Concern: Ken Saro- Wiwa, N.G. Dube, Kobari Nwile,* 31 August 1993, Index number: AFR 44/013/1993.

[20] The Oputa Panel, *Volume III*, 6.44, 2002.

[21] Amnesty International, 9 August 1993, UA 268/93.

[22] Ike Okonto and Oronto Douglas, *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, Verso, 2003, p127.

[23] Amnesty International, *Nigeria: Military Government Clampdown On Opposition,* 11 November 1994, p3, Index number: AFR 44/013/1994, available at https://www.amnesty.org/en/documents/afr44/013/1994/en/.

[24] Human Rights Watch, *Nigeria: a case study of military repression in South East Nigeria*, July 1995.

[25] Human Rights Watch, *Nigeria: a case study of military repression in South East Nigeria*, July 1995.

[26] Rivers State Commissioner of Police, *Restoration of Law and Order in Ogoniland, Operation Order No 4/94*, 21 April 1994, cited in Andy Rowell, Steve Kretzmann, A Project Underground Report, the Lowenstein Human Rights Clinic at Yale University, *All for Shell: The Ogoni Struggle*, 2006.

[27] Rivers State Commissioner of Police, *Restoration of Law and Order in Ogoniland, Operation Order No 4/94*, 21 April 1994.

Soldiers in Ogoniland, 1993, ©private.

ARREST OF MOSOP LEADERS AND FURTHER VIOLENCE IN OGONILAND

On 21 May 1994, four of the traditional Ogoni leaders, who had fallen out with Ken Saro-Wiwa the previous year, were attacked while they were holding a meeting in Giokoo, Ogoniland. According to the prosecution in the subsequent trial, the attack was carried out by a mob of 2,000 men.[28] According to witnesses, the attackers beat the four men to death and then set fire to the corpses. The victims were Chief Edward N. Kobani, who had resigned as MOSOP Vice-President in 1993, Chief Albert T. Badey, Chief Samuel N. Orage, and Chief Theophilus B. Orage.

The day after the murders, Lieutenant-Colonel Dauda Komo, the military administrator of Rivers State, announced at a press conference that MOSOP was to blame. [29] He provided no evidence. Ken Saro-Wiwa was subsequently arrested without charge, accused of inciting supporters to kill his opponents.[30] The security forces later arrested a further 14 men, including a commissioner in the Rivers State government, Dr Barinem Kiobel, who was also from Ogoniland, although not a member of MOSOP. Despite the fact that the government publically levelled allegations against the men, the police did not formally charge them for the next eight months. During that period they were held in military detention facilities. All the defendants said they were innocent.[31]

The ISTF was given responsibility for investigating the murders of the four chiefs, as well as for the detention and interrogation of the defendants, and the security of the trial. [32] Its commander, Major Okuntimo, was promoted to Lt Colonel.[33]

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[28] Michael Birnbaum QC, *A Travesty of Law and Justice*, Article 19, December 1995, p2.
[29] Footage of press conference on file with Amnesty International.
[30] J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, pp 94-5, 100.
[31] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, Index number: AFR 44/020/1995.
[32] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9 Index number: AFR 44/020/1995.
[33] Amnesty International meeting with Paul Okuntimo, 11 December 1994.

Following the murders, the ISTF's made regular raids on Ogoni villages.[34] The force arrested and tortured Ogoni individuals. Troops carried out many extrajudicial executions and opened fire arbitrarily, and soldiers, including Paul Okuntimo, were accused of raping women and girls.[35] It is not known how many people they killed. According to an Amnesty International report released on 24 June 1994, "*more than 50 members of the Ogoni ethnic group are reported to have been extrajudicially executed and over 180 others wounded during attacks by the security forces on Ogoni villages.*"[36] A month later, the Dutch ambassador told Shell Nigeria's then-Chairman Brian Anderson that the army had killed some 800 Ogonis.[37] In a meeting with Amnesty International in Port Harcourt in December 1994, Paul Okuntimo denied that he and his men had carried out human rights abuses, and insisted that they had actually saved lives in Ogoniland.[38]

ILL-TREATMENT IN CUSTODY

Most of the Ogoni leaders arrested in connection with murder of the four chiefs reported being subjected to torture or other ill-treatment while held at Bori detention centre or the Kpor camp, under the control of Paul Okuntimo. For example, Baribor Bera, a member of the MOSOP youth organisation, told the court that after his arrest he had been brutally tortured, forced to sign a confession and implicate other defendants.[39] On 23 February 1995 he showed the tribunal scars from beatings he said he had received at Bori: he said that he was stripped naked, tied to a pillar, flogged with a horsewhip ("koboko") and made to swallow teeth knocked out as a result of being beaten. [40] Ken Saro-Wiwa told the court that while in detention he was regularly beaten, held in manacles in a cell containing 30 other Ogoni prisoners, denied food and medical care.[41] Daniel Gbokoo, another of the Ogoni nine, had to be carried into the tribunal and supported by co-defendants because he was ill as a result, he said, of being beaten with gun butts at the time of his arrest.[42] On 27 June 1995 another defendant, Paul Levula, told the tribunal that he had been strung up by his hands for a long period on two occasions by the police in Port Harcourt following his arrest.[43]

No-one has ever been held to account for the torture and other ill-treatment suffered by those detained in the wake of the murder of the four chiefs.

UNFAIR TRIAL AND EXECUTION

On 6 February 1995, Ken Saro-Wiwa, Dr Barinem Kiobel and the other prisoners were allowed to see their lawyers for the first time since their arrest in May the previous year.[44] They were put on trial by a specially constituted tribunal – The Civil Disturbances Tribunal. Ken Saro-Wiwa, Barinem Kiobel and Saro-Wiwa's deputy in MOSOP, Ledum Mitee, were accused of inciting the murders. The other men were accused of carrying them out. They all faced the death penalty and were denied the right to appeal should they be convicted.

In September 1995, Amnesty International reported that *"the prosecutions appear to be politically motivated and the proceedings and decisions of the special tribunal set up specifically to try the cases do not satisfy international standards for fair trial."* [45] Amnesty International highlighted the following concerns: during their detention, defendants were tortured and denied food. [46] They were held incommunicado for at least eight months, denied access to lawyers and their own doctors. [47] Even after the start of the trial, the commander of the ISTF, Paul Okuntimo, allowed consultations between defendants and their lawyers only by prior arrangement with him and usually only in his presence. [48] Relatives said they were assaulted by soldiers when trying to visit the defendants, who were held at the Bori camp, which was under the control of Lt

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[34] Amnesty International, *Nigeria: military clampdown on the opposition*, 11 November 1994, ref: AFR 44/013/1994.
[35] Human Rights Watch, *Nigeria: a case study of military repression in South East Nigeria*, July 1995.
[36] Amnesty International, *Urgent Action*, 27 June 1994, AI Index AFR 44/06/94.
[37] Brian Anderson, *Nigeria Update*, 26 July 1994.
[38] Amnesty International, 12 December 1994. See also, The Oputa Panel, *Human Rights Violations Investigation Commission, Volume XI*, p183, 2002.
[39] Transcript of the Ogoni Civil Disturbances Tribunal, Day 4, 23 February 1995, p41-5.
[40] Transcript of the Ogoni Civil Disturbances Tribunal, Day 4, 23 February 1995, p45.
[41] Transcript of the Ogoni Civil Disturbances Tribunal, Day 2, 21 February 1995, p33-37.
[42] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9, Index number: AFR 44/020/1995.
[43] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9, Index number: AFR 44/020/1995.
[44] Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: report on the trial of Ken Saro-Wiwa and others*, Article 19, June 1995, p32.
[45] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, Index number: AFR 44/020/1995.
[46] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9, Index number: AFR 44/020/1995.
[47] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9, Index number: AFR 44/020/1995.
[48] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9 Index number: AFR 44/020/1995.

Colonel Okuntimo.[49] The tribunal was not independent of government control.[50] The tribunal conducted the trial of two sets of defendants (those accused of murder and those accused of inciting murder) simultaneously, on the basis of almost identical indictments and prosecution statements. This was prejudicial to the defendants.[51]

On the merits of the case, Amnesty International raised serious concerns about the eyewitness accounts used as evidence by the prosecution.[52] In addition, evidence that supported the defence was not admitted.[53] For example, the judges ignored statements by two key prosecution witnesses that they had been offered bribes to sign false statements incriminating Ken Saro-Wiwa.[54] The bribes allegedly included the offers of job contracts with Shell. One prosecution witness, Charles Danwi, said that representatives of Shell, as well as security agents and government officials, were all present at the meeting where the bribes were offered. Charles Danwi said that in exchange for the bribes, *"he was told to identify anyone that the military arrested."*[55] A second prosecution witness, Naayone Nkpah, also said that a representative of Shell, a Shell lawyer, as well as the commander of the ISTF, (by then) Lt Colonel Okuntimo, were present at the meeting where he was offered bribes.[56] Shell has always strongly denied it was involved in bribing the witnesses.[57]

A British criminal lawyer, Michael Birnbaum QC, who observed the trial, concluded that it was deeply unfair.[58]

"The judgement of the Tribunal is not merely wrong, illogical or perverse. It is downright dishonest. The Tribunal consistently advanced arguments which no experienced lawyer could possibly believe to be logical or just. I believe that the Tribunal first decided on its verdict and then sought for arguments to justify them. No barrel was too deep to be scraped."[59]

In spite of worldwide protests and condemnation by world leaders, Ken Saro-Wiwa and eight others were convicted and, on 10 November 1995, executed by hanging.

The executions of the nine men were carried out in secret. Their bodies were dumped in unmarked graves. Amnesty International considers the nine men were arbitrarily executed, in violation of their right to life.

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[49] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p9, Index number: AFR 44/020/1995.
[50] Amnesty International, *Nigeria: The Ogoni Trials and Detentions*, 14 September 1995, p11, Index number: AFR 44/020/1995.
[51] Amnesty International, *Nigeria: The Ogoni Trials And Detentions*, 14 September 1995, p14, Index number: AFR 44/020/1995.
[52] Amnesty International, *Nigeria: The Ogoni Trials And Detentions*, 14 September 1995, p13, Index number: AFR 44/020/1995, Michael Birnbaum QC, *A Travesty of Law and Justice*, Article 19, December 1995.
[53] Amnesty International, *Nigeria: The Ogoni Trials And Detentions*, 14 September 1995, p6 Index number: AFR 44/020/1995.
[54] Cited in Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied: report on the trial of Ken Saro-Wiwa and others*, Article 19, June 1995, Appendix 10 (hereinafter Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied)*
[55] Cited in Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied*, Appendix 10.
[56] Deposition of Naayone Nkpah, 19 March 2004 (exhibit 24 Nkpah)
[57] For example: *"The Shell Petroleum Development Company denies all allegations of bribery made during the proceedings of the Ogoni Civil Disturbances Tribunal…We have not paid cash, awarded contracts or used any other means to try to influence events surrounding the cases before the Tribunal."* "Shell Nigeria, *Statement by Brian Anderson*, 8 November 1995.
[58] Michael Birnbaum QC, *A Travesty of Law and Justice*, Article 19, December 1995, p2.
[59] Michael Birnbaum QC, *A Travesty of Law and Justice*, Article 19, December 1995, p2.

THE OGONI NINE

Ken Saro-Wiwa: Before launching MOSOP, Ken Saro-Wiwa, from Bane in Ogoniland, was a successful writer. From 1985-90, some 30 million Nigerians tuned in every week to "Basi and Company," a comedy drama he wrote for Nigerian TV.[60] Several of his books won international acclaim, including *Sozaboy: A Novel in Rotten English*, and *On a Darkling Plain*.[61]

Dr Barinem Kiobel: Dr Kiobel was from Kpor community in Ogoniland. Between January and July 1994 he was a senior official in the Rivers State government.[62] Dr Kiobel claimed he tried to stop the attacks on the four chiefs and a British criminal lawyer, Michael Birnbaum QC, who observed the trial, said that the evidence "appears consistent with the claim that [Kiobel] was trying to stop the violence."[63]

Dr. Kiobel was unusual among the Ogoni NIne not only because he held a government post, but because he was not a member of MOSOP. Until today it remains uncertain why Kiobel was targeted alongside Saro Wiwa and his supporters. His wife Esther Kiobel believes it was because Kiobel had been critical of the government's operations in Ogoniland, and had refused to collaborate with the government against Saro-Wiwa.[64]

Baribor Bera, from Bera, Ogoniland, was a member of NYCOP, the MOSOP youth organisation. The prosecution accused him of leading the mob that actually carried out the murders.[65] He denied this, and said that in fact he had tried to prevent the violence.[66]

Saturday Dobee worked as a security guard at a bank in Bori, Ogoniland. He denied being a MOSOP member, but said he knew Ken Saro-Wiwa "in person."[67]

Nordu Eawo was a member of NYCOP, from Nwe-ol, Ogoniland.[68] On 7 July 1995 he told the tribunal that he had been arrested by a leading prosecution witness and taken to his house, where he was beaten and cut on the genitals and head with a sharp stick by other key prosecution witnesses.[69] He said that a tape recording made at the time of this assault was later used by the police to prepare a statement, which he was forced to mark with his thumbprint.

Daniel Gbokoo was an electrician and farmer in Bera, Ogoniland. He denied being a member of MOSOP, but said his brother might have signed him up as a member of NYCOP without his knowledge while he was in hospital.[70]

John Kpuinen, from Bera, Ogoniland, was the deputy president of NYCOP. He denied accusations that he both instigated and took part in the murders, saying he was not present.[71]

Paul Levula, was an active member of MOSOP worked as a clerical officer at a health clinic at Bomu in Ogoniland.[72] He denied the charges.[73]

Felix Nuate was a trader and farmer from Loko, Ogoniland, who was an "ordinary member" of MOSOP, according to his widow, Friday Nuate.[74]

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[60] J. Timothy Hunt, *The Politics of Bones: Dr Owens Wiwa and the Struggle for Nigeria's Oil*, p54.
[61] J. Timothy Hunt, *The Politics of Bones, Dr Owens Wiwa and The Struggle for Nigeria's Oil*, p53-4.
[62] Letter Lt. Col. Dauda Musa Komo (Military Administrator, Rivers State) to Barinem Kiobel, 29 July 1994
[63] Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied*, 10.7 and 23.15
[64] Amnesty International Interview with Esther Kiobel, Amsterdam, 6 December 2016. In 2003 Esther stated that her husband had publically disagreed with Lieutenant Komo on the subject of Ken Saro Wiwa.
[65] Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied*, p75.
[66] Michael Birnbaum QC, *Nigeria: Fundamental Rights Denied*, p76.
[67] Statement by Saturday Dobee (undated).
[68] Transcript of interview with Blessing Eawo, 8 February 2017.
[69] Amnesty International, *Nigeria: The Ogoni Trials And Detentions*, Index number: AFR 44/020/1995
[70] Statement by Daniel Gboko, 9 July 1994
[71] Michael Birnbaum QC, *A Travesty of Law and Justice*, Article 19, December 1995, p17-8
[72] Layers interview with Charity Levula, 2 February 2017.
[73] Statement by Paul Levula, undated.
[74] Deposition by Friday Nuate, 18 October 2003, p68.

SHELL'S COMPLICITY IN THE EXECUTIONS

Corporations may be complicit in human rights violations committed by the State if through their knowledge, actions and/or omissions they contribute in certain ways to the violations. The International Commission of Jurists (ICJ), in a study of corporate complicity in gross human rights violations, identified a number of actions and failures that could leave a company exposed to allegations of, and legal liability for, complicity.

A company can be exposed to allegations of complicity if it participates in, assists or encourages the wrongful conduct to take place, if it enables the specific violations to occur or exacerbates the specific violations, meaning that the company makes the situation worse.[75] The knowledge of the company is an important element, specifically if it knows or should know from all the circumstances, of the risk that their conduct would contribute to the human rights violations, or are wilfully blind to that risk.[76]

While the mere presence of a company in a country or area of the country where gross human rights abuses are being committed would not automatically engage the responsibility of the company, the ICJ Panel notes that, "*in some situations, presence and silence are not neutral in law.*"[77] There may be "*special situations in which a company or its individual officials exercise such influence, weight and authority over the principal perpetrators that their silent presence would be taken by the principal to communicate approval and moral encouragement to commit the gross human rights abuses.*"[78] The ICJ Panel goes on to observe that: "*In practice, the more a company economically dominates a marketplace, the more it has access to the corridors of power, access to inside information and the opportunity to influence the actions of third parties who depend on the business relationship.*"[79]

Another relevant consideration for this case of the Niger Delta is that of economic benefit. The ICJ Panel of Experts observed that passively benefiting from a context in which human rights violations are occurring "*can quickly slide into a more active contribution that enables, exacerbates or facilitates gross human rights abuses. For example, a company that indicates to a government, in a country where it plans to set up operations, that trade union activity or continuing anti-development protests by local communities would be a major obstacle to it investing in the country may have more of an impact on the abuses that may be committed to remove such obstacles.*"[80]

SHELL ENCOURAGED SECURITY FORCES AND MILITARY AUTHORITIES TO STOP MOSOP AND THE PROTESTS KNOWING IT WOULD LEAD TO VIOLATIONS

There is irrefutable evidence that Shell knew that the Nigerian security forces committed grave violations when they were deployed to address community protests. Shell itself has acknowledged its awareness of the military actions in internal documents made public in a US legal action.[81] Shell also regularly monitored the media and the violence and violations were reported in the press.

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[75] Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, *Corporate Complicity & Legal Accountability: Volume 1* Facing the Facts and Charting a Legal Path, *Geneva 2008*, page 9, available at https://www.icj.org/wp-content/uploads/2012/06/Vol.1-Corporate-legal-accountability-thematic-report-2008.pdf (hereinafter Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, *Corporate Complicity & Legal Accountability: Volume 1)*

[76] Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, *Corporate Complicity & Legal Accountability: Volume 1,* pages 21 – 23.

[77] Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, *Corporate Complicity & Legal Accountability: Volume 1*, page 14.

[78] Crimes, *Corporate Complicity & Legal Accountability: Volume 1*, page 15.

[79] Crimes, *Corporate Complicity & Legal Accountability: Volume 1*, page 25.

[80] Crimes, *Corporate Complicity & Legal Accountability: Volume 1,* page 16.

[81] For example in a meeting with the Minister for Petroleum on 5 August 1995, Brian Anderson told the Minister: *"I was concerned that the security forces might get trigger happy, and that I did not want Shell staff injured…you only had to see what had happened at Umuechem at 1990 and the subsequent degradation of our relationship with the Ogoni etc to realise why we were adamant about this." Ref:* Brian Anderson, *Nigeria Update*, 6 August 1994). Some 80 people were killed at Umuechem in 1990 after Shell ask for the security forces to protect it against the community.

Despite this, Shell encouraged and solicited intervention by the Nigerian security forces and the military authorities in order to deal with protests by MOSOP. In 1993, Shell repeatedly asked the Nigerian government to deploy the army to Ogoniland to prevent protests from disrupting the laying the pipeline. This resulted in the shooting and injuring of eleven people at Biara on 30 April and the shooting to death of a man at Nonwa on 4 May.[82] Shell also regularly reminded the government of economic costs of the protests. For example, Shell wrote to the newly appointed military administrator of Rivers State on 13 December 1993, saying that "*community disturbances, blockade and sabotage*" had led to a drop in production of almost nine million barrels during the course of the year and asked for help to minimize the disruptions. In the letter, Shell named the communities, including those in Ogoniland, where these "community disturbances" had taken place.[83]

Between April 1994 and August 1995, Shell met General Sani Abacha on at least three occasions. In first meeting on 30 April 1994 the Chairperson of Shell Nigeria, Brian Anderson, raised "*the problem of the Ogonis and Ken Saro-Wiwa".*[84] On 5 August 1994, Brian Anderson had another meeting with General Abacha. Despite being aware that Ken-Saro-Wiwa and scores of others were in detention and that many Ogonis had been killed in raids by the ISTF,[85] Anderson did not use the meeting to call for an end to the violence.[86] He did not refer to the violence and widespread human rights violations at all. On the contrary, he spoke to General Abacha about "*the ongoing, and now accelerating, Ogoni problems*" and said he was not prepared to go into Ogoniland until there was "*a solution to the security (read political) problems there*."[87]

In some of its communications with the military authorities Shell stated that it did not want to have armed forces involved in Ogoniland. However, these disclaimers lose their credibility when viewed in the context of the most important company in Nigeria (as Shell was at the time) speaking to military authorities at the highest level, when the company was aware that the authorities had used unlawful and excessive force in Ogoniland and would do so again. For example, Brian Anderson left his first meeting with General Abacha with the sense that Abacha, "*will intervene with either the military or the police*." Anderson said he made it clear that he had asked Shell staff "*not to involve either body during the recent problems for fear of escalation and of Shell being accused of hiding behind the forces of law and order, and in fact of being responsible*."[88] However, Anderson did not ask General Abacha not to take military action.

During a meeting between General Abacha and Brian Anderson in July 1995, Abacha expressed concern that Shell was not doing enough to portray the "real facts" about the Ogoni issue. According to Anderson, General Abacha "*seemed to be particularly upset that we had not told the story properly about the Ogoni misdeeds…and how the government had not been responsible for wanton killings etc*."[89] Anderson did not disagree with Abacha's account (that the violence was the result of Ogoni "misdeeds" rather than the government) but simply replied by telling Abacha that it was "*not up to us to defend the government's role*." Considering that both knew the "*real facts*" included hundreds of deaths, torture and other ill-treatment, rapes, unlawful and arbitrary detention, and the blatantly unfair trial of Ken Saro-Wiwa and the other Ogoni leaders, Anderson's decision not to challenge Abacha's version of events can be taken as acquiescence. As the head of the most influential company in Nigeria, and having established a personal relationship with General Abacha, Anderson was in a position to discuss the human rights violations taking place in Ogoniland. By choosing to ignore them, and in fact acquiescing in a false narrative which expunged them, Shell encouraged the actions of the military state, which at this point included the high likelihood of a grave miscarriage of justice in the trial of the Ogoni nine. Anderson's notes of the meeting show he was well aware that the military ruler had influence in the trial. In a paragraph of his notes titled "*Saro-Wiwa's chances*", Anderson concluded that Shell must prepare itself for a conviction in the trial.

While the government was responsible for the violations, Shell encouraged the government to deal with Ken Saro-Wiwa and MOSOP, knowing it would likely result in human rights violations being committed against Ken Saro-Wiwa and those seen as members or leaders of MOSOP. They used their access at the most senior level to underline the economic interests of Shell and the Nigerian authorities and how these were threatened by MOSOP's protests.

Shell has always strongly denied these allegations.

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[82] Amnesty International, *UA 163/93 – Nigeria: Possible Extrajudicial Execution / Legal Concern: Agbarator Otu, Killed, and 11 Injured Including Karalolo Korgbara; One Other Detained Without Charge or Trial,* Index: AFR 44/04/93.
[83] Letter from G.E. Omene (Deputy Managing Director, SPDC) to Lt. Col. Dauda Musa Komo (Military Administrator, Rivers State), 13 December 1993.
[84] Brian Anderson, *Nigeria Update: notes of meeting with head of state*, 2 May.
[85] He was told this by the Dutch Ambassador in July 1994. See: Brian Anderson, *Nigeria Update*, 26 July 1994.
[86] Brian Anderson, *Nigeria Update*, 6 August 1994.
[87] Brian Anderson, *Nigeria Update*, 6 August 1994.
[88] Brian Anderson, *Nigeria Update: notes of meeting with head of state*, 2 May 1994.
[89] Brian Anderson, *Nigeria Update*, 22 July 1995.

SHELL KNEW THE TRIAL WAS UNFAIR

There can be no doubt that Shell knew that the trial was blatantly unfair. As noted earlier, this was widely reported on at the time.[90] In addition, Shell had its own source of information. Documents released by the company as part of US legal proceedings reveal that it secretly observed the trial through a lawyer. A document made public during a legal action in the US reveals that on 93 separate occasions, a law firm sent updates "*regarding proceedings before the Ogoni Civil Disturbances Tribun*al," to Shell executives, including Brian Anderson.[91] Shell has never explained why it needed this information, and has never publicly acknowledged receiving it.

SHELL KNEW IN ADVANCE THAT KEN SARO-WIWA WOULD BE FOUND GUILTY

On several occasions, Shell received private confirmation that Ken Saro-Wiwa would be found guilty, months before the verdicts were handed down. On 16 March, 1995, just one month after the trial had begun and seven months before the verdict, Shell executives met the Nigerian High Commissioner and representatives of Nigeria's armed forces in London.[92] The High Commissioner warned Shell that "there is every chance that he (Saro-Wiwa) will be found guilty."

On 6 April 1995, the UK High Commissioner in Nigeria told Shell's Brian Anderson that he believed that *"the government will make sure that he (Ken Saro-Wiwa) is found guilty."*[93]

Finally, four months before the convictions, on 22 July, 1995, Brian Anderson met Nigerian President, General Sani Abacha. Anderson concluded from what Abacha said that, *"he has no sympathy for Saro Wiwa whatsoever, and we must therefore prepare ourselves for a conviction in this trial with all the difficulties that portends* ***for us*** *(emphasis added)."*[94]

SHELL'S OFFER OF A DEAL TO HELP KEN-SARO-WIWA

Ken Saro-Wiwa's brother, Owens Wiwa met Brian Anderson three times in 1995, twice in secret at Anderson's home in Lagos. Owens Wiwa claimed that Anderson offered to help have his brother released on condition that Ken Saro-Wiwa called off MOSOP's protests. Owens Wiwa explained:

> *"When I asked him for his help to secure the release of my brother and other detainees, he had said that we should show goodwill. I said what is the goodwill? And he said three things: one, that I should write a press statement, have it published in Nigerian newspapers, that there are no environmental devastation in Ogoni; the second one was that we should call off the protest - I mean the campaign that was going on against Shell and the Nigerian Government internationally; third, the documentary which was about to be shown in London…at that time on Channel 4 be withdrawn."*[95]

Owens Wiwa claimed that the deal fell through because the two men were unable to agree on these conditions. However Brian Anderson provided a different account of these discussions. In an internal memo sent to his superiors in London, dated 22 August 1995, Anderson made no mention of offering to help release Ken Saro-Wiwa. This memo was sent before Owens Wiwa revealed in public his account of the conversations.

> *"I offered Owens Wiwa the possibility that we would be prepared to put in some humanitarian aid (medical?) in exchange for the undertaking by his brother to soften their official stance on two key issues for us. 1. The outrageous claims…against Shell for royalties and reparations, and 2. The claim that we funded the military in its clean up operations or 'to clear the way' for our return."*[96]

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[90] Amnesty International, *Nigeria: The Ogoni Trials And Detentions*, 14 September 1995, p13, Index number: AFR 44/020/1995, Michael Birnbaum QC, *A Travesty of Law and Justice*.
[91] October 2003 Privilege Log
[92] Alan Detheridge to Brian Anderson, *Meeting with Nigerian High Commission*, 16 March 1995.
[93] Brian Anderson, *Nigeria Update*, 6 April 1995.
[94] Brian Anderson, *Nigeria Update*, 22 July 1995.
[95] Deposition of Owens Wiwa, 2003, p247-8.
[96] Interoffice Memorandum, Brian Anderson to Alan Detheridge, 22 August 1995.

Even if one accepts that Anderson's account of the meeting was the most accurate, it is still deeply problematic.

First, Anderson admitted that he discussed an exchange of some kind with Owens Wiwa, with an inducement being offered if Ken Saro-Wiwa were "*to soften"* MOSOP's *"official stance on two key issues [for Shell]".* Second, by August 1995, Brian Anderson knew that Ken Saro-Wiwa had been severely mistreated while in detention, was suffering from health problems and was likely to be executed. Yet he felt it was an appropriate time to ask Ken Saro Wiwa to change MOSOP's stance in return for some humanitarian aid. This aspect of the explanation given by Brian Anderson lacks credibility. Third, it suggests that Shell, knowing that people were in need of humanitarian or medical aid and the company could provide it, that they were only willing to do so as part of a political trade.

COMPLICITY IN THE MISCARRIAGE OF JUSTICE

The culmination of the Nigerian military government's campaign to crush the MOSOP protests was the execution of the Ogoni Nine on 10 November, 1995. Shell knowingly provided encouragement and motivation to the military authorities to stop the MOSOP protests, even after the authorities repeatedly committed human rights violations in Ogoniland and specifically targeted Ken Saro-Wiwa and MOSOP. By raising Ken-Saro Wiwa and MOSOP as a problem, Shell was reckless, and significantly exacerbated the risk to Saro-Wiwa and those linked to MOSOP. Shell knew full well that the government regularly violated the rights of those linked to MOSOP and had targeted Saro-Wiwa. Following the arrests and during the blatantly unfair trial, the nature of the danger was clear. However, even after the men were jailed, being subjected to torture or other ill-treated and facing the likelihood of execution, Shell continued to discuss ways to deal with the "Ogoni problem" with the government, and did not express any concern over the fate of the prisoners. Such conduct cannot be seen as other than endorsement and encouragement of the military government's actions.

Amnesty International presented these allegations to Shell. Shell's global headquarters did not provide a substantive response. Shell Nigeria stated that:

> *"The allegations cited in your letter against [Shell] are false and without merit. [Shell Nigeria] did not collude with the military authorities to supress community unrest and in no way encouraged or advocated any act of violence in Nigeria….We have always denied these allegations in the strongest possible terms."*[97]

[97] Shell Nigeria letter to Amnesty International, 22 June 2017 (see annex).

ANNEX

The Shell Petroleum Development
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International Secretariat
Peter Benenson House,
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United Kingdom

Attention: Ms. Audrey Gaughran

Our Ref: SPDC-2017-06-00000417
Your Ref: TC AFR 44/2017.001

22nd June, 2017

Dear Ms. Gaughran,

We are in receipt of your letter dated 18 June, 2017 addressed to the Chief Executive of Royal Dutch Shell Plc (RDS) and the similar letter to Brian Anderson, former Managing Director of The Shell Petroleum Development Company of Nigeria Limited (SPDC), both regarding the operations of SPDC in the Niger Delta during the 1990s.

I would like to first say that the executions of Ken Saro-Wiwa and his fellow Ogonis in 1995 were tragic events that were carried out by the military government in power at the time. We were shocked and saddened when we heard the news of the executions. SPDC appealed to the Nigerian government to grant clemency. To our deep regret, that appeal, and the appeals made by many others within and outside Nigeria, went unheard.

The allegations cited in your letter against RDS and SPDC are false and without merit. SPDC did not collude with the military authorities to suppress community unrest and in no way encouraged or advocated any act of violence in Nigeria. In fact, the company believes that dialogue is the best way to resolve disputes. We have always denied these allegations, in the strongest possible terms.

I am proud to say that Shell has a history of nearly 60 years in Nigeria and has played a pioneering role in onshore, shallow and deep-water oil and gas exploration and production. In the past and today, Shell Companies in Nigeria have made many contributions to the Nigerian economy, not only through the energy they produce and the revenues and employment they generate for the country, but also via their extensive supply chain, local content and social investment.

Finally, I would like to reiterate that human rights is fundamental to Shell's core values of honesty, integrity and respect for people.

Yours faithfully,
The Shell Petroleum Development Company of Nigeria Limited

Osagie Okunbor
Managing Director / Country Chair

(Incorporated in Nigeria)
Registration Number
NO RC 892

Managing Director: Osagie Okunbor
Directors: Toyin Olagunju, Philip Mshelbila, Chibueze Uduanochie, David Martin (British), Igo Weli
Secretary: Nike Oyinlola Olafimihan

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IN THE DOCK

SHELL'S COMPLICITY IN THE ARBITRARY EXECUTION OF THE OGONI NINE

In November 1995, the Nigerian state arbitrarily executed nine men after a blatantly unfair trail. The executions led to global condemnation. Officially accused of involvement in murder, the men had in fact been put on trial because they had challenged the devastating impact of oil production by the Anglo-Dutch oil giant, Shell, in the Ogoniland region of the Niger Delta.

The executions were the culmination of a brutal campaign by Nigeria's military to silence the protests of the Movement for the Survival of the Ogoni People MOSOP, led by author Ken Saro-Wiwa, one of the men executed. In January 1993, MOSOP declared that Shell was no longer welcome to operate in its area. The Nigerian security forces' subsequent campaign in Ogoniland directly led to serious human rights violations, including the unlawful killing of hundreds of Ogoni people.

This briefing examines the role played by the Shell in the unfair trial and arbitrary execution of the Ogoni Nine. Shell has always denied any involvement. However, Amnesty International's work at the time, as well as evidence being used in a new legal action in the Netherlands, brought by the widows of some of the men who were executed, paints a very different picture.

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