

MOTION INFORMATION STATEMENT

Docket Number(s): 17-424 Caption [use short title] _____

Motion for: Judicial Notice Kiobel v. Cravath, Swaine & Moore LLP

Set forth below precise, complete statement of relief sought:

Judicial notice of the fact of service of a writ of
summons in the Netherlands

MOVING PARTY: Esther Kiobel OPPOSING PARTY: Cravath Swaine & Moore LLP

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Richard Herz OPPOSING ATTORNEY: Neal Kumar Katyal
[name of attorney, with firm, address, phone number and e-mail]

EarthRights International Hogan Lovells
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Court-Judge/Agency appealed from: Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)
Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: s/ Richard Herz Date: July 7, 2017 Service by: CM/ECF Other [Attach proof of service]

17-424

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTHER KIOBEL,

Petitioner-Appellee,

-against-

CRAVATH, SWAINE & MOORE, LLP,

Respondent-Appellant.

On Appeal from the United States District Court
for the Southern District of New York, Case No. 1:16-cv-07992 (AKH)

PETITIONER-APPELLEE'S MOTION FOR JUDICIAL NOTICE

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Petitioner-Appellee Esther Kiobel (“Petitioner”) requests judicial notice of the fact that a writ of summons has been served on Royal Dutch Shell, Shell Petroleum NV, Shell Transport & Trading Co., and Shell Petroleum Development Co. of Nigeria (collectively, “Shell”), in the Netherlands. This is the lawsuit referred to as the Dutch Kiobel Case in Petitioner’s brief. Copies of the writ of summons in Dutch and English are attached as Exhibits A and B to the Declaration of Channa Samkalden, Petitioner’s Dutch counsel.

As set forth in Ms. Samkalden’s declaration, serving the writ of summons commences proceedings under Dutch law, but Shell is not yet before a Dutch court. *See* Samkalden Decl. ¶ 4. Shell’s appearance date is October 11, 2017. *Id.* Even after that date, a Dutch court would not order discovery before the resolution of a jurisdictional challenge. *Id.* ¶ 7. Nonetheless, the evidence at issue is needed to contest Shell’s likely jurisdictional defense, and the time within which additional evidence may be submitted is limited. *Id.* ¶¶ 5-8. Because the evidence at issue is still needed for the early stages of the Dutch case, and because Shell is still not before a Dutch court (and a Dutch court could not order discovery at this stage), the initiation of proceedings in the Netherlands does not change the conditions under which the district court ordered discovery. Instead, it underscores the urgency of expediting these proceedings and obtaining the documents at issue.

Pursuant to Rule 201 of the Federal Rules of Evidence, judicial notice may be taken “at any stage of the proceeding.” Fed. R. Evid. 201(d), including by the Court of

Appeals. *See, e.g., Hotel Emps. & Rest. Emps. Union v. City of N.Y. Dep't of Parks & Recreation*, 311 F.3d 534, 540 n.1 (2d Cir. 2002). Petitioner submits that the fact of the serving of the writ of summons is a fact that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” pursuant to Rule 201(b)(2) of the Federal Rules of Evidence. This is especially so because Respondent-Appellant Cravath, Swaine & Moore, LLP (“Cravath”), which is counsel for Shell, does not object to taking judicial notice of this fact. Pursuant to Local Rule 27.1, however, counsel for Cravath has indicated that they do intend to file a response to this request.

Dated: July 6, 2017

Respectfully submitted,

/s/Richard Herz

Richard Herz

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CERTIFICATE OF SERVICE

I, Richard Herz hereby certify that on this 6th day of July, 2017, a copy of the foregoing Motion to Expedite Appeal was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that the Motion was served electronically to all parties by operation of the Court's electronic filing system.

/s/Richard Herz

Declaration of Channa Samkalden, Attorney-at-law in The Netherlands

Pursuant to 28 U.S.C. § 1746, I, Channa Samkalden, declare as follows:

1. I am the attorney of Esther Kiobel in litigation arising from human rights violations carried out by Royal Dutch Shell in Nigeria. I refer to my previous declarations of 4 October and 11 November 2016. In this declaration I explain recent developments concerning the commencement of proceedings against Shell in the Netherlands.
2. I stated in my previous declarations that I had intended to bring the lawsuit against Shell by the end of 2016. I delayed in doing so, however, in anticipation of obtaining documents from the United States. I concluded that I could not wait indefinitely, however, and so on 28 June 2017 I commenced proceedings by serving a writ of summons on the Shell defendants.
3. Copies of the executed writ of summons are attached as Exhibit A (in Dutch) and Exhibit B (in English).
4. Under Dutch procedural law, the service of the writ of summons commences the lawsuit and interrupts a limitations period, but nothing has yet been filed in court and Shell is not currently before a Dutch court. Instead, the claimant sets a date at least three months in advance for a foreign defendant to appear in court. In this case, Shell must appear on 11 October 2017. Nothing will be filed in court until shortly before that date.
5. I expect that Shell's response will be to challenge jurisdiction, because that is what they have done in other cases arising out of Nigeria. Although jurisdiction over Dutch defendants is secure, I expect Shell to argue that any non-Dutch companies involved – including the Nigerian company Shell Petroleum Development Co. of Nigeria – can only be sued in Dutch court if the case against them is intertwined with the cases against the Dutch companies at issue (including Royal Dutch Shell).
6. I understand that, in the *Kiobel* and *Wiwa* cases in the United States, one of the questions was the extent of involvement of the Shell parent companies in the events in Nigeria. The evidence relevant to that question would also be relevant to Shell's anticipated jurisdictional challenge in the Netherlands. All evidence of Shell's liability is also of course relevant to the claims against the parent companies..

7. While it may be possible to amend the claim and submit additional evidence at later points in the case, ordinarily, the court will decide jurisdiction based on the evidence submitted with the writ of summons. We will be given the opportunity to respond to Shell's jurisdiction defence (and to submit additional evidence for that purpose), but Dutch procedural law would not normally allow us to obtain additional evidence from Shell pertaining to the role of the parent company until the court has decided jurisdiction.
8. We can submit additional evidence on 11 October – and possibly shortly thereafter – , however, because Shell will not respond before then. Shell's response will be due six weeks after 11 October, and this deadline is often extended by another six weeks.
9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Signed in Amsterdam, the Netherlands



Channa Sankalden

5 July 2017

EXHIBIT A

DAGVAARDING

Heden, de tweeduizendzeventien, op verzoek van

- (1) mw. **Esther Duke Kiobel**, woonachtig te Dallas, Verenigde Staten van Amerika,
- (2) mw. **Victoria Bera**, woonachtig te Winnipeg, Canada,
- (3) mw. **Blessing Ken Nordu**, woonachtig te Giokoo, Gokana, Nigeria en
- (4) mw. **Charity Vureka Levula**, woonachtig te Bomu, Gokana, Nigeria,

allen te dezer zake woonplaats kiezende te Amsterdam (1092 CK) aan de Linnaeusstraat 2A ten kantore van Prakken d'Oliveira *Human Rights Lawyers*, van welk kantoor mr. Ch. Samkalden en mr. T. de Boer deze zaak behandelen en tot advocaat worden gesteld;

Heb ik

Met dien verstande dat de producties niet worden meebetkend, maar tijdig in het geding zullen worden gebracht,

gedagvaard:

(1) de rechtspersoon naar vreemd recht **Royal Dutch Shell, plc**, statutair gevestigd te Engeland en Wales en kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan:

(2) de naamloze vennootschap **Shell Petroleum N.V.** gevestigd te Den Haag, een rechtsopvolgster onder algemene titel van de naamloze vennootschap N.V. Koninklijke Nederlandsche Petroleum Maatschappij, kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan:

(3) de rechtspersoon naar vreemd recht **the Shell Transport and Trading Company, limited**, gevestigd te Londen, Verenigd Koninkrijk en kantoorhoudende aan het Shell Centre te Londen, SE1 7NA, Verenigd Koninkrijk,

waartoe ik, deurwaarder, uit kracht van art. 56 van het wetboek van Burgerlijke Rechtsvordering in mijn hoedanigheid van verzendende instantie als bedoeld in de Uitvoeringswet van de EG-Verordening nr 1393/2007 van de Raad van Europese Unie van 13 november 2007 (EU betekenisverordening), heden twee afschriften dezes heb verzonden naar de ontvangende instantie in Londen, Verenigd Koninkrijk, te weten:

Royal Courts of Justice
Room E16 Strand
WC2A 2LL Londen
Verenigd Koninkrijk

deze verzending heeft plaatsgevonden door middel van aangetekende post;

bijgevoegd is een vertaling van deze dagvaarding in de Engelse taal;

het formulier als bedoeld in art. 4, derde lid van genoemde verordening is door mij, deurwaarder ingevuld in de Engelse taal;

aan de ontvangende instantie heb ik verzocht om deze dagvaarding aan gerekwireerde te betekenen op de wijze als onder 5 in het hiervoor genoemde formulier “aanvraag om betekening en kennisgeving van stukken” omschreven, te weten betekening volgens de wet van de aangezochte staat (5.1 formulier) en mij, met het certificaat van betekening als bedoeld in art. 10 van genoemde verordening, één afschrift van het stuk terug te zenden afschrift van dit exploit, vergezeld van een vertaling in de Engelse taal wordt vandaag tevens per Fedex aan gerekwireerde toegezonden, onder mededeling dat de ontvangst van dit stuk kan worden geweigerd indien dit niet gesteld is in de Engelse taal, of een taal die gerekwireerde begrijpt, en dat het stuk bij weigering binnen een week vergezeld van het ingevulde formulier dient te worden getourneerd aan mij gerechtsdeurwaarder;

(4) de rechtspersoon naar vreemd recht Shell Petroleum Development Company of Nigeria, limited,

gevestigd te Port Harcourt, Rivers State, Nigeria, kantoorhoudende aan de Rumuobiakani, Shell Industrial Area, P.O. Box 263,

mitsdien mijn exploit doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Den Haag aan de Prins Clauslaan 60 en twee afschriften dezes alsmede van vertaling hiervan in de Engelse taal latende aan:

aldaar werkzaam;

wordende afschrift dezes tevens per Fedex aan gerekwireerde toegezonden

om:

op woensdag elf oktober 2017 om 10.00 uur des voormiddags, niet in persoon maar vertegenwoordigd door een advocaat, te verschijnen op de zitting van de rechtbank Den Haag in het Paleis van Justitie aan de Prins Clauslaan 60 te 's-Gravenhage;

onder uitdrukkelijke vermelding dat:

a. indien een gedaagde verzuimt advocaat te stellen of het hierna te noemen griffierecht niet tijdig betaalt, en de voorgeschreven termijnen en formaliteiten in acht zijn genomen, de rechter verstek tegen gedaagde zal verlenen en de hierna omschreven vordering zal toewijzen, tenzij deze hem onrechtmatig of ongegrond voorkomt;

b. indien ten minste één van de gedaagden in het geding verschijnt en het griffierecht tijdig heeft voldaan, tussen alle partijen één vonnis zal worden gewezen, dat als een vonnis op tegenspraak wordt beschouwd;

c. bij verschijning in het geding van gedaagde een griffierecht zal worden geheven, te voldoen binnen vier weken te rekenen vanaf het tijdstip van verschijning;

d. de hoogte van de griffierechten is vermeld in de meest recente bijlage behorend bij de Wet griffierechten burgerlijke zaken, die onder meer is te vinden op de website: www.kbvg.nl/griffierechtentabel

e. van een persoon die onvermogen is, een bij of krachtens de wet vastgesteld griffierecht voor onvermogenen wordt geheven, indien hij op het tijdstip waarop het griffierecht wordt geheven heeft overgelegd:

- een afschrift van het besluit tot toevoeging, bedoeld in artikel 29 van de Wet op de rechtsbijstand, of indien dit niet mogelijk is ten gevolge van omstandigheden die redelijkerwijs niet aan hem zijn toe te rekenen, een afschrift van de aanvraag, bedoeld in artikel 24, tweede lid, van de Wet op de rechtsbijstand, dan wel
- een verklaring van het bestuur van de raad voor rechtsbijstand, bedoeld in artikel 7, derde lid, onderdeel e, van de Wet op de rechtsbijstand waaruit blijkt dat zijn inkomen niet meer bedraagt dan de inkomens bedoeld in de algemene maatregel van bestuur krachtens artikel 35, tweede lid, van die wet;

f. van gedaagden die bij dezelfde advocaat verschijnen en gelijklopende conclusies nemen of gelijklopend verweer voeren, op basis van artikel 15 van de Wet griffierechten burgerlijke zaken slechts eenmaal een gezamenlijk griffierecht wordt geheven;

teneinde op voormelde zitting te horen eisen en concluderen als volgt:

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1 INLEIDING

1. In deze zaak houden vier Nigeriaanse weduwen Shell aansprakelijk voor de onrechtmatige detentie en executie van hun echtgenoten in 1995 en de schade die zij in samenhang met die gebeurtenissen hebben geleden.
2. Op 10 november 1995 werden dr. Barinem Kiobel, Ken Saro-Wiwa, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levula, Felix Nuate, Baribor Bera, en John Kpuinen - gezamenlijk veelal aangeduid als de 'Ogoni 9' - opgehangen door het militaire regime in Nigeria. Hun dood werd door de internationale gemeenschap beschreven als "*judicial murder*"; in het voorafgaande showproces waren de fundamentele rechten van alle betrokkenen veelvuldig geschonden en werden elementaire beginselen van rechtmatige rechtspraak verwaarloosd.
3. Shell speelde een cruciale rol in de gebeurtenissen die leidden tot de dood van de Ogoni 9. Eiseressen betogen in deze dagvaarding dat Shell medeplichtig is aan de schending van (onder meer) het recht op leven van hun echtgenoten, hun recht op een familieleven en hun recht op persoonlijke waardigheid en integriteit.
4. Nabestaanden van Saro-Wiwa, Dobe, Gbooko, Nuate en Kpuinen troffen, na Shell in de Verenigde Staten in rechte te hebben betrokken, in 2009 een schikking met Shell; Shell keerde deze groep een bedrag uit van 15,5 miljoen dollar. Ook Kiobel heeft geprobeerd haar zaak in de Verenigde Staten aan de rechter voor te leggen. In 2013 verklaarde het Supreme Court zich daar onbevoegd. Eiseressen zijn tot op de dag van vandaag verstoken gebleven van een uitspraak of regeling.
5. Deze dagvaarding is als volgt opgebouwd. In het volgende hoofdstuk worden eerst de eiseressen en gedaagden nader geïntroduceerd. Hoofdstuk 3 geeft, voor een goed begrip van de zaak, een korte weergave van de achtergrond waartegen de gebeurtenissen in Nigeria in de jaren negentig zich afspeelden. Hoofdstuk 4 omschrijft de gang van zaken rond het Ogoni 9-proces in 1994-1995 en omvat derhalve de feiten die de grondslag vormen voor de vordering van eiseressen. In hoofdstuk 5 worden kort de reeds in de Verenigde Staten over deze kwestie gevoerde processen omschreven. Hoofdstuk 6 gaat in op de internationale bevoegdheid van de Nederlandse rechter, terwijl in hoofdstuk 7 de toepasselijkheid en inhoud van het Nigeriaans recht wordt beschreven. In hoofdstuk 8 wordt de medeplichtigheid van Shell nader uitgewerkt. In hoofdstuk 8.2 en 8.3 wordt eerst uiteengezet dat Shell het regime bleef aanmoedigen om op te treden en schoon schip te maken in Ogoniland, terwijl zij wist dat daarbij al vele doden en gewonden waren gevallen. Hoofdstuk 8.4 laat zien dat dat er tussen het regime en Shell een diepe verwevenheid bestond, waardoor er feitelijk niets gebeurde zonder medeweten en steun van de andere partij: Shell betaalde leger en politie, stelde voertuigen en andere faciliteiten beschikbaar en schreef zelf een wapen-tender uit; Shell en het regime voerden voorts een gezamenlijke inlichtingendienst en hanteerden een *revolving door policy*. Hoewel Shell zelf publiekelijk stelde niet politiek stelling te willen nemen, voer zij in feite beslist geen apolitieke koers - zeker niet waar het de rol van MOSOP betreft

(8.5). Shell bemoeide zich ook actief met de gang van zaken tijdens het proces (8.6 en 8.7); zij vaardigde haar eigen advocaat af, die op zijn beurt betrokken was bij de omkoping van getuigen; zij ontving de rechters die zitting hadden in het tribunaal; zij bood zelfs aan om de uitkomst van het proces te beïnvloeden, mits Saro-Wiwa zijn toon zou matigen (hetgeen hij weigerde). Het Ogoni 9-proces was een onmiskenbaar showproces, waarvan de tragische afloop op voorhand vaststond en bovendien bij Shell bekend was. Shell was bij uitstek in de gelegenheid en positie om de dood van de echtgenoten van eiseressen te voorkomen, maar stelde in plaats daarvan haar economische belangen voorop en bleef ook gedurende het proces met het regime onderhandelen over toekomstige projecten (8.8). Hoofdstuk 8.9 laat zien dat Shell hierbij onafgebroken functioneerde als één onderneming, waarbij zowel SPDC als de moedervernootschappen feitelijk optraden en SPDC daarbij steeds vanuit de moedervernootschappen werd aangestuurd. Het hoofdstuk wordt afgesloten met een conclusie (8.10), waarin kort wordt samengevat waarom de genoemde omstandigheden leiden tot aansprakelijkheid uit medeplichtigheid zoals in hoofdstuk 7.1 uiteengezet. Hoofdstuk 9, 10 en 11 betreffen achtereenvolgens het bewijsaanbod, de toelichting op de vorderingen en het petitum. Ten behoeve van de leesbaarheid bevat de dagvaarding ten slotte nog een lijst van gebruikte afkortingen, een verklarende personenlijst en een tijdslijn.

2 PARTIJEN

6. Eiseressen zijn de weduwen van vier mannen die deel uitmaakten van de zogenaamde "Ogoni 9", de groep Ogoni die op 10 november 1995 na een schijnproces werd geëxecuteerd.
7. Gedaagden maken allemaal onderdeel uit van het Shell-concern. Zij speelden een cruciale rol bij de gebeurtenissen die leidden tot de dood van de Ogoni 9.

2.1 Esther Kiobel

8. Esther Duke Kiobel (eiseres) is op 1 april 1964 in Port Harcourt, Rivers State, Nigeria, geboren. Zij is Nigeriaans staatsburger en heeft tevens de Amerikaanse nationaliteit.
9. Esther Kiobel is de weduwe van dr. Barinem Nubari Kiobel met wie zij op 29 januari 1991 trouwde.^{1,2} Barinem Kiobel is een van de negen mannen die op 10 november 1995 na een schijnproces werden geëxecuteerd door het toenmalige Nigeriaanse regime. Esther Kiobel zelf is tijdens het proces van haar man het slachtoffer geworden van onrechtmatige detentie en van aanranding door de door Shell ondersteunde legerleider Paul Okuntimo.

¹ Productie 1: Affidavit of marriage, 8 mei 1991.

² Ten behoeve van de overzichtelijkheid zijn de producties in de productielijst (hoofdstuk 12) naar soort en alfabet gerangschikt; de nummering van producties in de tekst van de dagvaarding loopt daarom niet opeenvolgend. De producties zijn bij hun eerste aankondiging vetgedrukt.

10. Esther Kiobel is na de executie van haar man gevlucht naar Benin waar zij op 13 september 1996 vluchtelingenstatus toegewezen kreeg.³ Zij is in februari 1998 hervestigd naar de Verenigde Staten, waar zij nog altijd woont en werkt. In 2007 studeerde zij af aan de Des Moines Area Community College, waar zij *Science and Humanity* studeerde. Esther werkt thans in de medische sector als verpleegster.

2.1.1 Dr. Barinem Nubari Kiobel

11. Barinem Kiobel werd op 23 september 1959 in Kpor, Rivers State, Nigeria, geboren. Tussen 1979 en 1992 woonde hij in het Verenigd Koninkrijk, waar hij promoveerde aan de University of Glasgow. In 1992 keerde hij terug naar Nigeria, waar hij een betrekking aanvaardde als *senior lecturer* aan de University of Science and Technology in Port Harcourt. **Productie 4** omvat een Curriculum Vitae van dr. Barinem Nubari Kiobel.
12. Na een jaar bij de universiteit werd Kiobel voorzitter van de Publicity Committee van Kilsa Gokana, een groep van notabelen die zich inzet voor de ontwikkeling van deze regio, een van de zes koninkrijken van Ogoniland. Vanuit die functie raakte hij op de hoogte van de heersende onvrede onder de Ogoni over Shell en het regime en onderhield hij contacten met alle betrokken partijen.
13. In januari 1994, vier maanden voor zijn arrestatie, werd Kiobel *Honourable Commissioner* van het ministerie van Handel, Industrie en Toerisme van de provincie Rivers State. In die functie fungeerde hij wederom als schakel tussen de overheid en de Ogoni. Zo maakte hij een ontmoeting mogelijk van Lt. Col. Komo met zeven Ogoni-leiders.⁴
14. Kiobel was niet actief bij MOSOP betrokken. Wel laat hij zich tijdens zijn werk als Commissioner tijdens verschillende bijeenkomsten kritisch uit over het optreden van het regime in Ogoniland. Ook vraagt hij aandacht voor de eisen van MOSOP aan Shell en het regime.⁵ Kiobel is door zijn aanwezigheid bij deze bijeenkomsten ook op de hoogte van het plan van het regime om met geweld in te grijpen in Ogoniland, waarover hij openlijk met Lt. Col. Komo van mening verschilt.⁶
15. In 1994 stuurt Kiobel een kritische brief van de United States Congressional Human Rights Caucus door aan Lt. Col. Komo (**productie 3**). In de brief van het Amerikaanse Congres staat onder meer:

“We understand that the Rivers State Commissioner of Police issued a memo on April 21, 1994, outlining a plan for the Nigerian Army, Air

³ **Productie 14**: Verklaring van het Ministerie Binnenlandse Zaken Benin, 13 september 1996.

⁴ **Productie 2**: Brief aan Barinem Kiobel van verschillende Ogoni chiefs, 5 mei 1994.

⁵ **Productie 37**: *Public Deposition* Esther Kiobel, vol. II, 5 december 2003, pp. 174, 362, 383-384; **Productie 51**: *Public Deposition* Precious Sotonye Omuku, 19 april 2004, pp. 140-141.

⁶ Public deposition Esther Kiobel vol. II, 5 december 2003, p. 362 (productie 37)

Force, Navy, and Police to occupy the Ogoni territory to 'restore and maintain law and order in Ogoniland and apprehend intruders who may wish to use the period to ferment further disturbances'. We are concerned about the safety of the Ogoni people especially unarmed civilians [...]. We ask you to do everything in your power to bring an end to human rights violations against the Ogoni people".⁷

16. Volgens Esther Kiobel is het deze kritische houding die haar man als relatieve nieuwkomer op zich heeft genomen tegenover Shell en het regime, die er uiteindelijk voor zorgt dat hij samen met de leiders van MOSOP op 22 mei 1994 wordt opgepakt en vervolgens wordt berecht in het Ogoni 9-proces. Kiobel wordt op 10 november 1995 geëxecuteerd.

2.2 Victoria Bera

17. Victoria Bera (eiseres) is geboren op 10 oktober 1970 in Bori, Rivers State, Nigeria. Zij is Nigeriaans staatsburger en heeft tevens de Canadese nationaliteit.
18. Victoria is de weduwe van Baribor Bera, met wie zij op 26 december 1990 in Nigeria is getrouwd. Ook Baribor is op 10 november 1995 door het Nigeriaanse regime geëxecuteerd. Tijdens het schijnproces dat tot deze executies heeft geleid is Victoria ook zelf onrechtmatig gedetineerd.
19. Victoria Bera is na de executie van haar man naar Benin gevlucht, met hun kind, dat tijdens het Ogoni 9-proces op 2 maart 1995 werd geboren. Aldaar heeft UNHCR haar vluchtelingenstatus toegekend en twee jaar later hervestigd naar Canada. Daar woont zij nog steeds. Zij heeft in Canada een opleiding gevolgd en is thans werkzaam als verpleegster.

2.2.1 Baribor Bera

20. Baribor Bera werd geboren in 1964 in Bera, Nigeria. Hij werkte als monteur en technicus. Baribor was vanaf de oprichting een prominent lid van MOSOP en NYCOP. Met deze organisaties streed hij voor betere omstandigheden in Ogoniland en voor betere kansen voor jonge Ogoni. Hij woonde veel bijeenkomsten bij en verkeerde vaak in het gezelschap van Ken Saro-Wiwa en Ledum Mitee, respectievelijk president en vice-president van MOSOP vanaf 1993. Met hen nam hij ook deel aan verschillende demonstraties tegen Shell en Wilbros. Op 28 mei 1994 werd Bera gearresteerd door het regime; op 10 november 1995 is hij geëxecuteerd.

⁷ **Productie 3:** Brief aan Barinem Kiobel en brief van de U.S. Congressional Human Rights Caucus, 6 mei 1994). Op het bijgevoegde handgeschreven briefje staat: "*Doc, Here are two copies of the U.S. Congressional letter stopping the proposed military occupation of Ogoni. Please keep one copy and send one copy to his Excellency the Military Administrator*".

2.3 Blessing Kem Nordu

21. Blessing Kem Nordu (eiseres) is geboren op 3 maart 1958 te Biara, Rivers State, Nigeria. Zij is de weduwe van Nordu Eawo, met wie zij op 27 augustus 1981 is getrouwd.⁸ Samen hebben zij vijf kinderen gekregen. Zij woonden in Nwe-ol, in Ogoniland. Na de executie van haar man zijn Blessing en haar kinderen door de gemeenschap uit Nwe-ol verjaagd. Zij woont nu in Giokoo, waar zij gewassen verbouwt die ze verkoopt om rond te komen. Zij heeft met de jaren haar gezichtsvermogen volledig verloren en wordt door haar kinderen en de lokale kerkgemeenschap ondersteund.

2.3.1 Nordu Eawo

22. Nordu Eawo is geboren in Nwe-ol, Rivers State, Nigeria. Hij heeft altijd in Ogoniland gewoond en werkte als vrachtwagenchauffeur. In 1993 heeft hij zich aangesloten bij NYCOP, vanuit de wens om de exploitatie van de Ogoni te stoppen en hen betere leefomstandigheden te bieden. Hij was een actief lid, en gaf daar ook publiekelijk blijk van. Hij werd gearresteerd op 3 oktober 1994 en ruim een jaar later, op 10 november 1995, geëxecuteerd.

2.4 Charity Vureka Levula

23. Charity Levula (eiseres; ook wel aangeduid als Levura) is geboren in 1976 te Bomu, Rivers State, Nigeria. Zij is de weduwe van Paul Levula, met wie zij op 8 augustus 1992 is getrouwd.⁹ Zij woont nog steeds in het huis van haar overleden man in Bomu. Om rond te komen gebruikt zij een klein stuk land van haar familie om gewassen op te verbouwen die zij verkoopt. Af en toe wordt zij door haar kerkgemeenschap ondersteund.

2.4.1 Paul Levula

24. Paul Levula werd geboren in op 22 augustus 1965 te Bomu, Rivers State, Nigeria. Hij werkte als ondernemer. Hij kocht vis in Kameroen om in Nigeria te verkopen; in Nigeria kocht hij kleren die hij in Kameroen verkocht. Later ging hij werken voor de Gokana Local Government Council. Hij onderhield Charity. Levula is in 1993 lid geworden van MOSOP, en was een actief lid van de organisatie. Hij woonde regelmatig bijeenkomsten bij. Levula werd gearresteerd op 30 mei 1994 en geëxecuteerd op 10 november 1995.

⁸ **Productie 6:** Marriage Agreement regarding the marriage of Nordu Eawo and Mrs. Mkem Barima, 27 augustus 1981.

⁹ **Productie 7:** Marriage Agreement regarding the marriage of Paul B. Levula and Mrs. Vureka Charity Levula, 8 augustus 1992.

2.5 Shell Petroleum and Development Company of Nigeria, Ltd.

25. Shell Petroleum Development Company of Nigeria Ltd. (afgekort: SPDC) is een rechtspersoon naar Nigeriaans recht, gevestigd in Lagos, Nigeria.
26. SPDC is het grootste private oliebedrijf in Nigeria en de grootste buitenlandse onderneming in de Nigeriaanse industrie. SPDC is in Nigeria verantwoordelijk voor meer dan vijfduizend kilometer oliepijpleidingen en is de beheerder ofwel ‘operator’ van de belangrijkste Nigeriaanse *joint venture*, waaraan naast SPDC de Nigerian National Petroleum Corporation (NNPC), Elf Petroleum Nigeria Limited en de Nigerian Agip Oil Company Limited deelnemen. Deze *joint venture* is verantwoordelijk voor vijftig procent van de oliewinning en –exploitatie in Nigeria.¹⁰ De olieproductie is goed voor zo’n tachtig procent van de inkomsten van het Nigeriaanse regime.¹¹
27. SPDC is als *operating company* altijd volledig in handen geweest van de moedervernootschap(pen).¹² De moedervernootschappen benoemden haar *Managing Directors*,¹³ de *Group Managing Director* onder wie de regio West-Afrika viel was verantwoordelijk voor het voordragen van de overige bestuursleden van SPDC,¹⁴ en de olieopbrengsten van SPDC eindigden uiteindelijk in de boeken van de moedervernootschappen. Ook de winst van SPDC valt dus toe aan de moedervernootschappen.¹⁵

2.6 Shell Petroleum N.V. (voorheen Royal Dutch Petroleum Company (Koninklijke Nederlandse Petroleum Maatschappij N.V.))

28. Ten tijde van het Ogoni 9 proces was SPDC via haar houdstermaatschappij Shell Petroleum Company een dochteronderneming van Royal Dutch Petroleum Company en Shell Transport and Trading Company plc.¹⁶
29. Deze twee rechtspersonen waren tot 20 juli 2005 samen (Royal Dutch voor 60% en Shell T&T voor 40%) eigenaar van drie houdstermaatschappijen, te weten Shell Petroleum N.V., Shell Petroleum Company Ltd en Shell Petroleum Inc. De twee eerste

¹⁰ **Productie 136**: Brief Watts aan de Inspector General Of Police, 1 december 1993, p. 2.

¹¹ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, p. 20; **Productie 246** U. Idemudia, Assessing corporate–community involvement strategies in the Nigerian oil industry: An empirical analysis, *Resources policy*, 34(3), 2009, p. 135.

¹² SPDC is via verschillende houdstermaatschappijen altijd in handen van de moedervernootschappen en wordt ook genoteerd als 100% dochter in de jaarverslagen van de moedervernootschappen, zie **Productie 159**: Annual Report 1992 Shell Transport and Trading, p. 24) en Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2015 (**productie 172**), p. 230.

¹³ **Productie 54**: Verklaring Jordan I. Siegel, 5 februari 2009, para. 12; **Productie 84**: Note “*the following is issued at the request of the Committee of Managing Directors*”, benoeming van Brian Anderson als *Managing Director* van SPDC, 11 januari 1994; **Productie 34**: Public deposition John Jennings, 26 februari 2004, pp. 118-119.

¹⁴ Public deposition John Jennings, 26 februari 2004 (productie 34), pp. 123-125.

¹⁵ **Productie 160**: Jaarverslag Royal Dutch/Shell Group of Companies 1995, pp. 50, 60; **Productie 54**: Verklaring Jordan I. Siegel, 5 februari 2009, paras. 7, 18.

¹⁶ Public deposition John Jennings, 26 februari 2004 (productie 34), p. 131.

houdstermaatschappijen, ook wel de Group Holding Companies genoemd, waren aandeelhouders van meerdere *service companies* en *operating companies*.¹⁷ De drie houdstermaatschappijen en de *service-* en *operating companies* vormden samen de zogenaamde *Royal Dutch/Shell Group of Companies* (Shell-groep). De moedervennootschappen waren samen eigenaar van de Shell-groep. Zoals in hoofdstuk 8.9 nader wordt uiteengezet, oefenden de moedervennootschappen een doorslaggevende invloed uit op het reilen en zeilen binnen het Shell-concern.

30. De herstructurering van het Shell-concern heeft op 21 december 2005 een fusie teweeg gebracht tussen de Royal Dutch Petroleum Company als verdwijnende rechtspersoon en haar dochtermaatschappij, Shell Petroleum N.V., als verkrijgende rechtspersoon. Shell Petroleum N.V. is hierdoor een directe dochtermaatschappij geworden van Royal Dutch Shell plc en rechtsopvolger onder algemene titel van de Koninklijke Nederlandse Petroleum Maatschappij N.V.
31. Sinds de *unification* in 2005 is Royal Dutch Shell plc formeel aan het hoofd komen te staan van het Shell-concern. Volgens eiseressen betreft deze *unification* uitsluitend een papieren transitie.¹⁸ In hoeverre dat inderdaad het geval is, is een vraag die thans voorligt bij het gerechtshof Den Haag in de zaken van Milieudefensie c.s. tegen Shell.¹⁹ Om die reden is ervoor gekozen om zowel de 'oude' als de 'nieuwe' moedervennootschappen aan te spreken.

2.7 Shell Transport and Trading Company, ltd (voorheen Shell Transport and Trading Company, p.l.c.)

32. Shell Transport and Trading Company plc had vóór 2005 40 % van de Shell-groep in handen. Zij hield met de Royal Dutch Petroleum Company gezamenlijk toezicht op de dochterondernemingen (zie verder hoofdstuk 2.6 en 8.9). Deze rechtspersonen werkten, middels het Committee of Managing Directors en de Conference, zodanig intensief samen dat zij een eenheid vormden in de wijze van aansturing van het Shell-concern.²⁰ De beschrijving van de bedrijfsstructuur in hoofdstuk 2.6 en 8.9 is dan ook overeenkomstig van toepassing voor Shell Transport en Trading. Gezien de twee moedervennootschappen als eenheid handelden, zijn zij ook gezamenlijk

¹⁷ Deze *service companies* leverden diensten aan de *operating companies*, veelal in de vorm van technisch, financieel of juridisch advies.

¹⁸ Zie hierna, hoofdstuk 2.8.

¹⁹ Gerechtshof Den Haag 18 december 2015, ECLI:NL:GHDHA:2015:3588, r.o. 2.2, te raadplegen via: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2015:3588> <laatst bezocht op 28 april 2017>.

²⁰ Het Hof van Justitie van de Europese Unie heeft zich in 2012 over deze vraag gebogen. Zij moest bepalen of “the two parent companies [...] were in a position analogous to that in which a single company holds the entire share capital of its subsidiary”. Het Hof overweegt de feiten zoals ook hierna besproken in hoofdstuk 8.8.3 (de twee moedervennootschappen waren gezamenlijk aandeelhouder van de Group Holding companies, zij benoemden gezamenlijk de bestuurders van deze holding companies, zij stuurden middels het CMD het gehele Shell-concern aan) en concludeert dan ook dat de manier waarop de twee moedervennootschappen gezamenlijk opereren gelijkstaat aan het opereren van één moedervennootschap, zie Hof van Justitie van de Europese Unie, 27 september 2012, ECLI:EU:T:2012:478, zaak T-343/06, paras. 47-51, te raadplegen via: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=127581&pageIndex=0&doclang=nl&mode=lst&dir=&occ=first&part=1&cid=52489> <laatst bezocht op 21 juni 2017>.

verantwoordelijk. Het feit dat Shell Transport and Trading maar 40% van de aandelen hield, doet niet af aan het feit dat de moedervennootschappen het Shell-concern als eenheid hebben aangestuurd.²¹

33. Shell Transport and Trading Company, plc is per 20 juli 2005 overgegaan in Shell Transport and Trading Company Ltd. Shell Petroleum N.V. houdt thans 100% van de aandelen in Shell Transport and Trading Company, Ltd.²²

2.8 Royal Dutch Shell plc

34. Royal Dutch Shell plc is sinds 20 juli 2005 de moedervennootschap van Royal Dutch Petroleum Company en Shell Transport and Trading Company Ltd.²³ De aandelen die aandeelhouders hadden in de oude moedervennootschappen zijn in de zogenaamde *unification* pro rata ingewisseld voor aandelen in Royal Dutch Shell. Royal Dutch Shell is na verdere herstructureringen de directe eigenaar geworden van Shell Petroleum N.V. en indirect eigenaar van Shell Transport and Trading Company Ltd. Als nieuwe moedervennootschap is Royal Dutch Shell na de *unification* indirect voor 100 % eigenaar van SPDC gebleven.²⁴

35. Los van de *unification* en herstructureringen, zijn de vormen van sturing en toezicht tussen de moedervennootschap(pen) en de dochterondernemingen na 2005 niet wezenlijk veranderd. Wat vandaag de dag de Executive Committee heet, heette voor de *unification* van de twee moederbedrijven het Committee of Managing Directors (CMD).²⁵ In oktober 2004 werd de naam van het CMD vooruitlopend op de *unification* al veranderd in Executive Committee. De functies en bevoegdheden van dit orgaan en zijn leden zijn daarbij niet inhoudelijk veranderd.²⁶

36. De Board of Directors van Royal Dutch Shell bestond feitelijk voor de *unification* ook al, maar werd toen de “Conference” genoemd, die – in een meer complexe structuur – dezelfde functies had als de Board of Directors nu heeft. De Shell-groep functioneerde reeds voor de *unification* dus al alsof er maar één moederbedrijf was. Door de *unification* ontstond er slechts formeel een nieuwe toplaag in het bedrijf, die de daarvoor reeds feitelijk bestaande organisatiestructuur weerspiegelde.

37. Eiseressen menen dan ook dat RDS onverminderd aansprakelijk kan worden gehouden voor handelen ten tijde van vóór die papieren transitie. Zoals gezegd in hoofdstuk 2.6

²¹ Dit werd aangevoerd door Shell in de zaak tegen de Europese Commissie, maar het Hof van Justitie volgde haar niet om de bovengenoemde redenen.

²² **Productie 171:** Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2005, p. 6.

²³ Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2005 (productie 171), p. 6.

²⁴ Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2005 (productie 171), p. 199; Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2015 (productie 172), p. 230

²⁵ Zie hoofdstuk 2.6 over het CMD.

²⁶ **Productie 170:** Jaarverslag 2004 Koninklijke Nederlandse Petroleum Maatschappij N.V., p.118; Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2005 (productie 171), p. 5.

ligt de vraag in hoeverre dat inderdaad het geval is, thans voor bij het gerechtshof Den Haag in de zaken van Milieudefensie c.s. tegen Shell.²⁷ Mede om die reden is ervoor gekozen om thans zowel de 'oude' als de 'nieuwe' moedervennootschappen aan te spreken.

3 FEITELIJKE ACHTERGROND

3.1 Shell in Nigeria

38. Het Brits-Nederlandse bedrijf Shell speelt al sinds 1936 een actieve rol in het dan nog Brits-koloniale Nigeria, waar het betrokken is bij de zoektocht naar olievelden en de eerste oliewinning in de Nigerdelta vanaf de jaren veertig. Als vanaf 1958 een grootschalige olie-industrie op gang komt in Nigeria wordt Shell de belangrijkste speler.²⁸ Ook na de onafhankelijkheid van Nigeria in 1960 blijft de olie-exploitatie in Nigeria grotendeels in handen van Shell.
39. De olie-industrie in Nigeria was in eerste instantie de verantwoordelijkheid van buitenlandse bedrijven, tot de Nigeriaanse overheid zich er vanaf 1971 actief mee gaat bemoeien. In 1977 wordt in dit kader de Nigerian National Petroleum Company (NNPC) opgericht. De NNPC is verantwoordelijk voor de regulering van en het toezicht op de olie-industrie in Nigeria. Met deze oprichting wordt ook een nieuw systeem van samenwerking tussen de overheid en de verschillende oliemaatschappijen ingesteld. Vanaf 1977 wordt gebruik gemaakt van zogenaamde *joint venture agreements*, *production sharing arrangements* en *service or risk contracts*.
40. SPDC is sinds 1984 de *operator* van een Nigeriaanse *joint venture* waarvan het 30% van de aandelen bezit.²⁹ Als *operator* is Shell verantwoordelijk voor alle aspecten van de oliewinning- en exploitatie: het zoeken naar olie, het ontwikkelen van olievelden, het aanleggen en onderhouden van pijpleidingen, het beheer van export terminals, het beheer van de ruwe olie in opslaginstallaties, en het beheer van het operationele budget. Er is dus sprake van een grote mate van externe controle over de Nigeriaanse olie-industrie, die grotendeels in handen ligt van Shell.
41. Als *operator* van de grootste *joint venture* in Nigeria haalt SPDC grote hoeveelheden olie uit de grond; in de periode 1991-1995 was gemiddeld 13% van Shells totale olieproductie afkomstig uit Nigeria.³⁰ Volgens haar eigen cijfers produceert Shell in

²⁷ Gerechtshof Den Haag 18 december 2015, r.o. 2.2, ECLI:NL:GHDHA:2015:3588, te raadplegen via: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2015:3588> <laatst bezocht op 28 april 2017>.

²⁸ Zie de website van SPDC, <http://www.shell.com.ng/about-us/shell-nigeria-history.html> <laatst bezocht op 24 april 2017>.

²⁹ De verdeling van de aandelen is als volgt: NNPC 55%, SPDC 30% en 15 % voor andere oliemaatschappijen, zie de website van SPDC, te raadplegen via: <http://www.shell.com.ng/about-us/who-we-are.html> <laatst bezocht op 24 april 2017>.

³⁰ **Productie 162:** Form 20-F United States Securities and Exchange Commission, Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company, plc, 2005, p. 13.

Nigeria gedurende deze periode gemiddeld 278.000 vaten olie per dag.³¹ Het belang van olie, en daarmee de macht en zeggenschap van Shell in Nigeria, blijkt uit het feit dat 95% van de export van Nigeria bestaat uit olie en dat olie 80% beslaat van de inkomsten van het Nigeriaanse regime.³²

42. Er bestaat een wederzijdse afhankelijkheid tussen Shell en de Nigeriaanse regering. Shell is allereerst afhankelijk van het Nigeriaanse regime, omdat zij toestemming van het regime nodig heeft om olie te mogen winnen; alle natuurlijke hulpbronnen in Nigeria komen, conform de wet, de federale overheid toe. Verder is Shell afhankelijk van het regime voor 55% van de bekostiging van de operaties en, zoals uiteengezet zal worden in hoofdstuk 8, voor de bescherming van haar faciliteiten. Het Nigeriaanse regime is op haar beurt afhankelijk van Shell voor het gehele proces van oliewinning- en exploitatie. Niet alleen krijgt het regime 55% van de opbrengsten van de *joint venture*, SPDC betaalt over haar eigen opbrengsten ook nog eens 85% belasting aan het regime.³³ Shell is daarmee verantwoordelijk voor bijna de helft van de inkomsten van het Nigeriaanse regime. Zoals zal blijken in hoofdstuk 8 zet Shell haar economische belang ook regelmatig in om druk op het regime uit te oefenen.

3.2 Gevolgen van oliewinning in Ogoniland

43. Ogoniland is al ruim vijfhonderd jaar het thuisland van de Ogoni, een bevolkingsgroep van zo'n 500.000 mensen in 1994. Op dit moment wonen er zo'n 1,5 miljoen mensen in Ogoniland.



44. Vanwege de dichtbevolktheid is Ogoniland een lastige plek voor de exploitatie en exploratie van olievelden. Desondanks bouwde Shell er aan een netwerk van twaalf olievelden, 116 putten, vijf *flow stations*,³⁴ verschillende *manifolds* en kilometers aan

³¹ Form 20-F United States Securities and Exchange Commission, Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company, plc, 2005 (productie 162), p. 13.

³² United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, p. 20; U. Idemudia, Assessing corporate-community involvement strategies in the Nigerian oil industry: An empirical analysis, *Resources policy*, 34(3), 2009 (productie 246), p. 135.

³³ **Productie 142:** Brief van Head of Media Relations bij *service company* SIPC, Eric Nickson, aan Ms G Brooks van the Wall Street Journal, 20 april 1994, p. 2.

³⁴ In Ebbu, Korokoro, Yorla en twee in Bomu (K-dere).

- pijpleidingen.³⁵ Ogoniland was verantwoordelijk voor zo'n 10% van Shells olieproductie in Nigeria. De economische gevolgen van de protesten van de Ogoni en het noodgedwongen stopzetten van de productie in Ogoniland in 1993 waren dus aanzienlijk.³⁶
45. In 2011 concludeerde de United Nations Environmental Programme (UNEP) na een uitgebreid onderzoek dat vijftig jaar olie- en gaswinning in Ogoniland desastreuze gevolgen heeft gehad voor het milieu in het gebied en de gezondheid van de bewoners.³⁷
46. De olievervuiling heeft onder andere tot gevolg gehad dat landbouwgronden in Ogoniland – dat voor de komst van de olie-industrie bekendstond als “graanschuur” van de regio – blijvend onvruchtbaar zijn geworden, rivieren en kreken ongeschikt zijn geworden voor visserij en grond- en drinkwater verontreinigd is. De gevolgen voor de lokale economie en volksgezondheid zijn navenant. Naar schatting van de UNEP zou het 25 tot 30 jaar en een miljardeninvestering kosten om de schade in Ogoniland enigszins te herstellen.³⁸ Ondanks de rijkdom aan bodemschatten behoren de Ogoni tot de armste bevolkingsgroepen van Nigeria en leven 80% van de inwoners van de Nigerdelta onder de armoedegrens.³⁹
47. In 2002 wordt de grote milieuschade die door de regering en de oliemaatschappijen is aangericht in Ogoniland door de African Commission on Human and Peoples' Rights erkend in de *Ogoni*-zaak. Deze zaak was aangespannen door vertegenwoordigers van de Ogoni-bevolking tegen de Nigeriaanse regering. De African Commission komt tot het oordeel dat meerdere mensenrechten zijn geschonden, waaronder het recht op een schoon en gezond leefmilieu, het recht op leven en een schending van het verbod op discriminatie. De African Commission oordeelt hard over de wisselwerking tussen de Nigeriaanse regering en de oliemaatschappijen:

“the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-

³⁵ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, p. 24.

³⁶ Zie bijvoorbeeld aanzienlijke de daling in de olieproductie in 1994 en 1995, Security and Exchange Commission Form 20-F, Annual Report 1995 Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company plc (productie 162), p. 13; Zie ook de Public Deposition van Robert Sprague 10 februari 2003 (**productie 55**), p. 108: “once we withdrew from Ogoniland it was, there was a large impact on production, so I am sure I prepared in some discussions because it was a big chunk of production which we didn't want to lose, so it is the kind of thing we worry about”. Sprague was van 1991-1994 Head of Operations and Liaison bij SIPM (*service company*), hij was in deze functie het eerste aanspreekpunt voor SPDC. In 1994 werd hij Exploration and Production Coordinator. In beide functies rapporteerde hij direct aan een van de *Group Managing Directors*.

³⁷ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, pp. 9-11.

³⁸ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, p. 12.

³⁹ **Productie 240**: C.A. Lutz, “The Niger Delta Conflict and Military Reform in Nigeria”, in “The Politics of Military Reform” J. Rüland et al., 2012, p. 201.

being of the Ogonis [and] has allowed private oil companies to destroy food sources".⁴⁰

48. In de uitspraak wordt ook een note verbale van de toenmalige Nigeriaanse regering geciteerd, waarin zij verklaart dat "*there is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area*".⁴¹
49. Door critici wordt Shell 'ecologisch racisme' verweten, omdat het andere milieumaatstaven hanteert bij haar werkzaamheden in Nigeria dan in de Westerse landen waar zij opereert. Zo accepteert Shell in Nigeria lange tijd ernstige vervuiling, bovengrondse pijpleidingen, *gas flaring* nabij dorpen en gebrekkige compensatie bij landonteigening. In 2005 wordt Shell in de *Gbemre*-zaak door een Nigeriaanse rechter veroordeeld wegens het schenden van het grondrecht op een schoon leefmilieu en het recht op leven vanwege de schadelijke gevolgen van haar *gas flaring*-activiteiten nabij leefgemeenschappen.⁴²

3.3 Nigeria in de jaren negentig

3.3.1 De Nigeriaanse Junta

50. Nigeria wordt in het begin van de jaren negentig geregeerd door twee opeenvolgende militaire regimes. *Major-General Ibrahim Babangida* pleegt in 1985 een staatsgreep en blijft aan de macht tot 1993. Vanaf november 1993 volgt de militaire dictatuur van Sani Abacha.
51. Onder leiding van Babangida is er sprake van grootschalige corruptie. Als de olieprijs in 1990 aanzienlijk stijgt, verdwijnen miljarden dollars in eigen zak.⁴³ Het Nigeriaanse volk ziet door de corruptie weinig terug van de inkomsten uit de olie-industrie en eist een terugkeer naar een democratisch verkozen burgerregering. In juni 1993 worden verkiezingen georganiseerd. Hoewel Chief Abiola als winnaar uit de bus komt,

⁴⁰ **Productie 218:** African Commission on Human & Peoples' Rights, ACHPR/COMM/A044/1, 27 mei 2002, para.58, 66. De African Commission oordeelt dat Nigeria de volgende artikelen van de African Charter on Human and Peoples' Rights heeft geschonden: Articles 2 (non-discriminatory enjoyment of rights), 4 (right to life), 14 (right to property), 16 (right to health), 18 (family rights), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples to a satisfactory environment), p. 15.

⁴¹ Ibid, para. 42 (verwijst naar *note verbale* 127/2000).

⁴² **Productie 204:** Federal High Court of Nigeria in the Benin Judicial Division, suit FHC/B/CS/53/05, 14 November 2005, *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005). Shell werd in deze zaak veroordeeld tot het staken van de *gas flaring*-activiteiten. Toen de zaak in 2006 opnieuw moest voorkomen bleek de rechter van de zaak gehaald.

⁴³ Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis By Michael M. Ogbeidi Associate Professor Department of History and Strategic Studies, University of Lagos, Nigeria, 2012, pp. 9, 13, 15, te raadplegen via: http://www.unh.edu/nigerianstudies/articles/Issue2/Political_leadership.pdf <laatst bezocht op 24 april 2017>; Why Government Should Release the Okigbo and Oputa Reports, Mobolaji Aluko, Burtonsville, MD, USA, 25 april 2004, te raadplegen via: <https://dawodu.com/aluko88.htm> <laatst bezocht op 24 april 2017>; How Ibrahim Babangida Promoted Corruption And Stagnated Nigeria's Economic Growth And Development, Terfa Naswem, 23 april 2015, Newsrescue, te raadplegen via: <http://newsrescue.com/how-ibrahim-babangida-promoted-corruption-and-stagnated-nigerias-economic-growth-and-development-by-terfa-naswem/#ixzz4cAGfSjdr> <laatst bezocht op 24 april 2017>.

verklaart Babangida de resultaten nietig voordat deze officieel worden gemaakt.⁴⁴ Dit zorgt voor dermate veel opstand en onrust, dat hij zich in augustus 1993 genoodzaakt ziet om alsnog af te treden.

52. Daarop wordt een interim-regering ingesteld onder leiding van Ernest Shonekan, tot dan toe bestuurder van SPDC.⁴⁵ Deze regering houdt het drie maanden vol: in november 1993 pleegt generaal Sani Abacha, de minister van Defensie onder Babangida, een staatsgreep en herstelt het militaire bewind. Shonekan blijft fungeren als Abacha's rechterhand. De staatsgreep leidt tot grote internationale verontwaardiging en afkeuring en de Europese Unie legt sancties op aan Abacha's "military dictatorship".⁴⁶
53. Abacha gebruikt buitensporig geweld om zijn macht te verzekeren; demonstraties worden hard neergeslagen en politieke tegenstanders worden gedetineerd en geëxecuteerd.⁴⁷ Met name de onderdrukking van de Ogoni-bevolking trekt wereldwijd de aandacht, zeker als het leger in 1994 Ogoniland bezet en daar op grote schaal misdaden tegen de menselijkheid pleegt.⁴⁸
54. In 2014 wordt bevestigd dat ook de in 1998 overleden Abacha zijn positie heeft gebruikt voor persoonlijk gewin, wanneer in een rechtszaak in Amerika naar voren komt dat hij meer dan 480 miljoen dollar naar buitenlandse rekeningen heeft weggesluisd. De *Assistant Attorney General* zegt hierover:
- "Rather than serve his country, General Abacha used his public office in Nigeria to loot millions of dollars, engaging in brazen acts of kleptocracy. [...] With this judgment, we have forfeited \$480 million in corruption proceeds that can be used for the benefit of the Nigerian people".⁴⁹
55. De Nigeriaanse bevolking ziet in de jaren negentig nauwelijks iets terug van de inkomsten uit de olie-industrie, hetgeen vooral wrang is voor de bevolking van de Ogoniland. Zij behoren, zoals gezegd, tot de armste bevolkingsgroepen van Nigeria terwijl de olie in hun grondgebied wordt gewonnen, en zijn op grote schaal slachtoffer

⁴⁴ Encyclopedia Britannica, Nigeria, military regimes 1983-1999, beschikbaar via: <https://www.britannica.com/place/Nigeria/Military-regimes-1983-99> <laatst bezocht op 24 april 2017>.

⁴⁵ Zie hoofdstuk 8.4.5.

⁴⁶ Zie onder meer European Political Documentation Bulletin, Statement on Nigeria 93/272, 25 juni 1993, Brussel, p. 346; European Political Documentation Bulletin, Statement on Nigeria, 93/305, 13 juli 1993, p. 364; European Political Documentation Bulletin, Statement on Nigeria, 93/460, 19 november 1993, Brussel, "The European Union condemns the fact that the democratic process in Nigeria has been interrupted through the resumption of power by a military dictatorship", pp. 550-551 (**productie 230**). Zie ook hoofdstuk 8.4.3.

⁴⁷ Encyclopedia Britannica, Nigeria, military regimes 1983-1999, te raadplegen via: <https://www.britannica.com/place/Nigeria/Military-regimes-1983-99> <laatst bezocht op 24 april 2017>.

⁴⁸ Zie hoofdstukken 4 en 8.

⁴⁹ U.S. Department of Justice, "U.S. Forfeits More Than \$480 Million Stolen by Former Nigerian Dictator in Largest Forfeiture Ever Obtained Through a Kleptocracy Action" 7 Augustus 2014, te raadplegen via: <https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/u.s.-forfeits-more-than-480-million-stolen-by-former-nigerian-dictator-in-largest-forfeiture-ever-obtained-through-a-kleptocracy-action> <laatst bezocht op 24 april 2017>.

van mensenrechtenschendingen.⁵⁰ De VN-rapporteur voor buitengerechtelijke, standrechtelijke of willekeurige executies stelt in zijn rapport (**productie 235**):

“Security forces were said to have used excessive force against participants in peaceful demonstration against the destruction of fields and crops without indemnification by Nigerian and multinational companies exploiting oil fields in the region”.⁵¹

56. Zoals nader zal worden uitgewerkt in de hoofdstuk 8 blijft Shell tijdens de regeringsperiode van Abacha nauw met het regime samenwerken en biedt zij het regime regelmatig een helpende hand. Shell is onder meer bereid om wapens aan te schaffen, een informantennetwerk te onderhouden en haar vervoersmiddelen beschikbaar te stellen voor militaire operaties. Ook zorgt zij dat de regering weet waar de demonstraties plaatsvinden, zodat zij deze kan beëindigen. Deze houding verandert niet tijdens de militaire operatie in Ogoniland in 1994 en tijdens het showproces tegen de kopstukken van het Ogoni-verzet in 1995 dat van Nigeria defintief een pariastaat maakt.⁵²
57. Het gezamenlijk optreden van Shell met de militaire dictatuur van Abacha zorgt ervoor dat het bedrijf onder vuur komt te liggen. Desalniettemin start Shell, dat verantwoordelijk is voor bijna de helft van de inkomsten van het Nigeriaanse regime,⁵³ in deze periode in samenwerking met Abacha verschillende nieuwe projecten op.⁵⁴ Daarmee levert zij een belangrijke bijdrage aan de grootschalige corruptie en repressie die in deze jaren plaatsvindt.⁵⁵

3.3.2 MOSOP

58. De onvrede over de ernstige vervuiling en de exploitatie van Ogoniland zonder dat de Ogoni daarvan meeprofiteren, leidt in 1990 tot de oprichting van de Movement for the Survival of the Ogoni People (MOSOP). MOSOP streefde (en streeft nog altijd) naar sociale, juridische en financiële gerechtigheid voor de Ogoni-bevolking door middel

⁵⁰ C.A. Lutz, “The Niger Delta Conflict and Military Reform in Nigeria”, in “The Politics of Military Reform” J. Rüländ et al., 2012 (productie 240); p. 201; Rapport van de Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions van 7 december 1993, E/CN.4/1994/7 (productie 235), p. 105.

⁵¹ **Productie 235**: Rapport van de Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions van 7 december 1993, p. 105.

⁵² Zie hoofdstukken 4 en 8.

⁵³ SPDC alleen al is, zonder de andere Nigeriaanse Shell-vennootschappen, verantwoordelijk voor 50% van de olieproductie, en 80% van de overheidsinkomsten is afkomstig uit deze olieproductie, zie: **productie 137**: Brief Philip Watts aan Alhaji Ibrahim Coomassie (Inspector General Of Police, Nigerian Police Force, 1 december 1993, p. 2; United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <laatst bezocht 22 juni 2017>, p. 20; U. Idemudia, Assessing corporate–community involvement strategies in the Nigerian oil industry: An empirical analysis, Resources policy, 34(3), 2009 (productie 246), p. 135.

⁵⁴ Zie hoofdstuk 8.9.5.

⁵⁵ **Productie 242**: I. Okonta en O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003, p. 58, verwijzend naar Project Underground: “Shell supplies fully half of the income to a brutal regime bent on supressing dissent”.

van vreedzaam protest tegen het regime en de oliemaatschappijen, Shell in het bijzonder.

59. Het programma van MOSOP is neergelegd in de Ogoni Bill of Rights en richt zich met name op meer politieke autonomie, een rechtvaardige vergoeding voor het gebruik van hun land en grondstoffen door Shell en het regime, en herstel van de schade die is ontstaan door olie-exploitatie. MOSOP-oprichter en -leider Kenule (“Ken”) Beeson Saro-Wiwa⁵⁶ verwoordt de redenen voor de oprichting van de beweging als volgt:

“The Ogoni took stock of their condition and found that in spite of the stupendous oil and gas wealth of their land, they were extremely poor, had no social amenities, that unemployment was running at over 70 percent, and that they were powerless, as an ethnic community in a country of 100 million people, to do anything to alleviate their condition. Worse, their environment was completely devastated by three decades of reckless oil exploitation or ecological warfare by Shell”.⁵⁷

60. Een hoogtepunt van het verzet vormt een protestmars tegen Shell en het regime georganiseerd door MOSOP op 4 januari 1993, de dag die vanaf dat moment bekend komt te staan als Ogoni Day, en jaarlijks door de Ogoni wordt gevierd. Aan de mars nemen bijna 300.000 Ogoni deel, zo’n 60 % van de toenmalige bevolking van Ogoniland.⁵⁸ Saro-Wiwa reist in deze periode de wereld over om het lot van de Ogoni onder de aandacht te brengen en wordt door de internationale gemeenschap omarmd als milieu- en mensenrechtenactivist.
61. Shell heeft MOSOP ondanks de internationale druk nooit erkend als legitieme vertegenwoordiger van de Ogoni. Wel besluit Shell na het protest in 1993 haar werkzaamheden in Ogoniland tot nader orde op te schorten (hoewel zij daarna nog enkele malen zonder toestemming van de bevolking terugkeert).⁵⁹ Shell weigert met MOSOP te onderhandelen over schadevergoeding en royalty’s. Integendeel, zij beklaagt zich over MOSOP bij het dictatoriale regime,⁶⁰ uit publiekelijk kritiek op MOSOP en houdt het regime uit de wind als het verzet in 1994 en 1995 mede op Shells instigatie en met haar hulp met harde hand wordt neergeslagen. Ook als de wereld meekijkt hoe de top van MOSOP door Abacha wordt gezuiverd blijft Shell zijn regime onverminderd steunen.⁶¹ In hoofdstuk 8 wordt nader op de rol van Shell bij deze ontwikkelingen ingegaan.

⁵⁶ Saro-Wiwa was eerst woordvoerder en vanaf juni 1993 voorzitter van MOSOP.

⁵⁷ I. Okonta en O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003 (productie 242), pp. 116-117

⁵⁸ **Productie 225**: M. Birnbaum, *Nigeria Fundamental Rights Denied*, Report of the trial of Ken Saro-Wiwa and Others, juni 1995, para. 3.4.

⁵⁹ Zie hoofdstukken 8.2.4, 8.2.5, en 8.2.6.

⁶⁰ Zie hoofdstuk 8.

⁶¹ Zie hoofdstukken 8.3 en 8.4.

4 HET OGONI 9-SCHIJNPROCES

4.1 Inleiding

62. In 1994 vindt een grootschalige militaire operatie plaats in Ogoniland onder de noemer “*Operation Restore Order in Ogoniland*”.⁶² Het doel van deze operatie is orde op zaken te stellen door het verzet van MOSOP te breken. Het regime richt daartoe een speciale paramilitaire eenheid op die de leiding krijgt over de militaire operatie die maanden zal duren en waarbij op grote schaal misdaden tegen de menselijkheid worden gepleegd. De paramilitaire eenheid, de Rivers State Internal Security Task Force (RSISTF), staat onder leiding van Paul Okuntimo, een luitenant-kolonel met een beruchte reputatie en banden met Shell.⁶³
63. Als onderdeel van “*Operation Restore Order in Ogoniland*” worden in de maanden na mei 1994 vijftien Ogoni kopstukken gearresteerd, onder wie Barinem Kiobel, Baribor Bera, Nordu Eawo en Paul Levula. De arrestaties volgen op de moord op vier traditionele Ogoni-leiders tijdens een bijeenkomst in Giokoo, een dorp in Ogoniland. Het regime maakt vanaf begin af aan duidelijk dat het deze mannen verdenkt van betrokkenheid bij de moorden. Ruim anderhalf jaar later, op 10 november 1995, worden negen van de vijftien arrestanten, te weten Barinem Kiobel, Ken Saro-Wiwa, Baribor Bera, John Kpuinen, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levula en Felix Nuate, geëxecuteerd na een proces dat bekend komt te staan als het Ogoni 9-proces. De executies worden door de internationale gemeenschap veroordeeld als *judicial murder*, omdat elk bewijs tegen de verdachten ontbreekt en de rechtsgang evident gecorrumpeerd was.
64. Dat bij de gang van zaken bij het proces en de daarop volgende executies meerdere mensenrechten geschonden worden is al snel duidelijk.⁶⁴ Dit wordt later ook bevestigd door de African Commission on Human and Peoples’ Rights, die vaststelt dat Nigeria art. 1, 4 tot en met 7, 9 tot en met 11, 16 en 26 van het Afrikaanse Handvest heeft geschonden (**productie 216**: African Commission on Human and Peoples rights, Nigeria: *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* (2000)).

4.2 Arrestaties

4.2.1 Kiobel

65. Op 19 mei 1994 wordt Kiobel door de traditionele leider van Giokoo, Gbenemene J.P. Bagia, uitgenodigd om op 21 mei 1994 als spreker aanwezig te zijn bij een bijeenkomst in het paleis van de Gbenemene in Giokoo. Kiobel is dan net aangesteld als

⁶² Zie hoofdstuk 8.3.

⁶³ **Productie 17**: Public Deposition Brian Anderson, 13 februari 2003, p. 78. Okuntimo stond in Nigeria bekend als “the beast of Ogoniland”. Zie verder hoofdstukken 8.2.6, 8.3, en 8.5.3.

⁶⁴ Zie hoofdstuk 4.3 en het rapport van Michael Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, Article 19, Juni 1995 (productie 225).

Commissioner for Commerce, Industry and Tourism van Rivers State, nadat hij daarvoor lange tijd in het Verenigd Koninkrijk heeft gewoond. In zijn eerste maanden als Commissioner laat hij zich herhaaldelijk kritisch uit over het optreden van het regime en Shell tegenover de Ogoni-bevolking.

66. Wanneer Kiobel op 21 mei 1994 om 10.00 uur in Giokoo arriveert, blijkt de bijeenkomst nog niet te zijn begonnen, waarop hij terugkeert naar zijn woonplaats. Later die dag stuurt hij een motorrijder naar Giokoo om te kijken of de bijeenkomst al is begonnen. De motorrijder vertelt hem dat hij het paleis niet heeft kunnen bereiken omdat de omgeving rondom het paleis zou zijn volgelopen met woedende protesterende jongeren. Het gerucht gaat dat Saro-Wiwa is gearresteerd door het leger.
67. Kiobel vertrekt daarop onmiddellijk naar Giokoo in een poging de boel te sussen, maar de menigte jongeren wil niets van hem weten; er worden stenen naar hem gegooid en hij wordt geslagen. Hij besluit het incident te melden bij de autoriteiten, waar hem wordt verzocht nogmaals naar het paleis te gaan om de jongeren tot bedaren te brengen. Kiobel keert terug naar Giokoo, waar hij er in slaagt om even te spreken met Bagia, maar al snel door de jongeren wordt weggestuurd omdat hij een “Komo and Abacha agent” zou zijn. Hij is genoodzaakt te vluchten. Hij weet dan nog niet dat vier traditionele Ogoni-leiders – Edward Kobani, Albert Badey, Samuel Orage en Theophilus Orage – zijn vermoord tijdens de bijeenkomst waar hij zou spreken.⁶⁵
68. Aanleiding van de moorden zou een schisma binnen MOSOP zijn. Vanaf het voorjaar van 1993 ontstond er onenigheid tussen Garrick Leton (op dat moment president van MOSOP) en Saro-Wiwa, onder meer over de vraag of onderhandeld moest worden met Shell en het regime en of de aankomende nationale verkiezingen moesten worden geboycot. Onder de paraplu van MOSOP werden door Saro-Wiwa nieuwe organisaties opgericht, waaronder de jeugdbeweging National Youth Council of Ogoni People (NYCOP). Volgens Leton poogde Saro-Wiwa hiermee de controle binnen MOSOP over te nemen; hij en Edward Kobani deden daarop afstand van het president- en vicepresidentschap.⁶⁶ Zij werden opgevolgd door Saro-Wiwa en Ledum Mitee, waardoor een breuk ontstond binnen MOSOP tussen de Leton-factie enerzijds en de Saro-Wiwa-factie anderzijds. Hoewel nooit is vast komen te staan wie de moorden heeft gepleegd, speelt het regime in op de ontstane tweedeling, voor zover het al niet verantwoordelijk moet worden gehouden voor het ontstaan daarvan.⁶⁷ Het zouden

⁶⁵ **Productie 8:** Memorandum Barinem Kiobel, 2 juni 1994; **productie 173:** Affidavit Barinem Kiobel in support of motion, application for bail, ongedateerd, para. 13.

⁶⁶ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, juni 1995 (productie 225), paras. 3.5-3.7.

⁶⁷ Shell ziet de rol van het regime in ieder geval wel in dit licht. Vgl. **productie 70:** Telex Philip Watts aan SIPC en SIPM, 11 mei 1993. Watts stelt: “*Politically, it would appear that the government has succeeded in creating a split in the Ogoni solidarity [...]. This is yet to be proven*”.

NYCOP-leden zijn die op 21 mei 1994 voor goed wilden afrekenen met hun tegenstanders ('vultures' genoemd),⁶⁸ daartoe aangespoord door Saro-Wiwa en Kiobel.

69. Een dag na de moorden geeft de Military Administrator van Rivers State, Lt. Col. Dauda Musa Komo, een persconferentie die live wordt uitgezonden op televisie om te vertellen dat de schuldigen voor de moord op de vier Ogoni-leiders op dat moment worden gearresteerd. Hij opent de persconferentie met een fel anti-MOSOP betoog, waarin hij onder meer zegt dat:

"Ogoni is bleeding and not by federal troops [...], but by irresponsible and reckless thuggery of the MOSOP elements which as I've said must stop immediately and I therefore call on you to report accurately these events and to stop you being used as propaganda tools conveniently for some dictators like Ken Saro Wiwa".⁶⁹

70. Vervolgens komt Alhaji Mohammed Kobani aan het woord, de broer van de vermoorde Edward Kobani. Hij toont zijn verwondingen en krijgt van Komo uitvoerig de gelegenheid om te refereren aan de rol die Kiobel zou hebben gehad:

"But before the arrival of these people, the commissioner Kiobel] who were making the arrangements to receive came, you know, and viewed the environment there and left without a word. [...] Dr. Barinem Kiobel came back the second time and I [...] saw him addressing NYCOP group, there was a shout: "o shobey, hee!" twice like that, then he left."⁷⁰

71. Kobani zegt dat het niet de bedoeling was dat Kiobel bij de bijeenkomst aanwezig was: "*So I keep wondering why the commissioner came their twice. I know he is a staunch member of NYCOP. He is a leader of NYCOP*".⁷¹ Op de vraag van een van de journalisten dat het er op basis van Kobani's getuigenis naar uitziet dat "*one of your commissioners may have played a leading role in this incident*", antwoordt Komo: "*I think I've made it clear that if anybody is involved, whether he's a commissioner or not, we'll arrest him*".⁷²

⁶⁸ Deze term zou een belangrijke rol spelen tijdens het Ogoni 9-proces. Hiermee werd verwezen naar personen die onder invloed stonden van Shell en het regime. Zo stonden de meeste getuigen in het Ogoni 9-proces volgens MOSOP onder invloed van Shell en het regime, zie hoofdstuk 8.6.1.

⁶⁹ **Productie 5**: Geschreven transcript persconferentie, 22 mei 1994, p. 3 (het bestand bestaat uit tien pagina's, genummerd: p. 1-7 en p. 1-3. Dit staat op de eerste pagina 1); **Productie 254**: Video Persconferentie 22 mei 1994, 5:38 tot 6:19.

⁷⁰ Geschreven transcript persconferentie, 22 mei 1994 (Productie 5), pp. 5-6; Video persconferentie 22 mei 1994 (productie 254), 10:57 tot 11:16, 12:57 tot 13:16.

⁷¹ Geschreven transcript persconferentie, 22 mei 1994 (Productie 5), p. 1 (het bestand bestaat uit tien pagina's, genummerd: p. 1-7 en p. 1-3. Dit staat op de tweede pagina 1); Video persconferentie 22 mei 1994 (productie 254), 17:02 tot 17:30.

⁷² Geschreven transcript persconferentie, 22 mei 1994 (productie 5), p. 3 (het bestand bestaat uit tien pagina's, genummerd: p. 1-7 en p. 1-3. Dit staat op de tweede pagina 3). Video persconferentie 22 mei 1994 (productie 254), 20:45 tot 21:02.

72. Kiobel wordt kort daarop gearresteerd en uiteindelijk samen met de andere arrestanten opgesloten in Bori Camp, het hoofdkwartier van Okuntimo's RSISTF.
73. Op 3 juni 1994 schrijft Kiobel een brief aan Komo waarin hij zijn onschuld bepleit en hem smeekt om zijn vrijlating te bevelen. Hij vraagt ook aan Komo om het leger uit Gokana terug te trekken: *"This appeal is made because of indiscriminate shootings, killing of innocent persons including small children, old men and women thus making Gokana desolate."*⁷³ Komo negeert Kiobels smeekbede en laat hem op 29 juli 1994 weten dat hij ontheven is uit zijn positie als Commissioner.⁷⁴

4.2.2 Bera

74. De dag van de moorden in Giokoo viel samen met de (twee weken lange) rouwperiode voor de moeder van Bera, die eerder die maand was overleden. Op 21 mei 1994 was Bera met zijn vrouw in het huis van Bera's vader om condoleances in ontvangst te nemen. Toen hen het gerucht bereikte dat Ken Saro-Wiwa dood was, vluchtten zij in paniek samen met iedereen uit het dorp en de omliggende dorpen de jungle in. Daar hoorden zij dat de vier Ogoni-leiders vermoord waren en dat er gezocht werd naar MOSOP-leden. Een week lang brachten zij zo in de jungle door. Toen ze dachten veilig te zijn, keerden zij terug naar hun dorp Bera, in Ogoniland. Bijna alle huizen in het dorp waren vernield, ook hun huis was zodanig beschadigd dat zij gedwongen waren bij een familielid in te trekken. Op dit moment wisten Victoria en Baribor nog niet dat Baribor gezocht werd door het Nigeriaanse regime. Wel was het duidelijk dat MOSOP-leden nog steeds nergens veilig waren.
75. Een vrouw heeft Victoria geïnformeerd over het feit dat het regime op zoek was naar Baribor in verband met de moorden. Baribor is uiteindelijk gearresteerd en een week lang gedetineerd in Kpor, voor ook hij naar Bori Camp werd gebracht. Hier heeft hij de rest van zijn detentie vastgezet.

4.2.3 Eawo

76. Op de dag van de moorden in Giokoo was Eawo in Nowan, in de Local Government Area Tai in Rivers State, waar meer werk was dan in zijn woonplaats New-ol. Op 3 oktober 1994, bijna vijf maanden na de moorden, werd Eawo gearresteerd in Nowan, waar hij nog steeds verbleef. Zijn vrouw, Blessing, werd hierover geïnformeerd door de eigenares van het huis waar Eawo destijds woonde. Zij vertelde Blessing dat er vijf mannen binnenkwamen die Eawo sloegen met stokken en de achterkanten van hun geweren, waarna ze hem mee hebben genomen. Er is niet gezegd waarom hij werd gearresteerd.
77. Eawo werd ruim twee maanden vastgehouden op het politiebureau in Kpor. Daarna heeft hij een periode in Bori Camp gezeten, waarna hij werd overgeplaatst naar de State

⁷³ **Productie 9:** Memorandum Barinem Kiobel, 3 juni 1994.

⁷⁴ **Productie 13:** Termination of Appointment, D.M. Komo aan Barinem Kiobel, 29 juli 1994.

Intelligence Investigation Bureau (SIIB). Daar heeft hij tot aan zijn executie in detentie gezeten.

4.2.4 Levula

78. Op de dag van de moorden in Giokoo was Levula niet in Ogoniland. Hij is gearresteerd op 30 mei 1994, negen dagen na de moorden. 's Nachts kwamen vier mannen zijn huis binnen die hem sloegen met stokken en de achterkanten van hun geweren. Zijn vrouw probeerde hen vergeefs te weerhouden hem mee te nemen. Er is niet gezegd waarom haar man werd gearresteerd.
79. Levula werd vanaf 31 mei 1994 gedetineerd in Bori camp. Daarna werd hij naar het SIIB in Port Harcourt gebracht.
80. Levula heeft tijdens het Ogoni 9-proces verklaard dat Peter Fii het leger naar zijn huis heeft gebracht om hem te arresteren, en dat Peter Fii en hij in een rechtszaak verwickeld waren over een gestolen fiets. Peter Fii is één van de getuigen waarvan later wordt gesteld dat ze zijn omgekocht door Shell en het regime.⁷⁵

4.2.5 Klopjacht in Ogoniland

81. In totaal worden vijftien Ogoni-kopstukken gearresteerd die later berecht zullen worden voor vermeende medeplichtigheid aan de moorden. De moorden worden als excuus gebruikt om MOSOP nog meer in een kwaad daglicht te stellen. Tijdens de persconferentie op 22 mei 1994 wordt door een journalist gesteld dat “[MOSOP’s] program and irresponsible activities has contributed a lot to the disturbances in this state” en wordt de vraag aan Komo voorgelegd of het niet beter is dat MOSOP wordt verboden. Komo’s antwoord is kort maar krachtig: “*We are going after them*”.⁷⁶ In de dagen na het incident worden dan ook vele andere onschuldigen opgepakt – en vermoord – tijdens klopjachten van de RSISTF van Okuntimo.⁷⁷ De troepen van Okuntimo laten daarbij een spoor van verwoesting achter in verschillende dorpen, waarbij inwoners worden gestraft voor vermeende steun aan MOSOP. De VN-rapporteur voor buitengerechtelijke, standrechtelijke of willekeurige executies stelt hierover:

“Renewed military attacks against Ogoni villages were reported to have occurred during the first two weeks of June 1994, leading to the killing of at least 40 civilians. Fears were expressed for the lives of a large number of others who were reported to have been detained [...] The Special Rapporteur also transmitted to the Government allegations he

⁷⁵ **Productie 194**: verklaring Paul Levula; Zie verder hoofdstuk 8.6.1.

⁷⁶ Geschreven transcript persconferentie, 22 mei 1994 (productie 5), p. 2 (het bestand bestaat uit tien pagina’s, genummerd: p. 1-7 en p. 1-3. Dit staat op de tweede pagina 2); Video persconferentie 22 mei 1994 (productie 254), 19:29 tot 19:53.

⁷⁷ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, juni 1995 (productie 225), paras. 1.4, 3.9; Zie verder randnummers 233 tot en met 235.

had received concerning the killing of [56] persons [...] all of them said to belong to the Ogoni ethnic community, by soldiers of the “internal security unit”⁷⁸.

82. Okuntimo zou later deze operatie omschrijven als ‘psychological warfare’, bedoelt om een ‘constructive dialogue’ tot stand te brengen.⁷⁹

4.3 Ogoni Civil Disturbances Special Tribunal

83. De vijftien verdachten zitten tot begin 1995 vast zonder toegang tot een advocaat en zonder een officiële aanklacht, al is duidelijk dat zij worden verdacht van de moorden op de vier traditionele Ogoni-leiders. Lang is onduidelijk wat er met de verdachten gaat gebeuren en of zij zullen worden berecht binnen de rechtsmacht van de provincie Rivers State of door de federale regering.
84. Op 4 november 1994 wordt het Ogoni Civil Disturbances Special Tribunal opgericht per decreet van President Abacha en aangewezen om Kiobel en zijn medegevangenen te berechten voor de moord op de vier Ogoni-leiders.⁸⁰ Abacha beroept zich op een wet uit 1987 waarin het de regering wordt toegestaan om bij het plaatsvinden van *civil disturbances* een speciaal tribunaal op te richten dat buiten het reguliere rechtssysteem staat.⁸¹ Het Special Tribunal is gerechtigd mensen ter dood te veroordelen voor daden gepleegd voordat het tribunaal werd opgericht; het moet de doodstraf opleggen wanneer moord is bewezen, en mag de doodstraf laten uitvoeren zonder dat de mogelijkheid van hoger beroep openstaat.⁸² Een eventuele veroordeling wordt enkel nog voorgelegd aan een militaire commissie (*Armed Forces Ruling Council*); niet aan een regulier onafhankelijk hof.⁸³ Het tribunaal bestaat uit drie door Abacha persoonlijk aangewezen leden: twee rechters – voorzitter Justice Ibrahim Nadhi Auta⁸⁴ en Justice Etowa Enyong Arikpo – en een militair lid, luitenant-kolonel Hammid Ibrahim Ali.⁸⁵
85. De oprichting van het tribunaal leidt wereldwijd tot verontruste reacties. Zo uit de VN-rapporteur voor buitengerechtelijke, standrechtelijke of willekeurige executies in zijn rapport van 14 december 1994 zijn zorgen over het Special Tribunal:

⁷⁸ **Productie 236:** Rapport van 14 december 1994, E/CN.4/1995/61, p. 76.

⁷⁹ **Productie 222:** Human Rights Watch, Nigeria the Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, July 1995, p. 11; Zie ook **productie 248:** Documentaire The Drilling Fields, 23 mei 1994, (tape 4) 35:00 tot 35:20. Zie over deze gebeurtenissen verder hoofdstuk 8.3.1.

⁸⁰ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, juni 1995 (productie 225), para. 4.16.

⁸¹ Ibid, appendices 2 en 3 voor 1987 Decree en oprichtingsdecreet Abacha.

⁸² Ibid, paras. 1.6, 18.5-18.8.

⁸³ Ibid, para. 8.14.

⁸⁴ Ibrahim Auta is op dit moment Chief Judge van de Federal High Court van Nigeria, zie de website van de Federal Judicial Service Commission, te raadplegen via: <http://fjsc.gov.ng/hon-justice-ibrahim-ndahi-autaofr/> <laatst bezocht op 24 april 2017>.

⁸⁵ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, juni 1995 (productie 225), para. 9.6-9.7; African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (productie 216).

“special jurisdictions, especially when set up to deal speedily with situations of unrest, very often entail serious restrictions of the safeguards and guarantees for defendants, particularly when they face the death penalty. The Special Rapporteur therefore calls upon the authorities of Nigeria to ensure that proceedings before the special tribunal conform to the standards for fair trial procedures as contained in pertinent international instruments.”⁸⁶

86. Ook het Europees Parlement laat zich kritisch uit over het proces, en verzoekt om de onverwijld invrijheidsstelling van “Ken Saro-Wiwa en andere politieke vakbondsleiders, die gevangen zijn gezet vanwege hun strijd voor rechtvaardigheid en democratie in Nigeria” en “verlangt met name dat Nigeria de 28 betrokkenen onvoorwaardelijk vrijlaat en geen geweld meer aanwendt om de protesten te onderdrukken.”⁸⁷

87. De *Law Society of England and Wales* en de *Bar Human Rights Committee of England and Wales* vaardigen Michael Birnbaum af als onafhankelijk waarnemer. Hij publiceert – nog tijdens het proces – een vernietigend rapport (**productie 225**), waarin hij over de evident politieke beweegredenen achter de oprichting van het tribunaal schrijft:

“There is no sensible pragmatic reason for the appointment of a [Special Tribunal] other than the desire of the Federal Military Government that any trial relating to the Giokoo killings should take place before a tribunal which it hopes will favour the prosecution and a desire to avoid the scrutiny of its case by the ordinary courts”.⁸⁸

88. De eerste groep verdachten, die bestaat uit Saro-Wiwa, Mitee, Kiobel, Kpuinen en Bera, wordt pas op 28 januari 1995 officieel in staat van beschuldiging gesteld.⁸⁹ Dit is maanden nadat vals bewijs is verzameld⁹⁰ en slechts elf dagen voor de eerste zitting van het tribunaal. Uit de tenlasteleggingen blijkt dat dat Kiobel, Saro-Wiwa en Mitee worden verdacht van het aanzetten tot de moorden⁹¹ en dat Kpuinen en Bera worden verdacht van het plegen van de moorden. Op 28 februari 1995 worden nog twee groepen van vijf verdachten, onder wie Nordu Eawo en Paul Levula, officieel beschuldigd van deelname aan de moorden.⁹²

⁸⁶ Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1994/82, E/CN.4/1995/61, 14 december 1994 (productie 236), p. 77.

⁸⁷ Europees Parlement, Resolutie over de schendingen van de rechten van de mens in Nigeria, 16 februari 1995 (productie 229).

⁸⁸ M. Birnbaum, *Nigeria Fundamental Rights Denied*, Report of the trial of Ken Saro-Wiwa and Others, juni 1995 (productie 225), para. 2.4 (1).

⁸⁹ Summons to accused aan Barinem Nubari Kiobel, 28 januari 1995 (productie 178).

⁹⁰ Birnbaum (productie 225), para. 9.16.

⁹¹ Birnbaum (productie 225), para. 1.5: “to have counselled and procured (that is encouraged)”, 5.1.

⁹² Birnbaum (productie 225), para. 1.5. Groep A bestaat uit: 1. Ken Saro-Wiwa; 2. Ledum Mitee; 3. Barinem Kiobel; 4. John Kpuinen en 5. Baribor Bera. Groep B bestaat uit: 6. Pogbara Afa; 7. Saturday Dabee; 8. Monday Donwin; 9. Felix Nuate; 10. Nordu Eawo. Groep C bestaat uit: 11. Paul Levula; 12. Joseph Kpante; 13. Michael Vizor; 14. Daniel Gbokoo; 15. Albert Kagbara.

89. Birnbaum oordeelt dat de door de aanklager opgestelde samenvattingen van het bewijsmateriaal onvoldoende grond bieden om aan te nemen dat de verdachten een delict hebben gepleegd, een vereiste genoemd in de Civil Disturbances Decree of 1987 om een proces te laten beginnen.⁹³ Zo kwalificeert Birnbaum de samenvatting van het bewijs tegen Kiobel als “*misleading and tendentious*”.⁹⁴ Deze conclusie wordt bevestigd wanneer de aanklager pas op 29 maart 1995, als het proces allang begonnen is, na lang aandringen de volledige verklaringen van de getuigen aan de verdediging overhandigt.⁹⁵ Birnbaum concludeert dat de tenlastelegging voornamelijk op één verklaring is gebaseerd, die van de broer van een van de vermoorde leiders: Alhaji Kobani.⁹⁶ Uit Kobani’s verklaring leidt de aanklager af dat Kiobel de menigte heeft opgehitst, hetgeen hem verantwoordelijk zou maken voor de moorden.⁹⁷ Het overige bewijsmateriaal komt echter overeen met Kiobel’s eigen verklaring dat hij enkel heeft geprobeerd de boel te sussen.⁹⁸ Verschillende ontlastende verklaringen, onder meer van Gbenemene Bagia, worden door de aanklager genegeerd en verschillende getuigen *à décharge* worden niet toegelaten tot bewijslevering.⁹⁹ Ondanks het feit dat de samenvattingen van het bewijs onvoldoende grond bieden om aan te nemen dat de verdachten een delict hebben gepleegd, laat rechter Auta het proces aanvangen.

90. Birnbaum noemt de rechtsgang van het tribunaal in strijd met verschillende fundamentele rechten van de verdachten, in de eerste plaats hun recht op een eerlijk proces:

“it is my view that the breaches of fundamental rights I have identified are so serious as to arouse grave concern that any trial before this tribunal will be fundamentally flawed and unfair.”¹⁰⁰

91. Zijn standpunt wordt onderschreven door de volgende bevindingen:

a) Het tribunaal is niet onafhankelijk en staat onder toezicht van de regering.¹⁰¹

⁹³ Birnbaum (productie 225), para. 1.17, en appendices 2 en 3 voor 1987 Decree en oprichtingsdecreet Abacha: Decree No. 2 1987, section 4:

“1. The trial of offences under this Decree shall commence by way of an application, supported by a summary of evidence or affidavit made to the tribunal by the prosecutor.

2. Where after the perusal of the application and the summary of evidence, affidavit or any further evidence in such form as the Tribunal may consider necessary, the tribunal is satisfied that any person appears to have committed an offence referred to in this Decree, it shall cause that person to be brought before the tribunal on such date and at such time as it may direct.”

⁹⁴ Birnbaum (productie 225), para. 22.12 .

⁹⁵ **Productie 184:** Transcripts 29 maart 1995, p. 2; Birnbaum (productie 225), para. 10.7.

⁹⁶ **Productie 177:** Submissions Fawehinmi regarding the application for bail.

⁹⁷ **Productie 186:** Transcripts 22 mei 1995, p. 71; Birnbaum (productie 225), para. 22.10.

⁹⁸ Birnbaum (productie 225), para. 23.15: “The evidence against Kiobel appears consistent with the claim that he was trying to stop the violence”; **productie 174:** Counter-affidavit Barinem Kiobel, ongedateerd.

⁹⁹ Birnbaum (productie 225), para. 22.12, Zie ook para. 10.7: “Further, the summary in relation to Kiobel was unfair: it exaggerated the effect of the evidence against him and omitted crucial evidence in his favour.”

¹⁰⁰ Birnbaum (productie 225), para. 2.6 .

¹⁰¹ Birnbaum (productie 225), para. 2.4 (1); De Secretary-General van de Verenigde Naties zegt hierover “The fact that the judges were appointed by the Executive calls seriously into question the independence and impartiality of the tribunal. [...] the presence of a military officer on the tribunal is contrary to the standard of impartiality and independence set out in article 7(1)(d) and article 26 of the African Charter of Human and Peoples’ Rights and

- b) Het tribunaal is partijdig ten gunste van de regering en de openbaar aanklager. Zo laat het tribunaal de zaken toe van elf verdachten tegen wie de aanklager geen concreet bewijs heeft overgelegd en geeft het toestemming aan de aanklager om, voor hetzelfde tribunaal, drie zaken tegelijkertijd te voeren met betrekking tot verschillende groepen verdachten op grond van hetzelfde bewijsmateriaal.¹⁰² Dit houdt bijvoorbeeld in dat het kan voorkomen dat een verdachte niet de kans krijgt om een getuigenverklaring te weerleggen die gegeven is in een van de andere twee zaken.¹⁰³ Het recht op hoor en wederhoor wordt hierdoor geschonden. Bovendien stelt het tribunaal dat het aan president Abacha is om te bepalen hoeveel processen er worden geïnitieerd. Dit is een flagrante schending van de plicht van het tribunaal om individuen te beschermen tegen de macht van de staat.¹⁰⁴ Ook worden legitieme vragen over de rechtsmacht van het tribunaal door de rechters in de wind geslagen. Hoewel de wet een door de president aangewezen *investigation committee* vereist en er geen aanwijzingen zijn dat dit gebeurd is, stelt rechter Auta simpelweg dat de verdediging niet kan bewijzen dat de president dit niet gedaan heeft.¹⁰⁵
- c) Het is de verdachten niet toegestaan om een advocaat te spreken voor het begin van het proces. Zelfs na de start van het proces mogen zij alleen met een advocaat spreken in aanwezigheid van luitenant-kolonel Okuntimo.¹⁰⁶ Sowieso speelt Okuntimo een opvallend grote rol tijdens het proces.¹⁰⁷
- d) Verschillende verdachten zijn maanden zonder aanklacht gedetineerd, sommigen zelfs negen maanden (onder wie Kiobel).¹⁰⁸
- e) Er is geen forensisch onderzoek gedaan naar de moorden.¹⁰⁹
- f) Er is overtuigend bewijs van intimidatie van de advocaten van de verdachten door de *security forces* van Okuntimo.¹¹⁰
- g) Getuigenissen blijken onbetrouwbaar maar worden desondanks gebruikt.¹¹¹ Zo hebben twee getuigen, Charles Danwi en Naayone Nkpah, onder ede verklaringen afgelegd waarin zij stellen dat zij door het regime en Shell geld en een baan aangeboden hadden gekregen in ruil voor een belastende getuigenis.¹¹² Zoals nader

article 14(1) of the International Covenant on Civil and Political Rights”, zie Note by the Secretary General on the Situation of Human Rights in Nigeria, 22 oktober 1996, A/51/538 (**productie 234**), p. 20.

¹⁰² Birnbaum (productie 225), para. 2.4 (2).

¹⁰³ Birnbaum (productie 225), paras. 11.28-11.39.

¹⁰⁴ Birnbaum (productie 225), para. 11.40.

¹⁰⁵ Birnbaum (productie 225), paras. 11.12-11.13.

¹⁰⁶ Birnbaum, (productie 225) para. 2.4 (3); **productie 233**: Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960, p. 14; **productie 181**: Transcripts 23 februari 1995, p. 25 (A. Oso; “Another very major constraint is the Military Camp. Lt. Col. Paul Okuntimo would not allow us to see our clients”)

¹⁰⁷ Birnbaum (productie 225), para. 13.1 – 13.12; Zie hoofdstuk 8.5.3.

¹⁰⁸ Birnbaum (productie 225), 2.4 (4); Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 14.

¹⁰⁹ Birnbaum (productie 225), para. 1.19.

¹¹⁰ Birnbaum (productie 225), para. 2.4 (5), 16.4; Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 14.

¹¹¹ Birnbaum (productie 225), para. 1.19.

¹¹² Zie hoofdstuk 8.6.1.

wordt toegelicht in hoofdstuk 8.6.1 wordt dit ontlastende bewijsmateriaal niet toegelaten door het tribunaal.

h) Er is geen mogelijkheid om in hoger beroep te gaan, hetgeen extra wrang is gezien de gereede kans dat de doodstraf zal worden opgelegd.¹¹³

92. De advocaten van de verdachten worden bij elke stap tegengewerkt.¹¹⁴ Tijdens de zitting op 7 juni 1995 krijgt Alhaji ('Fatai') Oso, de advocaat van Kiobel, de gelegenheid om Alhaji Kobani te ondervragen.¹¹⁵ Hij wil Kobani confronteren met de uitspraken die hij heeft gedaan tijdens de persconferentie op 22 mei 1994, maar geeft aan dat de *subpoena* om de videoband te verkrijgen is afgewezen door de griffier van het tribunaal.¹¹⁶ De aanklager ontkent dat hij in het bezit is van video-opnames van de persconferentie. Rechter Auta concludeert dat de verdediging in deze fase van het proces geen bewijs mag inbrengen.¹¹⁷ Op 19 juni 1995 kent rechter Auta het verzoek van Oso alsnog toe, maar twee dagen later blijkt dit een pyrrusoverwinning: de Chief Press Secretary van Komo (Fidelis Agbiki) verklaart voor het tribunaal dat de tape waar de persconferentie op stond is gebruikt voor andere opnames.¹¹⁸

93. Volgens advocaat Oso wordt de cruciale videotape bewust achtergehouden. Ook advocaat Falana trekt die conclusie:

“In the circumstance, Sir, I urge your Lordship to come to the only irresistible inference which is that there is a conspiracy between the official media of this State and the government that is prosecuting the accused persons to deny them fair hearing.”¹¹⁹

94. Dit betoog wordt door rechter Auta van de hand gewezen en de video zal uiteindelijk nooit in de rechtszaal worden getoond. De advocaten zien hierin het zoveelste bewijs voor flagrante schendingen van fundamentele rechten in een politiek proces waarvan de uitkomst vooraf is bepaald.

95. Ook de getuigenverklaringen van Nkpah en Danwi, waarin zij stellen te zijn omgekocht door Shell en het regime, worden niet toegelaten door het tribunaal.¹²⁰ Aangezien dit bewijsmateriaal cruciaal is voor de verdediging van Kiobel, laat advocaat Oso weten

¹¹³ Birnbaum (productie 225), para. 2.4 (6), 18.8-18.10; Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 7.

¹¹⁴ De advocaten van de verdachten waren: Femi Falana, Uche Onyeagucha, Olisa Agbakoba, Gani Fawehinmi, Alhaji ('Fatai') Oso, Oronto Douglas, Emmanuel Ukala en Nnaemeka Amaechina.

¹¹⁵ Productie 190: Transcripts 7 juni 1995.

¹¹⁶ Transcripts 7 juni 1995 (productie 190), p. 67; **Productie 191**: Transcripts 19 juni 1995, p. 3; Voorts geeft Mitee aan dat het op zijn minst opmerkelijk is dat het secretariaat oordeelt over een dergelijk verzoek, en niet het tribunaal zelf, zie Transcripts 7 juni 1995 (productie 190), p. 68

¹¹⁷ Transcripts 7 juni 1995 (productie 190), p. 73; Rechter Auta gaat hier in mee, zie p. 74.

¹¹⁸ Productie 192: Transcripts 21 juni 1995, pp. 3-5.

¹¹⁹ Transcripts 21 juni 1995 (productie 192), p. 8.

¹²⁰ Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 15.

dat hij zich genoodzaakt voelt deze te staken.¹²¹ Wanneer rechter Auta aan Kiobel vraagt hoe hij daarover denkt antwoordt hij als volgt:

“I cannot force him, equally I will not accept any other person than that one. If justice is to be done, I plead the Tribunal has to look into that. Let that videotape be played for the whole world to see. So that whatever decision you take would be seen to be just.”¹²²

96. Op 22 juni 1995 maakt advocaat Amaechina bekend dat alle advocaten zich uit protest definitief terug trekken.¹²³

4.4 Mishandeling van de verdachten

97. De verdachten worden vanaf hun arrestatie vastgehouden onder zeer erbarmelijke omstandigheden, de meesten in een militaire gevangenis in Bori Camp, hetgeen hoogst ongebruikelijk is.¹²⁴ Ze staan onder gezag van de RSISTF en worden op dagelijkse basis onderworpen aan fysieke en psychische mishandeling en marteling.¹²⁵
98. Saro-Wiwa, die aan een hartconditie leidt, wordt zelfs geketend opgesloten.¹²⁶ Zijn gezondheid gaat tijdens het proces dermate achteruit dat hij op een gegeven moment niet meer in staat is om de zittingen bij te wonen. Op 7 april 1995 is rechter Auta genoodzaakt het proces voor langere tijd uit te stellen vanwege de snel verslechterende gezondheidssituatie van Saro-Wiwa.¹²⁷
99. Ook Kiobel wordt tijdens zijn gevangenschap inhumain behandeld. Zo werd hem structureel noodzakelijke medische zorg onthouden en kreeg hij slecht te eten. Als gevolg hiervan kreeg hij in oktober 1994 ernstige buikklachten. Hij betaalde N15.000 voor medische verzorging, maar ontving die nooit.¹²⁸
100. Victoria Bera verklaart dat toen ze haar man voor het eerst zag na zijn arrestatie, zij hem nauwelijks kon herkennen omdat zijn gezicht zo opgezwollen was, en onder het

¹²¹ Transcripts 21 juni 1995 (productie 192), p. 15; Public Deposition Esther Kiobel, vol. II, 5 december 2003 (productie 37), p. 297.

¹²² Productie 193: Transcripts 22 juni 1995, p. 4.

¹²³ Transcripts 22 juni 1995 (productie 193), pp. 2-3.

¹²⁴ Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 14: “During this period they were held in inhuman conditions [...] access to counsel was limited by the condition of detention of the accused in a military base”; Transcripts 6 februari 1995 (productie 179), p. 16: “Fawehinmi: My Lord, what is the business of the Army in this case? You would recall Sir, that even in the Federal High courts, I have never heard of an Order being made irrespective of the accused person to be kept in the Military Barracks, whether Bonny Camp or elsewhere.”

¹²⁵ Human Rights Watch, 1995 (productie 222), pp. 21-22; Zie ook **productie 219**: Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995, pp. 9-10.

¹²⁶ **Productie 24**: Public Deposition Boniface Ejiogu, vol. I, 22 mei 2004, pp. 57-59. Boniface Ejiogu is ten tijde van Operation Restore Order in Ogoniland de rechterhand van Okuntimo, zie verder hoofdstuk 8.3; Transcripts 6 februari 1995 (productie 179), p. 19: “Fawehinmi: He became sick because for sixty-four days when he was arrested, he was manacled, chained and beaten up by the Army at the age of 54 years. The second accused person was also manacled and chained for sixty-four days as well. This is an evidence of degrading treatment frowned against by our Constitution.”

¹²⁷ Productie 185: Transcripts 7 april 1995, pp. 9-11.

¹²⁸ Affidavit Barinem Kiobel in support of motion, application for bail, ongedateerd (productie 173), paras. 34-36.

bloed zat. Ook was hij niet in staat zelfstandig te lopen. Ze had eten voor hem meegebracht, maar het werd Baribor niet toegestaan dit op te eten. Ukala, de advocaat van Bera, vertelt op 27 februari 1995 in de rechtszaal over de ernstige marteling die zijn cliënt onderging na zijn arrestatie.¹²⁹ Zijn handen en voeten werden vastgebonden, waarna hij honderd keer werd geslagen met een koperen kabel. Vervolgens werd een mengsel van water en traangas over zijn ernstig gewonde lichaam gegooid. Ook werd zijn kunstgebit kapot geslagen met een geweer, en werd hij gedwongen de resten door te slikken.¹³⁰ Foto's van de littekens van Bera worden overgelegd als **productie 251**.¹³¹

101. Nordu Eawo heeft voor het tribunaal verklaard dat één van de getuigen van de aanklager hem bij zijn arrestatie geslagen heeft en hem in zijn genitaliën en hoofd gesneden heeft met een scherpe stok.¹³² In detentie is hij blootgesteld aan verdere martelingen: hij is geslagen, ze hebben aanstekers gebruikt om zijn huid te verbranden, en er is een bezemsteel in zijn geslachtsorgaan ingebracht. Zijn wonden zijn gaan ontsteken waardoor hij erg ziek is geworden. Buiten de antibiotica die hij van een politieagent kreeg, is hem verder geen medische zorg geboden.¹³³
102. Levula heeft verklaard dat de politie in Port Harcourt hem tweemaal voor een langere tijd aan zijn handen heeft opgehangen.¹³⁴ Daarnaast heeft hij zijn vrouw verteld dat tijdens zijn detentie er een bezemsteel in zijn geslachtsorgaan is ingebracht.
103. Op 24 januari 1995 sturen de advocaten op verzoek van de vrouwen van Saro-Wiwa, Mitee en Kiobel een noodbrief naar de Brigade Commander van de Bori militaire gevangenis, getiteld 'Official Starvation of Ken Saro-Wiwa, Ledum Mitee and Dr. Kiobel.' Zij beschrijven daarin hoe Okuntimo het de vrouwen verbiedt om hun mannen te spreken in de gevangenis. Bovendien mogen ze niet langer zelf voedsel naar hun mannen brengen, waardoor de mannen dreigen te verhongeren. De advocaten stellen:

“We are very much concerned about these latest violations of our clients rights which we consider rather inhuman. We have to point out that our Clients, like all Nigerian citizens including Lt. Col. Okuntimo are presumed innocent unless adjudged guilty by a court of law and are

¹²⁹ Productie 182: Transcripts 27 februari 1995.

¹³⁰ Transcripts 27 februari 1995 (productie 182), p. 41 e.v; Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995 (productie 219), p. 7.

¹³¹ Door Okuntimo wordt in een *counter-affidavit* gesteld dat Bera zijn verwondingen zou hebben overgehouden aan een huidziekte die hij zou hebben opgelopen toen hij was ontsnapt. Die lezing wordt niet gedeeld door Bera en getuigen, en is volstrekt ongeloofwaardig. Zie ook hetgeen Ukala daarover opmerkt ter zitting: Transcripts 27 februari 1995 (productie 182), p. 44 – 45. Ukala verwijst in dit verband ook naar de eerdere detentie van Esther Kiobel, die in een psychiatrisch ziekenhuis opgenomen zou zijn volgens Okuntimo, maar waarvan later bleek dat zij werd vastgehouden op het politiebureau in Kpor (p. 45); zie ook para. 4.5. Ook advocaat Ledum Mitee is getuige geweest van het feit dat Bera werd mishandeld met een koperen kabel en daarna nauwelijks in staat was zelfstandig te staan. Ook wordt Bera noodzakelijke medische zorg onthouden, zie Verklaring Ledum Mitee, 2 mei 2017 (**productie 41**), para. 9.

¹³² Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995 (productie 219), p. 6.

¹³³ Ibid.

¹³⁴ Ibid.

consequently entitled to all rights least of all the right to have access to their families and to be fed."¹³⁵

104. Het vertrouwen in de autoriteiten is zo laag, dat wordt gevreesd dat de verdachten vergiftigd zullen worden. Dit wantrouwen is begrijpelijk aangezien Okuntimo eiseres heeft verteld dat hij ervoor zal zorgen dat haar man ter dood veroordeeld zal worden, nu het niet is gelukt zijn voedsel te vergifigen.¹³⁶
105. Op 28 februari 1995 wordt het probleem nogmaals aangekaart bij het tribunaal. Fawehinmi stelt dat de vrouwen het eten moeten afgeven aan de militairen met alle gevaren van dien. Rechter Auta stelt daarop:

“I am saying that the food should be given to the security men there to hand it over to their husbands. If there is any case of poisoning, then Chief Fawehinmi should hold Lt. Col. Okuntimo liable.”¹³⁷

4.5 Mishandeling van advocaten en familieleden

106. Zowel advocaten als familieleden van de verdachten worden tijdens het proces ernstig geïntimideerd, bedreigd en zelfs mishandeld.¹³⁸
107. De advocaten wordt meermaals de toegang tot de zwaar beveiligde rechtbank geweigerd.¹³⁹ Zo vertelt Fawehinmi op de zitting van 21 februari 1995 hoe hij die ochtend door Lt. Hassan, die direct werkt onder Okuntimo, onder dreiging van geweld wordt gedwongen om een politiebus in te stappen. Advocaat Falana wordt bij hetzelfde incident geslagen.¹⁴⁰ Deze twee advocaten worden tijdens (de aanloop naar) het proces ook onrechtmatig gedetineerd door het regime.¹⁴¹
108. Oso, de advocaat van Kiobel, vertelt hoe hij het slachtoffer is geworden van ernstige intimidatie. Bij aankomst bij de rechtbank wordt hem verteld te vertrekken, waarna zijn chauffeur in elkaar wordt geslagen en zijn auto vernield.¹⁴² Diezelfde ochtend wordt de

¹³⁵ **Productie 10**: Ukala, 24 januari 1995, Official starvation of Ken Saro-Wiwa, Ledum Mitee and Dr. Kiobel.

¹³⁶ **Productie 38**: Verklaring Esther Kiobel, 12 februari 1995.

¹³⁷ **Productie 183**: Transcripts, 28 februari 1995, pp. 38-39.

¹³⁸ Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 14: “The military was involved in all phases of the trial, as a result of which serious allegations were made affecting the credibility of witnesses, freedom of access to the tribunal and intimidation of the accused, their relatives and other members of the public”.

¹³⁹ Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, supra, p. 14: “The defence counsel were harassed by the military personnel by requiring them to request permission of them to enter the courts and submitting them in the process to hardship, indignities and waste of time”.

¹⁴⁰ **Productie 180**: Transcripts 21 februari 1995, pp. 4-5; Birnbaum (productie 225), para. 13.3, 13.4.

¹⁴¹ **Productie 108**: Nigeria Update 24 oktober 1994, “Release of Gani Fawehinmi [...] this radical lawyer has been released from jail on bail [...] he is also the main defense lawyer for all those activists who have been put away, including Saro Wiwa”; **productie 187**: Transcripts 24 mei 1995, pp. 1-2; **productie 188**: Transcripts 26 mei 1995, p. 2 e.v.; **productie 189**: Transcripts 31 mei 1995, p. 10. Falana merkt hier op: “I have been to detention for almost fifty times but they have never charged me for anything”.

¹⁴² Transcripts 21 februari 1995 (productie 180), p. 7

74-jarige moeder van Saro-Wiwa op instructie van Lt. Hassan in elkaar geslagen wanneer zij de rechtbank wil betreden.¹⁴³

109. Wanneer Kiobel op 22 juni 1995 wordt gevraagd of hij een andere advocaat kan regelen nu Oso zijn verdediging gestaakt heeft, vertelt hij, tot ergernis van rechter Auta, hoe zijn familie wordt lastig gevallen door het leger:

“I have been detained since last year. I have no access to anybody to go and get any further information for anything or get a capable lawyer who will be able to stand to defend me. Surprisingly, Thursday last week, even my family at home and secretary to the Chief of my village are being chastised by the Armed Forces because of this matter.”¹⁴⁴

110. Al eerder in het proces wordt Esther Kiobel slachtoffer van Okuntimo's praktijken. Wanneer zij haar man eten komt brengen, stelt Okuntimo dat zij dat alleen mag doen als hij met haar naar bed gaat. Als zij weigert, mishandelt Okuntimo haar in zijn kantoor.¹⁴⁵ Esther meldt dit bij de *Brigade Commander*, waar zij ook vermeldt dat Okuntimo haar heeft bezworen dat haar man opgehangen zou worden als uitkomst van de rechtszaak.¹⁴⁶ Okuntimo instrueert daarop de politie om Esther elke keer dat zij haar man wil bezoeken gevangen te nemen.¹⁴⁷
111. Op 19 februari 1995, als Esther opnieuw tracht haar man te bezoeken, wordt zij door Okuntimo opgesloten en ontkleed vastgebonden op een stoel. Hierna wordt zij geslagen met een koboke en seksueel geïntimideerd en aangerand door Okuntimo.¹⁴⁸ Daarop wordt zij nog enige tijd door hem gevangen gehouden.¹⁴⁹ Wanneer dit wordt aangekaart bij het tribunaal, stelt de aanklager dat zij in een psychiatrisch ziekenhuis is opgenomen. In werkelijkheid wordt zij echter, zoals later blijkt, vastgehouden op het politiebureau in Kpor.¹⁵⁰
112. Ook Victoria Bera is tweemaal onrechtmatig gedetineerd. De eerste keer vond plaats in Bori Camp toen zij haar man eten wilde brengen. Op weg naar haar man werd zij vastgezet. Zij was toen zwanger. Haar werd toegeworpen: “*If you get your baby, you can replace your husband*”. Zij is een hele dag vastgehouden en aan het einde van die dag zonder uitleg vrijgelaten. De tweede keer dat zij werd gearresteerd, was de dag na de executies, op 11 november 1995. Bera was met haar zus en haar baby op weg naar huis. Zij werden allen zonder uitleg gearresteerd en vastgezet in Gokana. Hier was ook

¹⁴³ Transcripts 21 februari 1995 (productie 180), p. 5.

¹⁴⁴ Transcripts 22 juni 1995 (productie 193), p. 4.

¹⁴⁵ Zie ook **zie productie 175**: Geschreven affidavit Barinem Kiobel: “Earlier on 29/12/94 while I was at Afam. He denied access to me by my wife unless she goes to bed with him. When my wife refused, Paul Okuntimo had her beaten up in his office”.

¹⁴⁶ Transcripts 21 februari 1995 (productie 180), pp. 8-9.

¹⁴⁷ Geschreven affidavit Barinem Kiobel (productie 175).

¹⁴⁸ Geschreven affidavit Barinem Kiobel (productie 175); Transcripts 21 februari 1995 (productie 180), p. 8.

¹⁴⁹ Counter-affidavit Barinem Kiobel, ongedateerd (productie 174), pp. 4-5; Public Deposition Esther Kiobel, vol. II, 5 december 2003 (productie 37), p. 361.

¹⁵⁰ Transcripts 6 februari 1995, (productie 179), p. 45.

Okuntimo aanwezig. Na meer dan acht uur te zijn vastgehouden, is zij wederom zonder uitleg vrijgelaten.

4.6 Doodstraf Ogoni 9

113. Op 31 oktober 1995 spreekt het tribunaal het doodvonnis uit tegen negen verdachten.
114. De vader van Kiobel stuurt nog een clementiebrief aan Abacha op 7 november 1995 (**productie 11**), waarin hij stelt: *“there is a misunderstanding, he tries to make peace”*.¹⁵¹ Ook de vrouwen van de ter dood veroordeelden, onder wie Esther Kiobel en Victoria Bera, doen een appel op Abacha op 8 november 1995 (**productie 12**):

“As Your Excellency is no doubt aware there is no right of appeal against the judgment of the Tribunal that convicted and sentenced our husbands so there is no forum to test the correctness or otherwise of the said decision. Besides, our husbands have to do without the services of lawyers of their choice through no fault of theirs mid way their trial; Even at the point of conviction our husbands still maintained and we are convinced of their innocence. [...] Let your verdict not make us widows and our children fatherless.”¹⁵²

115. De vrouwen wijzen expliciet op het ontbreken van de mogelijkheid van hoger beroep. De Decree van 1987 sluit immers uit dat een (hogere) instantie, onafhankelijk van het tribunaal en het regime, de zaak nogmaals in zijn geheel beoordeelt en eventuele juridische dwalingen herstelt. Section 7 van de Decree stelt wel dat een door het tribunaal uitgesproken straf alleen geëffectueerd kan worden door bevestiging van ‘the confirming authority’.¹⁵³ Echter, deze autoriteit kan de veroordeling niet vernietigen. Het is daarnaast onduidelijk of weigering van bevestiging mogelijk is en of weigering gelijk zou staan aan vrijspraak.
116. De autoriteit die de bevindingen van het tribunaal moet bevestigen, de Armed Force Ruling Council, is onderdeel van het militaire regime. Ten tijde van het proces zijn de bevoegdheden van dit orgaan overgegaan naar de door Abacha nieuw opgerichte Provisional Ruling Council (PRC).¹⁵⁴ Op 8 november 1995 komen de leden van de PRC bijeen. Uit een memo van de bijeenkomst (**productie 176**) volgt dat Abacha de voorzitter was van deze bijeenkomst en dat:

“He was of the view that no sympathy should be shown on the convicts so that the sentence would be a lesson to everybody. He stated that the

¹⁵¹ **Productie 11**: Plea for clemency for dr. Barinem Kiobel, 7 november 1995.

¹⁵² **Productie 12**: Plea for clemency on behalf of our convicted husbands, 8 november 1995.

¹⁵³ Decree No. 2 1987, section 7 (zie Birbaum (productie 225), para. 8.14; “Any sentence imposed by the Tribunal shall not take effect until the conviction or sentence is confirmed by the confirming authority. The confirming Authority may confirm or vary the sentence of the Tribunal.”)

¹⁵⁴ Birbaum (productie 225), para. 18.7.

Ogoni issue had lingered on for a very long time and should be addressed once and for all.”

117. De Secretaris-Generaal van de Verenigde Naties stelt over de PRC: “*The PRC confirmed the conviction and sentence even before the records of the trial were received*” en “*the haste with which the sentences were confirmed by the Provisional Ruling Council (PRC) implies that the Government had made up its mind and was not interested in a fair consideration of the case*”.¹⁵⁵ Bovendien blijkt ook uit het memo van de bijeenkomst dat heroverweging van de door het tribunaal opgelegde straf nooit een optie is geweest voor de leden van de PRC. Om te voorkomen dat het regime zwak over zou komen, moest de executie zo snel mogelijk worden uitgevoerd.¹⁵⁶
118. Intussen werden er ook klachten over de rechtsgang voor het tribunaal in behandeling bij de African Commission on Human and People’s Rights.¹⁵⁷ Wanneer de African Commission bericht krijgt dat de straf is bevestigd door de PRC, worden voorlopige maatregelen opgelegd aan de Nigeriaanse overheid om onherstelbare schade te voorkomen: Nigeria dient de executies uit te stellen tot de Commission de gelegenheid heeft gehad om de zaak te bespreken met de overheid.¹⁵⁸ Deze oproep wordt door het Nigeriaanse regime genegeerd en de volgende dag, 10 november 1995, worden de negen veroordeelden, ondanks de nationale en internationale protesten,¹⁵⁹ ter dood gebracht door ophanging in de Federal Prisons in Port Harcourt.¹⁶⁰
119. De African Commission stelt over de uitvoering van de executies en het negeren van de voorlopige maatregelen:

“Execution in the face of the invocation of rule 111 defeats the purpose of this important rule. [...] This is a blot on the legal system of Nigeria which will not be easy to erase. To have carried out the execution in the face of pleas to the contrary by the Commission and world opinion is something which we pray will never happen again. That this is a violation of the Charter is an understatement.”¹⁶¹

¹⁵⁵ Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 7.

¹⁵⁶ **Productie 176:** PRC, Confirmation of the judgement of the Ogoni Civil Disturbance (Special) Tribunal (Secret Memo Abacha PRC).

¹⁵⁷ African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (productie 217), para. 2.

¹⁵⁸ Ibid, paras. 8-9, 29-31.

¹⁵⁹ Twee Special Rapporteurs van de Verenigde Naties hebben tweemaal een joint urgent appel naar Abacha gestuurd met betrekking tot de Ogoni 9. Deze zijn ook gepubliceerd zijn in press releases. De laatste is de dag na de beslissing van de PRC verstuurd. Zie het rapport van Special Rapporteur Bacre Waly Ndiaya, on Extraditorial, summary or arbitrary executions van 25 january 1995, E/CN.4/1996/4 (productie 237), p. 81.

¹⁶⁰ Productie 33: Public Deposition Blessing Israel, 28 mei 2004, pp. 41-44. Blessing Israel beschrijft de executies.

¹⁶¹ African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (productie 217) paras. 114-115.

5 PROCEDURES IN DE VERENIGDE STATEN

5.1 Inleiding

120. Na de executie van hun mannen zijn eiseressen voortdurend bedreigd en lastiggevallen door het Nigeriaanse regime.¹⁶² Esther Kiobel is, net als vele andere Nigerianen die slachtoffer zijn geworden van Shell en het militaire regime, hervestigd naar de Verenigde Staten vanuit het vluchtelingenkamp in Benin. In de Verenigde Staten hebben twee groepen slachtoffers en nabestaanden in civiele procedures schadevergoeding geëist van Shell. De Saro-Wiwa zaak is geëindigd in een schikking (zie hoofdstuk 5.2). In de zaak aangespannen door onder anderen, Esther Kiobel, achtte het Amerikaanse Hooggerechtshof uiteindelijk de Amerikaanse rechter niet bevoegd om te oordelen over de zaak (zie hoofdstuk 5.3).
121. In dit hoofdstuk wordt ter verduidelijking kort op die Amerikaanse procedures ingegaan.

5.2 Wiwa-zaak

122. Op 8 november 1996 dagen verschillende nabestaanden van de Ogoni 9, alsmede verschillende slachtoffers van het geweld in Ogoniland, Shell voor de Amerikaanse rechter. De dagvaarding werd in eerste instantie ingediend tegen Royal Dutch Petroleum Company en Shell Transport and Trading Company (Royal Dutch/Shell). In 2001 wordt ook Brian Anderson, *Managing Director* van SPDC tussen 1994 en 1996, gedagvaard. In 2003 wordt de zaak nogmaals uitgebreid en wordt ook dochteronderneming SPDC zelf gedagvaard.
123. De gedaagden worden beschuldigd van medeplichtigheid aan verschillende mensenrechtenschendingen en misdaden gepleegd tegen de Ogoni in Nigeria, waaronder standrechtelijke executies, misdaden tegen de menselijkheid, marteling, onmenselijke behandeling, willekeurige arrestatie en detentie, dood door schuld, aanranding en mishandeling. De zaken werden gebracht onder de Alien Tort Claims Act (ATCA, ook wel Alien Tort Statute, ATS, genoemd) en de Torture Victim Protection Act (TVPA). In de zaak tegen Royal Dutch/Shell werd tevens beargumenteerd dat het bedrijf in strijd handelde met de Racketeer Influenced and Corrupt Organizations (RICO) Act.
124. Na de fase van *discovery*, waarin bewijsmateriaal wordt verzameld en overgelegd, en jaren van juridisch getouwtrek over de bevoegdheid van de Amerikaanse rechter, neemt de District Court van Southern New York op 23 april 2009 bevoegdheid aan. Op 26 mei 2009 begint de inhoudelijke behandeling van de zaak, die dan inmiddels dertien

¹⁶² Esther Kiobel en Victoria Bera zijn dan ook gevlucht naar Benin. Voordat Esther besloot te vluchten, is haar huis in de stad in brand gestoken. Vlak na haar vlucht is ook haar *country house* tot op de grond afgebrand. Blessing Nordu heeft aangegeven dat zij nog lang is lastiggevallen door Celestine Miebe [Meabe], een van de getuigen in het Ogoni 9-proces waarvan is gesteld dat hij is omgekocht door Shell (zie hoofdstuk 8.6.1). Blessing noemt hem ook een van de "Shell agents".

jaar aanhangig is. Op 3 juni 2009 oordeelt het Court of Appeal of the Second Circuit dat Shell nog meer inzage moet geven in al dan niet vertrouwelijke bedrijfsinformatie dan eerder was toegestaan door het District Court.

125. Op 8 juni 2009, als het proces op het punt van beginnen staat, komen Shell en de eisers een schikking overeen. Shell betaalt de eisers een bedrag van \$15,5 miljoen als schadevergoeding. Met het bedrag wordt tevens een trustfonds opgezet voor de Ogoni-bevolking.

5.3 Kiobel-zaak

126. Op 1 september 2002 worden Royal Dutch Petroleum Company en Shell Transport & Trading Company gedagvaard door Esther Kiobel (mede namens haar geëxecuteerde echtgenoot dr. Barinem Kiobel) en elf andere (nabestaanden van) Nigeriaanse activisten uit het Ogoni-gebied. In 2004 wordt ook dochteronderneming SPDC gedagvaard. De zaak komt juridisch en inhoudelijk grotendeels overeen met de hierboven besproken Wiwa-zaak.
127. In tegenstelling tot de Wiwa-zaak treffen de partijen in de Kiobel-zaak geen schikking. In plaats daarvan wordt de bevoegdheidsvraag tot aan het Hooggerechtshof van de Verenigde Staten uitgevochten. In een zaak die wereldwijd de aandacht trekt, oordeelt het Hooggerechtshof dat het territorialiteitsbeginsel (en daarmee de “*presumption against extraterritoriality*”) in de weg staat aan bevoegdheid van de Amerikaanse rechter op grond van de Alien Tort Claims Act.¹⁶³ Shell kan alleen aansprakelijk worden gehouden op grond van de ATCA als een zaak voldoende aanknopingspunt heeft met de Amerikaanse rechtssfeer. Het Hooggerechtshof oordeelt dat dit niet het geval is, omdat Shell een Nederlands-Brits bedrijf is en de gebeurtenissen hebben plaatsgevonden in Nigeria. Na elf jaar van procederen staat Esther Kiobel met lege handen.

5.4 Bewijsmateriaal

128. In de zogenoemde *discovery* ten behoeve van de *Wiwa*- en *Kiobel*-zaken in de Verenigde Staten heeft Shell een grote hoeveelheid bewijsmateriaal moeten overleggen. De onderbouwing van deze dagvaarding is voor een belangrijk deel gebaseerd op dat bewijsmateriaal.¹⁶⁴
129. Een deel van het bewijsmateriaal wordt echter beschermd door een *confidentiality agreement*, op grond waarvan ten aanzien van dat materiaal geheimhouding moest worden betracht en dat materiaal na de procedures moest worden geretourneerd of vernietigd. Bij vonnis van 24 januari 2017 heeft het District Court of the Southern

Productie 197: *Kiobel, Individually and on behalf of her late husband Kiobel, et al. v. Royal Dutch Petroleum Co. et al.*, 133 S.Ct. 1659 (2013).

¹⁶⁴ Niet-vertrouwelijke bescheiden die deel uitmaakten van het procesdossier zijn toegankelijk via het Amerikaanse online registratiesysteem Pacer, te raadplegen via: <https://pacer.login.uscourts.gov/csologin/login.jsf>. <laatst bezocht op 24 april 2017>; In verschillende media, en onder meer op www.shellguilty.com, zijn eveneens bewijsstukken gepubliceerd.

District of New York Shells advocaten Cravath, Swaine & Moore LLP op verzoek van Esther Kiobel bevelen om het eerder prijsgegeven materiaal in de *Wiwa*- en *Kiobel*-zaken (opnieuw) te overleggen.¹⁶⁵ Hangende het beroep dat Cravath tegen die uitspraak heeft ingesteld, is de uitvoerbaarheid van dat vonnis geschorst.

130. Teneinde verdere vertraging te voorkomen, en omdat eiseressen menen reeds over voldoende bewijsmateriaal te beschikken om hun vordering te onderbouwen, hebben zij ervoor gekozen het verloop van de beroepsprocedure in de Verenigde Staten niet af te wachten. Vast staat echter dat de verzochte stukken destijds vanwege hun directe relevantie voor deze zaak zijn overgelegd. Derhalve bestaat naar overtuiging van eiseressen krachtens artikel 21 Rv voor Shell de verplichting om de betreffende stukken ook in Nederland in de procedure te brengen. Zij geven uw rechtbank in overweging Shell krachtens artikel 22 Rv te gelasten dat te doen. Zonodig zullen eiseressen daartoe nog een beroep doen op artikel 843a Rv.
131. Het niet-vertrouwelijke bewijsmateriaal dat naar boven is gekomen in de Amerikaanse *discovery*-procedure, waaronder een groot aantal getuigengehoren met slachtoffers, ooggetuigen en Shell-medewerkers, wordt gebruikt in deze dagvaarding. De in het kader van de Amerikaanse zaak onder ede afgelegde verklaringen – die schriftelijk zijn vastgelegd – zijn door uw rechtbank aan te merken als schriftelijk bewijs. Omdat deze schriftelijke vastlegging een letterlijke weergave is van wat door alle aanwezigen is gezegd, heeft de rechter die in de hoofdzaak zal oordelen voldoende houvast om elke verklaring op haar merites te kunnen beoordelen.¹⁶⁶

6 INTERNATIONALE BEVOEGDHEID NEDERLANDSE RECHTER

6.1 Rechtsmacht op grond van de EEX-verordening

132. Shell Petroleum NV en Royal Dutch Shell plc zijn gevestigd in Den Haag. Derhalve staat vast dat de Nederlandse rechter op grond van artikel 4 lid 1 jo artikel 63 van de herschikte EEX-verordening rechtsmacht heeft om van geschillen jegens deze partijen kennis te nemen.¹⁶⁷ De rechtbank Den Haag is relatief bevoegd.

6.2 Rechtsmacht op grond van art. 7(1) Rv

133. De vorderingen van eiseressen jegens Shell Petroleum NV en Royal Dutch Shell zijn onlosmakelijk verbonden met hun vorderingen jegens Shell Transport and Trading en SPDC. Eiseressen verwijten immers zowel de moedervenootschap(pen) als SPDC dat

¹⁶⁵ **Productie 196:** District Court of the Southern District of New York, per Judge Hellerstein, In Re Petition of Esther Kiobel, Opinion and Order Granting Petition, 24 januari 2017.

¹⁶⁶ O.m. rechtbank Rotterdam, 8 augustus 2012, para. 5.9, 2012: ECLI:NL:RBROT:2012:BX4521; Gerechtshof Amsterdam, 24 oktober 1996, rolnr. 490/96 SKG, NIPR 1997/120.

¹⁶⁷ Verordening (EG) nr Nr. 1215/2012 van het Europees Parlement en de Raad van 12 december 2012 betreffende de rechterlijke bevoegdheid, de erkenning en de tenuitvoerlegging van beslissingen in burgerlijke en handelszaken (herschikking), te raadplegen via: <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32012R1215>.

zij medeplchtig zijn aan mensenrechtenschendingen jegens henzelf en hun geëxecuteerde mannen. In deze dagvaarding wordt door eiseressen nader onderbouwd dat SPDC en de moedervenootschap daarbij gezamenlijk een actieve rol hebben vervuld en daarbij steeds als één lichaam hebben opgetreden.

134. Op grond van artikel 7 lid 1 Rv is de Nederlandse rechter die bevoegd is ten aanzien van een gedaagde, ook bevoegd ten aanzien van andere in het geding betrokken gedaagden, mits tussen de vorderingen tegen de onderscheiden gedaagden een zodanige samenhang bestaat, dat redenen van doelmatigheid een gezamenlijke behandeling rechtvaardigen.
135. Eiseressen leggen aan hun vorderingen jegens de Nederlandse en niet-Nederlandse gedaagden dezelfde feiten en rechtsgronden ten grondslag. Het is daarom doelmatig dat deze zaken gezamenlijk worden behandeld. Het gezamenlijk handelen waarop de medeplichtigheid van Shell is gebaseerd, geeft blijk van een gecoördineerde werkwijze die feitelijk niet in afzonderlijke handelingen door de verschillende gedaagden kan worden opgesplitst. De samenhang tussen de vorderingen is dan ook dusdanig nauw, dat een goede rechtsbedeling vraagt om hun gelijktijdige behandeling en berechting, teneinde tevens te vermijden dat bij afzonderlijke berechting van de zaken onverenigbare beslissingen worden gegeven.¹⁶⁸
136. Opgemerkt zij nog dat uit de door Shell in de Amerikaanse Wiwa-zaak ingediende verklaring van (voormalig) advocaat Mr. J.K. Franx van advocatenkantoor De Brauw blijkt, dat ook Shell de mening is toegedaan dat de Nederlandse rechter bevoegd is om over de onderhavige kwestie te oordelen (**productie 27**: Verklaring van J.K. Franx, 21 maart 1997).

6.3 Subsidiare rechtsmacht op grond van forum necessitatis

137. Subsidiair beroepen eiseressen zich ten aanzien van de bevoegdheid van de Nederlandse rechter op artikel 9 sub c Rv. Dit artikel bepaalt dat de Nederlandse rechter bevoegd is bij gebreke van rechtsmacht op grond van art. 2 tot en met 8 Rv, wanneer een zaak die bij dagvaarding moet worden ingeleid, voldoende met de Nederlandse rechtssfeer verbonden is en het onaanvaardbaar is van de eiser te vergen dat hij de zaak aan het oordeel van een rechter van een vreemde staat onderwerpt.
138. De vorderingen tegen SPDC zijn nauw met de Nederlandse rechtssfeer verbonden nu SPDC een volwaardige dochteronderneming is van de moedervenootschap(en) in Den Haag; zij in casu met de moedervenootschap(en) als één lichaam optrad; en bovendien uit Den Haag haar instructies ontving.
139. Gezien de achtergrond van de zaak en de spilrol die het Nigeriaanse regime en de Nigeriaanse rechtspraak in de gebeurtenissen hebben gespeeld – welke gebeurtenissen

¹⁶⁸ Vgl. mbt 6 EEX-Vo. (thans art. 8 EEX-Vo. II): HvJ EG 27 september 1988, zaak 189/87, Jur. 1988, p. 5565, NJ 1990/425, m.nt. J.C. Schultsz (*Kalfélis/Bank Schröder*), te raadplegen via: <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A61987CJ0189> <accessed 24 April 2017>..

bovendien hebben geleid tot een vluchtelingenstatus van Kiobel en Bera, alsmede van enkele getuigen – kan ook niet van eiseressen worden geveerd dat zij hun zaak thans aan het oordeel van de Nigeriaanse rechtsmacht onderwerpen. Niet alleen hebben zij daar geen vooruitzicht op een *fair trial*; ook zou een rechtsgang in Nigeria voor hen rondweg traumatisch en gevaarlijk zijn.

140. De rechters die destijds in het tribunaal zitting namen, maken nog altijd deel uit van de Nigeriaanse rechtsorde. Er is na de geberutenissen van 1995 en ondanks de massale internationale kritiek, dus niet bepaald schoon schip gemaakt. Rechter Auta is momenteel zelfs *Chief Judiciary* in het federale hof van Nigeria.¹⁶⁹ Tegen hem loopt sinds november 2016 een onderzoek in het kader van een omkopingsschandaal binnen de rechterlijke macht.¹⁷⁰
141. Grootschalige corruptie in Nigeria en binnen de Nigeriaanse rechtsmacht is al langer een bekend probleem.¹⁷¹ Hierdoor is in Nigeria een behoorlijke procesgang niet gewaarborgd. Het hof Den Haag heeft ten aanzien van artikel 9 gesteld:

“afwezigheid van een behoorlijke rechtsgang [...] vormt naar het oordeel van het hof geen onmogelijkheid in de zin van artikel 9, aanhef en onder b Rv (absolute onmogelijkheid). Een dergelijke omstandigheid kan wel een ernstige bezwaarlijkheid opleveren die moet worden meegewogen in het kader van artikel 9, aanhef en onder c Rv in die zin dat het kan meebrengen dat het onaanvaardbaar is van een eiser te vergen dat hij de zaak aan het oordeel van de rechter van de desbetreffende staat onderwerpt”¹⁷²

142. Dit wordt bevestigd door A-G Vlas:

“art. 9 sub c Rv vereist dat het onaanvaardbaar is van de eiser te vergen dat hij de zaak aan het oordeel van een rechter van een vreemde staat onderwerpt (bijvoorbeeld omdat een behoorlijke procesgang (fair trial) in de buitenlandse procedure niet is gewaarborgd)”¹⁷³

7 NIGERIAANS RECHT

143. Op de onderhavige zaak is op grond van artikel 3 van de destijds geldende Wet Conflictenrecht Onrechtmatige Daad (WOCD) het Nigeriaans recht van toepassing, nu

¹⁶⁹ Het gaat om Ibrahim Auta, destijds de voorzitter van het Special Disturbances Tribunal (zie hoofdstuk 4.3), nu Chief Judge of the Federal High Court, zie de website van de Federal Judicial Service Commission: <http://fjsc.gov.ng/hon-justice-ibrahim-ndahi-autaofr/> <laatst bezocht op 24 april 2017>.

¹⁷⁰ Zie “*Chief Judge of Nigeria’s Federal High Court Implicated In 1.3\$ Million Bribery Arrest*”, 11 oktober 2016, te raadplegen via: <http://saharareporters.com/2016/10/11/chief-judge-nigeria%E2%80%99s-federal-high-court-implicated-13-million-bribery-arrest> <laatst geraadpleegd op 24 april 2017>.

¹⁷¹ **Productie 227**: Transparency International, “Nigeria: Evidence of corruption and the influence of social norms”, 26 september 2014, p. 10; **Productie 241**: F.A.R. Adeleke & O.F. Olayanju “The role of the judiciary in combating corruption: aiding and inhibiting factors in Nigeria”, *Commonwealth Law Bulletin*, 2014, 40(4), pp. 604-605.

¹⁷² Gerechtshof Den Haag, 15 oktober 2013, ECLI:NL:GHDHA:2013:3895, r.o. 11.3.

¹⁷³ Conclusie A-G Vlas bij HR 20 februari 2015, ECLI:NL:PHR:2014:2344, r.o. 2.5.

de onrechtmatige daad in Nigeria is gepleegd en de schade zich – in eerste instantie – ook in Nigeria heeft voorgedaan.

7.1 Medeplichtigheid aan mensenrechtenschendingen onder Nigeriaans recht

144. Eiseressen verwijten Shell dat zij medeplichtig is aan de onrechtmatige arrestatie en detentie, alsmede de schending van de persoonlijke integriteit van hun echtgenoten en, in het geval van Esther Kiobel en Victoria Bera, henzelf, alsmede aan de schending van hun recht op een eerlijk proces en hun recht op leven, en het recht op een familieleven van de eiseressen. Deze fundamentele rechten maken deel uit van ongeschreven internationaal recht, en zijn tevens verankerd in de Nigeriaans rechtsorde.
145. De Grondwet van de Federale Republiek Nigeria 1979 (**productie 215**) waarborgt onder meer het fundamentele recht op leven (artikel 30), op persoonlijke integriteit, of waardigheid (artikel 31), het recht op vrijheid (artikel 32), en het recht op een eerlijk proces (artikel 33).
146. Deze rechten zijn ook neergelegd in het door Nigeria geratificeerde *International Covenant on Civil and Political Rights* en in het *African Charter on Human and Peoples' Rights* (**productie 216**). Dit mensenrechtenverdrag maakt sinds de *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act* rechtstreeks deel uit van de Nigeriaanse rechtsorde. De *African Charter* beschermt de bovengenoemde rechten in artikel 4 tot en met 7:

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:

- a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
- c. The right to defence, including the right to be defended by counsel of his choice;
- d. The right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

147. Aan deze rechten wordt tevens horizontale werking toegekend. Het Nigeriaanse *Supreme Court* bevestigde in 2006 (opnieuw) de lijn die eerder in een lange lijst van rechtszaken werd ontwikkeld:

The position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals, as in the instant case, such victims have rights against the individual perpetrators of the acts as they would have done against state actions. It follows therefore that in the absence of clear positive prohibition which precludes an individual to assert a violation or invasion of his fundamental rights against another individual, a victim of such invasion can also maintain a similar action in a court of law against another individual for his act that has occasioned wrong or damage to him or his property in the same way as an action he could maintain against the

State for a similar infraction. See *Onwo v. Oko & Ors.* (1996) 6NWL (PT 456) at 603; and *Ogugu v. The State* (1994) 9 NWL (PT 366).¹⁷⁴

148. Voor een uitvoeriger uiteenzetting van mensenrechten onder Nigeriaans recht zij verwezen naar de *legal opinion* van Obiora Okafor, die wordt overgelegd als **productie 198**. Okafor is als professor in Human Rights Law momenteel verbonden aan de Osgoode Hall Law School of York University in Toronto, Canada. Daarnaast werkt hij als *barrister* in Nigeria. Momenteel is Okafor tevens lid van het *UN Human Rights Council Advisory Committee*. Okafor maakt duidelijk dat onder Nigeriaans recht bedrijven kunnen worden aangesproken vanwege schendingen van mensenrechten, en ook vanwege medeplichtigheid aan dergelijke schendingen.

“...it should be noted that it is clearly an established aspect of Nigerian law that legal persons (natural or otherwise) who are complicit in the commission of certain improper and/or illegal acts are themselves responsible for the acts in question. This is an uncontroversial point.”¹⁷⁵

149. Van medeplichtigheid kan naar Nigeriaans recht bijvoorbeeld sprake zijn als een partij de verweten gedraging heeft aangemoedigd of bevorderd:

“One who knowingly, voluntarily and with common intent unites with the principal offender ... partaker of guilt; one who aids and assists or is an accessory ... one who is guilty of complicity ... either by being present and aiding or abetting it ... or having advised and encouraged it, though; absent from place when it is committed.”¹⁷⁶

150. Het Nigeriaanse *Supreme Court* heeft te dien aanzien bepaald, dat voor het aannemen van medeplichtigheid niet noodzakelijk is dat die partijen ook zelf deelnamen aan of zelfs weet hadden van de specifieke inbreukmakende gebeurtenis(sen) (“*the conspirators need not know themselves or be in direct communication*”). Medeplichtigheid kan uit het samenstel van handelingen, en bijvoorbeeld het gemeenschappelijk doel van de betrokken partijen, worden afgeleid.¹⁷⁷

151. Dit geldt onverminderd voor bedrijven of andere rechtspersonen:

The Nigerian courts including the Supreme Court of Nigeria- have consistently and firmly held that a company or other legal person may be held legally responsible for procuring, provoking or even encouraging an agency or agent of the Government of Nigeria to

¹⁷⁴ **Productie 201:** *Abdulhamid v. Akar and another* (2006) LPELR-24. R.N. (); Legal Opinion O.C. Okafor, 21 June 2017 (productie 198), p.5.

¹⁷⁵ Legal Opinion O.C. Okafor, 21 June 2017 (productie 198), p. 2.

¹⁷⁶ *Akinlade v. the State* (2010) LPER 8632 (**productie 199**) p.12.

¹⁷⁷ *The State v. James Gwangwan* (Suit No. 504/2012, *Supreme Court of Nigeria*, 3 July 2015 (niet gepubliceerd) (**productie 214**); *Kayode Babarinde & 2 Others v. The State* (2014) 3 NWL (Part 1395) p.568 (**productie 208**), r.o. 614; *Osugwu v. The State* (2013) LPELR-19823 (**productie 211**), p.33, para. A-F; Legal Opinion O.C. Okafor, 21 June 2017 (productie 198). .

commit an improper or illegal act against another, and/or for violating that other person's human rights.¹⁷⁸

152. Okafor bespreekt in zijn opinie een groot aantal Nigeriaanse zaken waarin medeplichtigheid aan mensenrechtenschendingen werd aangenomen.¹⁷⁹ In veel van die zaken gaat het om het aanmoedigen of veroorzaken van een onrechtmatige arrestatie of detentie. In een van die zaken werd SPDC medeplichtig gevonden aan de onrechtmatige arrestatie en detentie van een oud-werknemer.¹⁸⁰
153. Uit de rechtspraak blijkt dat medeplichtigheid als figuur niet alleen in strafrechtelijke context wordt aanvaard, maar dat tevens aansprakelijkheid uit medeplichtigheid op puur mensenrechtelijke grondslag kan worden aangenomen.¹⁸¹ In *Akwa Savings and Loans Ltd v. Ime Wilson Udoumana & 2 Others* (**productie 215**), een procedure op basis van de voormalige *Fundamental Rights (Enforcement Procedure) Rules 1979*, waren zelfs de – eveneens gedaagde – politieagenten niet, maar de aanstichter van de arrestatie en detentie wél aansprakelijk wegens de schending van fundamentele rechten.¹⁸²
154. Ter verduidelijking zij in dit verband nog opgemerkt dat aansprakelijkheid uit (medeplichtigheid aan) mensenrechtenschendingen in Nigeria een andere figuur is dan die van aansprakelijkheid uit onrechtmatige daad (*tort*). Schendingen van mensenrechten kunnen naar Nigeriaans recht wel leiden tot aansprakelijkheid, maar zij worden (anders dan in het Nederlands recht) niet in de categorie *torts* vervat. Voor mensenrechtenschendingen staat in Nigeria ook een afzonderlijke juridische procedure open.¹⁸³
155. Tot slot staat naar Nigeriaans recht vast dat Esther Kiobel als nabestaande voor de fundamentele rechten van Barinem Kiobel kan opkomen.¹⁸⁴

7.2 Geen verjaring van vorderingen uit hoofde van mensenrechtenschendingen in Nigeria.

156. Volledigheidshalve zij opgemerkt dat het Nigeriaans recht geen verjaring kent van vorderingen uit hoofde van mensenrechtenschendingen. De *Fundamental Rights (Enforcement Procedure) Rules 2009* regelen niet alleen de procedure voor dergelijke

¹⁷⁸ Legal Opinion O.C. Okafor, 21 June 2017 (productie 198).

¹⁷⁹ Ibid, p. 3-5.

¹⁸⁰ *S.P.D.C (NIG) Ltd v. Olarewaju* (2002) 16 NWLR (Part 792) (**productie 212**), at 38; *S.P.D. C v. Olarewaju* (2008) LPELR 3046 (**productie 213**), pp. 26-28.

¹⁸¹ Legal Opinion O.C. Okafor, 21 June 2017 (productie 198).

¹⁸² *Akwa Savings and Loans Ltd v. Ime Wilson Udoumana & 2 Others* (2009) LPELR-8861.

¹⁸³ Vgl. *Fundamental Rights (enforcement and Procedure) Rules 2009* (**productie 215**).

¹⁸⁴ *Mrs. Precious Omonyahuy & Ors V. The Inspector-General Of Police & Ors* (2015) LPELR-25581(CA) (dealing with this issue under the FREP-rules 2009) (**productie 209**); *Nosiru Bello V. A.G, Oyo State* (1986) 5 NWLR (Pt.45) 828 (dealing with this issue under the FREP-rules 1979) (**productie 210**).

vorderingen – bepalingen die thans door het prevaleren van de *lex fori* geen toepassing vinden – maar ook hun verjaring. In dat verband stelt Order III:

ORDER III – LIMITATION OF ACTION

1. An Application for the enforcement of Fundamental Rights shall not be affected by any limitation Statute whatsoever.

157. Okafor zet in zijn opinie uiteen, dat deze bepaling óók van toepassing is op mensenrechtenschendingen die voorafgaand aan de introductie van deze regels in 2009 hebben plaatsgevonden. Zulks volgt om te beginnen uit de volgende bepalingen van Order XV:

ORDER XV – TRANSITIONAL PROVISIONS

1. The Fundamental Rights (Enforcement Procedure) Rules 1979 are hereby abrogated.

2. From the commencement of these Rules, pending Human Rights applications commenced under the 1979 Rules shall not be defeated in whole or in part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed, for failure to comply with these Rules provided the applications are in substantial compliance with the Rules.

3. Such pending Human Rights applications may continue to be heard and determined as though they have been brought under these Rules.

158. Hieruit volgt dat eiseressen in Nigeria hun zaak onder de *Fundamental Rights (Enforcement Procedure) Rules 2009* hadden kunnen aanbrengen, en dat hun onder diezelfde Rules geen verjaring zou kunnen worden tegengeworpen.¹⁸⁵ De Fundamental Rights (Enforcement Procedure) Rules zijn niet alleen van toepassing op nieuwe zaken, maar ook op zaken die reeds onder de oude Fundamental Rights (Enforcement Procedure) Rules werden aangebracht.

159. Zie in dit kader ook de *legal opinion* van Okafor:

And so, the overarching position of Nigerian law is that since Ms. Kiobel (or any other human rights claimant) is entitled to bring her matter under the 2009 FREPRs, and since these Rules do *not* at all allow for human rights claims to be dispensed with on the technicality of the passage of time, and instead now allow such claims to be brought before the Nigerian courts regardless of how long ago they arose, Ms. Kiobel's claim is not at all statute barred. The above stated position of Nigerian law is now so clearly established that the Court of Appeal has

¹⁸⁵ Legal Opinion O.C. Okafor, 21 June 2017 (productie 198).

recently gone as far as declaring, in *Mallam Nasir Ahmad ElRufai v. Senate of the National Assembly & Others* (2014) LPELR-233115 at p.47 paragraphs B-E, that:

"It is therefore, clear[,] that an action for the enforcement of a person's fundamental right *cannot be defeated by the provisions of a statute of limitation*. This point has been made clear and plain by Order 3 of the FREP Rules, 2009 which came into force on the 1st day of December, 2009."

8 SHELL IS MEDEPLICHTIG AAN DE MENSENRECHTENSCHENDINGEN JEGENS DE OGONI 9 EN EISERESSEN

8.1 Inleiding

160. Zoals in het vorige hoofdstuk is toegelicht, leidt naar Nigeriaans recht het aanmoedigen of aanzetten tot, het bevorderen of bijdragen aan, het mede mogelijk maken of het faciliteren van mensenrechtenschendingen tot medeplichtigheid.
161. Op basis van de omstandigheden die in dit hoofdstuk worden beschreven, is Shell medeplichtig aan de in hoofdstuk 4 omschreven mensenrechtenschendingen die door het Nigeriaanse regime zijn gepleegd jegens de echtgenoten van eiseressen en jegens eiseressen zelf. In het bijzonder gaat het om de volgende mensenrechten, die deel uitmaken van de Nigeriaanse rechtsorde:
- *The right to life* (artikel 4 ACHPR en artikel 30 van de Nigeriaanse Grondwet 1979)
 - Right to dignity of the person and the prohibition of torture and cruel or inhuman punishment and treatment (artikel 5 ACHPR, artikel 31 Nigeriaanse Grondwet 1979)
 - The right to personal liberty and the security of the person; the prohibition of arbitrary arrest and detention (artikel 6 ACHPR, artikel 32 Nigeriaanse Grondwet 1979)
 - *The right to a fair trial* (artikel 7 ACHPR, artikel 33 Nigeriaanse Grondwet 1979)
 - *The right to family life* (artikel 18 ACHPR, artikel 34 Nigeriaanse Grondwet 1979)
162. Shell en het militaire regime vormden een bondgenootschap bij de gebeurtenissen die leidden tot de dood van de Ogoni 9. Hun relatie was er een van wederzijdse afhankelijkheid: de Nigeriaanse staat was afhankelijk van de inkomsten uit olie die Shell genereerde; Shell was op haar beurt van de welwillendheid en bescherming van

het regime afhankelijk om haar werkzaamheden in Nigeria te kunnen verrichten en zo een belangrijk deel van haar omzet te kunnen verwezenlijken.¹⁸⁶

163. Shell en het regime waren ook in hun functioneren onlosmakelijk met elkaar verbonden. Shell ondersteunde in de periode 1990-1995 een groot aantal overheidstaken, en voerde die soms zelf uit. Shell werkte samen met de geheime dienst bij het onderhouden van een spionagenetwerk in Ogoniland, was bereid wapens te kopen voor de politie, onderhield zelf een groot politiecorps, leverde allerhande ondersteuning aan verschillende overheidsdiensten en plaatste daar zelfs haar eigen mensen.
164. In aanloop naar de start van *Operation Restore Order in Ogoniland*, de grote militaire operatie waarmee het regime het verzet in Ogoniland in 1994 wilde beëindigen,¹⁸⁷ stond Shell herhaaldelijk aan de basis van excessief gewelddadig optreden van het regime jegens de Ogoni en andere bevolkingsgroepen die protesteerden tegen Shell (hoofdstuk 8.2). Dit ingrijpen had als doel dat Shell haar werkzaamheden in weerwil van de protesten kon blijven verrichten en dat haar economische belangen werden veiliggesteld. Shell heeft het regime herhaaldelijk en met nadruk gewezen op de economische belangen van haar activiteiten in Ogoniland en de economische gevolgen van de tegen Shell gerichte opstanden. Ook heeft Shell daarbij meermaals MOSOP aangewezen als hoofdschuldige en daarmee bijgedragen aan het vijandsbeeld van het regime. Shell wist gezien de eerdere optredens van het regime, dat het hierdoor de noodzaak zou voelen om op haar hardhandige wijze orde op zaken te stellen.
165. Shell heeft het regime op deze wijze aangezet tot het starten van *Operation Restore Order in Ogoniland*, waarvan het zuiveren van de leiding van het Ogoni-verzet deel uitmaakte (8.3). Shell heeft het regime vervolgens ook actief ondersteund tijdens zijn gewelddadige optreden in Ogoniland door het ter beschikking stellen van voertuigen en het betalen van beruchte milities als MOPOL (8.4). Ook onderhield Shell nauwe banden met Paul Okuntimo, de legerleider die verantwoordelijk was voor de militaire operatie in Ogoniland, en die ook een belangrijke rol speelde tijdens het Ogoni 9-proces.
166. Het Ogoni 9-proces vormde de apotheose van de pogingen van Shell en het regime om de oliewinning in Ogoniland te kunnen hervatten. In plaats van zich te distantiëren van het evidente schijnproces, althans daar zelf verre van te blijven, liet Shell haar eigen advocaat aan het Ogoni 9-proces deelnemen (8.5). Vervolgens misleidde Shell het publiek door openbaar te stellen dat zij haar advocaat had teruggetrokken, terwijl zij in werkelijkheid zijn instructie onverminderd liet voortduren. Tijdens het proces stond Shell bovendien direct in contact met de rechters van het Tribunal en assisteerde Shells advocaat het regime bij de omkoping van getuigen (8.6). Gedurende het proces bleef Shell warme contacten onderhouden met president Abacha, de hoofdverantwoordelijke voor de excessen.

¹⁸⁶ Zie hoofdstuk 3.1.

¹⁸⁷ Zie hoofdstuk 4.

167. Verklaringen van Shell dat het een apolitieke koers voer en dus niet verantwoordelijk kan worden gehouden voor de mensenrechtenschendingen, worden niet door de feiten gesteund. Shell heeft op geen enkel moment in de periode 1990-1995 afstand genomen van het regime, wat op zichzelf als een politieke koers moet worden beschouwd in een periode waarin de internationale gemeenschap Nigeria unaniem veroordeelde. Daarentegen bleef het, publiekelijk en contacten met het regime, uiterst kritisch tegenover MOSOP en de strijd van de Ogoni. Economische belangen prevaleerden, ook toen duidelijk was dat uit naam van Shell op grote schaal misdaden tegen de menselijkheid werden gepleegd in Ogoniland. Het sluiten van een grote Liquid Natural Gas-deal één maand na de executies van de Ogoni 9 is daarvan een goed voorbeeld (8.7).
168. De onvermijdelijke conclusie luidt dat de onrechtmatige executies van de Ogoni 9 plaatsvonden vanwege Shell. Ook als Shell zich niet met het proces zou hebben ingelaten – hetgeen zij wel degelijk deed – en haar houding niet meer was dan opportunisme, is zij voor de onontkoombare afloop ervan medeverantwoordelijk te houden, omdat zij er niets aan deed om de door haar zelf aangezwengelde gebeurtenissen te beïnvloeden of te voorkomen. Dat Shell zichzelf hiertoe wel in staat achtte, blijkt onder meer uit het feit dat zij Ken Saro-Wiwa aanbood om de uitkomst van het proces te beïnvloeden (8.6.3). Hieraan koppelde het echter de perfide voorwaarde dat MOSOP het protest tegen Shell zou staken. Toen dit aanbod werd geweigerd bleef Shell het regime achter de schermen steunen, terwijl zij zich publiekelijk verschool achter een apolitieke koers. De grote economische afhankelijkheid van het Nigeriaanse regime, door Shell steevast ingezet als zij het regime verzocht om in te grijpen bij demonstraties, werd op geen enkel moment gebruikt om het regime op andere gedachten te brengen. Integendeel, tot het einde toe trachtte Shell Abacha en zijn ministers te vriend te houden, omdat het concern niet wilde dat haar economische belangen in gevaar zouden komen. Daarbij trad het concern steevast als één lichaam op (8.8); de moedervennootschappen bepaalden niet alleen de koers die SPDC moest varen, maar waren daarbij ook zelf actief betrokken.
169. Het bondgenootschap dat Shell met het militaire regime was aangegaan, heeft zo geleid tot de in hoofdstuk 4 beschreven dood van negen onschuldige Ogoni, onder wie Barinem Kiobel, Baribor Bera, Nordu Eawo en Paul Levula; en tot de molestatie van Esther Kiobel en Victoria Bera. Shell heeft deze gebeurtenissen niet alleen aangemoedigd, maar zij heeft ze tevens gefaciliteerd, ondersteund en beïnvloed. Deze medeplichtigheid zal nu nader worden toegelicht.

8.2 Shell stond aan de basis van excessief gewelddadig optreden van het regime

8.2.1 Inleiding

170. Shell had in de jaren tachtig toenemend aanvaringen met de lokale bevolking in de Nigerdelta, die zich openlijk ging verzetten tegen de exploitatie van hun land. Shell liet daarbij herhaaldelijk de politie aanrukken die de demonstraties vaak hardhandig

beëindigde. Zo leidde in 1983 het ingrijpen bij een protest tegen Shell tot de arrestatie en mishandeling van betogers. En in 1987 leidde Shells verzoek om ingrijpen door de *Mobile Police Force* (MOPOL, of MPF) – een speciale mobiele eenheid van de politie met een gewelddadige reputatie – tot twee doden, de verwoesting van veertig huizen en 350 daklozen.¹⁸⁸ MOPOL werd daarbij geholpen door Shell, dat haar boten ter beschikking stelde.¹⁸⁹

171. Ondanks deze dodelijke incidenten bleef Shell de autoriteiten de jaren daarna verzoeken om in te grijpen als haar werkzaamheden werden verstoord door protesten. Daartoe gaf Shell meermaals de precieze locaties van de doorgaans vreedzame demonstraties aan het regime door, de vele doden en gewonden voor lief nemend. Ook toen in 1993 de massale protesten in Ogoniland leidden tot een staking van Shells werkzaamheden in Ogoniland, bleef Shell het regime continu en nadrukkelijk in het vooruitzicht stellen dat zij naar Ogoniland zou terugkeren als de protesten maar zouden stoppen. Shell keerde in deze periode ook nog enkele malen terug naar Ogoniland zonder toestemming van de lokale bevolking en onder militaire bescherming, hetgeen steeds tot (vaak dodelijk) geweld leidde.
172. Hierna wordt de nauwe samenwerking tussen Shell en het militaire regime in de periode vanaf 1990 tot begin 1994 beschreven, als *Operation Restore Order in Ogoniland* wordt aangekondigd. Achtereenvolgens wordt daarbij ingegaan op Shells betrokkenheid bij verschillende gewelddadige incidenten in Ogoniland in de periode 1990-1994: het Umuechem-bloedbad in 1990 (8.2.2), de dodelijke slachtoffers van ingrijpen bij de Bonny Terminal (1992) en de Trans Niger Pipeline (1993) (8.2.4), Shells logistieke ondersteuning van het leger tijdens geveinsde etnische conflicten tussen de Ogoni en naburige bevolkingsgroepen (1993) (8.2.5) en het betalen van Paul Okuntimo na een geweldsexces in het Ogoni-dorp Korokoro (1993) (8.2.6). Hoofdstuk 8.2.3 bespreekt het inzetten en ondersteunen van MOPOL door Shell, ondanks de geweldsincidenten in Umuechem en daarvoor. Uit deze opeenstapeling van incidenten blijkt, dat Shell wist waar haar hulpverzoeken en facilitaire ondersteuning aan het militair regime toe leidden, maar dat zij het regime daartoe desalniettemin keer op keer bleef uitnodigen.

8.2.2 *Shell stond aan de wieg van het 'Umuechem massacre'*

173. In 1990 leidt een verzoek van Shell aan de autoriteiten om een vreedzame demonstratie te laten beëindigen in Umuechem, een dorp net buiten Ogoniland, tot een tweedaagse strafexpeditie van MOPOL. Hierbij vallen tientallen doden, nog meer gewonden en worden vele honderden bewoners dakloos.
174. Het protest van de bewoners van Umuechem is gericht tegen de gebrekkige elektriciteits- en watervoorzieningen in Umuechem en het ontbreken van een redelijke

¹⁸⁸ In Iko, zie bijv. A. Rowell, Ja.Marriott en L. Stockman, "The Next Gulf: London, Washington and Oil Conflict in Nigeria", Londen: 2005 (productie 239), p. 83; Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 1999 (productie 223), p. 128 .

¹⁸⁹ A. Rowell, Ja.Marriott en L. Stockman, "The Next Gulf: London, Washington and Oil Conflict in Nigeria", Londen: 2005 (productie 239), p. 83.

vergoeding voor de onteigening en exploitatie van hun land.¹⁹⁰ Daarnaast zijn zij gefrustreerd over de milieuschade veroorzaakt door de oliewinning en de onmogelijkheid hiervoor een schadevergoeding te krijgen.¹⁹¹

175. Als de vreedzame demonstratie van de bewoners twee weken aan de gang is, schrijft Shells *divisional manager* James Udofia op 29 oktober 1990 een brief aan de Nigeriaanse *Commissioner of Police* (**productie 129**). Hierin verwijst hij naar een “*impending attack*” op Shell-faciliteiten en verzoekt hij om inzet van MOPOL, dat vanwege eerdere incidenten bekendstond als ‘*kill and go mob*’:

“[W]e request that you urgently provide us with security protection (preferably Mobile Police Force) [...] to enable us have the peaceful and safe operating environment necessary to achieve our planned crude oil production targets”.¹⁹²

176. Als Udofia op 31 oktober nog een brief stuurt, waarin hij stelt dat Shells personeel zich bedreigd voelt door het gewelddadige gedrag van de demonstranten, sturen de autoriteiten inderdaad MOPOL naar Umuechem.¹⁹³ Diezelfde dag nog wordt de vreedzame demonstratie met grof geweld en gebruik van wapens en traangas door MOPOL opgebroken.¹⁹⁴ De dag daarna keert MOPOL in alle vroegte terug om een strafexpeditie uit te voeren in Umuechem. Hierbij worden 495 huizen met inboedel en al in brand werden gestoken door MOPOL.¹⁹⁵ Er vallen vele gewonden en in interne stukken van Shell en een rapport van Human Rights Watch wordt gesproken over een dodental van tachtig.¹⁹⁶

177. De commissie die op verzoek van de Government of Rivers State onderzoek doet naar het incident, spreekt in maart 1991 in haar rapport van een “*reckless disregard for lives and property*” door MOPOL, dat zich in Umuechem heeft gedragen als “*an invading army that had vowed to take the last drop of the enemy’s blood*”.¹⁹⁷ De commissie vindt

¹⁹⁰ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, maart 1991 (**productie 220**), p. 2. Ook Shell schreef aan het regime dat de demonstratie zag op een “*demand for social amenities which, in recent times, has become an order of the day with most communities in our areas of operation*”, Brief J.R. Udofia (Divisional Manager East, SPDC) aan de Commissioner of Police, 29 oktober 1990 (**productie 129**).

¹⁹¹ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, maart 1991 (productie 220), pp. 2-3. De Commissie stelt vast dat slechts 1,5 % van de olieopbrengsten ten goede komt aan de olieproducerende staten, en beschrijft dit als “*grossly inadequate*”. De commissie stelt voor het percentage te verhogen naar 15 % (p. 4).

¹⁹² Brief Udofia aan de Commissioner of Police, 29 oktober 1990 (productie 129).

¹⁹³ **Productie 224**: Judicial Commission of Inquiry into Umuechem Disturbances, januari 1991, para. 5.

¹⁹⁴ Human Rights Watch 1995 (productie 222), p.9; Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities*, 1999 (productie 223), pp. 112-113.

¹⁹⁵ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, maart 1991 (productie 220), p. 7.

¹⁹⁶ **Productie 104**: Nigeria Update 8 augustus 1994; Human Rights Watch 1995 (productie 222), p. 9.

¹⁹⁷ Judicial Commission of Inquiry into Umuechem Disturbances, Rivers State of Nigeria, januari 1991 (productie 224), para. 47 Volgens de commissie heeft MOPOL zich schuldig gemaakt aan “*acts of homicide, [...] grievous harms, malicious damage to property and arson*”; Zie ook Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, maart 1991 (productie 220), p. 7.

geen bewijs van een “*impending attack*”, zoals Shell in zijn brief had gesteld, noch van enige gewelddadigheid van de demonstranten.¹⁹⁸

178. De aanbeveling van de onderzoekscommissie om de MOPOL-leden te vervolgen, de inwoners een schadevergoeding te betalen en de huizen te laten herbouwen werd niet opgevolgd door de toenmalige *Attorney General* van Rivers State, O.C.J. Okocha.¹⁹⁹ Naar de rol van Shell bij het incident wordt geen nader onderzoek gedaan.
179. Blijkens zijn eigen verklaring in de Amerikaanse *Kiobel*-zaak (**productie 49**) is Okocha dan al drie jaar als advocaat verbonden geweest aan Shell.²⁰⁰ Later zou hij in die hoedanigheid aanwezig zijn bij het Ogoni 9-proces en betrokken zijn bij het omkopen van getuigen.²⁰¹

8.2.3 *Shell bleef MOPOL ondersteunen en om haar inzet verzoeken*

180. Shell neemt na ‘Umuechem’ publiekelijk afstand van MOPOL en zegt niet langer om de hulp van deze eenheid te zullen verzoeken in crisissituaties.²⁰² Niettemin blijven de banden tussen MOPOL en Shell bestaan en zal de eenheid nog verschillende malen voor Shell optreden. Zo heeft George Ukpong, Shells toenmalige *Head of Security for the Eastern Division in Nigeria*, in zijn getuigenis in de Amerikaanse *Kiobel*-zaak (**productie 57 en 58**) verklaard dat Shell haar boten beschikbaar stelde aan MOPOL om de gebieden rond Shells faciliteiten te patrouilleren.^{203,204} Hiervoor betaalde Shell “*duty allowances*” aan MOPOL-leden.²⁰⁵ Ook verzocht Ukpong specifiek om de inzet van MOPOL ter bescherming van Shell-faciliteiten.²⁰⁶ In zijn getuigenverklaring vergelijkt hij MOPOL met de reguliere politie en stelt dat MOPOL-leden “*are toughened and better placed to have more confidence to provide countermeasures to*

¹⁹⁸ Judicial Commission of Inquiry into Umuechem Disturbances, Rivers State of Nigeria, januari 1991, (productie 224) para. 38. Shell hield ook tegen de commissie vol dat de demonstranten gewelddadig waren geweest.

¹⁹⁹ Zie Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities*, 1999 (**productie 223**), pp. 112-113; Human Rights Watch 1995 (productie 222), p. 9.

²⁰⁰ Verklaring O.C.J. Okocha, 8 december 2003 (productie 49), para. 3: “From 1990 to 1992 I served as the Attorney General of Rivers State”) and para. 7 (“I have served as an external solicitor to [SPDC] since 1987”).

²⁰¹ Zie hoofdstukken 8.5.2 en 8.6.1.

²⁰² Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities*, 1999 (productie 223), p. 162; Public Deposition Alan Detheridge, vol. 1, 3 februari 2003 (**productie 21**) pp. 124-125: “Anderson gave instructions that in the event of any community disturbance, certainly in any peaceful community disturbance then the police were not, any form of police were not to be called and that he expressed a view that we should not be responsible for calling in the mobile police”; SPDC, *Response to Human Rights Watch/Africa publication – The Ogoni Crisis: A Case-study of Military Repression in South-Eastern Nigeria*, juli 1994 (**productie 146**), p. 2: “after the Umuechem incident we disassociated ourselves from the intensity of the police action”; Zie ook Public Deposition T. Cloughly (General Manager of Operations SPDC), 11 februari 2003 (**productie 20**), pp. 69-70: “I seem to remember that mobile police were involved at Umuechem and I think it went badly wrong. Was it the mobile police that were called in? I suspect it probably was and a lot of deaths resulted. We were very concerned about any suggestion of the mobile police because, I mean, they had the reputation of maybe over-reacting.” Ook in interne Shell-documenten wordt MOPOL “macho and trigger happy” genoemd, zie public deposition Mike Basnett, 18 juni 2003 (**productie 18**), p. 116.

²⁰³ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), pp. 176-180; Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), pp. 237, 462-474.

²⁰⁴ Zie ook hoofdstuk 8.4.2.

²⁰⁵ Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), p. 466.

²⁰⁶ *Ibid.*, pp. 237, 462-474.

whatever situation they find themselves".²⁰⁷ De reactie van de reguliere politie is volgens hem "*slower than what you get from the mobile police*".²⁰⁸

181. Dat MOPOL ook na 'Umuechem' naar Shell-locaties werd gebracht door middel van Shell-helikopters, -boten en -auto's, is voorts bevestigd door Osazee Osunde in zijn getuigenverklaring in de Amerikaanse *Kiobel*-zaak (**productie 53**). Osunde was ten tijde van de onlusten in Ogoniland *Head of Intelligence and Surveillance East* van SPDC en de ondergeschikte van Ukpong.²⁰⁹ In zijn getuigenverklaring stelt hij over MOPOL: "*it depends on where they're working or where they're deployed to. So what we do is assist ferry them, either by boat or by chopper*".²¹⁰ Zo verzorgde Shell vervoer voor MOPOL bij *community disturbances*, bijvoorbeeld tijdens problemen bij de Bonny terminal:

"At the time the well head was shut, they [the community] gave us some problems. [...] I think the government deployed MOPOL there, and we helped ferry them to and fro."²¹¹

182. Dit wordt bevestigd door de getuigenverklaring in de Amerikaanse *Kiobel*-zaak van Eebu Jackson Nwiyon (**productie 48**), die tussen augustus 1993 en augustus 1995 lid was van MOPOL, en ook enkele maanden onderdeel uitmaakte van Okuntimo's *Rivers State Internal Security Task Force* (RSISTF).²¹² Hij verklaart dat hij meermalen werd ingehuurd door Shell om haar faciliteiten te beschermen.²¹³ Volgens Nwiyon betaalde Shell hem en de andere MOPOL-leden hier goed voor en droeg Shell tevens zorg voor rantsoenen, vervoer en overnachtingen.²¹⁴ Ook als lid van het RSISTF ontving Nwiyon naar eigen zeggen rechtstreeks geld van Shell.²¹⁵
183. Vincent Nwidoh, die ruim vijf jaar in dienst was van Shells politiedienst (SPY Police) en tussen 1988 en 1994 werkzaam was op de Bonny Terminal, heeft in de Amerikaanse *Kiobel*-zaak verklaard dat MOPOL-leden verschillende malen aanwezig waren op Bonny Terminal en daar soms ook overnachtten (**productie 46**).²¹⁶ Bij incidenten arriveerde MOPOL met een Bristow-helikopter, de helikopters die door Shell werden gebruikt, of per Shell-boot (deze waren van Modant Marine²¹⁷ en Oil Lion²¹⁸). Hij

²⁰⁷ Ibid, pp. 469-470.

²⁰⁸ Ibid.

²⁰⁹ Public Deposition Osazee Osunde, 22 oktober 2003 (**productie 53**), pp. 10-11.

²¹⁰ Ibid, pp. 47-53 (citaat p. 52).

²¹¹ Ibid, pp. 48-49.

²¹² Zie over Okuntimo's RSISTF, hoofdstukken 4.1 en 8.3.

²¹³ Public Deposition Eebu Jackson Nwiyon, 24 mei 2004 (**productie 48**), pp. 37-38.

²¹⁴ Ibid, pp. 37-38, 46-69.

²¹⁵ Ibid.

²¹⁶ Public Deposition Vincent Tomebamri Nwidoh, 25 mei 2004 (**productie 46**), p. 85: "The regular police came [...], and when they saw that they cannot really protect the situation MOPOL were later brought through helicopter". Zie ook pp. 13-15, 85, 88.

²¹⁷ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), p. 180.

²¹⁸ Public Deposition Vincent Tornebamri Nwidoh, 25 mei 2004 (productie 46), pp. 13-15, 85.

verklaart bovendien dat MOPOL-leden ook Shell-managers en –stafleden escorteerden, onder wie George Ukpog. ²¹⁹

184. Geconcludeerd moet worden dat Shell onverminderd intensief met MOPOL bleef samenwerken, en dat van de door haar in het vooruitzicht gestelde verwijdering tussen MOPOL en Shell geen sprake was. MOPOL werd actief ingezet bij veiligheidsoperaties en faciliteerde daarnaast het regime bij het verwezenlijken van nationale veiligheidsdoeleinden, waartoe het beschermen van Shell-faciliteiten en het neerslaan van protesten moet worden gerekend.

8.2.4 Shells hulpverzoeken leidden tot doden bij de Bonny Terminal en de Trans Niger Pipeline

185. In de jaren na Umuechem volgen er meer demonstraties tegen Shell, die door het leger of de politie met harde hand worden beëindigd. Ook hierbij vallen dodelijke slachtoffers. Zo rapporteert Shells *General Manager Business Development* (GMB) Emeka Achebe op 12 mei 1993 aan de *service companies* dat bij demonstraties op 20 en 21 juli 1992 bij de Bonny-terminal een inwoner van Bonny de dood heeft gevonden en twee anderen zwaargewond zijn geraakt, na ingrijpen door een 51 man sterke *Rapid Intervention Force* bij een demonstratie (**productie 73**).²²⁰ Deze *Rapid Intervention Force* is volgens dezelfde Achebe een voorloper van de beruchte RSISTF.²²¹
186. Door de voortdurende demonstraties tegen haar aanwezigheid in het gebied, trekt Shell zich in januari 1993 terug uit Ogoniland. Shell stelt hierover in officiële stukken:
- “We will not resume production in Ogoni land with military protection but only with the cooperation and peaceful disposition of the communities.”²²²
187. Ondanks haar officiële terugtrekking, blijft Shell echter olie transporteren door Ogoniland en worden haar faciliteiten permanent bewaakt door politie- en MOPOL-eenheden die worden betaald door Shell.²²³ Ook gaat Shell verder met de aanleg van een nieuwe olielijleiding, de Trans Niger Pipeline (TNP), door het conflictgebied.

²¹⁹ Public Deposition Vincent Tornebamri Nwidoh, 25 mei 2004 (productie 46), pp. 18-19, 65-67, 121-122. Volgens Nwidoh heette de MOPOL-agent die Ukpog escorteerde Omotara.

²²⁰ Fax Emeka Achebe (SPDC) aan SIPC London en SIPM The Hague, 12 mei 1993 (**productie 73**), p. 3: “A contingent of 51 Rapid Intervention Force men were airlifted to Bonny Terminal”. De Rapid Intervention Force wordt ook wel de Quick Intervention Force genoemd. Greenpeace over dit incident: “In 1992, one person was killed, 30 shot and 150 beaten when local villagers from Bonny demonstrated against Shell”, Greenpeace, Shell-shocked: The Environmental and Social Costs of Living with Shell in Nigeria, juli 1994 (**productie 221**), p. 19.

²²¹ **Productie 15**: Public deposition Emeka Achebe, vol. II, 6 februari 2003, pp. 5-6. Zie over Okuntimo’s RSISTF hoofdstukken 4.1 en 8.3. Overigens werd de Bonny Terminal permanent bewaakt door de Nigeriaanse marine, zie brief Eric Nickson (Head Media Relations SIPC) aan Paul Brown en Andy Rowell, 6 november 1996 (**productie 156**), pp. 4-5.

²²² SPDC, Response to Human Rights Watch/Africa publication – The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, juli 1994 (productie 146), p. 2.

²²³ Public Deposition George Akpan Ukpog, vol. II, 24 maart 2004 (productie 58), pp. 237-238; **productie 62**: Public Deposition Owens Wiwa, vol. I, 9 december 2003, p. 86.

188. Hoewel Shell al vóór haar officiële terugtrekking uit Ogoniland rekening houdt met de mogelijke problemen waartoe de aanleg van de pijpleiding kan leiden – in december 1992 laat Shell al weten aan Willbros West Africa, het bedrijf dat de pijpleiding bouwt, dat *“the ever increasing tension in the area would result in an inevitable confrontation with the possibility of individuals suffering personal and physical injury”*²²⁴ – gaat zij na haar terugtrekking uit Ogoniland toch verder met de aanleg van de pijpleiding.
189. Het voortzetten van de aanleg van de TNP gaat in tegen de wensen van MOSOP en een groot deel van de Ogoni-bevolking en is in strijd met Shells belofte om alleen in samenwerking met de lokale bevolking economische activiteiten te ontplooiën in Ogoniland. Uit interne correspondentie van Shell, gedateerd op 23 februari 1993 (**productie 68**), blijkt dat Neil Whyte, de General Manager van Willbros in Nigeria, ernstige kritiek heeft op de aanpak van Shell en grote problemen voorziet:

“Neil Whyte stated that clearly there are two alternative courses of action namely, to apply maximum military presence which GME [the General Manager East] rightly says will attract a potential confrontation which may have catastrophic results, or to dramatically increase our public relations effort. His opinion is quite clear – Shell has an apparent unclear policy with respect to construction operations security. He also believes that Shell has a lack of sensitivity for the villagers, has poor lead time planning in relation to negotiating with the villagers prior to bull dozers arriving to destroy farmland, and is willing to accept lengthy delays in resolving villagers claims [...]. Unfortunately, his view is shared by the majority of the SPDC and contractor staff I met on my visits [...]”²²⁵

190. Blijkens de memo vermoedt Whyte dat de situatie al teveel uit de hand is gelopen en dat Shell nu genoodzaakt is tot het tonen van *“considerable ‘muscle’ in the form of a substantial military presence”*, waarbij *“the military [...] warn[...] the communities that if there is the slightest bit of interference with the pipeline operations, they will respond with ‘deliberate’ force”*.²²⁶ De memo stelt daarna:

“History has proven that if military personnel are initially used as a deterrent only, it only requires one shot to be fired in their direction or one act of violence for them to respond with the intention to kill. Shell’s image in the world would suffer (as it has done so in the not so distant past) and this time, the implications may be a lot more serious.”²²⁷

²²⁴ Weergave in het verslag van Willbros aan SPDC, *Review of events leading to the withdrawal of workforce from the Bomu Area*, 3 mei 1993 (**productie 135**).

²²⁵ Notitie van William Dick (HSEL, Head of Health, Security and Environment in Lagos, SPDC) aan Godwin Omene (DMD), 23 februari 1993 (**productie 68**).

²²⁶ Notitie van William Dick aan Godwin Omene, 23 februari 1993 (productie 68).

²²⁷ Ibid.

191. Shell slaat de voorspellingen dat militaire aanwezigheid tot gewelddadige confrontaties zal leiden en haar eigen officiële beleid om niet onder militaire bescherming te werken echter in de wind,²²⁸ en kiest ervoor de pijpleiding onder bescherming van het Nigeriaanse leger aan te laten leggen.²²⁹ MOSOP en de lokale bevolking blijven tegen de aanleg van de TNP protesteren.
192. In brieven van 16 december 1992, 7 januari, 19 februari en 19 maart 1993 identificeert Shell de plekken waar wordt gedemonstreerd en verzoekt zij Rufus Ada George, de gouverneur van Rivers State en oud-medewerker van Shell, om in te grijpen zodat de pijpleiding ongehinderd kan worden aangelegd (**productie 129, 133**). Shell benadrukt daarbij steeds het economische belang van haar werkzaamheden:

“We feel very worried about these stoppages and their resultant impact on our ability to meet the Nation’s production target.”²³⁰

“the TNPL Project is very crucial to our capacity to meet our National Production Target”.²³¹

“We therefore humbly solicit Your Excellency’s intervention to enable us carry out our operations given the strategic nature of our business to the economy of this nation”.²³²

193. Uit een *File Note* van Shell gedateerd op 18 maart 1993 (**productie 69**) blijkt dat Shells *General Manager East* (GME) J.R. Udofia voorafgaand aan de brief van 19 maart 1993 een onderhoud heeft gehad met Rufus Ada George. Ada George uitte daarin zijn bezorgdheid over de aanwezigheid van het leger, en stelde dat hij het leger terug wil trekken. Udofia benadrukt echter het belang van de aanwezigheid van het leger, en “*suggested that the Military be allowed to give adequate protection to personnel while Government on its part should show more involvement towards arresting the consistent disruption to operations by the Communities*”.²³³ Ada George laat daarop weten dat hij vastbesloten is om er voor te zorgen dat het werk in Ogoniland kan worden voortgezet, en dat hij met de MOSOP-leiders zal gaan praten, maar hij uit ook een “*strong indication to withdraw the Military from the site*”.

²²⁸ Zie bijv. Nigeria Update Brian Anderson, 12 augustus 1994 (**productie 105**), p. 2: “*Whilst [this] impinges on our ‘no military protection’ stance*”; SPDC, Response to Human Rights Watch/Africa publication – The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, juli 1994 (productie 146); Notitie van William Dick aan Godwin Omene, 23 februari 1993 (productie 68), p.2: “*SPDC has stated publicly that it will not operate under military protection and has not operated in the Ogoni area since 1993*”.

²²⁹ **Productie A.69**: File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 maart 1993; SPDC, Nigeria Brief: Ogoni and the Niger Delta, augustus 1997 (**productie 166**), p. 11; Public deposition Precious Omuku, 19 april 2004 (productie 51), pp. 66-67; De officiële opdracht voor het leger luidt blijkens de op 23 januari 1993 verstrekte guidelines: “*TO KEEP PEACE AND ENSURE SAFETY, PROVIDE AND MAINTAIN SECURITY, PROTECTION AND ASSISTANCE IN ASSURING CONTINUITY OF WORK OPERATIONS ALONG PIPELINE ROUTE*”, Bijlage bij brief Willbros aan SPDC, 23 januari 1993 (**productie 131**).

²³⁰ Brief J.R. Udofia (GME SPDC) aan Rufus Ada George, 7 januari 1993 (**productie 130**).

²³¹ Ibid.

²³² Brief J.R. Udofia (GME SPDC) aan Rufus Ada George, 19 maart 1993 (productie 133).

²³³ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 maart 1993 (productie 69).

194. Udofia en Achebe gaan na het onderhoud met Ada George naar Bori Camp om te spreken met Brigadier General T. Ashei, de *Commanding Officer* van de *Second Amphibious Brigade*.²³⁴ Zij onderstrepen bij Ashei nogmaals het belang van militaire aanwezigheid en vragen hem om in zijn vergadering met Ada George de veiligheidsrisico's te benadrukken die ontstaan als het leger wordt teruggetrokken. Ashei zegt toe dit te doen en verzekert Udofia en Achebe van zijn volledige inzet om de orde te herstellen. Hij spreekt daarbij de verwachting uit dat "*following the arrest/detention of the Rumuekpe Youths, some sanity will be restored in the area*". Achebe dringt er vervolgens bij Ashei op aan dat deze jongeren niet worden vrijgelaten voordat er overeenstemming is bereikt met de meer gematigde dorpelingen over een "*trouble free operation*", waarop Ashei toelegt dit ter tafel te brengen bij Ada George.²³⁵
195. De dag na deze vergaderingen, bij brief van 19 maart 1993, vraagt Udofia onder verwijzing naar het economische belang voor Nigeria, opnieuw om interventie. MOSOP protesteert kort daarop, op 7 april 1993, per brief aan Willbros tegen de aanwezigheid en gedragingen van het leger in Ogoniland. Volgens MOSOP maken de soldaten zich schuldig aan "*illegal and provocative activities [...] such as the arrest and detention of Ogoni men under grave, inhuman conditions*".²³⁶
196. Op 30 april 1993 vindt dan de verwachte confrontatie tussen het leger en de Ogoni-demonstranten plaats. Greenpeace schrijft hierover (**productie 221**):

"As the peaceful protest against the pipelaying culminated in a demonstration of 10,000 people, soldiers opened fire on the crowd, wounding at least 10 and leaving Mrs Karalolo Korgbara, a mother of five, in a critical condition. She later lost her arm because of her injury."²³⁷

197. Als de protesten hierna verhevigen besluiten Shell en Willbros op 3 mei 1993 om de werkzaamheden aan de pijpleiding op te schorten. Op 4 mei licht Udofia Shells besluit toe in een brief aan gouverneur Ada George (**productie 136**), waarbij hij hem – opnieuw onder verwijzing naar het economische belang van het project – verzoekt ervoor te zorgen dat het project hervat kan worden:

"I regret to inform you that work on the Bomu end of the line has been forced to stop because of some community intervention. [...] As at now, work has been suspended in this area of the line which carries a significant portion of the crude oil production from Shell and Elf

²³⁴ Ibid. Overigens is Major Paul Okuntimo *second-in-command* van de *Second Amphibious Brigade*, die later ook het merendeel van de leden van de RSISTF zou leveren (Human Rights Watch/Africa, Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, juli 1995 (productie 222), p. 14, voetnoot 44).

²³⁵ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 maart 1993 (productie 69).

²³⁶ Brief MOSOP aan Willbros, 7 april 1993 (productie 134).

²³⁷ Greenpeace, Shell-shocked, juli 1994 (productie 221), p. 19.

operations. We humbly request the usual assistance of his Excellency to enable the project to proceed".²³⁸

198. Udofia stelt in zijn *deposition* in de Amerikaanse *Kiobel*-zaak (**productie 56**) dat hij met "*the usual assistance*" op iets anders doelde dan militair ingrijpen, namelijk "[to] mediate, engage, clear the road so that we can talk and get things going."²³⁹ Deze uitleg is echter in tegenspraak met de voorafgaande feiten en de hierboven omschreven standpunten die Udofia steeds jegens Ada George had verwoord. Udofia had op 18 maart 1993 al aan Ada George laten weten dat bemiddeling met de lokale bevolking geen enkel resultaat had opgeleverd, omdat "*the Government Agents [...] who went on site were rebuffed by the Communities*".²⁴⁰ In de tussentijd had Willbros al om *military assistance* gevraagd na een incident op 17 februari 1993,²⁴¹ en hadden Udofia en Achebe bij zowel Ada George als Brigadier General Ashei aangedrongen op behoud van militaire aanwezigheid. Dat Ada George bereid was om de soldaten in te zetten, was gebleken tijdens het gewelddadig neergeslagen protest enkele dagen eerder. Shells verzoek kan dan ook niet anders worden opgevat dan als een verzoek om militair ingrijpen teneinde de werkzaamheden te kunnen voortzetten.
199. Overigens diende Shell, zelfs als zij niet doelde op militair ingrijpen, te begrijpen dat Ada George dit verzoek wel als zodanig zou interpreteren, gezien zijn belofte om de voortzetting van de werkzaamheden aan de TNP desnoods met militaire middelen te garanderen.
200. Na Udofia's verzoek van 4 mei 1993 stuurt Ada George nog dezelfde dag een legereenheid naar de door Shell geïdentificeerde locatie, die de protesten op zeer gewelddadige wijze beëindigt. Daarbij vindt één van de demonstranten, Agbarator Otu, de dood.²⁴² Willbros zal uiteindelijk op verzoek van de regering de medische kosten van de gewonden en begrafeniskosten van Otu voor haar rekening nemen.²⁴³
201. Naar aanleiding van deze ontwikkelingen stuurt Philip B. Watts, op dat moment de *Managing Director* van SPDC, een urgente telex (**productie A.72**) naar de *service companies* in Londen en Den Haag waarin hij aangeeft dat "*the ongoing difficulties in the Ogoni area [...] give rise for serious concern*".²⁴⁴ Dit is voor Shell geen verrassing: "*You are aware that we had been anticipating this and hence our efforts to upgrade our contingency plans, public affairs, PA effort and security cover*".²⁴⁵ Wat betreft de beveiliging van de Shell-faciliteiten laat Watts er geen gras over groeien: uit zijn telex

²³⁸ Brief J.R. Udofia (GME SPDC) aan Rufus Ada George, 4 mei 1993 (productie 136).

²³⁹ Public Deposition J.R. Udofia, 24 oktober 2003 (**productie 56**), p. 141.

²⁴⁰ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 maart 1993 (productie 69).

²⁴¹ Ibid.

²⁴² Rapport van de Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, van 7 december 1993, E/CN.4/1994/7 (productie 235), p. 106: "Agbarator Otu, who was said to have been killed when security forces opened fire on Ogoni people demonstrating against oil companies". Zie ook Greenpeace, Shell-shocked, juli 1994 (productie 221), p. 19; Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, February 17-26, 1995, 1 May 1995 (productie 228), pp. 22-23.

²⁴³ **Productie 71**: Notulen van meeting tussen Willbros, SPDC, MOSOP en het Nigeriaanse regime, 11 mei 1993.

²⁴⁴ Urgent Telex van Watts aan SIPC en SIPM, 11 mei 1993 (productie A.72).

²⁴⁵ Ibid, p. 1.

blijkt dat hij en Achebe op 11 mei 1993 (nog geen week na het geweld bij de TNP) meetings hebben gehad met Chief Shonekan - die op dat moment aan het hoofd staat van de *Civilian Transitional Council* en in die functie verantwoordelijk is voor de “*day-to-day affairs of government*”²⁴⁶ en die minder dan een jaar daarvoor nog bestuurslid was van SPDC -²⁴⁷ de *Inspector-General* van de politie en de *Director-General* van de *State Security Service*. Shell hamert op de noodzaak van de aanwezigheid van politie- en legereenheden om de Shell-faciliteiten te beschermen en biedt de autoriteiten aan deze eenheden logistiek te ondersteunen.²⁴⁸ Hoewel Watts tevreden is dat het Nigeriaanse regime de zaak serieus neemt, stelt hij nog wel “*but we will have to encourage the follow through into real action*”.²⁴⁹

202. De dodelijke incidenten in Umuechem, de Bonny Terminal en de TNP zorgen blijkbaar niet voor meer voorzichtigheid bij Shell; zelfs na deze ervaringen verzoekt zij het Nigeriaanse regime om inzet van extra politie- en legereenheden ter bescherming van haar faciliteiten.

8.2.5 Shell ondersteunde het leger bij geveinsde ‘etnische conflicten’

203. Tussen juli 1993 en april 1994 vinden honderden Ogoni de dood en raken duizenden dakloos door vermeende etnische conflicten tussen de bevolkingsgroepen Andoni, Okrika en Ndoki en de Ogoni. De grootste aanval vindt plaats op het Ogonidorp Kaa op 4 en 5 augustus 1993, waarbij naar schatting 35 tot 124 dorpelingen om het leven komen; ook wordt er op grote schaal geplunderd en worden eigendommen en huizen verwoest.²⁵⁰ Ondanks herhaaldelijke verzoeken daartoe van MOSOP aan Rufus Ada George en president Abacha, grijpt het Nigeriaanse regime in deze periode niet in.²⁵¹ Het regime blijkt later zelf betrokken bij de aanvallen, waarbij het een helpende hand wordt geboden door Shell.
204. Human Rights Watch onthult in 1995 dat “*the government played an active role in forming [...] ethnic antagonism, and indeed that some attacks attributed to rural minority communities were in fact carried out by army troops in plainclothes*”.²⁵² Ook de VN-rapporteur voor buitengerechtelijke, standrechtelijke of willekeurige executies

²⁴⁶ **Productie 266**: Issue paper Nigeria, Chronology of events January 1992 – February 1995, Immigration and Refugee Board of Canada, p. 8.

²⁴⁷ Productie 157, Jaarverslag 1992 SPDC, pp. 3, 19.

²⁴⁸ Zo vertelt Watts: “We informed [Shonekan] about our efforts to work with the police, providing logistic support for their protection of key locations”, “The opportunity was taken to stress the need for extra police presence in strategic locations and offer logistic support (since they are incapable of doing it themselves)” en “reiterate our requests for support from the police and army” in Urgent Telex van Watts aan SIPC Londen en SIPM Den Haag, 11 mei 1993 (productie 72).

²⁴⁹ Urgent Telex van Watts aan SIPC Londen en SIPM Den Haag, 11 mei 1993 (productie 72).

²⁵⁰ Human Rights Watch 1995 (productie 222), pp. 11-13; Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, (productie 228), p. 24.

²⁵¹ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), p. 24; Brief Ken Saro-Wiwa aan President Abacha, 1 november 1993 (**productie 260**).

²⁵² Human Rights Watch 1995 (productie 222), p. 11. Dat het regime debet is aan het toenemen van de etnische spanningen is ook erkend door Shell: Anderson vertelt het CMD op 27 september 1994 dat “Ethnic differences had been exacerbated by the government, undermining national unity, and the security situation had deteriorated markedly”, Public Deposition Cornelius Herkströter, 14 april 2004 (**productie 28**), p. 100.

uit zijn bezorgdheid over de betrokkenheid van het Nigeriaanse regime.²⁵³ De laatste verstuurde bovendien urgent appeals naar het Nigeriaanse regime, waarin hij zijn zorgen uit over “reports of the killing of about 20 persons in clashes between members of the Ogoni and Ndoki ethnic groups, the latter allegedly being supported by the security forces, in early April 1994”.²⁵⁴

205. Human Rights Watch noteerde verklaringen van soldaten en andere getuigen waaruit blijkt dat soldaten vanuit de naastgelegen territoria de Ogoni hadden aangevallen.²⁵⁵ Meerdere getuigen hebben verklaard dat Okuntimo op verschillende gelegenheden met enige trots de verantwoordelijkheid voor de aanvallen opeiste.²⁵⁶ Ook het gebruik van professionele wapens tijdens de aanvallen, het ontbreken van voorafgaande animositeit tussen de bevolkingsgroepen en het feit dat het leger en de politie drie weken voor de aanvallen om onduidelijke redenen waren teruggedroepen uit het gebied, werd door Human Rights Watch gezien als bewijs van betrokkenheid van het regime.²⁵⁷
206. Hoewel Shell betrokkenheid altijd heeft ontkend,²⁵⁸ hebben verschillende getuigen in de Amerikaanse *Kiobel*-zaak verklaard dat Shell hulp heeft geboden aan het regime bij de aanvallen op de Ogoni. Zo heeft Eebu Jackson Nwiyon – tussen augustus 1993 en augustus 1995 lid van MOPOL en in die rol betrokken bij de aanval op Kaa, verklaard dat het leger en de politie speedboten en helikopters van Shell gebruikte tijdens de operatie, MOPOL-leden geld ontvingen van Shell voor hun deelname aan de operatie, en dat hij zelf vanaf het helipad van Shells *Industrial Area* per helikopter naar Andoni-gebied is gebracht door een Shell-piloot en daarbij onder meer wapens en munitie meebracht (**productie 48**).²⁵⁹
207. Uit de verklaringen van Shells veiligheidsmedewerkers Ukpong en Osunde en voormalig Shell Police-lid Nwidoh blijkt inderdaad dat de Nigeriaanse autoriteiten tijdens hun operaties gebruik maakten van Shell-helikopters, -boten en andere voertuigen van het bedrijf.²⁶⁰ Ukpong en Precious Omuku, hoofdverantwoordelijke van Shells veiligheidsafdeling in Nigeria en in die functie de manager van Ukpong, bevestigden dat die helikopters gestationeerd waren op de Shell *Industrial Area*.²⁶¹

²⁵³ Rapport van Special Rapporteur Bacre Waly Ndiaya on Extrajudicial, Summary or Arbitrary Executions, van 14 december 1994, E/CN.4/1995/61 (productie 236), p. 76; Rapport van de Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions van 7 december 1993, E/CN.4/1994/7 (productie 235), p. 105.

²⁵⁴ Rapport van Special Rapporteur Bacre Waly Ndiaya on Extrajudicial, Summary or Arbitrary Executions, van 14 december 1994, E/CN.4/1995/61 (productie 236), p. 76.

²⁵⁵ Human Rights Watch 1995 (productie 222), pp. 11-13.

²⁵⁶ Human Rights Watch 1995 (productie 222), p. 13.

²⁵⁷ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, (productie 228), pp. 24-25; Human Rights Watch (productie 222), pp. 11-13.

²⁵⁸ Nigeria Brief 1996 (productie 166), p. 10.

²⁵⁹ Public Deposition Eebu Jackson Nwiyon, 24 mei 2004 (productie 48), pp. 14-27, 69-71. Toen hij in de helikopter stapte zag hij een Shell-vertegenwoordiger – naar eigen zeggen George Ukpong – praten met zijn leidinggevende.

²⁶⁰ Zie ook hierboven hoofdstuk 8.2.3.

²⁶¹ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), p. 32; Public Deposition Precious Sotonye Omuku, 19 april 2004 (productie 51), p. 83.

Nwidoh heeft verklaard dat er regelmatig gewapende militairen in Shell-helikopters werden vervoerd.²⁶²

208. Verschillende andere getuigen in de Amerikaanse *Kiobel*-zaak hebben verklaringen afgelegd die het gebruik van Shell-helikopters tijdens het Ogoni/Andoni-conflict bevestigen.²⁶³

8.2.6 *Shell keerde onder valse voorwendselen terug naar Ogoniland en beloonde Okuntimo na geweldsexces*

209. Begin oktober 1993 worden door de autoriteiten van Rivers State vredesonderhandelingen opgestart tussen de Ogoni en Andoni. Shell en MOSOP zijn hiervoor ook uitgenodigd, al is Shell geen partij bij het akkoord.²⁶⁴ Andere aanwezigen zijn “*OMPADEC, the Military, the S.S.S. (State Security Service), the warring parties and Police representatives*”.²⁶⁵ Tot de verbazing van Owens Wiwa, die namens MOSOP aanwezig is, schuift ook Paul Okuntimo aan bij de gesprekken:

“to our surprise, the surprise of Ken and I, we saw Okuntimo walking with two Shell staff and they sat together at one edge of the table”²⁶⁶

210. Het resultaat van de onderhandelingen vormt een concept-vredesakkoord, waarin een bepaling is opgenomen dat de economische activiteiten in Ogoniland met onmiddellijke ingang zullen worden hervat.²⁶⁷ Deze omstreden passage is voor Ken Saro-Wiwa een van de redenen om het akkoord in eerste instantie niet namens MOSOP te ondertekenen. Ook de voorzitter van de onderhandelingen, professor Claude Ake, is uit protest niet bij de ondertekening aanwezig en stelt over het akkoord: “*I am amazed that the Peace Agreement was signed without prior consultation with the communities and ratification by them*”.²⁶⁸ Uiteindelijk ondertekent Ken Saro-Wiwa het akkoord met het voorbehoud dat de onmiddellijke hervatting van de economische activiteiten voor MOSOP en de Ogoni onbespreekbaar is.²⁶⁹
211. Uit een bericht van Egbert Imomoh, SPDC’s *General Manager East* (GME), aan onder anderen Philip Watts, blijkt dat de Rivers State Government vlak na de ondertekening

²⁶² Public Deposition Vincent Tornebamri Nwidoh, 25 mei 2004 (productie 46), pp. 22-24 . Nwidoh stelt ook dat Air Operation Staff “flight logs of the whereabouts and itineraries of the helicopters” bijhielden. (ibid., p. 23-24).

²⁶³ **Productie 29**: Public Deposition Tony Idigma, vol. I, 24 juli 2003, pp. 167-168; **productie 32**: Public Deposition Benson Ikari, vol. I, 28 juli 2003, pp. 171-180; **productie 43**: Public Deposition Princewill Nathan Neebani, 13 mei 2004, pp. 152-157; **productie 47**: Public Deposition Israel Nwidor, 24 september 2003, pp. 106-118; **productie 61**: Public Deposition Victor Barima Wifa, 2 april 2004, pp. 262-270.

²⁶⁴ **Productie 83**: Shell Inter-office Memorandum van Egbert Imomoh, 8 november 1993.

²⁶⁵ Shell Inter-office Memorandum van Egbert Imomoh, 8 november 1993 (productie 83).

²⁶⁶ **Productie 63**: Public Deposition Owens Wiwa, Vol. II, 24 mei 2004, p. 388. Een van de twee Shell-medewerkers is volgens Wiwa Precious Omuku.

²⁶⁷ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), p. 25: “immediate resumption of all full economic and social activities within Ogoni and Andoni areas”.

²⁶⁸ Ibid, p. 25. Ake schreef dit in een brief aan Rufus Ada George, de gouverneur van Rivers State, zie ook het beeldmateriaal van de zittingen van het Oputa Panel waar Ledum Mitee voorleest uit deze brief (**productie 253**), Oputa Panel Video 2, Ogoni Speech, van 44:10 – 51:54.

²⁶⁹ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), p. 25.

van het akkoord SPDC verzoekt haar werkzaamheden in Ogoniland te hervatten.²⁷⁰ Mede op verzoek van het regime vindt vervolgens een overleg plaats met vertegenwoordigers van MOSOP, vertegenwoordigers van het regime en SPDC. Bij dit overleg wordt MOSOP voorgehouden dat SPDC Ogoniland in wil om te verzekeren dat haar installaties goed zijn afgesloten en dat er geen olie lekt. Voor dat doel stemt MOSOP in met een bezoek van Shell aan Ogoniland.²⁷¹

212. Daarop onderneemt Shell tussen 20 en 26 oktober 1993 een inspectiemissie in Ogoniland, onder bescherming van 26 soldaten die onder leiding staan van Paul Okuntimo.²⁷² De werkelijke doelstelling van deze *Joint Patrol of SPDC and the Armed Forces personnel* is echter niet alleen het controleren van de *flow stations*, maar blijkt een intern SPDC-rapport ook: “ascertain the type and mode of security needed for SPDC to commence operations”, en “ascertain the possibility of SPDC commencing operations in the area”.²⁷³ Kortom, Shell wil onderzoeken of de tijd al rijp is om terug te keren naar Ogoniland.
213. De afspraak vormt een nieuwe breuk met Shells “*commitment not to operate with military support, but only with community cooperation and backing*”.²⁷⁴ Op verschillende plekken stuit de missie dan ook op verzet.
214. In het dorp Korokoro leidt het bezoek van Shell en de militairen op 25 oktober 1993 tot een gewelddadige confrontatie met de lokale bevolking.²⁷⁵ Daarbij wordt één dorpling, Uebari N-Nah, doodgeschoten en raken twee anderen ernstig gewond.²⁷⁶ James N-Nah, de broer van het overleden slachtoffer, heeft in de Amerikaanse procedure verklaard dat Okuntimo het dorp op agressieve wijze binnenviel en de dag na de moord naar Korokoro terugkeerde om hem en andere dorplingen te arresteren en te detineren.²⁷⁷ In de documentaire *The Drilling Fields* (**productie 249**) zijn beelden te zien van de begrafenis van N-Nah en worden slachtoffers geïnterviewd.²⁷⁸

²⁷⁰ Productie 78: Bericht van Imomoh aan Philip Watts, 26 oktober 1993; productie 79: Shell Communication over Korokoro, 25 december 1995; productie 30: Public Deposition Egbert Imomoh, vol. I, 17 juni 2003, p. 69. In het bericht van Imomoh aan Philip Watts, 26 oktober 1993 (productie 78) stelt Imomoh: “In response to the Rivers State Government’s call for SPDC to resume oil operations in the Ogoni fields, a joint inspection team comprising representatives of law enforcement agencies (24 armed personnel) and SPDC was set up”; In de Shell Communication over Korokoro staat: “The civilian Governor of River State asked Shell to resume operations in Ogoniland October 1993, following the signing of the Ogoni/Andoni accord after ethnic clashes that left many dead and many more homeless.”.

²⁷¹ Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), p. 57-59: “the assurances we were able to get that day was that SPDC could go back to closing, to shut the stations down properly”.

²⁷² **Productie 86**: Inter-office Memo van Osazee Osunde, 25 februari 1994.

²⁷³ **Productie 80**: SPDC, Report on the Joint Location Visit by SPDC and Armed Forces Personnel to Ogoni Area Oil Fields.

²⁷⁴ Shell, Nigeria Brief: Ogoni and the Niger Delta, 1996 (productie 166), p. 10.

²⁷⁵ Shell stelt dat de aanleiding voor het bezoek het confisqueren van twee brandweerwagens door de lokale bevolking was, na een valse brandmelding twee dagen eerder. Deze lezing is in de Amerikaanse *Kiobel*-zaak weersproken door de *plaintiffs*. Het bezoek zou volgens hen onaangekondigd zijn geweest.

²⁷⁶ Public Deposition James B. N-Nah, 16 oktober 2003 (**productie 44**), pp. 37-56, 57-61, 67-69, 89; Documentaire *The Drilling Fields* (productie 249), 40:00 – 40:40. Paul Sunday, die zwaargewond raakte, wordt in deze documentaire geïnterviewd (39:30-39:50). Volgens N-Nah is een tweede dorpling later aan zijn verwondingen overleden.

²⁷⁷ Public Deposition James B. N-Nah, 16 oktober 2003 (productie 44), pp. 18-19, 40-41, 46-47, 92.

²⁷⁸ Documentaire *The Drilling Fields* (productie 249), 39:30-41:00.

215. Uit een interne Shell-memo getiteld "*Honourarium for Armed Forces Personnel on Special Assignment*" blijkt dat Okuntimo's team enkele maanden na het incident, op 25 februari 1994, een extra toelage voor zijn optreden betaald krijgt "*as a show of gratitude and motivation for a sustained favourable disposition towards SPDC in future assignments*".²⁷⁹ Deze betaling wordt verricht door Osazee Osunde, die namens Shell aanwezig was bij het bezoek aan Korokoro, en geautoriseerd door George Ukpog.²⁸⁰ Volgens Shell is tot betaling overgegaan "*after repeated harassment from Major Okuntimo*".²⁸¹ Osunde heeft het geld blijkens zijn eigen verklaring persoonlijk naar Bori Camp, het legerkamp van Okuntimo, gebracht.²⁸² De betrokkenen worden ook nog getraakteerd op lunch, zo valt te lezen in de memo:

"arrange to prepare advance on company business from entertaining 26 armed forces personnel for lunch at the restaurant of their choice for the cost of 20,000 naira only. Also prepare normal special duty allowance for 26 men for 5 days work at the rate of 80 naira only per day".²⁸³

216. Hoewel Shell heeft toegegeven dat de betaling aan Okuntimo is verricht, heeft zij altijd ontkend dat tijdens het incident in Korokoro dorpelingen zijn gedood of gewond zijn geraakt. Volgens Shell en Okuntimo vielen er dankzij daadkrachtig optreden van Okuntimo en zijn mannen aan beide kanten geen dodelijke slachtoffers. Osunde verklaart later echter in de Amerikaanse *Kiobel*-zaak dat de militairen eerst werden aangevallen door de jongeren uit Korokoro, en dat daarbij drie van Okuntimo's mannen om het leven werden gebracht.²⁸⁴ Na intimidatie door Okuntimo zou hij die moorden echter in zijn verslag van het incident hebben opgenomen.²⁸⁵
217. Voor zover bekend is er nooit een onafhankelijk onderzoek geweest naar het incident. Feit is dat Shells toelage wordt toegekend aan alle 26 militairen die betrokken zijn bij het Korokoro-incident.²⁸⁶ Van de door Osunde gestelde dood van drie van de soldaten lijkt dus geen sprake. Wel staat vast dat Shell zich ook in de toekomst van de ondersteuning van Okuntimo's militaire eenheid, die een hoofdrol zou vervullen tijdens *Operation Restore Order in Ogoniland*, verzekerd wilde weten.

²⁷⁹ Inter-office Memo van Osazee Osunde, 25 februari 1994 (productie 86). Zie ook Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), pp. 164-167.

²⁸⁰ Public Deposition Osazee Osunde, 22 oktober 2003, p. 164-166 (productie 53); Public Deposition George Akpan Ukpog vol. 1, 23 oktober 2003 (productie 57), p. 84.

²⁸¹ **Productie 31:** Public Deposition Egbert Imomoh, vol. II, 2 februari 2004, p. 302. Zie ook Shell Communication over Korokoro, 25 december 1995 (productie 79).

²⁸² Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), pp. 164-166.

²⁸³ Inter-office Memo van Osazee Osunde, 25 februari 1994 (productie 86); ten tijde van de misstanden in Ogoniland was het gemiddelde salaris in Nigeria 700 naira per maand en de wisselkoers ten opzichte van de dollar 22-1, Human Rights Watch 1995 (productie 222), pp. 11-13, voetnoot 66.

²⁸⁴ Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), pp. 98-101.

²⁸⁵ Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), pp. 109-113.

²⁸⁶ Inter-office Memo van Osazee Osunde (productie 86), 25 februari 1994.

8.3 Shell faciliteerde Operation Restore Order in Ogoniland

218. In 1994 start het Nigeriaanse regime van Sani Abacha een grootschalig militair offensief in Ogoniland om het verzet van de bevolking tegen Shells werkzaamheden te breken en de weg vrij te maken voor een hervatting van de olieproductie. Niet lang nadat het offensief wordt aangekondigd, worden de kopstukken van MOSOP en enige andere prominente Ogoni gearresteerd, met de dood van de Ogoni 9 in 1995 tot gevolg.
219. Shell speelt een cruciale rol in de totstandkoming en uitvoering van *Operation Restore Order in Ogoniland*. Niet alleen omdat zij onaflatend op ingrijpen aandrong, maar ook door de operatie actief te ondersteunen, onder meer middels betalingen en logistieke hulp aan Okuntimo en zijn RSISTF.

8.3.1 Shell zette aan tot ingrijpen tegen MOSOP

220. Shell brengt in haar correspondentie met de Nigeriaanse regering steevast de protesten ("*community disturbances*") in Ogoniland in verband met lagere productiecijfers en winstderving, en koppelt dit vervolgens aan een verzoek om te interveniëren. De hiervoor omschreven geweldsexcessen brengen daarin geen verandering. Het noodgedwongen stopzetten van de werkzaamheden in Ogoniland heeft grote gevolgen voor Shells productie en navenante gevolgen voor haar inkomsten en die van het regime.²⁸⁷ Shell zette ertoe aan, en kon ervan op aan, dat het regime korte metten zou maken met de opstanden, ook als dat betekende dat er geweld werd gebruikt.
221. In december 1993 schrijft Shell aan A.J. Oyekan, de director van het Department of Petroleum Resources:
- "It is alarming to note that the cumulative crude oil shut-in resulting from community disruptions from January 1993 to 13th December 1993 is 8,988,660 barrels. We would therefore appreciate any assistance you can give to minimise these disruptions."²⁸⁸
222. De brief verwijst naar een brief van 13 december 1993 van GME Egbert Imomoh, aan luitenant-kolonel Dauda Musa Komo, de dan net aangetreden *Military Administrator* van Rivers State, met als onderwerp "*Oil production deferment caused by community disturbances/blockade and sabotage for November 1993*" (**productie 138**). In die brief wijst Shell de probleemgebieden nauwkeurig aan, inclusief verschillende plekken in Ogoniland waar Shell dan officieel al een jaar niet meer opereert.
223. Het is in deze periode dat door het regime plannen worden gesmeed om orde op zaken te stellen in Ogoniland. Komo speelt hierbij een hoofdrol. Hij nodigt op 26 december 1993 Owens Wiwa, de broer van Ken Saro-Wiwa, uit om te vragen wat MOSOP van plan is op *Ogoni Day* (4 januari).²⁸⁹ Wanneer Wiwa vertelt dat er vreedzame

²⁸⁷ Zie hoofdstuk 3.2.

²⁸⁸ Brief SPDC aan A.J. Oyekan, Department of Petroleum Resources, 16 december 1993 (productie 139).

²⁸⁹ Public Deposition Owens Wiwa, Vol. II, 24 mei 2004 (productie 63), p. 380.

demonstraties gepland staan tegen Shell, laat Komo weten dat hij deze wil verbieden. Diezelfde dag nog krijgt Wiwa bezoek van Majoor Tunde Odina, die hem te verstaan geeft dat hij Ogoniland moet verlaten, hetgeen Wiwa weigert. De volgende dag worden Owens Wiwa en ook MOSOP-prominent Ledum Mitee onder begeleiding van het leger door Odina gearresteerd, en vervolgens door Okuntimo gedetineerd.²⁹⁰ Pas op de avond van *Ogoni Day* worden ze weer vrijgelaten.²⁹¹ Ken Saro-Wiwa zelf wordt onder huisarrest geplaatst tot en met 5 januari 1994, een dag na *Ogoni Day*. Tijdens de feestdag worden alle geplande MOSOP-activiteiten verboden, alleen een kerkceremonie onder toezicht van het leger wordt door het regime toegestaan.²⁹²

224. Op 21 april 1994 wordt door het regime actieplan "*Operation Restore Order in Ogoniland*" aangekondigd,²⁹³ waarvoor drie maanden eerder al de RSISTF is opgericht.²⁹⁴ De RSISTF, waar ook de militairen die Shell assisteerden in Korokoro deel van uitmaken, wordt door Human Rights Watch als volgt beschreven:

"Members of the Rivers State Internal Security Task Force are drawn primarily from the Second Amphibious Brigade, which is based at Bori Military Camp in Port Harcourt. It also includes contingents from the national mobile police force, air force, and navy. Many Task Force members were previously part of the National Guard, a paramilitary unit disbanded when General Abacha seized power. Lieutenant-Colonel Paul Okuntimo is the commander of the Task Force."²⁹⁵

225. Okuntimo wordt aan het hoofd van de operatie geplaatst. Enkele weken later, op 12 mei 1994, duikt een "*restricted*" memo van Okuntimo op, gericht aan Komo. Okuntimo stelt daarin de volgende doelen:

"Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence".

"Wasting operations during MOSOP and other gatherings making constant military presence justifiable".

²⁹⁰ Public Deposition Owens Wiwa, Vol. II, 24 mei 2004 (productie 63), p. 371-384. Zie ook de verklaring van Ledum Mitee tijdens het Oputa Panel, zie Oputa Panel Video 2 (productie 253), Ogoni Speech, van 1:21:00 tot 1:25:19.

²⁹¹ Public Deposition Owens Wiwa, Vol. II, 24 mei 2004 (productie 63), p. 384.

²⁹² Documentaire The Drilling Fields, 23 mei 1994 (productie 249), 42:50 t/m 44:35; Documentaire Delta Force (productie 250), 26:00 t/m 27:44.

²⁹³ The Commissioner of Police, Restoration of Law and Order in Ogoniland, Operation Order 4/94, 21 april 1994, zie Project Underground report "All for Shell" by Andy Rowell and Stephen Kretzmann, eerste versie 1 november 1996, laatst geupdate 4 maart 1997 (productie 226), p. 11; zie ook de opname van de Oputa Panel, waar Ledum Mitee voorleest uit deze Operation Order, Oputa Panel Video 2 (productie 253), Ogoni Speech, van 1:31:30 tot 1:32:45.

²⁹⁴ Human Rights Watch 1995 (productie 222), p. 14; zie over de RSISTF ook 4.1 en 8.2.3. Interessant is dat twee dagen voor de aankondiging van Operation Restore Order in Ogoniland een gesprek plaatsvindt tussen Egbert Imonoh en Military Admins. De inhoud van het gesprek is echter niet bekend.

²⁹⁵ Human Rights Watch 1995 (productie 222), p. 14, voetnoot 44.

“Wasting targets cutting across communities and leadership cadres especially vocal individuals”.

“Wasting operations coupled with psychological tactics of displacement/wasting as noted above”.

“Restriction of unauthorised visitors especially those from Europe to the Ogoni”.

“Surveillance on Ogoni leaders considered as security risks/MOSOP propellers”.

“Ruthless operations and high level authority for the task force effectiveness”

226. Ook roept Okuntimo de regering op “[to] pressure oil companies for prompt regular inputs” om deze operaties te bekostigen.²⁹⁶
227. Shell refereert in haar officiële documenten over de Ogoni-kwestie aan het standpunt van het Nigeriaanse regime dat de memo vervalst zou zijn.²⁹⁷ Shell voegt hieraan toe: “Even if it is genuine, it does not describe an action taken by Shell”.²⁹⁸ Daarmee miskent Shell dat de kern van het verwijt aan haar adres is dat Shell daarbij een onmisbare rol heeft gespeeld. Los van de vraag of de memo is vervalst – bewijs hiervoor is nooit geleverd – is duidelijk dat het regime opereert in naam van Shell en met het doel Shell te laten terugkeren naar Ogoniland. Bovendien blijkt dat Shell de repressie actief ondersteunt.
228. In deze periode vindt regelmatig contact plaats tussen SPDC en de directe betrokkenen bij *Operation Restore Order*. Zo heeft op 19 april 1994, twee dagen voor de aankondiging van het plan, een gesprek plaats tussen Egbert Imonoh en *Military Administrator* Lt. Col. Komo.²⁹⁹ Brian Anderson, vanaf januari 1994 de nieuwe *Managing Director* van SPDC, heeft zelf op 2 mei 1994 een ontmoeting met Abacha. Hij doet hiervan verslag in een van zijn *Nigeria Updates* – berichten van Anderson met een beschrijving van belangrijke gebeurtenissen in Nigeria die wekelijks en soms bijna dagelijks worden rondgestuurd binnen de Shell-groep. In dit gesprek, een kleine drie weken voor de arrestatie van Ken Saro-Wiwa en Kiobel, vertelt hij Abacha dat hij Saro-Wiwa medeverantwoordelijk acht voor de vernieling van Shell-faciliteiten in Ogoniland:

²⁹⁶ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), bijlage 4, Facts Sheet, p. 44.

²⁹⁷ Zie bijv. Shell, Nigeria Brief: Ogoni and the Niger Delta, 1996 (productie 166), p. 12: “The government has asserted that the document is a fake”.

²⁹⁸ Shell, Nigeria Brief: Ogoni and the Niger Delta, 1996 (productie 166), p. 12.

²⁹⁹ **Productie 118**: Brief Alan Detheridge aan Anderson van 27 september 1995, p. 4. Zie ook Public Deposition Brian Anderson, 13 februari 2003 (productie 17), p. 114-115. Op de inhoud van het gesprek wordt in deze stukken niet ingegaan.

"I raised the problem of the Ogonis and Ken Saro Wiwa, pointing out that Shell had not been in the area now for almost a year. We told him of the destruction they had created at our sites, of which he was apparently unaware."³⁰⁰

229. Enkele dagen voor de moorden op de vier Ogoni-leiders op 21 mei 1994 houdt Shell nog een media briefing in Lagos en Londen, waarin wordt gesteld dat “[a]cts of sabotage have been tacitly acknowledged by Mr. Ken Saro-Wiwa”. Ook brengt Shell Saro-Wiwa direct in verband met geweld:

“Mr. Saro-Wiwa apparently feels that he has not had an adequate response from the Government. So he has started to raise the stakes and put pressure on Shell by making wild accusations and disrupting SPDC operations in the Ogoni by direct violence”.³⁰¹

230. Dat Abacha op deze verdachtmakingen met harde hand zou reageren werd door Shell voorzien. In de *Nigeria Update* van 2 mei 1994 stelt Anderson, nadat hij Abacha deelgenoot heeft gemaakt van verschillende demonstraties in Ogoniland:

"I sense [...] that [Abacha] will intervene with either the military or the police. [...] The HoS said that he would be calling elders and military administrators from the regions involved to a meeting at which he said that he would be making the military administrators responsible for any future problems."³⁰²

231. Als Anderson in zijn gesprek met Abacha op 2 mei 1994 de lange afwezigheid van Shell in Ogoniland in verband brengt met de vernielingen aan haar faciliteiten,³⁰³ weet Shell dus waar zij hem toe uitnodigt.
232. Op 22 mei 1994 en in de weken daarna worden de eerste prominente Ogoni en Shell-critici gearresteerd, onder wie Saro-Wiwa, Kiobel, Bera, Levula en (enkele maanden later) Eawo. Zoals is beschreven in hoofdstuk 4 volgen de arrestaties op de nooit opgehelderde moord op vier traditionele Ogoni-leiders een dag eerder in Giokoo. De meeste arrestanten worden opgesloten in Bori Military Camp, het hoofdkwartier van Okuntimo.
233. Het regime grijpt de moorden aan om een staat van beleg aan te kondigen in Ogoniland. Tussen mei en augustus 1994 onderneemt het Nigeriaanse leger onder aanvoering van Okuntimo's RSISTF in ten minste zestig dorpen in Ogoniland uitermate gewelddadige

³⁰⁰ **Productie 92**: Nigeria Update, 2 mei 1994. Zie ook Public Deposition Brian Anderson, 13 februari 2003 (productie 17), pp. 71-74.

³⁰¹ Outline for approach to Media by Shell Participants, media briefing in London and Lagos prior to May 23, Channel 4 screening of Catma Films' production (**productie 143**).

³⁰² Nigeria Update, 2 mei 1994 (productie 92); Public Deposition Brian Anderson, 13 februari 2003 (productie 17), p. 77.

³⁰³ Nigeria Update, 2 mei 1994 (productie 92).

strafexpedities om zogenaamde MOSOP-elementen te elimineren.³⁰⁴ Daarbij worden (vermeende) MOSOP-sympathisanten mishandeld, verkracht, gemarteld, vermoord en afgeperst, worden dorpen geplunderd en talloze huizen verwoest.³⁰⁵ Paul Okuntimo vervult een hoofdrol tijdens de militaire operaties. Uit ooggetuigenverslagen van Human Rights Watch van zowel slachtoffers als soldaten blijkt dat hij persoonlijk betrokken is bij marteling, moord en verkrachting.³⁰⁶ Op een persconferentie die wordt uitgezonden op de Nigerian Television Authority, legt Okuntimo uit hoe hij te werk gaat:

“The first three days of the operation, I operated in the night. Nobody knew where I was coming from. What I will just do is that I will just take some detachments of soldiers, they will just stay at four corners of the town. They ... have automatic rifle[s] that sound death. If you hear the sound you will freeze. And then I will equally now choose about twenty [soldiers] and give them ... grenades – explosive – very hand one[s]. So we shall surround the town at night ... The machine gun with five hundred rounds will open up. When four or five like that open up and then we are throwing grenades and they are making ‘eekpuwaal’ what do you think the ... and they know I am around, what do you think the people are going to do? And we have already put roadblock[s] on the main road, we don’t want anybody start running ... so the option we made was that we should drive all these boys, all these people into the bush with nothin except the pant[s] and the wrapper they are using that night.”³⁰⁷

234. Honderden Ogoni worden tijdens de operatie het slachtoffer van willekeurige detentie, met name in Bori Military Camp en Kpor Detention Center; ten minste vijftig Ogoni worden standrechtelijk geëxecuteerd.³⁰⁸ De omvang van de verwoesting en gewelddadigheden is te zien in de documentaire *Delta Force (productie 250)* en is uitgebreid gedocumenteerd aan de hand van ooggetuigenverslagen in een rapport van Human Rights Watch.³⁰⁹
235. Uit de interviews afgenomen door Human Rights Watch blijkt dat gevangenen worden gevraagd over hun banden met MOSOP en hun kennis van de betrokkenheid van

³⁰⁴ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), pp. 29-30; Human Rights Watch 1995 (productie 222), pp. 14-24..

³⁰⁵ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), pp. 29-30; Human Rights Watch 1995 (productie 222), pp. 14-24.

³⁰⁶ Human Rights Watch 1995 (productie 222), pp. 19-21, 23.

³⁰⁷ Beelden persconferentie zoals te zien in de documentaire *Delta Force (productie 250)*, van 37:23 tot 38:46. Zie voor de transcriptie van Okuntimo’s woorden Human Rights Watch 1995 (productie 222), pp. 15-16; Zie ook Greenpeace, *Shell-shocked: The Environmental and Social Costs of Living with Shell in Nigeria* (productie 221), juli 1994, p. 21.

³⁰⁸ Richard Boele / UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (productie 228), pp. 29-30; Human Rights Watch 1995 (productie 222), pp. 14-24.

³⁰⁹ Human Rights Watch 1995 (productie 222), pp. 14-19.

MOSOP, NYCOP en Saro-Wiwa bij de moord op de vier Ogoni-leiders.³¹⁰ De militaire operatie dient dus ook nadrukkelijk het doel belastend materiaal te verzamelen tegen de verdachten in het Ogoni 9-proces, die dan nog zonder officiële aanklacht gedetineerd zijn in Bori Military Camp, overigens samen met de andere politieke gevangenen die worden opgepakt tijdens de *raids* van het leger.³¹¹

8.3.2 *Okuntimo werkte mede in opdracht van Shell*

236. Okuntimo verkondigt bij herhaling en publiekelijk dat hij de operatie mede uitvoert in opdracht van Shell.³¹² Boniface Ejiogu, die ten tijde van de Ogoni-crisis de rechterhand was van Okuntimo, heeft in de Amerikaanse procedure voorts verklaard dat hij drie keer getuige is geweest van het overhandigen van geld door Shell aan Okuntimo, waarvan twee keer door George Ukpong (**producties 24 en 25**).³¹³ Ejiogu beschrijft verder dat Ukpong en Okuntimo elkaar regelmatig ontmoetten, meestal in Ukpongs kantoor op de *Industrial Area*, maar ook bij Ukpong thuis.³¹⁴ Bovendien assisteerde Shell de RSISTF volgens Ejiogu in de vorm van rantsoenen, munitie en vervoer.³¹⁵ De betalingen aan Okuntimo door Shell zijn bevestigd door een andere getuige in de Amerikaanse *Kiobel*-zaak, Raphael Kponee, die tussen 1991 en 1998 lid was van Shells politie-eenheid en werkzaam was op Shells *Industrial Area* (**productie 39**).³¹⁶ Ook Shell-medewerker Osazee Osunde heeft in de Amerikaanse procedure verklaard dat hij Ukpong en Okuntimo samen op de *Shell Industrial Area* heeft gezien.³¹⁷
237. De regelmatige ontmoetingen tussen Shell en Okuntimo zijn bevestigd door Human Rights Watch:

“a highly placed government source in Rivers State told Human Rights Watch that SPDC representatives meet regularly with the director of the Rivers State Security Service and Lieutenant-Colonel Paul

³¹⁰ Ibid; Uit verklaringen afgenomen door de politie ten tijde van het Ogoni 9-proces blijkt ook dat Ogoni-gevangenen werden ondervraagd over MOSOP en NYCOP. Okuntimo was betrokken bij deze arrestaties en verhoren.

³¹¹ Verklaring Ledum Mitee, 2 mei 2017 (productie 41), para. 8.

³¹² Zo stelt Tony Idigma dat hij Okuntimo heeft horen verklaren dat “it was Shell Oil Company that brought them into Ogoni”, Public Deposition Tony Idigma, vol. I, 24 juli 2003 (productie 29), pp. 167-168.

³¹³ Public Deposition Boniface Ejiogu, vol. II, 23 mei 2004 (productie 25), pp. 162-182, 193-203, 213-217. Zie ook Public Deposition Boniface Ejiogu, vol. I, 22 mei 2004 (productie 24), pp. 35-46, 96-105; Zie voor Ukpongs rol ook hoofdstukken 8.2.3, 8.2.5, en 8.2.6. Het ging steeds om contante betalingen, wat normaal was bij de verklaring van Shells *security manager* Osunde, Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), pp. 155-166.

³¹⁴ Public Deposition Boniface Ejiogu, vol. I, 22 mei 2004 (productie 24), pp. 15-19, 25-28, 32-34, 49. Hij geeft een zeer gedetailleerde beschrijving van de werkkamer van Ukpong en de *Industrial Area*, zie Public Deposition Boniface Ejiogu, vol. II, 23 mei 2004 (productie 25), pp. 162-182.

³¹⁵ Public Deposition Boniface Ejiogu, vol. I, 22 mei 2004 (productie 24), pp. 28-29, 34, 46-47, 49-53, 72-75, 105-107. Ukpong heeft de RSISTF volgens Ejiogu ook gevraagd om in te grijpen bij Shells *Industrial Area*, zie pp. 26-28.

³¹⁶ Public Deposition Raphael Kponee, 26 mei 2004 (**productie 39**), p. 12, 22-24. Hij liet Okuntimo toe op het terrein en zag tassen met geld in zijn auto getild worden.

³¹⁷ Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), p. 179-180

Okuntimo, the commander of the Rivers State Internal Security Task Force”.³¹⁸

238. Op 17 december 1995 publiceert de Engelse krant *The Sunday Times* een artikel over de “close relationship between local branches of [Shell] and General Sani Abacha's brutal military regime”.³¹⁹ Tegenover de journalisten verklaart Okuntimo dat hij regelmatig geld heeft ontvangen van Shell ten tijde van *Operation Restore Order in Ogoniland*:

“Interviewed by *The Sunday Times* in Nigeria last week, Okuntimo initially admitted being paid by Shell while he was in charge of crushing Ogoni protests against the company. 'Shell contributed to the logistics through financial support. To do this, we needed resources and Shell provided these,' he said.”

239. Hoewel Okuntimo bovenstaande uitspraak later zou ontkennen, vonden de journalisten van *The Sunday Times* andere bronnen die de betalingen van Shell aan Okuntimo bevestigden:

“The evidence against [Okuntimo] is supported by a conversation between Okuntimo and Nick Ashton-Jones, a British environmentalist, and Oronto Douglas, a Nigerian journalist, in June [1994]. Ashton-Jones, who had worked for Shell in eastern Nigeria, said the colonel, then a major, felt badly let down by Shell.

Ashton-Jones recalled: "He said he was doing a wonderful job for the government and he was disappointed that Shell had stopped paying him. He said that everything he was doing was for Shell." [...]

Ledum Mittee [sic], the lawyer who stood trial with Saro-Wiwa and was the only defendant acquitted, built up a close relationship with Okuntimo during his detention. Mittee said: "He admitted he was being paid by Shell. He said he was angry with Shell because they were no longer paying as much for the upkeep of his boys. He felt they were not grateful enough." Mittee explained that Shell provided vehicles for military operations and rewarded Okuntimo personally.”³²⁰

240. Okuntimo had Douglas, Ashton-Jones en ook advocaat Uche Onyeagucha – een van de advocaten van de Ogoni 9 – gearresteerd en enkele dagen gedetineerd en mishandeld

³¹⁸ Human Rights Watch 1995 (productie 222), p. 38.

³¹⁹ Frank Kane, Steven Haynes, Christina Lamb, “Shell axes 'corrupt' Nigeria staff”, *The Sunday Times*, 17 december 1995 (productie 255).

³²⁰ Ibid.

nadat zij een bezoek wilden brengen aan Ledum Mitee in Bori Camp.³²¹ Het verhaal van Ashton-Jones is in de Amerikaanse *Kiobel*-zaak bevestigd door Oronto Douglas:

“While we were in the vehicle with him, Lt. Col. Okuntimo spoke to us freely about his relationship with Shell. He stated that he had been helping Shell, had performed all types of services for Shell and that he was upset because he had been doing all this work for Shell but that they were not treating him well as they used to.”³²²

241. Onyeagucha bevestigt in zijn verklaring van 15 juni 2017 (**productie 52**) dat Okuntimo dergelijke uitlatingen heeft gedaan: “he told me that he worked for Shell, was paid by Shell and that Shell actively supported his task force by buying vehicles and other material for them”.³²³ Ook Ledum Mitee, voormalig (vice-)president van MOSOP, heeft de weergave van zijn gesprekken met Okuntimo door *The Sunday Times* bevestigd:

“Okuntimo told us about Shell and how much he worked for them, that they had paid him money for all that he had done, because it benefited him. Shell still owed him money, for his work”.³²⁴

242. Andere getuigen in de Amerikaanse *Kiobel*-zaak hebben eveneens verklaard dat Okuntimo hen persoonlijk heeft toevertrouwd betalingen te ontvangen van Shell.³²⁵
243. Bovendien hebben verschillende opgepakte Ogoni in de Amerikaanse *Kiobel*-zaak verklaard dat zij, voordat zij werden vrijgelaten door de RSISTF, een verklaring moesten ondertekenen dat zij niet meer zouden protesteren tegen Shell.³²⁶ Dumle Kunenu, een van de eisers in de Amerikaanse *Kiobel*-zaak, stelt bijvoorbeeld:

“After then, they give me a document that I should sign if only I want to be released. That was under duress. The content of the document was that I should not protest against Shell again. And Okuntimo that very day he told me that didn't I know that Shell and the government are partners. Didn't I know they are the same. So that if I want to have my

³²¹ **Productie 23**: Verklaring Oronto Douglas, 4 februari 2009, paras. 19-24; **productie 52**: Verklaring Uche Onyeagucha, 15 juni 2017. Zij werden onder meer mishandeld door honderd slagen met een elektrische kabel. Zie ook M. Birnbaum, *Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others*, juni 1995 (productie 225), pp. 44-45.

³²² Verklaring Oronto Douglas, 4 februari 2009 (productie 23), para. 23.

³²³ Verklaring Uche Onyeagucha, 15 juni 2017 (productie 52).

³²⁴ Verklaring Ledum Mitee, 2 mei 2017 (productie 41), para. 10.

³²⁵ Public Deposition Nathan Neebani, 13 mei 2004 (productie 43), pp. 188-189 : “[Okuntimo is] always like he's complaining that they're not giving him what he want, that he's doing a dirty job for them”; Public Deposition Owens Wiwa vol. II, 24 mei 2004 (productie 63), p. 354, 386-387; Public Deposition Tony Idigma, vol. I, 24 juli 2003 (productie 29), p. 171; Zie ook: Human Rights Watch 1995, (productie 222) p. 38; M. Birnbaum, *Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others*, juni 1995 (productie 225), p. 45, appendices 5 en 5A, pp. 92-94.

³²⁶ Public Deposition Israel Nwidor, 24 september 2003 (productie 47), pp. 199-200; Public Deposition Victor B. Wifa, 2 april 2004 (productie 61), pp. 131-135; Public Deposition Legbara Tony Idigma, 24 juli 2003 (productie 29), p. 70; Public Deposition Nathan Neebani, 13 mei 2004 (productie 43), p. 133.

peace, I should not ever again demonstrate against Shell because if I do, he will kill me.”³²⁷

244. Ook dit onderstreept hoezeer de militaire operatie in Ogoniland erop was gericht om het verzet tegen de terugkeer van Shell te breken, hetgeen Okuntimo volgens verschillende getuigen ook herhaaldelijk zelf heeft verklaard.³²⁸
245. Dat Okuntimo het gevoel had dat hij ten behoeve van Shell werkte, wordt geïllustreerd door het feit dat hij George Ukpong heeft gevraagd of Shell hem in dienst kon nemen nadat zijn werk bij de RSISTF erop zat, zo volgt uit de verklaring van Ukpong.³²⁹

8.4 Shell en het regime opereerden als tandem

246. Shell staat niet alleen aan de wieg van de hierboven omschreven excessen door telkens het ingrijpen van MOPOL of het RSISTF te verzoeken, zij stelde het regime daartoe ook feitelijk in staat door wapens, personeel en geld beschikbaar te stellen. Shell faciliteerde zo het excessieve optreden van het regime, maar vervulde ook zelf typische overheidstaken.
247. De sterke verwevenheid van Shell en het regime blijkt onder meer uit de volgende feiten en omstandigheden, die voor een deel hierboven al aan de orde zijn gekomen:
- Shell betaalde en onderhield een deel van de Nigeriaanse politiemacht.
 - Shell was bereid wapens te kopen voor het regime.
 - Shell verstreekte het regime cruciale informatie over ‘*community disturbances*’, onder meer door de locaties van demonstraties te verstrekken en om ingrijpen te verzoeken.
 - Shell faciliteerde Operation Restore Order in Ogoniland
 - Shell onderhield samen met het regime een informantennetwerk in Ogoniland.
 - Shell betaalde de politie, MOPOL, het leger en de RSISTF toelagen en maakte operaties van het regime mogelijk door toelagen te betalen en faciliteiten en vervoersmiddelen beschikbaar te stellen.
 - Shell had stromannen tot op het hoogste niveau van de Nigeriaanse regering als gevolg van haar ‘*revolving door policy*’, waarbij oud-werknemers van Shell werkten voor het regime en vice versa.

³²⁷ Productie 40: Public Deposition Dumle J. Kunenu, 14 mei 2004, p. 18.

³²⁸ Public Deposition Blessing Israel, 28 mei 2004 (productie 33), pp. 24-31; Public deposition Israel Nwidor, 24 september 2003 (productie 47), p. 72: “When Okuntimo arrested Mr Nwidor on the 25th of May 1994, Okuntimo said: ‘we have got those ones who have been working against Shell’”; Public Deposition Bishop John Miller, vol. I, 25 juli 2003 (productie 35), pp. 80-83; Human Rights Watch 1995 (productie 222), p. 38.

³²⁹ Public Deposition Ukpong, vol. I, 23 oktober 2003 (productie 57), pp. 20-21.

- Shell voedde het wantrouwen van het regime jegens Saro-Wiwa en MOSOP en vergrootte op die manier de urgentie om in te grijpen in Ogoniland.

248. Zoals hieronder nader zal worden onderbouwd, is Shell hierdoor in feite niet los te zien van het regime in de periode 1990-1995.

8.4.1 Shell betaalde politieagenten, MOPOL-agenten en mariniers

249. Shells politiecorps telt in 1994 meer dan 1,200 agenten (aangeduid als *supernumerary police*, *SPY Police* of *Shell Police*). Dit zijn agenten die officieel behoren tot de politiemacht van Nigeria, maar volledig worden betaald door Shell (**productie 88**: Briefing Notes over een vergadering tussen Brian Anderson (*Managing Director* SPDC) en de Inspector General of Police, 17 maart 1994). Uit een verslag van een bezoek van SPDC's *Managing Director* Brian Anderson aan de *Inspector General* van de *Nigeria Police Force* op 17 maart 1994 blijkt dat Shell naast deze politieagenten ook nog 41 mariniers en 128 MOPOL-leden op de loonlijst heeft staan voor "Special Duty".³³⁰ Blijkens het verslag is er "a strong competition amongst the rank and file of the NPF to be selected for SPDC service", omdat Shell-agenten twee keer zoveel betaald krijgen als gewone NPF-leden.³³¹
250. Brian Anderson heeft zelf in een *keynote address* in 1994 gesteld dat de *Shell-operated Joint Venture* in totaal ongeveer 2.470 beveiligingsmensen in dienst heeft.³³² Dit houdt in dat zij voor elke twee SPDC-werknemers één beveiligiger in dienst had. Deze veiligheidsmaatregelen kostten bijna achttien miljoen dollar.³³³
251. Shell maakte dus zelf rechtstreeks en actief deel uit van (alle geledingen van) het overheidsapparaat dat de 'orde' in Ogoniland moest handhaven en daartoe op grote schaal de mensenrechten schond. Deze feitelijke situatie strookt niet met Shells betoog dat zij met het optreden van het regime niets te maken had, en zelf een apolitieke koers zou varen.
252. Toen de onrust in Ogoniland begin jaren negentig toenam, had Shell de steun van het regime in toenemende mate nodig. Zo blijkt uit een interne memo van Watts, de toenmalige *Managing Director* van Shell in Nigeria, dat Shell vice-president Shonekan logistieke ondersteuning aanbiedt ten behoeve van de politie.³³⁴ Ook wanneer Watts het

³³⁰ Briefing Notes over een vergadering tussen Brian Anderson (*Managing Director* SPDC) en de Inspector General of Police, 17 maart 1994 (productie 88).

³³¹ Ibid.

³³² Dit betreft dus de beveiliging van de volledige *joint venture*, niet slechts SPDC.

³³³ **Productie 91**: Nigeria Update 25 april 1994. Bijlage: Highlights of keynote address on "Major issues and challenges of energy investments in Nigeria" by mr. B.R.H. Anderson, Chairman and Managing Director of SPDC at the International energy Investment Seminar, Sheraton hotel and towers, Lagos, 19 april 1994: "The Shell-operated JV has some 2470 security staff. This implies a ratio of 2 security man for every 2 SPDC employees. All this costs a great deal of money (US\$17.8m)".

³³⁴ Urgent Telex van Watts aan SIPC Londen en SIPM Den Haag, 11 mei 1993 (productie 70): "We informed [Shonekan] about our efforts to work with the police, providing logistic support for their protection of key locations.". Zie ook hoofdstuk 8.2.4 randnummer 201.

belang van meer politieaanwezigheid kenbaar maakt aan de *Inspector-General* van de politie, laat hij weten dat Shell logistieke ondersteuning zal bieden.³³⁵

253. Shell verzoekt het regime eveneens om uitbreiding van haar eigen politiecorps en stelt dat de Beretta-pistolen waarover het corps beschikt moeten worden aangevuld met semi-automatische wapens.³³⁶ Op 1 december 1993 schrijft Watts ten dien einde een brief aan de *Nigerian Police Inspector General* Alhaji Coomassie, waarin hij benadrukt dat de belangen van Shell samenvallen met die van Nigeria:

“It is recognised that in these current troubled times, it may be easy to release the number of resources required to adequately protect SPDC’s facilities. However, we must emphasise that SPDC produces more than 50% of Nigeria’s oil, which has consequential major impact on the country’s economy. To secure a continuation of operations at the present level requires the provision of maximum protection. We request therefore that you give consideration of providing such resources as are available at this time and to bring these up full strength when a relative calm prevails.”³³⁷

254. In dezelfde brief wordt verwezen naar het plan van de olie- en gasmaatschappijen in Nigeria om een eigen 2,000 man grote politie-eenheid op te zetten, de *Oil Production Area Police Command* (OPAPCO).³³⁸ In het plan voor OPAPCO staat het volgende te lezen:

"In a recent move dictated by the increase in tension amongst the communities in the Oil Producing Regions, SPDC plans to deploy Out of State Police (OPAPCO) to protect oil production facilities in the Niger Delta oil province. This force will provide protection for SPDC through provision of arm mobile patrols and some static guard duties."³³⁹

255. Watts benadrukt in zijn brief dat Shell de kosten en organisatie voor de oprichting van OPAPCO op zich wil nemen:

“SPDC has given a commitment to provide complete logistics, accoutrement and welfare support to the OPAPCO police force which will be assigned to SPDC’s operations. You stated that the provision of the OPAPCO force would require Federal approval. In this respect, we would be pleased to assist in preparing any papers which describe the

³³⁵ Ibid.

³³⁶ Brief Phil Watts aan Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force), 1 december 1993 (productie 137).

³³⁷ Ibid.

³³⁸ Ibid; Het aantal van 2,000 wordt genoemd in Briefing Notes over een vergadering tussen Brian Anderson (*Managing Director* SPDC) en de Inspector General of Police, 17 maart 1994 (productie 88).

³³⁹ Productie 50: Public Deposition Dozie Okonkwo, 19 juni 2003, pp. 59, 68-69. Het plan voor OPAPCO is opgenomen in het “five year corporate security development plan 1993 to 1998”, daterend van 9 november 1993.

deployment, operating and welfare philosophy as well as the relationship between OPAPCO and SPDC.”

“SPDC will fully support the cost of setting up and maintaining the contingents.”³⁴⁰

256. In maart 1994 schrijft Watts’ opvolger Brian Anderson dat SPDC bereid is 7,2 miljoen dollar per jaar bij te dragen aan OPAPCO.³⁴¹
257. Op 30 maart 1995 maakt Brian Anderson bekend dat OPAPCO er niet zal komen, omdat de OPTS (de *Oil Producers Trade Section*, een overkoepelende organisatie van de olie- en gasmaatschappijen in Nigeria) het plan niet wil financieren.³⁴²

8.4.2 Shell stelde voertuigen en faciliteiten beschikbaar

258. Het kenmerkt de relatie tussen Shell en het regime dat Shell met regelmaat “*for relationship rapport*” allerhande verzoeken van de politie en de veiligheidsdienst honoreert, variërend van het betalen van bootreparaties tot het aankopen van airconditioning en kantoormeubilair.³⁴³ Zelfs uit eigen beweging biedt Shell logistieke ondersteuning aan.³⁴⁴ Ook betaalt zij geregeld *field allowances* voor MOPOL,³⁴⁵ en worden – zoals in hoofdstuk 8.2.3 reeds besproken – voertuigen en gebouwen beschikbaar gesteld. Shell regelde niet alleen het vervoer voor MOPOL. Het was gebruikelijk om vervoer te verzorgen in de situaties waarbij Shell het regime om “assistentie” verzocht, zoals in de voorbeelden genoemd in hoofdstukken 8.2.3 en 8.2.4.³⁴⁶ Bovendien blijft de Nigeriaanse politie ook na 1993 aanwezig in Ogoniland, dat dan al een no go-area is voor Shell, met het doel om Shell-eigendommen te beschermen.³⁴⁷ Shell betaalt onder meer het salaris en de maaltijden van deze agenten.³⁴⁸ Aan het Nigeriaanse leger verstrekt Shell op verzoek *operational maps*, waarop alle Shell-werkzaamheden worden weergegeven.³⁴⁹

³⁴⁰ Brief Phil Watts aan Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force), 1 december 1993 (productie 137).

³⁴¹ Briefing Notes over een vergadering tussen Brian Anderson (*Managing Director* SPDC) en de Inspector General of Police, 17 maart 1994 (productie 88).

³⁴² **Productie 154:** Brief Brian Anderson aan OMPADEC, 30 maart 1995.

³⁴³ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), p. 149-152; Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), pp. 288-290, 297. “SSS is seeking our assistance in the provision of some items in support of their operations”, o.a. “boat repairs, photocopier, five air conditioners, fifteen office tables, thirty office chairs and eighty tyres”; Zo schrijft ook de Assistant Commissioner of Police aan Ukpong “it is being strongly suggested that your organisation should think of the possibility of necessary assistance in the area of logistic support and general welfare”, Public Deposition George Akpan Ukpong (productie 57), p. 170.

³⁴⁴ Zie hoofdstuk 8.2.4, randnummer 201.

³⁴⁵ Zie bijvoorbeeld randnummers 182, 206 en 215.

³⁴⁶ Zo stelt Eric Nickson, Head Media Relations bij Shell International, “On a number of occasions Shell has requested additional protection from the police where its own security measures were thought not to be adequate against criminal activities. SPDC has provided transport for the police on such occasions”, Brief van Eric Nickson aan Paul Brown en Andy Rowell, 6 november 1996 (productie 156), p. 3.

³⁴⁷ Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), p. 237-238, 294-295.

³⁴⁸ *Ibid.*, pp. 238, 246.

³⁴⁹ *Ibid.*, pp. 227, 229.

8.4.3 Shell ondernam actie om het politiecorps zelf van wapens te voorzien

259. In de periode waarin wordt gesproken over de oprichting van OPAPCO en de uitbreiding van Shells politiecorps verzoekt SPDC's veiligheidsadviseur Victor Oteri het regime om toestemming voor het importeren van meer dan een half miljoen dollar aan wapens.³⁵⁰ De bestelling bestaat uit onder meer:

- 130 SMG Beretta 9mm Calibre
- 200.000 Rounds of 9mm bullets/ammunitions
- 40 Beretta Pistols (to replace unserviceable ones)
- Pump Action Shotgun 12 GA, 6 shots including slings
- 50.000 rounds cartridges for Pump Action Shot Guns
- 20.000 rounds Shotgun rubber bullets
- 500 Smoke Hand Grenades³⁵¹

260. Het eerste verzoek van Oteri wordt gedaan op 31 maart 1994 en nog enkele verzoeken volgen, waarbij Oteri verwijst naar bovengenoemde brief van Watts van 1 december 1993.³⁵²

261. De Nigeriaanse politie geeft toestemming voor de aanschaf, maar stelt als voorwaarde dat de wapens primair voor het Nigeriaanse politiecorps worden aangeschaft en door de Shell-politie (die daarvan deel uitmaakt) mogen worden gebruikt:

“Approval is hereby given for the purchase of such semi automatic riffles [sic] to be decided upon by your representative and this office. The weapons would however be procured for the Nigeria Police Force. The Force would take full custody and monitor the deployment of the weapons within your establishment.”³⁵³

262. Ook stemt Shell ermee in dat de wapens worden aangeschaft bij een wapenhandelaar naar keuze van het regime (“*we will be prepared to pay the cost of acquisition by your nominated dealer/supplier*”).³⁵⁴ Deze handelaar is Chief G.O. Akinluyi van Humanitex Nigeria Ltd. dat het internationale wapenbedrijf XM Federal Ltd. vertegenwoordigt. Op

³⁵⁰ Brief V. Oteri aan Inspector General of Police, 31 maart 1994 (**productie 140**); Brief V. Oteri aan Inspector General of Police, 18 april 1994 (**productie 141**); Brief V. Oteri aan The Inspector General of Police, 24 juni 1994 (**productie 144**); Brief V. Oteri aan The Inspector General of Police, 17 augustus 1994 (**productie 147**).

³⁵¹ Brief V. Oteri aan de Inspector General of Police, 17 augustus 1994 (productie 147).

³⁵² Brief Phil Watts aan Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force), 1 december 1993 (productie 137), zie hoofdstuk 8.4.1.

³⁵³ Brief The Inspector General of Police aan Anderson, 27 juli 1994 (**productie 145**). Zie ook Brief van The Inspector General of Police aan Akinluyi, 17 augustus 1994 (**productie 262**); Brief van The Inspector General of Police aan V.A. Oteri, 18 augustus 1994 (**productie 148**).

³⁵⁴ Brief V. Oteri aan Inspector General of Police, 18 april 1994 (productie 141).

1 en 18 augustus 1994 worden door XM Federal Limited prijsvoorstellen gedaan, beide van meer dan een half miljoen dollar.³⁵⁵

263. Akinluyi schrijft op 8 september 1994 aan Shell dat de levering enige vertraging heeft opgelopen, omdat deze alleen mogelijk was door tussenkomst van een derde partij vanwege een wapenembargo tegen Nigeria (waarover hieronder meer), maar dat deze horde inmiddels is genomen (**productie 149**).³⁵⁶ Vier dagen later laat Shell de deal met Akinluyi echter stuklopen op de hoogte van de factuur, zoals blijkt uit een brief van Brian Anderson aan Alhaji Coomassie van 12 september 1994 (**productie 150**):

“In our letter of 1/12/93, we stipulated the number and type of arms which we wished to procure in order to improve our defensive capability in Lagos and in the Eastern and Western Divisions of SPDC. Recently, we received a quotation for the required arms from a chief G.O. Akinluyi of Humanitex Nigeria Limited whom we understand is the sole appointed agent for any transaction of this nature between the NPF and SPDC. We consider this quotation to be excessive, based upon own investigations from other sources of supply. Consequently, we may have to suspend all activity on arms procurement until further notice [...]. [We] hope that at some time in the future, we can re-initiate this project.”

264. Shell schrijft hierna, op 6 februari 1995, een eigen *tender* uit.³⁵⁷ Op dat moment is *Operation Restore Order in Ogoniland*, met haar gewelddadige excessen, op een hoogtepunt en is het Ogoni 9-proces juist van start gegaan.³⁵⁸
265. Opmerking verdient dat al vanaf de coup van Abacha in november 1993 door de internationale gemeenschap sanctiemaatregelen worden afgekondigd tegen Nigeria. Zo kondigt de Europese Unie in december 1993 verschillende sanctiemaatregelen aan tegen Nigeria, die ertoe moeten leiden dat elke ondersteuning van het militaire regime wordt opgeschort en de wapenhandel wordt beperkt:

“In the statement on Nigeria published on 19 November 1993, in which the European Union condemned the fact that the democratic process in Nigeria had been interrupted through the resumption of power by a military dictatorship, the European Union decided to examine without delay the consequences of the setback to the democratic process in Nigeria. In a press release published on 7 December 1993, the Presidency announced [...] that the Member States of the European Union, inter alia, would make a case-by-case

³⁵⁵ Price Quotation XM Federal Limited, 1 August 1994 (**productie 268**); Price Quotation XM Federal Limited, 18 August 1994 (**productie 269**).

³⁵⁶ Brief Chief G.O. Akinluyi aan Shell, 8 september 1994 (**productie 149**).

³⁵⁷ Brief W.J.C. Dick aan Humanitex (Nig) Ltd., 6 februari 1995 (**productie 152**).

³⁵⁸ Zie ook Polly Ghazi and Cameron Duodu, “How Shell tried to buy Berettas for Nigerians”, 11 februari 1996 (**productie 258**): “The request was issued at the height of worldwide protests against the military regime's brutal suppression of the Ogoni minority people.”.

examination, with a presumption of refusal, of all new export licences for defence equipment. The Member States of the Union agreed that this measure on defence equipment would apply to all categories of arms, ammunition and military equipment, i.e. weapons designed to kill and ammunition for them, weapon platforms, non-weapon platforms and auxiliary equipment.”³⁵⁹

266. Deze beperkingen van de wapenhandel weerhouden Shell er dus niet van om zelf stappen te zetten teneinde het militaire regime van wapens te voorzien. Naar verluidt maakt Shell in maart 1995 een keuze uit de door haar uitgeroepen *tender*, maar komt het uiteindelijk niet tot de daadwerkelijke aanschaf van wapens.³⁶⁰ Op 20 november 1995 kondigt de EU een algeheel wapenembargo tegen Nigeria af.³⁶¹

8.4.4 Shell en het regime voerden een gezamenlijke inlichtingendienst

267. Samen met de *State Security Service* (“SSS”; de nationale inlichtingen- en veiligheidsdienst) onderhoudt Shell een eigen informantennetwerk. Volgens George Ukpong, heeft Shell in deze periode dagelijks contact met de politiecommissaris van Rivers State en de directeur van de SSS.³⁶² De SSS, volgens Ukpong, “*is one of the security agencies rendering valuable assistance in support of SPDC security operations in the state*”; de SSS “*has provided assistance in meeting some of our staff training needs*” en “*has been of particular assistance to [Shell] in the area of crime intelligence acquisition*”.
268. Tussen Shell en de SSS wordt informatie uitgewisseld over de situatie in onder meer Ogoniland, zodat Shell op de hoogte blijft van potentiële onrust en mogelijk gevaar voor haar bezittingen.³⁶³ Informatie wordt ingewonnen middels informanten onder de Ogoni die werken voor de SSS of voor Shell.³⁶⁴ Shell stuurt ook regelmatig Shell-politie incognito Ogoniland in om informatie te verzamelen³⁶⁵ en geeft de SSS de opdracht op kosten van Shell dergelijke informatie te verzamelen.³⁶⁶ In lijn met deze handelwijze

³⁵⁹ Written question No. 3578/95 by Edith Müller, Wilfried Telkämper to the Council. EU arms embargo against Nigeria, OJ C 280, 25 september 1996 (**productie 232**); Andere door de EU afgekondigde maatregelen: - suspension of military cooperation, - visa restrictions for members of the military or the security forces, and their families, - suspension of visits of members of the military, -suspension of any further cooperation aid, zie European Political Documentation Bulletin, 93/305, Statement on Nigeria, 13 juli 1993 (productie 230), p. 364.

³⁶⁰ Zie Jędrzej Georg Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (**productie 244**), p. 55: “Following revelations in the British press on Shell’s arm dealings in 1996, a Shell International spokesman later admitted that one of three bids for arms purchases had been ‘selected’ by Shell in March 1995, although the arms deal had not gone ahead.”

³⁶¹ Gemeenschappelijk standpunt van 20 november 1995 betreffende Nigeria, door de Raad bepaald op basis van artikel J.2 van het Verdrag betreffende de Europese Unie (**productie 231**).

³⁶² Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), p. 279.

³⁶³ Ibid.

³⁶⁴ Ibid, pp. 292-296, 477-478; Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), p. 175; Public Deposition of Egbert Imomoh, 17 juni 2003 (productie 30), p. 72.

³⁶⁵ Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), pp. 506-507.

³⁶⁶ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (productie 57), p. 175-176: verzoek “[to] task your operatives to move into the area to enable us to get relevant and up-to-date intelligence on the general security situation”. Opvallend is verder dat Shell zich laat informeren door de Britse geheime dienst, zie Nigeria Update van Anderson, 27 juni 1994 (productie 97): “I am in touch with the British Secret Service representative in Lagos. He has agreed to keep me informed on any developments that might be of interest to Shell”.

zijn de verklaringen van vier voormalige leden van *Shell Police* dat zij geld kregen van Shell om informatie te verzamelen in Ogoniland en zo nodig dorpelingen om te kopen.³⁶⁷

8.4.5 *Shell had stromannen op cruciale posities binnen het regime (en vice versa)*

269. Het intensieve bondgenootschap tussen Shell en het regime blijkt ook uit de door hen gehanteerde “*revolving door policy*”. Nigeriaanse overheidsbeambten – veelal de verantwoordelijken voor het nationale energiebeleid – en Shell-personeel worden consequent gerouleerd, zodat de samenwerking kan worden gegarandeerd en bestendigd.
270. Verschillende overheidsbeambten die betrokken zijn bij de repressie van de Ogoni waren werkzaam voor Shell. Chief Ernest Shonekan was enige jaren bestuurslid van SPDC.³⁶⁸ Hij heeft in de periode tussen mei 1992 tot mei 1993 afstand gedaan van deze positie,³⁶⁹ en werd op 4 januari 1993 benoemd als de voorzitter van de *Civilian Transitional Council* van het Nigeriaanse regime. Shonekan leidt dan “*the day-to-day affairs of government*”.³⁷⁰ Op 26 augustus 1993 wordt Shonekan officieel ingesteld als de leider van de interim overheid, nadat Babangida is afgetreden.³⁷¹ Hij wordt dan reeds gezien als een marionet van Abacha, die op dat moment minister van defensie is.³⁷² Wanneer Abacha na drie maanden een coup pleegt en *Head of State* wordt, blijft Shonekan als zijn rechterhand fungeren.³⁷³ Oud-Shell-bestuurslid Shonekan is voor Shell een ideaal toegangspunt tot Abacha,³⁷⁴ en het vaste aanspreekpunt bij het Nigeriaanse regime.³⁷⁵
271. Verder werkte Chief Rufus Ada George, de gouverneur van Rivers State, eerder voor Shell in Port Harcourt,³⁷⁶ werkte Osazee Osunde voordat hij bij Shell begon bij de *National Electoral Commission*,³⁷⁷ en is Godwin Omene, de latere voorzitter van de *Niger Delta Development Commission*, een voormalig *Deputy Managing Director* van

³⁶⁷ I. Okonta en O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003 (productie 242), pp. 59-60, verwijzend naar Project Underground: “to gather intelligence and bribe and befriend villagers wherever there was an oil spill. These villagers would then instigate conflict in the village over competing claims for money, a situation Shell would subsequently exploit, claiming that it would not pay any compensation since the community was divided on the issue of who would get what”.

³⁶⁸ **Productie 60**: Public Deposition Philip Beverly Watts, vol. II, 17 april 2004, pp. 155-158; Zie ook Public Deposition Brian Anderson, 13 februari 2003 (productie 17), pp. 56-57; **productie 65**: Minutes of the meeting of the Board of Directors of SPDC, 5 september 1991

³⁶⁹ Jaarverslag 1992 SPDC (productie 157), pp. 3, 19.

³⁷⁰ Issue paper Nigeria, Chronology of events january 1992 – february 1995, Immigration and refugee board of Canada (productie 266), p. 8.

³⁷¹ Ibid, p. 11.

³⁷² Ibid; Zie ook het artikel van de New York Times op 18 november 1993, te raadplegen via: <http://www.nytimes.com/1993/11/18/world/nigerian-military-leader-ousts-interim-president.html> <laatst bezocht op 26 april 2017>.

³⁷³ Nigeria Update van Brian Anderson, 23 juli 1995 (**productie 116**), pp. 8-9: “Shonekan is very close to him”.

³⁷⁴ Public deposition Brian Anderson, 13 februari 2003 (productie 17), p. 140.

³⁷⁵ Nigeria Update van Brian Anderson, 23 juli 1995 (productie 116), p. 8.

³⁷⁶ Aan wie het verzoek om “the usual assistance” is verstuurd, zie brief J.R. Udofia (GME SPDC) aan Rufus Ada George, 4 mei 1993 (productie 136). Dat hij voor Shell werkte staat in Public Deposition George Akpan Ukpong, vol. II, 24 maart 2004 (productie 58), pp. 281-282.

³⁷⁷ Public Deposition Osazee Osunde, 22 oktober 2003 (productie 53), p. 8.

Shell in Nigeria.³⁷⁸ Shells vaste advocaat O.C.J. Okocha, die ook haar belangen behartigt tijdens het Ogoni 9-proces en aanwezig is bij de omkoping van getuigen, is enige jaren *Attorney General* van Rivers State.³⁷⁹

272. Door deze vervlechting is de wederzijdse verbondenheid en invloed onmiskenbaar. Daarnaast blijft Shell op deze manier ook op de hoogte van het reilen en zeilen binnen de regering.
273. Shell faciliteerde informeel contact tussen de hoogste geledingen van het regime en het bedrijf, onder andere middels haar eigen *senior staff club* in Port Harcourt, met een zwembad, voetbal-, hockey- en rugbyvelden, tennis- en squashbanen, een bar en een restaurant. Lidmaatschap van deze club stond niet alleen open voor Shell-medewerkers, maar ook voor hooggeplaatste overheidsfunctionarissen. Egbert Imomoh, *General Manager East* en bestuurslid van SPDC, stelt hierover:

“[M]embers of Port Harcourt military police also had membership of the club. [...] [W]e used to extend membership to people like the Governor, the Chief Justice, and a few others, what I call senior people in society, so that we extend that courtesy to those senior people in Government in Rivers State”³⁸⁰

274. Volgens Olisa Agbakoba, een van de advocaten van de verdachten in het Ogoni 9-proces, zoeken ook de rechters van het *Civil Disturbances Tribunal* na zittingsdagen ontspanning in Shells club.³⁸¹
275. De omvang van de infiltratie van Shell in de Nigeriaanse politiek werd later duidelijk uit de door Wikileaks gepubliceerde berichten van de Amerikaanse ambassade in Nigeria. Daarin pocht toenmalig *Executive Vice President* van Shell in Afrika, Ann Pickard, tegenover de Amerikaanse ambassadeur dat de Nigeriaanse overheid was vergeten dat Shell mensen had gedetacheerd in elk departement van de Nigeriaanse regering en dus op de hoogte was van alles wat daar gebeurde:

“Pickard said Shell had good sources to show that their data had been sent to both China and Russia. She said the GON had forgotten that Shell had seconded people to all the relevant ministries and that Shell

³⁷⁸ Nigeria update van Omene (SPDC Lagos) aan SIPC London en SIPM The Hague, 10 juli 1995 (productie 115); Brief van G.E. Omene (*Deputy Managing Director*, SPDC) aan A.J. Oyekan (Director, Department of Petroleum Resources), 16 december 1993 (producties 139); Public deposition Dozie Okonkwo, 19 juni 2003 (productie 50), p. 16.

³⁷⁹ Verklaring O.C.J. Okocha, 8 december 2003 (productie 49), para. 3: “From 1990 to 1992 I served as the Attorney General of Rivers State” en para. 7: “I have served as an external solicitor to [SPDC] since 1987”. Zie ook hoofdstuk 8.2.2 over ‘Umuechem’.

³⁸⁰ Public Deposition Egbert Imomoh, vol. I, 17 juni 2003 (productie 30), pp. 24-26.

³⁸¹ Zie hoofdstuk 8.7.2, zie in datzelfde hoofdstuk ook de verklaring van advocaat Onyeagucha, die stelt dat de rechters verbleven op Shells Residential Area.

consequently had access to everything that was being done in those ministries.”³⁸²

276. Shell was derhalve niet onafhankelijk van het regime; zij had vertakkingen in al haar geledingen. Zij werkte niet alleen daadwerkelijk aan de agenda van het Nigeriaanse regime mee, maar was zo ook op de hoogte van de gruwelijkheden die in Ogoniland in haar naam werden begaan.

8.5 Het Ogoni 9-proces diende om de gemeenschappelijke belangen van Shell en het regime zeker te stellen

8.5.1 Inleiding

277. Het Ogoni 9-proces vormde het sluitstuk van *Operation Restore Order in Ogoniland*. Met het Ogoni 9-proces ontdeed Abacha zich van de belangrijkste politieke vertegenwoordigers van de Ogoni in een uiterste poging om het verzet definitief te breken. Het proces diende een gemeenschappelijk doel, het hervatten van de oliewinning in Ogoniland, en volgde op de onophoudelijke aansporingen van Shell om er orde op zaken te stellen. Professor Olubayo Oluduro stelt hierover:

“Although Ken Saro-Wiwa and the other eight Ogonis were ostensibly charged and tried for murder, it is obvious to the world that they were actually arrested and executed for expressing their discontent with the environmental harm caused by Shell and the Government in their native Ogoniland.”³⁸³

278. Zoals uiteengezet in hoofdstuk 4 was het Ogoni 9-proces, dat op 6 februari 1995 aanving, een zorgvuldig voorbereid showproces. De vijftien verdachten zaten bij de start van het proces al ruim acht maanden vast zonder officiële aanklacht, al was duidelijk dat zij waren opgepakt op verdenking van betrokkenheid bij de moord op de vier traditionele Ogoni-leiders op 21 mei 1994. Ken Saro-Wiwa, Barinem Kiobel en Baribor Bera kregen de officiële aanklacht pas te horen op 28 januari 1995, terwijl Nordu Eawo en Paul Levula op 28 februari 1995 de tenlastelegging ontvingen. In deze periode beginnen ook de zittingen van het speciaal opgerichte *Ogoni Civil Disturbances Special Tribunal*. Beeldmateriaal van deze zittingen wordt overgelegd als **productie 247**. Fragmenten daaruit zijn tevens te zien in de onthullende documentaire *In-Remembrance Ken Saro-Wiwa (productie 252)*.³⁸⁴ Het proces zou duren tot en met 31 oktober 1995 en eindigen met de voltrekking van de de doodstraf voor negen van de vijftien verdachten, die op 10 november 1995 worden geëxecuteerd. In hoofdstuk 4 zijn de ernstige mensenrechtenschendingen waaraan de verdachten en eiseressen werden

³⁸² Embassy Cable no. 09ABUJA1907_a, Shell MD discusses the Status of the Proposed Petroleum Industry Bill”, 20 oktober 2009 (**productie 265**).

³⁸³ O. Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria’s oil Producing Communities*, dissertatie, Intersentia, 2014 (**productie 243**), p. 237.

³⁸⁴ *In Remembrance, Ken Saro-Wiwa*, regie: Glenn Ellis, 1996, Channel 4 (**productie 252**), 00:57-01:40, 10:37-13:00, 13:39-14:16, 15:34-18:20, 19:58-10:57.

blootgesteld tijdens het proces en die uiteindelijk tot de executies hebben geleid beschreven.

279. Omdat al gauw duidelijk was dat de verdachten geen eerlijk proces kregen en in feite politieke gevangenen waren vanwege hun verzet tegen Shell, waren alle ogen op het bedrijf gericht. Ten onrechte stelde Shell een apolitieke koers te varen, maar langs de wegen van de stille diplomatie haar invloed aan te wenden. In werkelijkheid was Shell wel degelijk bij de gang van zaken tijdens het proces betrokken, en zette ze ondertussen vol in op haar onderhandelingen met het regime over het NLNG-project, dat tezelfdertijd zou worden beklonken. Op geen enkel moment laat Shell enig ongenoegen over de gang van zaken blijken, ook niet als zij vlak voor de executie van de Ogoni 9 een lauwwarme brief naar Abacha stuurt met een gratieverzoek, waarvoor ze zich al bij voorbaat bij het regime heeft verontschuldigd.³⁸⁵ Terwijl Nigeria internationaal inmiddels tot pariastaat is verworpen, blijft Shell onverminderd intensief met het regime samenwerken.
280. Dat Shells betrokkenheid bij het proces verder ging dan impliciete steun, blijkt uit de volgende feiten en omstandigheden, die hierna worden toegelicht:
- Shell stuurde zelf een advocaat naar het proces, die haar nauwkeurig op de hoogte hield, en middels een zogenaamde *watching brief* de positie van de aanklager ondersteunde;
 - Shell loog publiekelijk over de rol die haar advocaat bij het proces vervulde;
 - Shell onderhield tijdens het proces contacten met de rechters die waren aangewezen om over de zaak te beslissen;
 - Shells advocaat was aanwezig bij de omkoping van getuigen die belastende verklaringen moesten afleggen tegen de “Ogoni 9”; hen werd compensatie en een betrekking bij Shell aangeboden;
 - Shells protegé Okuntimo speelde een dominante rol tijdens het proces;
 - Shell nam op geen enkel moment publiekelijk of discreet afstand van de gang van zaken tijdens het proces;
 - Shell bleef jegens het regime haar economische belangen benadrukken en onderhandelde tijdens het proces met het regime over nieuwe projecten in Nigeria. Eén maand na de executies werd het grootschalige *National Liquid Natural Gas*-project aangekondigd, waarmee de samenwerking tussen het regime en Shell voor vele jaren werd bestendigd.

³⁸⁵ Zie ook hierna, randnummers 328 en 329.

8.5.2 *Shell stuurde haar advocaat om haar belangen te behartigen*

281. Shell stuurde haar eigen advocaat O.C.J. Okocha en zijn kantoorgenoten naar het tribunaal met een zogenaamde '*watching brief*'. Een *watching brief* is in het Nigeriaanse rechtssysteem een manier voor een derde-partij om op de hoogte te kunnen blijven van de ontwikkelingen in een procedure teneinde haar rechtstreekse belangen daarbij zeker te stellen. Daartoe werkt de advocaat die de *watching brief* houdt in de regel nauw samen met de openbaar aanklager. Uit de Nigeriaanse jurisprudentie blijkt, dat een *watching brief* geweigerd kan worden als een partij geen belang heeft in het proces:

“...the practice of watching brief is not unknown to our Courts. It is part of our unwritten rules of practice in our Criminal Courts. . . . My understanding of this system which applies only in criminal cases is that a person seeking to watch brief in a case must not necessarily be a party to that case but he must have an interest in the case which he seeks to protect. Such a person then appoints a Counsel to appear in Court and watch the proceedings on his behalf to ensure that his interest is not willfully jeopardized. A Counsel so appointed then enters an appearance as watching brief, sits and watches the proceedings and may take notes of the proceedings which he can use in reporting to his client.”³⁸⁶

282. Oronto Douglas, een van de advocaten van de verdachten, heeft deze rol in zijn *declaration* in de Amerikaanse procedure als volgt beschreven:

“A third party may participate through counsel in a Nigerian criminal proceeding through a procedure known as a watching brief. The purpose of a watching brief is to protect the client's interest. A lawyer holding a watching brief participates in the proceeding, which often includes providing informal assistance to the prosecutor. To participate by watching brief, a party must have a legal interest to protect that is at stake in the proceedings.”³⁸⁷

283. Shells vaste advocaat O.C.J. Okocha werd op 1 december 1994 als volgt geïnstrueerd door Shells *Legal Adviser East I.O.* Ahize:³⁸⁸

“As Shell has various interests in the Ogoni area which were adversely affected by the disturbances, we consider it necessary to brief a lawyer to follow up the proceedings in case Shell would be expected to testify

³⁸⁶ *Federal Republic of Nigeria v. Abiola* [1994] FHCLR 156, 160 (productie 203).

³⁸⁷ Verklaring Oronto Douglas, 4 februari 2009 (productie 23), para. 8.

³⁸⁸ Zie over Okocha ook hoofdstuk 8.2.2, randnummer. 178 (Umuechem): Okocha was in 1990 de officier van justitie van Rivers State die besloot dat strafrechtelijke vervolging van de verantwoordelijken voor het Umuechem-bloedbad niet nodig was.

before the panel. We therefore request you to hold a watching brief on behalf of Shell during the proceedings. We expect you to:

- attend the sittings of the panel on a regular basis.
- report the outcome of the proceedings of each sitting to Shell.
- in case Shell is to testify before the panel, document and conduct the presentation of Shell's case to the panel.
- pursue and obtain copy of the panel's final report, recommendation or judgment for Shell's records.³⁸⁹

284. Uit de transcripts van het proces blijkt dat Shells advocaat aan het begin van de eerste zitting benadrukt dat hij namens Shell aanwezig is met een *watching brief*.³⁹⁰

285. Shell heeft publiekelijk betoogd dat zij haar advocaat zou hebben teruggetrokken toen bleek dat het proces niet over de onlusten in Ogoniland, maar uitsluitend over de moorden ging:

“SPDC had no connection with the tribunal. Our lawyer attended the first day as an observer because we understood the tribunal was concerned generally with civil disturbances in Ogoniland, which had affected our staff and facilities. When it became clear on the first day of the tribunal that this was a murder case, the lawyer was withdrawn.”³⁹¹

286. En Brian Anderson heeft in de Amerikaanse procedure verklaard dat Shell na de eerste zittingsdag alleen nog maar openbare informatie over het proces ontving:

³⁸⁹ Brief I.O. Ahize, Legal adviser SPDC, aan O.C.J. Okocha, “Re: Ogoni Disturbances Representation at the Sittings of the Tribunal”, 1 december 1994 (**productie 151**); Zie ook Betaling van SPDC aan O.C.J. Okocha, 8 februari 1995 (**productie 153**); Verklaring Oronto Douglas, 4 februari 2009 (productie 23); Verklaring van O.C.J. Okocha, 8 december 2003 (productie 49).

³⁹⁰ Transcripts dag 1, 6 februari 1995 (**productie 179**), p. 9: “MR. BAYO FADUGBA: My Lord, I am holding brief for Chief O.C.J. Okocha. My Lord, we have a watch brief for Shell Development Company of Nigeria”; p. 10: “MR. FADUGBA: My Lord, In my introduction, I said that I am holding brief for Chief O. C.J. Okocha who has a watching brief on behalf of Shell Development Company and I would like to be on record, Sir. CHAIRMAN: I have already written that. MR. FADUGBA: I am much obliged, my Lord.”.

³⁹¹ Shell, Nigeria Brief: Ogoni and the Niger Delta, 1996 (productie 166) p. 7: Vgl. WCC Report “Ogoni – the struggle continues” Comments by Shell (productie 167), pp. 21, 22: “When it became clear on the first day that the tribunal was for the trial of murder of four Ogonis, Mr. Fadugba announced the withdrawal of his representation in court. It is understood that Mr. Okocha attended the trial subsequently on a number of days. It is a matter of public record that this was in his capacity as the chairman of the Rivers State Bar Association, and not as representative of SPDC”. Dat Shell niet zou weten waar het tribunaal over ging is overigens ongeloofwaardig in het licht van haar nauwe banden met het regime (vgl. hoofdstuk 8.4, met name 8.4.4 en 8.4.5) en de publieke aandacht voor het proces en de langdurige detentie van de Ogoni 9. Op het moment dat zij de opdracht verstrekten aan Okocha in december 1994 en bij de start van de behandeling van de zaak ter zitting op 16 januari 1995 stonden de kranten al maanden vol over het proces en was precies duidelijk wie de verdachten waren en waarvan zij verdacht werden. Ook de juridische bezwaren tegen het speciaal gecreëerde Civil Disturbances Special Tribunal waren toen al lang en breed bekend (zie hoofdstuk 4.3).

“Q. Did you receive reports on the progress of the trial of the Ogoni nine?”

A. At the very beginning I had the reports and afterwards it was public information.

Q. Can you explain what you mean by in the very beginning you had the reports?

[...]

A. I received a report the first day of the activities of the court.

Q. After receiving a report of the activities of the court on the first day did you receive any other reports on the progress of the trial other than what you have learned through the media?

A. No.”³⁹²

287. Inderdaad maakt O.C.J. Okocha op 21 februari 1995, de tweede zittingsdag van het proces in Nigeria, opeens kenbaar dat hij niet langer aanwezig is als vertegenwoordiger van Shell,³⁹³ maar “*on behalf of the Nigeria Bar Association [...] as Official Observer*”.³⁹⁴

288. Niets blijkt echter minder waar. Zowel Shell als Okocha geven later toe dat Okocha – anders dan Shell publiekelijk stelde – wel degelijk in opdracht van Shell aan het proces bleef deelnemen:

“On further discussions with SPDC, my firm held a watching brief of the proceedings so that legal advice could be given when and if allegations should be made against SPDC”.³⁹⁵

289. Shell is pas open over Okocha’s werkelijke rol bij het proces, wanneer zij zich in de Amerikaanse *discovery*-procedure beroept op de vertrouwelijkheid van advocaat-cliëntcorrespondentie teneinde de rapportages van Okocha & Okocha aan Shell niet te hoeven prijsgeven. Dit leidt ertoe dat Shell de correspondentie met betrekking tot het Ogoni 9-proces inderdaad niet hoeft te overleggen in de Amerikaanse procedure. Wel is een omschrijving van die documenten opgenomen in het zogenaamde *privilege log* (**productie 198**).

³⁹² Public Deposition Brian Anderson, 13 februari 2003 (productie 17), pp. 127-128.

³⁹³ Transcripts dag 2, 21 februari 1995 (productie 180), pp. 65-66.

³⁹⁴ Transcripts dag 2, 21 februari 1995 (productie 180), p. 2.

³⁹⁵ Verklaring van O.C.J. Okocha, 8 december 2003 (productie 49), p. 6. Vgl. Defendants’ supplemental interrogatory responses, 17 december 2008 (**productie 195**), p. 4, waarin Shell toegeeft dat Okocha & Okocha “*held a watching brief of the proceedings so that it could give legal advice if and when allegations were made against SPDC*”.

290. Uit het *privilege log* blijkt dat Shell, in strijd met haar eerdere verklaring, van elke zitting op de hoogte werd gehouden door Okocha of een van zijn kantoorgenoten. De advocaten blijven voor Shell waarnemen tot aan het einde van van het proces³⁹⁶ – toen de advocaten van de Ogoni 9 zich allang hadden teruggetrokken vanwege de evidente schendingen van de fundamentele rechten van hun cliënten – en sturen daarvan steeds een verslag naar Shell. Ook Brian Anderson ontving, geheel in strijd met hetgeen hij eerder had verklaard, zeker negen schriftelijke rapporten over de ontwikkelingen in het Ogoni 9-proces.³⁹⁷ Okocha verklaart later in de Amerikaanse *Kiobel*-zaak:

“I or my designees had attorney-client communications on the Tribunal proceedings. My designees included S.N. Atabe, B. Akang, O.A. Solagbade, I.A. Uzakah, and B. Fadugba, among others. Each of those individuals was a junior solicitor with my firm, and each was therefore authorized and able to convey attorney-client communications to SPDC regarding proceedings before the Tribunal.”³⁹⁸

291. Het gaat om in totaal 97 verslagen, in de *privilege log* aangeduid als “*Communication from counsel regarding proceeding before the Ogoni Civil Disturbances Tribunal*”.³⁹⁹ De verslagen werden gestuurd naar Shell-medewerker Ahize. Azihe bracht op zijn beurt verslag uit aan het bestuur van SPDC (onder wie Anderson, Achebe en Imomoh) en vertegenwoordigers van de *service companies*.

292. Aanwezigen bij het proces hebben verklaard dat – geheel in lijn met hetgeen hierboven over een watching brief werd opgemerkt – Okocha en zijn kantoorgenoten zich enkel onderhielden met de vertegenwoordigers van de regering en de aanklager, Chief Umeadi San, en de zittingen bijwoonde aan hun zijde (**productie 26**: Verklaring Femi Falana, 16 juni 2017).⁴⁰⁰

8.5.3 De rol van Shell-protégé Okuntimo

293. Shells protégé Okuntimo eist tijdens het Ogoni 9-proces een dermate dominante rol op dat Birnbaum er in zijn rapport een apart hoofdstuk aan wijdt.⁴⁰¹ Zo controleerde Okuntimo persoonlijk alle bezoeken van advocaten aan de verdachten en werd het de advocaten niet toegestaan hun cliënten te bezoeken zonder zijn toestemming.⁴⁰² Cliëntgesprekken vonden in zijn bijzijn en binnen zijn gehoorsafstand plaats.⁴⁰³

³⁹⁶ Dit blijkt ook uit de Defendants’ supplemental interrogatory responses, 17 december 2008, Appendix A. (productie 195). Hieruit komt naar voren dat Bayo Fadugbo voor Shell in totaal 61 zittingsdagen heeft bijgewoond, Okocha vier zittingsdagen heeft bijgewoond, en tussen de twintig en dertig andere zittingsdagen zijn bijgewoond door andere advocaten van Okocha’s kantoor (Okocha & Okocha).

³⁹⁷ Privilege log *Wiwa v. Royal Dutch Petroleum Company, et al, Kiobel v. Royal Dutch Petroleum Company, et al*, oktober 2003 (**productie 198**), pp. 9-11.

³⁹⁸ Verklaring van O.C.J. Okocha, 8 december 2003 (productie 49), pp. 6-7.

³⁹⁹ Privilege log *Wiwa v. Royal Dutch Petroleum Company, et al, Kiobel v. Royal Dutch Petroleum Company, et al*, oktober 2003 (productie 198).

⁴⁰⁰ Zie ook: Verklaring Ledum Mitee, 2 mei 2017 (productie 41), paras. 13-15; Verklaring Uche Onyeagucha (productie 52), 15 juni 2017.

⁴⁰¹ Zie Birnbaum (productie 225), pp. 44-48.

⁴⁰² Ibid.

⁴⁰³ Ibid, p. 46.

Daarnaast was Okuntimo verantwoordelijk voor de beveiliging van de rechtszaal en onderhield hij tijdens de zittingen direct contact met de voorzitter van het tribunaal, Justice Auta, die hem “Paul” noemt. Auta blijkt ter zitting tot de verbazing van de advocaten van de verdachten informatie over hun cliënten te bezitten die alleen afkomstig kan zijn van de kringen rond Okuntimo.⁴⁰⁴

294. Okuntimo wordt door betrokkenen geduid als de bewindvoerder van het regime in Ogoniland en de spil achter het proces (**productie 181**: Transcripts 23 februari 1995).⁴⁰⁵ Charity Levula en Blessing Kpuinen hebben verklaard dat Okuntimo verantwoordelijk was voor de arrestatie van hun man. Tijdens het Ogoni 9-proces heeft Esther Kiobel verklaard dat Okuntimo haar liet weten ervoor te zullen zorgen dat haar man ter dood veroordeeld zou worden, nu het niet was gelukt zijn voedsel te vergiften. Ook ziet zij Okuntimo en Alhaji Kobani, de belangrijke getuige *à charge*, met elkaar discussiëren in Okuntimo’s kantoor in Bori Camp.⁴⁰⁶ Tijdens een gesprek tussen waarnemer Birnbaum en de openbaar aanklager, schuift Okuntimo persoonlijk onuitgenodigd aan.⁴⁰⁷
295. Zoals beschreven in hoofdstuk 4 is Okuntimo ook verantwoordelijk voor de mishandeling van Esther Kiobel en de intimidatie van verdachten, hun familieleden en advocaten.⁴⁰⁸

8.6 Shell droeg bij aan de uitkomst van het Ogoni 9-proces

8.6.1 Shell was betrokken bij de omkoping van getuigen

296. Al tijdens het proces in 1995 verklaarden twee getuigen dat zij waren omgekocht om belastende verklaringen af te leggen in ruil voor geld en een baan bij Shell. Charles Danwi en Naayone Nkpah legden op 16 respectievelijk 27 februari 1995 op video een verklaring onder ede af, die als *affidavit* wordt voorgelegd aan het Civil Disturbances Tribunal.⁴⁰⁹ Dat legt het bewijs echter naast zich neer.
297. Nkpah en Danwi noemen in hun verklaringen een aantal andere getuigen die zijn omgekocht door Shell en het regime, te weten Celestine Meabe, Kevin Badara,⁴¹⁰ Limpa Bah, Peter Fii, Saturday Iye en David Keenom (**productie 45**: Public Deposition Naayone Nkpah, 19 maart 2004, pp. 19-22; **productie 21**: Affidavit Charles Danwi,

⁴⁰⁴ Ibid, p. 47: “These incidents suggest at the least that tribunal sometimes receives information from a military or police source.”

⁴⁰⁵ De aanklager stelt op de derde zittingsdag over Okuntimo: “at moment, he is in charge”, p. 31.

⁴⁰⁶ Verklaring Esther Kiobel, 12 februari 1995 (productie 38).

⁴⁰⁷ Birnbaum (productie 225), p. 46: “After about an hour Okuntimo walked in uninvited and sat down. I did not ask him to leave. It was not for me to do so and I was curious to see whether anyone else would ask him to go. Nobody did. He stayed for about half an hour. From time to time he got up and strolled around the room. He made a few contributions to his own to the discussion. When I asked about the legal qualification of Lt-Col Ali, it was Okuntimo who told me what they were. He used words to the effect that he (Okuntimo) was the Chief of Ogoniland.”

⁴⁰⁸ Zie hoofdstukken 4.4, 4.5 en ook 8.3.2.

⁴⁰⁹ Zie voor delen van de opname waarin Danwi en Nkpah de verklaringen afleggen de documentaire In Remembrance: Ken Saro-Wiwa (productie 252), van 14:06-15:34.

⁴¹⁰ Aangeduid als Kevin Badella in de *deposition* van Nkpah en Kenwim Badara in de *affidavit* van Danwi.

16 februari 1995).⁴¹¹ De valse verklaringen van deze omgekochte getuigen zijn doorslaggevend geweest bij de veroordeling van de Ogoni 9.⁴¹²

298. Uit de verklaringen van Danwi en Nkpah blijkt dat zij kort na de moorden op de traditionele Ogoni-leiders door de belangrijkste getuigen *à charge* Alhaji Kobani (de broer van de vermoorde Edward Kobani) en Priscilla Vikue⁴¹³ onder druk werden gezet om een valse verklaring te ondertekenen waarin zij de inmiddels opgepakte MOSOP- en NYCOP-kopstukken beschuldigden van de moorden.⁴¹⁴ Aanvankelijk weigerden zij dit, waarop zij enige tijd onder huisarrest werden geplaatst. Danwi verklaart dat hem vervolgens het volgende werd beloofd:

“I was promise[d] that after the case in Court I will be given a house any place in the country, a Contract from Shell and OMPADEC and some amount of money to buy my musical instrument. [...] On another date of meeting in Kobani’s House, representative from Shell, OMPADEC, security agents, Govt officials and the Kobani, Orage and Badey’s family were present and they all agreed. The family gave some money say that the money come from Govt. and Shell. In my case I was given N 30,000,- from Shell and Govt.”⁴¹⁵

299. Nkpah verklaart dienovereenkomstig en geeft in zijn uitgebreidere verklaring in de Amerikaanse *Kiobel*-zaak ook aan wie betrokken waren bij de omkoping. Dit waren naast Alhaji Kobani en enkele andere familieleden van de vermoorde Ogoni *chiefs* ook verschillende vertegenwoordigers van het regime en de olie-industrie, onder wie Shells advocaat O.C.J. Okocha.⁴¹⁶ Ook Nkpah wordt een huis, 30,000 naira en een contract bij Shell, OMPADEC of de overheid beloofd.⁴¹⁷ In zijn *deposition* beschrijft hij dat Celestine Meabe aan Alhaji Kobani vraagt waar de 30.000 naira vandaan komt, waarop Kobani antwoordt:

“This money come from Shell, government of Nigeria. This is why the chairman, the lawyer representative is here.”⁴¹⁸

300. Deze advocaat van Shell wordt door Kobani aan Nkpah voorgesteld als O.C.J. Okocha.⁴¹⁹ Nkpah heeft ook verklaard dat Kobani hem heeft verteld dat “*anything that*

⁴¹¹ Meabe, Bah en Badara zijn inmiddels overleden. Blessing Eawo heeft verklaard dat Celestine Meabe reeds voor het proces was omgekocht door Shell, en haar man trachtte te overtuigen om te stoppen bij NYCOP.

⁴¹² Zie Birnbaum (productie 225), appendix 9, pp. 104-116, voor een overzicht van deze belastende getuigenverslagen.

⁴¹³ Ook een bekende van Shell, zoals blijkt uit de verklaring van Omuku (Manager Health Safety Environment Public Affairs SPDC) Precious Omuku, 19 april 2004 (productie 51), p. 238.

⁴¹⁴ Affidavit Charles Suanu Danwi, 16 februari 1995 (productie 21); Public Deposition Egbert Imomoh, vol. I, 17 juni 2003 (productie 30); Public Deposition Naayone Nkpah, 19 maart 2004 (productie 45), p. 97-100.

⁴¹⁵ Affidavit Charles Suanu Danwi, 16 februari 1995 (productie 21).

⁴¹⁶ Public Deposition Naayone Nkpah, 19 maart 2004 (productie 45), p.21; Nkpah geeft ook een beschrijving van Okocha, zie p. 114-115.

⁴¹⁷ Public Deposition Naayone Nkpah, 19 maart 2004 (productie 45), pp. 113-121.

⁴¹⁸ Ibid, p. 113.

⁴¹⁹ Ibid, p. 114.

*is being given to us [...] basically is from the government and the Shell and Ubadek [OMPADEC]”.*⁴²⁰

301. Net als Danwi krijgt Nkpah in ruil voor het tekenen van de valse getuigenis naast de 30.000,- Naira een baan bij de transportsectie van de gemeente Gokana, waar hij maandelijks salaris heeft gekregen zonder daar daadwerkelijk werkzaam te zijn.⁴²¹
302. Gani Fawehinmi, advocaat van de verdachten, brengt op de tweede zittingsdag van het Ogoni 9-proces (op 21 februari 1995) de verklaring van Danwi naar voren:
- “My Lord, he [Charles Danwi] is number 22 on the list of witnesses. He has sworn to an Affidavit and he has exhibited what is called a principal statement. He accused the Government [and] Shell Development Company for bribing him with thirty thousand naira (N30.000) and a house. He has made a full disclosure that what they have was not his statement [...].”⁴²²
303. Hoewel Kiobels advocaat Alhaji Oso op de derde zittingsdag opnieuw probeert het belang van de omkoping te benadrukken⁴²³ en uitlegt dat de betrouwbaarheid van de getuigen de basis van de zaak vormt,⁴²⁴ worden de *affidavits* van Nkpah en Danwi niet toegelaten als ontlastend bewijs.⁴²⁵ Danwi en Nkpah zijn dan al ondergedoken uit angst voor repercussies van het regime en kunnen derhalve niet ter zitting getuigen. Hun angst blijkt gegrond, beide mannen worden op de zwarte lijst van het regime gezet.⁴²⁶ Uiteindelijk zijn zij genoodzaakt Nigeria te ontvluchten en worden zij als vluchtelingen opgenomen in Benin.⁴²⁷
304. Nkpah woont tegenwoordig in de Verenigde Staten en is zo nodig bereid zijn verklaringen nader te onderbouwen als getuige. Waar Danwi zich momenteel bevindt is onbekend.

⁴²⁰ Ibid, p. 19.

⁴²¹ Ibid, pp. 119-121.

⁴²² Transcripts Ogoni Civil Disturbances Special Tribunal, dag 2, 21 februari 1995 (productie 180), pp. 18-27. (quote p. 18).

⁴²³ Transcripts Ogoni Civil Disturbances Special Tribunal, dag 3, 27 februari 1995 (productie 182), pp. 34-39.

⁴²⁴ Ibid, p. 39: “I am inviting you to look at it because this is the basis of the case for the prosecution. All the people mentioned here are all Witnesses [Oso refereert aan de namen van omgekochte getuigen die Danwi noemt in zijn affidavit]. If the statement made by each of them is inherently flawed, then, it is mere elephant feet of clay [...]. In summary, I submit that prima facie, the quality of the evidence is poor. The character of the evidence before the Tribunal is quantitative. To sway you against the application, it must be qualitative. The affidavit of Charles Suanu Danwi is a very serious issue which must not be taken lightly by this Tribunal”.

⁴²⁵ Zie ook: Letter dated 23 may 1996 from the Secretary-General addressed to the President of the General Assembly, 28 mei 1996, A/50/960 (productie 233), p. 15.

⁴²⁶ Lijst met gezochte leden van MOSOP afkomstig van de Deputy Inspector General of Police, gericht aan Major Obi Umahi, de opvolger van Okuntimo, 4 maart 1996 (productie 267).

⁴²⁷ Public Deposition Naayone Nkpah, 19 maart 2004 (productie 45), pp. 179-180, 184-186. Nkpah heeft in de Amerikaanse procedure een uitgebreide verklaring afgelegd over de omkoping. Hij is in 1998 vanuit Benin hervestigd naar de Verenigde Staten, waar hij nog altijd woont. Danwi zou als getuige opgeroepen worden in de Amerikaanse *Kiobel*- en *Wiwa*-zaak, maar zover is door de uitkomst in die zaken nooit gekomen, zie hoofdstuk 5.

8.6.2 *Shell onderhield direct contact met de rechters van het Special Tribunal tijdens het proces*

305. Ondanks het feit dat Shell middels de *watching brief* naar Nigeriaans recht officieel een *interested party to the proceedings* was,⁴²⁸ heeft Shell, geheel conform haar gewoonte om hooggeplaatste functionarissen van het Nigeriaanse regime uit te nodigen in haar Residential Area, daar vlak voor de aanvang van het proces een welkomstdiner georganiseerd voor de rechters van het tribunaal. Hierbij was in elk geval rechter Auta, voorzitter van het tribunaal, aanwezig. Dit is verklaard door Femi Falana, de advocaat die Saro-Wiwa bijstond bij het proces, en Ledum Mitee, een van de verdachten.⁴²⁹
306. Advocaten Onyeagucha (productie 52) en Agbakoba (**productie 16**) bevestigen de contacten tussen de rechters van het tribunaal en Shell. Zij stellen dat de rechters, die speciaal voor het proces naar Port Harcourt waren gekomen, na een zittingsdag werden geëscorteerd naar Shells *Residential Area* op Aba Road, waar zij verbleven en verpoosden in Shells *senior staff club*:

“We knew that Shell, the prosecutor and the members of the tribunal were working hand in glove with each other. The hearings of the tribunal started between 9 and 10 AM and took until 2 or 3 PM. The judges were subsequently driven away by the military to Shell’s premises at Aba Road. Those judges did not normally live in Port Harcourt and Shell had a really good and modern club. They probably went there for relaxation. I believe that they were also accommodated at Shell’s premises.

[...]

It was baffling to me that Okuntimo, Shell and the Tribunal members were openly cooperating.”⁴³⁰

307. Onyeagucha verklaart:

“[T]he justices were [...] accommodated by Shell. After every day in court, the justices of the Civil Disturbances Tribunal were escorted by Paul Okuntimo and the army to the Shell premises on Aba Road in Port Harcourt. [...] The justices of the tribunal were also known to have repeatedly visited the facilities of Shell’s club in the Shell Residential Area.”⁴³¹

⁴²⁸ Zie hoofdstuk 8.5.2 en de verklaring van Femi Falana, 16 juni 2017 (productie 26), para. 6(g).

⁴²⁹ Verklaring Femi Falana, 16 juni 2017 (productie 26), para. 6(g); Verklaring Ledum Mitee, 2 mei 2017 (productie 41), paras. 16-17.

⁴³⁰ Verklaring Olisa Agbakoba, 2 mei 2017 (productie 16), paras. 10 en 14.

⁴³¹ Verklaring Uche Onyeagucha, 15 juni 2017 (productie 52), para. 7: “In addition, we had lawyers who were close to the lawyers working for Shell. They informed us that Shell was involved with the judges.”.

8.6.3 *Shell bood aan de uitkomst van het proces te beïnvloeden in ruil voor staken protest MOSOP*

308. Dat Shell zich in deze periode primair bezighoudt met haar imago en haar economische belangen blijkt uit de drie ontmoetingen die Owens Wiwa, de broer van Ken Saro-Wiwa, heeft met Brian Anderson tijdens het Ogoni 9-proces. Owens Wiwa vraagt de *British High Commissioner* om hem in contact te brengen met Brian Anderson om het proces van zijn broer te bespreken. Hierop wordt Owens uitgenodigd voor een borrel bij de *British High Commissioner*.⁴³² Daarbij is ook Olisa Agbakoba aanwezig, een van de advocaten van de Ogoni 9.⁴³³ Owens Wiwa en Agbakoba spreken hier met Anderson, die hen aanbiedt wat aan de de executie van Saro-Wiwa te doen op de voorwaarde dat MOSOP haar internationale protest tegen Shell staakt.⁴³⁴ Na het gesprek bij de *British High Commissioner* volgen nog twee afspraken tussen Owens Wiwa en Brian Anderson, waarin Shells voorstel nader wordt geconcretiseerd en besproken. Dit voorstel kwam volgens Owens Wiwa op het volgende neer:

“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.”⁴³⁵

309. Anderson, die dan nog niet op de hoogte is van Owens Wiwa's weergave van de onderhandelingen, geeft op 22 augustus 1995 in een vertrouwelijke memo aan Alan Detheridge (SIPC) een andere lezing (**productie 116a**):

“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

⁴³² Public Deposition Owens Wiwa, Vol. I, 9 december 2003 (productie 62), p. 203; Public Deposition Owens Wiwa, Vol. II, 24 mei 2004 (productie 63), pp. 544-545; Verklaring Olisa Agbakoba, 2 mei 2017 (productie 16), paras. 3-7.

⁴³³ Public Deposition Owens Wiwa, Vol. II, 24 mei 2004 (productie 63), pp. 544-545; Verklaring Olisa Agbakoba, 2 mei 2017 (productie 16), para. 6: “I think that I was invited for this meeting, because I was considered to be a moderate human rights lawyer, in contrast to Femi Falana and Gani Fawehinmi. They probably thought that it would be easier to strike a deal with me”.

⁴³⁴ Deposition Owens Wiwa, vol. I, 9 december 2003 (productie 62), pp. 247-249; Documentaire In remembrance: Ken Saro-Wiwa (productie 252), van 29:11 tot 30:37; Verklaring Olisa Agbakoba, 2 mei 2017 (productie 16); Zie ook Ken Saro-Wiwa's reactie op deze ontmoeting in de brief van Ken Saro-Wiwa aan zijn broer Owens Wiwa, 13 mei 1995 (productie 261) en Polly Ghazi, “Shell refused to help Saro-Wiwa unless protest called off”, *The Observer*, 19 november 1995 (productie 259).

⁴³⁵ Deposition Owens Wiwa, vol. I, 9 december 2003 (productie 62), pp. 247-249.

reparations, and 2. The claim that we funded the military in its clean up operations or ‘to clear the way’ for our return.”

310. Dat Anderson slechts “*humanitarian aid*” zou hebben toegezegd – nog afgezien van de vraag wat dit zou hebben betekend – wordt weersproken door Olisa Agbakoba, die aanwezig was bij het eerste gesprek en die de lezing van Wiwa bevestigt:

“I [...] remember a meeting with Brian Anderson, then Country Managing Director of Shell. Ken Saro-Wiwa’s brother, Owens, was also present during that meeting. The British High Commissioner created the opportunity and told us that Mr Brian Anderson would like to meet us. The meeting took place at the British High Commissioner’s residence under cover of the usual Embassy Reception with drinks to create a good atmosphere for political deal-making.

The meeting was not fruitful though. Brian Anderson made a proposal. He made clear to us that the matter, simply meaning the trial, could be resolved if Ken would renounce his statements against Shell. I never forgot the arrogance of Brian Anderson during that meeting, he was not there to negotiate. His attitude was take it or leave it. Shell just wanted to have the international criticism off its back.

There is no doubt in my mind that Shell could have influenced the outcome of the trial. Brian Anderson told us that the trial could end in several ways, and that he could have the case dropped. He also said to Owens Wiwa that he could create an outcome that was good for his brother. [...].”⁴³⁶

311. Vanuit de gevangenis geeft Saro-Wiwa zijn broer de opdracht het voorstel van Shell niet te accepteren.⁴³⁷ Anderson laat daarop in zijn memo aan Detheridge weten dat hij in dat geval niet bereid is iets te doen aan de situatie van de Ogoni 9, te meer omdat dit het regime voor het hoofd zou kunnen stoten: “*we need something in return [...]. Don’t forget that the government see MOSOP as terrorists and our dealing with them could be misconstrued*”.⁴³⁸ Tezelfdertijd vinden onderhandelingen plaats in Londen tussen afgevaardigden van MOSOP en de *service companies* in Londen, waarover Anderson schrijft: “*we should NOT allow minutes to be taken*”.⁴³⁹
312. Het mislukken van de onderhandelingen met Owens Wiwa heeft ook gevolgen voor een andere onderhandelingspoging van Shell, beschreven door Ledum Mitee in zijn

⁴³⁶ Verklaring Olisa Agbakoba, 2 mei 2017, paras. 3-5, 7 (productie 16).

⁴³⁷ Brief van Ken Saro-Wiwa aan zijn broer Owens Wiwa, 13 mei 1995. (productie 261); Verklaring Olisa Agbakoba, 2 mei 2017 (productie 16), para. 7.

⁴³⁸ Interoffice Memorandum van Brian Anderson aan Alan Detheridge, 22 augustus 1995 (productie 116a).

⁴³⁹ Ibid.

verklaring. Hij zet daarin uiteen dat hij in gevangenschap bezoek kreeg van Eddie Wikina, een medewerker van SPDC, wiens rol hij als volgt beschrijft:

“After the suggestion of Okuntimo, we managed to smuggle a then Shell-representative into Bori Camp to talk to him. His name is Dr. Eddie Wikina, he was also a friend of mine. The idea was to solve this issue through the back-door, because the the issue was really between Shell and MOSOP: Shell would be able to intervene. Shell was aware of the fact that Wikina was meeting with Ken and me. Wikina said that he would take the matter up with the people higher up in Shell and the would get back to me with their response. However, something came up. Dr. Owens Wiwa had a meeting with Brian Anderson and that went to the press. That blocked every possibility that could have come up through Wikina. Shell was scared that we would go public, so nothing happened.”⁴⁴⁰

313. Dat Shell Wikina inzette als contactpersoon met MOSOP is bevestigd door Shell-medewerker Precious Omuku.⁴⁴¹
314. Uit deze onderhandelingspogingen blijkt dat Shell zich wel degelijk in staat achtte om het lot van de Ogoni 9 te beïnvloeden,⁴⁴² maar daartoe alleen bereid was als MOSOP aan haar voorwaarden wilde voldoen. Shell was op dat moment op de hoogte van de gevolgen die het weigeren van hulp zou hebben, namelijk een voortzetting van de onrechtmatige detentie, de onmenselijke behandeling die de gevangenen moesten ondergaan en de mogelijke executie van de verdachten (zie ook het volgende hoofdstuk). Uit Andersons memo blijkt dat Shell het regime echter niet voor het hoofd wilde stoten en enkel bereid was haar invloed aan te wenden als zij Abacha iets kon bieden dat ook zijn belangen diende, in dit geval het beëindigen van MOSOP's verzet tegen Shell en het regime. Duidelijk was dat Shell zich hierbij liet leiden door de gedeelde commerciële belangen met het regime, die niet mochten lijden onder een deal met MOSOP.

8.7 Shell liet, wetende hoe het proces zou aflopen, haar commerciële belangen prevaleren boven het lot van de Ogoni 9

315. Shell wist door haar nauwe betrokkenheid bij de zaak en bij het regime al vroeg dat de verdachten geen eerlijk proces kregen. In juli 1995, ruim drie maanden voordat het

⁴⁴⁰ Verklaring Ledum Mitee, 2 mei 2017 (productie 41), para. 11.

⁴⁴¹ Deposition Precious Omuku, 19 april 2004 (productie 51), pp. 133-134: “Eddie Wikina, this person who authored this notice, an Ogoni man who works in Shell – and I got him to arrange for me to talk with MOSOP people. We tried to talk”.

⁴⁴² Zie ook **Productie 64**: Public Deposition Nick Woods, 16 juni 2003, p. 112: “Mr. Anderson said that if some trust and reconciliation would be achieved between Shell and MOSOP then this might affect the government's attitude in relation to Mr. Saro-Wiwa” (citaat komt uit *A prepared response to a public statement by Owens Wiwa*). Volgens Woods heeft hij dit *statement* opgesteld aan de hand van verklaringen van “*the people who were at the meetings*” met Owens Wiwa: Achebe en Anderson, pp. 107-108.

tribunaal vonnis zal wijzen, doet Anderson verslag van een gesprek dat hij met president Abacha voerde:

“I conclude 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”.⁴⁴³

316. Anderson houdt er al langer rekening mee dat Saro-Wiwa ter dood zal worden veroordeeld. Op 16 april 1995 schrijft hij in een *Nigeria Update* aan de Shell-groep (**productie 114**, p. 2):

“The BHC [British High Commissioner] believes that although the charges should not stick the government will make sure that he is found guilty. He would be sentenced to death, and reprieved after giving in to pressure from outside, but be incarcerated for a very long time. The feeling is that the trial will go the way of all others of the kind in the past here: nobody has ever been found innocent.”

317. Ondanks deze wetenschap, past Shell haar toon over Saro-Wiwa en MOSOP, en haar relatie met Abacha niet aan; niet voorafgaand aan *Operation Restore Order*, niet tijdens het Ogoni 9-proces en evenmin in aanloop naar de executies van de Ogoni 9. Hoewel Shell publiekelijk stelt dat het middels stille diplomatie het regime tracht te bewegen af te zien van het proces, blijft ze in werkelijkheid het regime steunen, terwijl ze onderhandelt over nieuwe projecten. Bovendien blijft ze zich ook gedurende het proces actief met de gang van zaken bemoeien.
318. Duidelijk is dat Shell in de positie verkeerde om de executies te verhinderen. Dat zij daar zelf net zo over dacht, blijkt uit het gesprek tussen Brian Anderson en Owens Wiwa,⁴⁴⁴ en uit het feit dat Shell in andere gevallen wel degelijk, en met succes, aan de autoriteiten had verzocht om aanklachten te laten vallen en verdachten vrij te laten.⁴⁴⁵
319. Op het moment dat de Ogoni 9 op 31 oktober 1995 ter dood werden veroordeeld, was Nigeria verworpen tot een pariastaat.⁴⁴⁶ De vele verzoeken aan het Shell om haar

⁴⁴³ Productie 116: Nigeria Update, 23 juli 1995.

⁴⁴⁴ Zie hoofdstuk 8.7.3.

⁴⁴⁵ Zie Public Deposition George Ukpong, vol II, 24 maart 2004 (productie 58), pp. 521-522: “I recall that the police command had instituted charges of either disruption or attempted disruption of oil operations and wanted to take the suspected leaders to court and, by the time the operations went on smoothly without any disturbance, we had to follow up with this letter to say that there was no problem and, therefore, if you have instituted charges, please withdraw them” Zie ook *ibid.* pp. 282-284 en Public Deposition George Akpan Ukpong, Vol. I, 23 oktober 2003 (productie 57), waaruit blijkt dat Ukpong Okuntimo heeft verzocht om gearresteerde jongeren vrij te laten.

⁴⁴⁶ Twee dagen na de executies wordt Nigeria geschorst door de Commonwealth, raadpleeg: <http://thecommonwealth.org/history-of-the-commonwealth/nigeria-suspended-commonwealth> <laatst bezocht op 26 april 2017>; De EU veroordeelt de executies, bevestigt de maatregelen uit 1993, voert een embargo op wapens, munitie en militaire uitrusting in, en schort de ontwikkelingssamenwerking met Nigeria op, zie Gemeenschappelijk standpunt van 20 november 1995 betreffende Nigeria, door de Raad bepaald op basis van artikel J.2 van het Verdrag betreffende de Europese Unie (productie 231).

invloed jegens het regime aan te wenden teneinde de executies te voorkomen ten spijt, blijft Shell zich echter beroepen op haar vermeende apolitieke koers.⁴⁴⁷

320. Op 19 november 1995, negen dagen na de executie van de Ogoni 9, schuift Shell in een persbericht de schuld in de schoenen van de partijen die zich openlijk hebben gekeerd tegen het Nigeriaanse regime, omdat dit de potentieel succesvolle aanpak van Shells stille diplomatie zou hebben doorkruist:

“First, did discreet diplomacy fail? Perhaps we should ask instead why the worldwide protests failed. Our experience suggests that quiet diplomacy offered the very best hope for Ken Saro-Wiwa. Did the protesters understand the risk they were taking? Did the campaign become more important than the cause?”⁴⁴⁸

321. Van de stille diplomatie die Shell stelt te hebben betracht,⁴⁴⁹ is niets gebleken. Evenmin is daarvan iets terug te zien in de verslagen van de gesprekken met de overheidsbeambten die door Brian Anderson worden rondgestuurd binnen de Shell-groep (de eerdergenoemde *Nigeria Updates*). Integendeel: zoals hieronder zal worden onderbouwd, getuigen deze veeleer van een dienstbare houding en een poging om de regering tevreden te houden.⁴⁵⁰
322. Uit de *Nigeria Updates* blijkt hoe Shell ook tijdens het Ogoni 9-proces haar economische belangen vooropstelt. Zo blijft zij met het regime onderhandelen over een grootschalig *National Liquid Natural Gas* (NLNG-)project en een nieuw *Memorandum of Understanding* voor de periode 1996-2000.⁴⁵¹ Duidelijk is dat Shell er niet over piekert om zich terug te trekken uit Nigeria of anderszins gevolgen te verbinden aan de mensenrechtenschendingen die worden gepleegd door het Abacha-regime.
323. Op 23 juli 1995, als het Ogoni 9-proces zijn apotheose nadert, heeft Brian Anderson een ontmoeting met president Abacha. Anderson brengt tijdens dit gesprek niet het proces ter sprake, maar benadrukt de zorgen die bij aandeelhouders leven over achterstallige betalingen van het regime en legt een verband met het welslagen van het NLNG-project:

⁴⁴⁷ Zie bijv. Persbericht van Brian Anderson, 8 november 1995 (**productie 164**). Dat deze apolitieke koers een dekmantel was voor een juist zeer politieke koers en de symbiotische relatie van Shell met het regime is beschreven in hoofdstuk 8.5.

⁴⁴⁸ Shell, “Clear thinking in troubled times”, 19 november 1995 (**productie 165**); Persbericht van Brian Anderson MD, 8 november 1995 (productie 164); Brief Eric Nickson (Head Media Relations Shell) aan Glen Ellis, 1 november 1996 (**productie 155**), pp. 3-4.

⁴⁴⁹ Ibid, zie ook de brief van Philip Watts aan Brian Anderson van 24 januari 1996 (**productie 128**).

⁴⁵⁰ Zie hieronder.

⁴⁵¹ Nigeria Update, 19 april 1994 (productie 91), p. 6) Nigeria Update, 20 mei 1994 (productie 93), pp. 4-5; Nigeria Update 12 juni 1994, (productie 96) p. 4; Nigeria Update, 10 juli 1994 (productie 98), p. 5; Nigeria Update, Verslag van een gesprek tussen Anderson en Abacha op 23 juli 1995, 28 juli 1995 (productie 116); Nigeria Update 16 oktober 1995 (productie 120), pp. 1-2, 4; Nigeria Update 2 november 1995 (productie 122), pp. 2-3; Nigeria Update, Verslag van een gesprek tussen Anderson en Shonekan op 6 december 1995, 8 december 1995 (productie 126), p. 2.

“I made a strong case for the payment process being resolved as soon as possible, as it would allow us to have confidence to pick up our investment rate in the upstream oil and gas business, and at the same time give our shareholders confidence that the government would pay its full share of any NLNG cash calls after FID.

I made it quite clear that I believed that this single issue outweighed all others at this time”⁴⁵²

324. Abacha moet tijdens dit gesprek na anderhalf uur zelf over het Ogoni-vraagstuk beginnen,⁴⁵³ waarbij hij laat blijken geïrriteerd te zijn over Shells gebrek aan openlijke steun als *“the biggest company in Nigeria, w[ith] the best knowledge of the activities on the ground in the Ogoni area”*.⁴⁵⁴ Uit het document blijkt dat Shell zich ook dan verschuilt achter haar gestelde apolitieke houding:

“I tried to defuse the situation by going over the non-political stance that we had taken mentioning that our job was to try and do our best to help the government develop its oil and gas reserves as efficiently as possible, and that we could not take sides with the government on such a sensitive issue. I must say that after explaining he calmed down a bit, but I was left with the distinct impression that he was not really happy nevertheless!”⁴⁵⁵

325. Anderson maakt daarop duidelijk dat hij zich bewust is van de kritiek die het regime te verduren krijgt (“I told him that we were very conscious of the government’s irritation with the public villification it was getting on the Ogoni issue”), maar dat het een PR-ramp zou kunnen betekenen als Shell zich openlijk achter het regime zou scharen:

“I told him of the pressures we as Shell were under on the Ogoni issue internationally and that we had to tread extremely carefully in order to try and minimise the potential (or actual) damage such an issue could cause worldwide business.”⁴⁵⁶

“He wants us to support him, but I think he now understands better that we have some very clear limits to what we can do publicly, or in private for that matter”⁴⁵⁷

⁴⁵² Nigeria Update, 28 juli 1995 (productie 116).

⁴⁵³ Nigeria Update, 28 juli 1995, p. 6: “After I had finished with my part (which had lasted about 1 ½ hours) he said he had something he wanted to raise with me. The Ogoni issue!” (productie 116).

⁴⁵⁴ Nigeria Update, 28 juli 1995 (productie 116), p. 6.

⁴⁵⁵ Nigeria Update, 28 juli 1995 (productie 116), pp. 6-7.

⁴⁵⁶ Nigeria Update, 28 juli 1995 (productie 116), p. 7.

⁴⁵⁷ Ibid.

326. Uit de *Updates* blijkt vooral dat Shell in haar maag zit met de imagoschade die het kan lijden als gevolg van het Ogoni 9-proces en de mogelijke gevolgen voor het NLNG-project:

“We are naturally most concerned at the potential for problems arising from the forthcoming judgment in the trial of Ken Saro Wiwa and other Ogonis in PH, slated for 31st October [...] I feel particularly exposed at this time in the lead-up to the NLNG FID!”⁴⁵⁸

327. Shell is echter op geen enkele wijze bereid om voorwaarden te stellen aan het voortduren van de samenwerking met het regime. Integendeel, Shell wil Abacha vooral tevreden stellen teneinde haar economische belangen veilig te stellen (Anderson: “*I suspect that we have to do something to keep him happy!*”).⁴⁵⁹ In de periode die volgt op deze ontmoeting met Abacha doet Shell geen aantoonbare pogingen om het regime op andere gedachten te brengen en gaan de onderhandelingen over het NLNG-project en de MOU onverminderd door.⁴⁶⁰ Om ervoor te zorgen dat de NLNG-deal zonder al teveel internationaal protest kan worden gesloten, stuurt Anderson zelfs Achebe naar Abuja om te praten met iemand van het Ministerie van Buitenlandse Zaken en “*the Security people*” (vermoedelijk de SSS):

“to see if he [Achebe] could do something about the confluence of events [...] the NLNG project and the trial that were coming at the same time. [...] I think it was around the middle of November there was a final decision required on the NLNG project. At the same time we were seeing the end of the trial of Saro Wiwa”

“Q: And the problem you sent him to speak about was the end of the trial and its timing in relationship to the NLNG; is that correct? A: The two things were coming – looked like they were coming exactly the same time”⁴⁶¹

328. Op 2 november 1995, twee dagen na het doodvonnis van de Ogoni 9 en acht dagen voor de executies, schrijft Anderson de Shell-groep een verslag over zijn ontmoeting met Ernest Shonekan, vice-president onder Abacha en oud-bestuurder van SPDC.⁴⁶² Anderson vertelt Shonekan in dit gesprek dat Shell met het idee speelt een clementiebrief te sturen naar Abacha om gratie of strafvermindering te bepleiten voor Saro-Wiwa, hetgeen hem door Shonekan wordt afgeraden.⁴⁶³ Anderson benadrukt echter dat Shell zich naar buiten toe moet verdedigen:

⁴⁵⁸ Nigeria Update van Anderson, 16 oktober 1995 (productie 120).

⁴⁵⁹ Nigeria Update, 28 juli 1995 (productie 116), p. 5.

⁴⁶⁰ Ibid, pp. 4-5; Nigeria Update 16 oktober 1995 (productie 120), pp. 1-2, 4; Nigeria Update 2 november 1995 (productie 122), pp. 2-3; Nigeria Update, Verslag van een gesprek tussen Anderson en Shonekan op 6 december 1995, 8 december 1995 (productie 126), p. 2.

⁴⁶¹ Public Deposition Brian Anderson, 23 februari 2003 (productie 17), pp. 166-168.

⁴⁶² Nigeria Update 2 november 1995 (productie 122). Zie over Shells *revolving door policy* hoofdstuk 8.4.5.

⁴⁶³ Nigeria Update, 2 november 1995 (productie 122), pp. 1-3.

“I emphasised that Shell would be obliged to defend itself against criticism from many quarters, both locally and internationally, over the next weeks and that we could not take the government’s corner. [Shonekan] accepted this as a matter of fact. He did however remind me of the HOS’s [Head of State’s/Abacha’s] demand that Shell be more (publicly) supportive, and he said that the HoS felt that the government were doing what they could to help Shell.”⁴⁶⁴

329. Anderson voelt zich derhalve verplicht zich bij Shonekan zo goed als te verontschuldigen voor het feit dat Shell zich niet publiekelijk achter het regime schaaft. Het bondgenootschap tussen Shell en het regime wordt voorts benadrukt door het verzoek van Shonekan aan Shell het regime meer zichtbaar te ondersteunen en zijn herinnering aan het feit dat het regime zich inspande om Shells belangen te dienen.⁴⁶⁵
330. Na het gesprek met Shonekan laat Anderson de Shell-groep verheugd weten dat “Abacha seemed to have valued our last talk very highly and he felt that he would welcome a fairly frequent dialogue of this kind [...] This bodes well if true”.⁴⁶⁶
331. Kort daarna stuurt Shell haar aangekondigde brief aan het regime, waarin ze in overweging geeft om uit humanitaire overwegingen de executies niet uit te voeren.⁴⁶⁷
332. Op 8 december 1995, een kleine maand na de executies, brengt Shonekan de complimenten van Abacha over aan Anderson, die dit weer rapporteert aan de Shell-groep:
- “The HoS [Head of State, Abacha] told S[honekan] that he was very happy that Shell had remained steady under pressure, and asked him to convey his thanks to me. [...] He was particularly happy about the NLNG Project.”⁴⁶⁸
333. Het regime en Shell hebben in november, daags na de executies, al overeenstemming bereikt over het NLNG-project, hetgeen in december wereldkundig wordt gemaakt.⁴⁶⁹ De Wereldbank heeft zich dan al uit het miljardenproject teruggetrokken vanwege de

⁴⁶⁴ Ibid.

⁴⁶⁵ Hetzelfde blijkt uit de gesprekken die Anderson met Abacha voerde, zie bijvoorbeeld hierboven, randnrs. 324 e.v.

⁴⁶⁶ Nigeria Update, 2 november 1995 (productie 122).

⁴⁶⁷ Defendants’ supplemental responses to Wiwa plaintiffs’ second set of interrogatories pursuant to the Court’s november 6, 2008 order, 17 december 2008 (productie 195), p. 9: volgens Shell is de brief op 8 november 1995 persoonlijk bezorgd bij de Nigeriaanse High Commissioner in Londen, die ervoor zou zorgen dat Abacha hem zou ontvangen. Shell gelooft daarom dat de brief in ieder geval vóór 10 november 1995 bij Abacha is aangekomen.

⁴⁶⁸ Nigeria Update, 6 december 1995 (productie 126).

⁴⁶⁹ Zie de website van NLNG, te raadplegen via: <http://www.nlng.com/Our-Company/Pages/The-Plants.aspx> <laatste bezocht op 27 juni 2017>; Nigeria Update 11 december 1995, p. 2 (productie 127); Ondanks herhaalde verzoeken aan Shell om haar medewerking aan het project te staken, zie Ian Black, Cameron Duodo, Anthony Bevins, Michael Durham en Polly Ghazi, “Shell fuels outrage over Saro-Wiwa with \$ 4 billion Nigerian gas deal”, 12 november 1995 (productie 257).

politieke situatie in Nigeria. Ook roepen verschillende landen hun ambassadeurs terug en heeft de EU de ontwikkelingshulp stopgezet en een wapenembargo uitgevaardigd.⁴⁷⁰

8.8 Shell opereerde als één lichaam

8.8.1 Inleiding

334. SPDC handelde in de periode 1990-1995 niet zelfstandig, maar uitdrukkelijk als onderdeel van de Shell-groep. Dat droeg zij niet alleen naar buiten toe zo uit,⁴⁷¹ maar blijkt ook uit haar interne organisatie, communicatie en verantwoordingslijnen. De moedervenootschappen oefenden, direct en middels de *service companies*, invloed en controle uit op SPDC, maar bemoeiden zich ook rechtsreeks met de kwestie Ogoniland, het NLNG-project en het Ogoni 9-proces. Nu de in het voorgaande hoofdstuk omschreven koers bij uitstak door de moedervenootschappen werd uitgezet, zijn zowel de moedervenootschappen als SPDC medeplichtig aan de schendingen van fundamentele rechten van eiseressen en wijlen hun echtgenoten.

8.8.2 Identiek belang

335. Zoals onderbouwd in hoofdstuk 3.1 was de olie-exploitatie in Nigeria van groot belang voor de Shell-groep: Nigeria was in de jaren 1991-1995 gemiddeld verantwoordelijk voor 12,9% van de totale olieproductie van het Shell-concern en daarmee het op twee na belangrijkste productieland voor Shell.⁴⁷² Robert Sprague, Head of Operations and Liaison bij SIPM en bestuurslid van SPDC van 1991-1994, stelt in zijn deposition in de Amerikaanse Kiobel-zaak dan ook dat SPDC een van de belangrijke operating units van de Shell-groep was.⁴⁷³ In hoofdstuk 3.2 is omschreven dat de productie in Ogoniland op haar beurt weer van groot belang was voor de opbrengsten binnen Nigeria. De terugtrekking uit Ogoniland had dan ook een grote impact op de productie van Shell in Nigeria.⁴⁷⁴

336. De winst die SPDC boekte werden als dividend uitgekeerd aan Shells aandeelhouders en eindigden voor bijna 100 % in de boeken van de moedervenootschappen.⁴⁷⁵ Het

⁴⁷⁰ Zie Howard W. French, "Nigeria Executes Critic of Regime; Nations Protest", *The New York Times*, 11 November 1995 (productie 256): "The United States, Britain and other countries withdrew their ambassadors, the Commonwealth countries were considering whether to expel or suspend Nigeria and the World Bank announced it would not support a \$100 million loan to Nigeria for a huge project to develop liquefied natural gas."

⁴⁷¹ Productie 59: Public Deposition Philip Beverly Watts, 16 april 2004. Zo stelt Watts: "So our joint venture partners, they not only get SPDC as the operator; they also know that there is a wealth of support from the Shell group world wide giving support and help to SPDC to do a world class job.", pp. 64-65.

⁴⁷² Securities and Exchange Commission, 20-F form 1995, N.V. Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company, plc (productie 162), p. 13.

⁴⁷³ Public Deposition Robert Sprague, 10 februari 2003 (productie 55), pp. 10, 106-107 "once we withdrew from Ogoniland it was, there was a large impact on production, so I am sure I prepared in some discussions because it was a big chunk of production which we didn't want to lose, so it is the kind of thing we worry about".

⁴⁷⁴ Zie hoofdstuk 3.2 (rond de 10 %).

⁴⁷⁵ Jaarverslag 1992 SPDC (productie 157), p. 3. Dit document laat zien dat 480 miljoen dollar van de 498,8 miljoen dollar winst werd overgedragen: 96% van de winst wordt dus afgedragen aan één van de Group Holding Companies, die het weer afdroeg aan de beide moedervenootschappen; Public Deposition John Jennings, 26 februari 2004 (productie 34), pp. 83-84, 135; Jaarverslag Royal Dutch/Shell Group of Companies, 1995 (productie 160), pp. 50, 60; Public Deposition Alan Detheridge, 3 februari 2003 (productie 21), p. 64: "Q: When Royal Dutch

kunnen hervatten van de werkzaamheden in Ogoniland – wat het regime mogelijk trachtte te maken met *Operation Restore Order in Ogoniland* – was dus niet alleen voor SPDC, maar ook voor Shell als geheel van groot belang.

8.8.3 *Één centraal aangestuurde Shell-organisatie*

337. De moedervennootschappen hadden in grote mate invloed op het handelen van de verschillende ondernemingen binnen de Shell-groep. Die invloed vertaalde zich ten eerste in de institutionele structuur. De moedervennootschappen benoemden tot 2005 de *Managing Directors* van de *Group Holding Companies*.⁴⁷⁶ Ook zaten de *Managing Directors* van beide moedervennootschappen in het zogenaamde *Committee of Managing Directors* (CMD).⁴⁷⁷ Het CMD had een belangrijke functie in het Shell-concern. De *Group Governance Guide* (GGG) van de Royal Dutch/Shell group omschrijft de wijze van leiding geven binnen het Shell-concern vóór 2005 en stelt over het CMD:

“CMD advises the Group Holding Companies on investments in Shell companies and on the exercise of shareholder rights for these companies. CMD guides the Group by providing strategic direction, support and appraisal to Group Business. The strategy, planning, appraisal and assurance cycle [...] ensures that Group strategy is aligned with the interests of the Parent Companies.”⁴⁷⁸

338. De *Managing Directors* van de moedervennootschappen werden ook wel de *Group Managing Directors* (GMDs) genoemd. Niet alleen vormen zij het CMD, zij zaten ook in de besturen van beide *Group Holding Companies*.⁴⁷⁹

339. De *Group Managing Directors* kwamen samen met de overige bestuursleden van beide moedervennootschappen en *Group Holding Companies* in de Conference. De Conference was formeel een overlegorgaan waarin “*Group strategy, organisation, plans and performance, as well as risks and the system of internal control*” werden besproken.⁴⁸⁰ In de praktijk werden in dit overleg belangrijke beslissingen voor de Shell-groep genomen, waardoor aparte discussies in de verschillende besturen overbodig werden gemaakt.⁴⁸¹ Via de CMD en de Conference functioneerden de beide

petroleum and Shell Transport and Trading issued an annual report [...] the financial information is the accumulation of the financial information of all the operating companies; is that correct? A: It is the financial accumulation of the group, which is largely, of course, the operating companies because that’s where the income comes from”.

⁴⁷⁶ Group Governance Guide Royal Dutch/Shell Group, december 2001 (**productie 169**), p. 2.

⁴⁷⁷ Jaarverslag 1997 Koninklijke Nederlandse Petroleum Maatschappij (**productie 167**), p. 16.

⁴⁷⁸ Group Governance Guide Royal Dutch/Shell Group, december 2001 (productie 169), p. 4.

⁴⁷⁹ Group Governance Guide Royal Dutch/Shell Group, december 2001 (productie 169), p. 2; Ook was de voorzitter van de Group Holding Companies altijd een voorzitter van één van de moedervennootschappen, zie public deposition John Jennings (productie 34), p. 116.

⁴⁸⁰ Group Governance Guide Royal Dutch/Shell Group, december 2001 (productie 169), p. 3.

⁴⁸¹ De inhoudelijke discussie en besluitvorming vonden plaats in de Conference, de besluiten werden vervolgens formeel bekrachtigd door de twee besturen in aparte bestuursvergaderingen, verklaring Jordan I. Siegel, 5 februari 2009 (productie 54), para.5; public deposition John Jennings (productie 34), pp. 129-130.

moedervennootschappen feitelijk als één organisatie en hadden zij veel invloed op het functioneren van de ondernemingen in de Shell-groep.

340. *Operating companies* zijn in de verschillende landen waar Shell opereert verantwoordelijk voor het daadwerkelijk winnen en exploiteren van olie- en gasvelden.⁴⁸² SPDC is een van deze ondernemingen. De GGG stelt hierover:

“The Group Holding Company boards, supported by CMD, set clear expectations as to how such companies are to be run, by providing guidance on policy and strategy. Even where the Group does not have a controlling interest in a Shell company, the Group Holding Companies still try to influence how such companies are run, particularly where necessary to protect Group reputation.”⁴⁸³

341. Via de *Managing Directors* van de moedervennootschappen (de *Group Managing Directors*) in het CMD en in de besturen van de *Group Holding Companies* bewerkstelligden de moedervennootschappen dat alle ondernemingen in de Shell-groep handelden in het concernbelang, te meer wanneer Shells reputatie op het spel stond. De activiteiten van de operating companies werden dan ook centraal gecoördineerd.⁴⁸⁴ Dat gebeurde onder meer door de beoordeling van een jaarlijks *Country Business Plan* (CBP) als onderdeel van het groepsbeleid. De CBP's werden daartoe besproken in de *service companies* in Den Haag en Londen (SIPM en SIPC) en vervolgens door een vertegenwoordiger van SPDC en *service company* SIPC ter goedkeuring door de moedervennootschappen aan het CMD en de Conference voorgelegd.⁴⁸⁵
342. Ook feitelijk gezien werd SPDC direct door de moedervennootschappen aangestuurd. De *Group Managing Directors*, tevens de *Managing Directors* van beide moedervennootschappen, namen in hun voltalligheid zitting in de besturen van niet alleen beide holdingmaatschappijen, maar ook de *service companies* SIPC en SIPM.⁴⁸⁶ John Jennings was van 1987-1991 als *Group Managing Director* verantwoordelijk voor *Exploration en Production*, terwijl hij tegelijkertijd als *Exploration and Production*

⁴⁸² Jaarverslag 1997 Koninklijke Nederlandse Petroleum Maatschappij (productie 167), p. 1.

⁴⁸³ Group Governance Guide Royal Dutch/Shell Group, december 2001 (productie 169), p. 3.

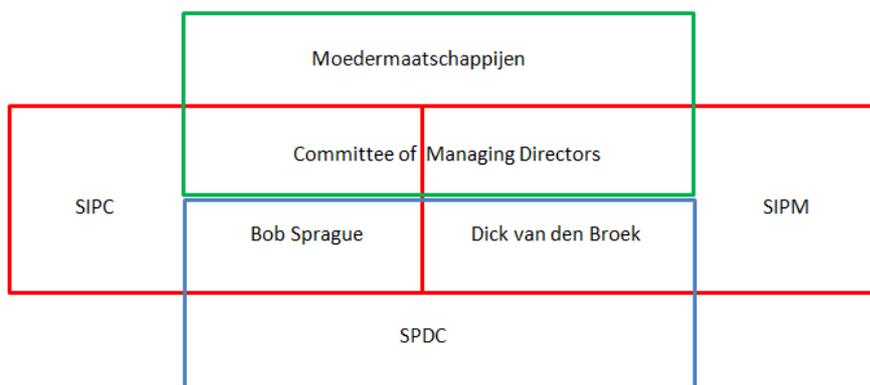
⁴⁸⁴ Public Deposition John Jennings, 26 februari 2004 (productie 34), p. 23-24: “All those activities run through local operating companies [...] the activities of all those companies are coordinated centrally.”; Public Deposition Brian Anderson, 13 februari 2003 (productie 17), pp. 84-85: “Group Planning were a specialist group in Shell that helped operating companies think through and build scenarios, which is a process that Shell uses for assisting in planning. [...] The draft is prepared [...] with the help of the Group Planning people, the specialists in the technology, if you like, for developing scenarios, which is a thing we do – we used to do in Shell.”

⁴⁸⁵ Public Deposition Sprague, 10 februari 2003, pp. 54-59 (productie 55); Minutes of meeting Conference 14 oktober 1992 (**productie 66**): CBP werd ook voorgelegd aan de Conference; Public Deposition Cornelius Herkströter, 14 april 2004 (productie 28), p. 20: “There was a structure for reports by operating companies to the Committee of Managing Directors. The larger operating companies, and SPDC was one of the larger operating companies, would come in once a year to present to the Committee of Managing Directors their plan for the coming year.”; Public Deposition Brian Anderson, 13 februari 2003 (productie 17), p. 83; Zie ook Public Deposition John Jennings, 26 februari 2004 (productie 34), pp. 129-130.

⁴⁸⁶ **Productie 42**: Public Deposition Mark Moody-Stuart, 15 april 2004, pp. 17-21. Public Deposition John Jennings, 26 februari 2004 (productie A.34), pp. 116-117 Vgl. Jaarverslag Shell International Petroleum Company, 1992 (productie 158), p. 1; De chairmen van de moedervennootschappen waren normaliter ook chairmen van de group holding companies, zie Public Deposition John Jennings, 26 februari 2004 (productie 34), p. 116.

coördinator fungeerde bij *service company* SIPM;⁴⁸⁷ hetzelfde geldt voor Mark Moody-Stuart, die vanaf 1991 GMD werd en ook *Exploration en Production coördinator* was bij SIPM.⁴⁸⁸ Zowel Mark Moody-Stuart als John Jennings moesten in hun functie als *Exploration and Production coordinator* bij SIPM derhalve technisch gezien rapporteren aan zichzelf als *Managing Director*.⁴⁸⁹

343. Niet alleen de *Group Managing Directors* bekleedden verschillende functies binnen het Shell-concern. De contactpersonen van de *service companies* aan wie de *Managing Director* van SPDC moest rapporteren, zaten óók in het bestuur van SPDC. Robert Sprague, werkzaam bij SIPM én bestuurslid van SPDC, moest zo rapporteren aan Mark Moody-Stuart, werkzaam bij (én bestuurslid van) SIPM én bestuurslid van de Engelse moedervernootschap Shell Transport and Trading.⁴⁹⁰
344. In de *service companies* kwamen dus bestuursleden van SPDC en bestuursleden van de moedervernootschappen samen. Ook in het geval van SIPC liep er een directe lijn van communicatie van SPDC naar de moedervernootschappen: Dick van den Broek, werkzaam bij (én bestuurslid van) SIPC en bestuurslid van SPDC, rapporteerde direct aan Henny de Ruiter, bestuurslid van SIPC en bestuurslid van de Nederlandse moedervernootschap Royal Dutch Petroleum Company.⁴⁹¹ Bij gelegenheid werd de pettenwissel helemaal achterwege gelaten en werd er rechtstreeks aan de moedervernootschap gerapporteerd.⁴⁹² Deze overlappende bedrijfsstructuur is hieronder schematisch weergegeven:



⁴⁸⁷ Public Deposition John Jennings, 26 februari 2004 (productie 34), pp. 27-28.

⁴⁸⁸ Public Deposition Mark Moody-Stuart, 15 april 2004 (productie 42), p. 14.

⁴⁸⁹ Public Deposition Mark Moody-Stuart, 15 april 2004 (productie 42), p. 14.

⁴⁹⁰ Jaarverslag Shell International Petroleum Company, 1992 (productie 158), p. 1; Jaarverslag 1992 SPDC (productie 157), p. 3; Public Deposition Mark Moody-Stuart, 15 april 2004 (productie 42), pp. 17-18.

⁴⁹¹ **Productie 19**: Public Deposition Richard van den Broek, 17 februari 2003, p. 12. Zie ook Jaarverslag Shell International Petroleum Company, 1992 (**productie 158**), p. 1; Jaarverslag 1992 SPDC (productie 159), p. 3.

⁴⁹² Brian Anderson stuurt op 17 januari 1994 een update direct naar twee *Managing Directors* van de moedervernootschappen, namelijk Mart Moody-Stuart, die op dat moment ook Exploration and Production Coordinator is (indicator "EP"), en Henny de Ruiter (indicator MGDHR) (**productie 85**); Op 14 november 1995 stuurt hij een telex aan Maarten van den Bergh over zijn ontmoeting met Shonekan de dag ervoor, met de vraag deze door te sturen aan Dick van den Broek (**productie 123**).

8.8.4 *International staff werkte voor het Shell-concern*

345. De Shell-werknemers die bij SPDC belangrijke posities bekleedden - zoals Anderson, Watts, maar ook internationale staf in lagere posities, werden gerekruteerd, gecoacht en gecontroleerd door de *service companies*, waarin de leden van het *Committee of Managing Directors* zitting namen. International staff was in feite in dienst van Shell International, dat vanuit Londen of Den Haag niet alleen hun loopbaan bepaalde, maar ook hun salaris geheel of gedeeltelijk uitbetaalde. Zij hielden daar, ook wanneer zij naar een *operating company* werden uitgezonden, een mentor die hen begeleidde volgens een systeem van *parenthood*.⁴⁹³ Ook een volgende *posting* werd vanuit Londen of Den Haag bepaald; bij ontslag meenden expats dat “hun belangen in ‘Den Haag’ niet goed waren verdedigd”⁴⁹⁴: de international staff legde verantwoording af aan centrale organisaties binnen de Shell-groep in Den Haag en Londen, niet aan de *operating company* waar zij werkzaam waren. Zo liepen op alle cruciale posities de verantwoordingslijnen rechtstreeks naar de *service companies* en de moedervernootschap. Deze gang van zaken is volgens Robert Sprague, *Head of Operations and Liaison* bij SIPM, “one of the critical success factors for our business”, waarbij “our business” wordt beschreven als “*The Shell exploration and production business*”.⁴⁹⁵

8.8.5 *De moedervernootschappen bepaalden de koers en opstelling van SPDC in de Ogoni-crisis*

346. Vanwege het economische belang van SPDC voor de Shell-groep en het reputatierisico dat gemoeid is met de Ogoni-crisis, kiest Shell er al vroeg voor om de problemen in Nigeria op groepsniveau aan te pakken. Zij richt daartoe een *Nigeria Issue Group* op en laat zich van A tot Z op de hoogte houden middels de *Nigeria Updates* van SPDC’s *Managing Director*.

347. In het voorgaande hoofdstuk is reeds gebleken, dat de koers van SPDC werd bepaald in overleg met en aangestuurd door de moedervernootschap, onder meer door middel van bezoeken, telefoongesprekken en de *Nigeria Updates*. Het contact intensiverde naarmate de onrust en met het Ogoni 9-proces ook de publieke belangstelling toenam. John Jennings stelde daarover:

“It would be perfectly normal, particularly given the circumstances in Nigeria, for there to be regular telephone conversations between Brian Anderson and Van den Broek certainly, and maybe Brak, and maybe Van Den Bergh.”⁴⁹⁶

⁴⁹³ Door Shell zelf ook wel beschreven als “het disciplinaire effect van de ‘peetvaders’”, *Geschiedenis van de Koninklijke Shell*, deel 3, Keetie Sluyterman (productie 245), p. 288.

⁴⁹⁴ *Ibid.*, pp. 288-289.

⁴⁹⁵ Public Deposition Robert Sprague, 10 februari 2003 (productie 55), pp. 96-99.

⁴⁹⁶ Public Deposition John Jennings, 26 februari 2004 (productie 34), p. 166.

348. Al eind 1992 stuurt Philip Watts, in zijn functie als *Managing Director* van SPDC, een memo naar onder anderen Dick van den Broek (*Regional Coordinator West Africa*) en Mark Moody-Stuart (*Group Managing Director*) waarin hij de noodzaak van vergaande coördinatie en samenwerking binnen de Shell-groep benadrukt en bestendigt.⁴⁹⁷ Het memo geeft een beschrijving van de “*growing pressures*” in Nigeria, en verwijst daarbij naar Ken Saro-Wiwa. Watts laat de *service companies* weten dat “*efforts have been made to enhance relations with Government officials at all levels*” en “*efforts have been made to establish closer link with the Governors and Deputy Governors in each of the states*”.
349. De situatie in Ogoniland leidt ertoe dat door Shell in februari 1993 een vergadering wordt belegd in Londen, waarbij ook de *service companies* en vertegenwoordigers van SPDC (Nmaemeka Achebe, Dozie Okonkwo en Precious Omuku) aanwezig zijn. Uit de notulen (**productie 132**) blijkt dat Ken Saro-Wiwa en MOSOP worden beschouwd als een risico voor Shells internationale reputatie en dat daarvoor “*urgent attention*” wordt gevraagd.⁴⁹⁸
350. De Shell-groep spreekt af dat de belangrijkste actievoerders nauwlettend zullen worden gevolgd, zodat verdere imagoschade kan worden voorkomen:
- “SPDC and SIPC PA [Public Affairs] departments to keep each other more closely informed to ensure that movements of key players, what they say and to whom is more effectively monitored to avoid unpleasant surprises and adversely affect the reputation of the Group as a whole”.⁴⁹⁹
351. Uit interne documenten van Shell blijkt dat zij Saro-Wiwa en MOSOP de jaren daarop inderdaad zorgvuldig in de gaten houdt.⁵⁰⁰
352. De *Public Affairs*-staf van het Shell-concern wordt ingezet om ervoor te zorgen dat Shells internationale reputatie niet teveel wordt geschaad door de Ogoni-crisis. Dit beleid wordt bepaald door de moedervernootschappen.⁵⁰¹ Met name wanneer de Ogoni-

⁴⁹⁷ Brief van Philip Watts naar onder anderen Dick van den Broek (Regional Coordinator West Africa) en Mark Moody-Stuart (*Group Managing Director*), 4 december 1992 (**productie 67**).

⁴⁹⁸ In de notulen wordt gesteld: “Ken Saro-Wiwa is using his influence at a number of meetings [...]. [He] will be using every opportunity made available by 1993 being the UN’s declared Year of Indigenous Peoples. [...] The main thrust of the activists now seems to be directed at achieving recognition of the problems of oil-producing areas by using the media and pressure groups. By concentrating accusations against Shell, especially internationally, they feel that the publicity generated will have greater impact. Herein lies risk for Shell. Urgent attention, therefore, is being directed to the issue.”

⁴⁹⁹ Ibid.

⁵⁰⁰ Background Briefing Note van SPDC met betrekking tot de persconferentie over Ken Saro-Wiwa van 24 mei 1993 in Den Haag (**productie 74**); Telex SIPC aan SPDC, 2 juni 1993 (**productie 75**): “We heard on the grapevine [...] that a meeting would take place with Ken Saro-Wiwa on 15/5 [...] We would have appreciated it if group PA could have been advised directly sooner”; Ogoni Briefing Note: Recent Events at Korokoro, 5 november 1993 (**productie 82**); Nigeria Update, 27 juni 1994 (**productie 97**), p. 4; Nigeria Update, 13 april 1994 (**productie 90**), p. 4; Nigeria Update, 2 mei 1994 (**productie 92**).

⁵⁰¹ Bijv. **Productie 81**: Background to the Nigerian Issue, 1993. SPDC en Group PA produceren in maart 1993 een leaflet voor gebruik in Nigeria en andere externe doeleinden. Ook produceert de Shell-groep een briefing note voor intern en extern gebruik, zie p. 10.

crisis vanaf 1993 in toenemende mate internationale aandacht trekt, wordt de communicatie binnen de Shell-groep versterkt. Ook worden extra bezoeken ingepland, van een *Exploration and Production*- en *Public Affairs*-team, en van de PA-coördinator.⁵⁰²

353. Ten tijde van de onrusten in 1994 is er middels de *Nigeria Updates* en (andere) telexberichten enkele keren per week rechtstreeks contact tussen *Managing Director* Watts en de *service companies*,⁵⁰³ waaronder met Mark Moody Stuart, *coördinator Exploration and Production* bij SIPM ("EP") en *Group Managing Director*. De berichtgeving ziet onder meer op de bewapening van de politie, op demonstraties in Ogoniland en op gesprekken die plaatsvonden tussen SPDC en Ken Saro-Wiwa.⁵⁰⁴ Op 17 januari 1994 stuurt SPDC's *Managing Director* een overzicht met de belangrijkste ontwikkelingen in Nigeria rechtstreeks naar twee *Managing Directors* van de moedervennootschappen.⁵⁰⁵ Regelmatig worden de berichten ook aan Carl Herkströter (MGDCH, *Group Managing Director*), Maarten van den Bergh (MGDMB, *Group Managing Director*), en Tony Brak (PA, *Head of Public Affairs*) gestuurd,⁵⁰⁶ of integraal aan alle *Group Managing Directors*.⁵⁰⁷
354. Vanaf maart 1995 wordt een groepsbrede *Nigeria Issue Contact Group* opgezet, dat onder meer de taak heeft een *Group Wide Action Plan* te implementeren.⁵⁰⁸ In het kader hiervan houdt SIPC een tweedaagse workshop over de situatie in Nigeria.⁵⁰⁹ Ook worden persberichten en andere publieke documentatie gecontroleerd door het *Committee of Managing Directors* (CMD), al dan niet met tussenkomst van de *service companies*, alvorens publiek te worden gemaakt: *Public Affairs* is een groepsaangelegenheid.⁵¹⁰

⁵⁰² Background to the Nigerian Issue, 1993 (productie 81), pp. 10, 13.

⁵⁰³ Nigeria updates: 17 januari 1994 (productie 85), 14 maart 1994 (productie 87), 5 april 1994 (productie 89), 13 april 1994 (productie 90), 25 april 1994 (productie 91), 2 mei 1994 (productie 92), 20 mei 1994 (productie 93), 30 mei 1994 (productie 94), 6 juni 1994 (productie 95), 12 juni 1994 (productie 96), 27 juni 1994 (productie 97), 10 juli 1994 (productie 98) 20 juli 1994 (productie 99), 26 juli 1994 (productie 100), 28 juli 1994 (productie 101), 4 augustus 1994 (productie 102), (productie 103), 8 augustus 1994 (productie 104), 12 augustus 1994 (productie 105), 22 augustus 1994 (productie 106), 23 augustus 1994 (productie 107), 24 oktober 1994 (productie 108), 16 april 1995 (productie 114), 10 juli 1995 (productie 115), 23 juli 1995 (productie 116), 25 september 1995 (productie 117), 16 oktober 1995 (productie 120), 2 november 1995 (productie 122), 6 december 1995 (productie 126), 11 december 1995 (productie 127).

⁵⁰⁴ **Productie 76**: Brief van Philip Watts 13 augustus 1993; **Productie 77**: Brief van Philip Watts 17 augustus 1993.

⁵⁰⁵ Situation review van de *Managing Director* van SPDC aan onder anderen Henny de Rooter (indicator MGDHR) en Mark Moody-Stuart (indicator SIPM EP), 17 januari 1994 (**productie 85**).

⁵⁰⁶ Nigeria Update, 4 augustus 1994 (productie 102); en Nigeria Update, 22 augustus 1994 (**productie 106**).

⁵⁰⁷ Nigeria Update, 23 juli 1995, p. 8 (productie 116).

⁵⁰⁸ **Productie 111**: Note van Martin Christie aan tenminste 16 ontvangers binnen het Shell-concern, 10 maart 1995: "One of the actions from the International Workshop on the Nigeria Issue (Pennyhill Park) was to establish an e-mail network to keep all informed of the latest developments. This is now in place and this note contains the first instalment."

⁵⁰⁹ **Productie 121**: Telex van M. Christie aan de Nigeria Issue Contact Group, 23 oktober 1995.

⁵¹⁰ **Productie 119**: Minutes of meeting Conference, 11 oktober 1995, pp. 12-13; **productie 124**: Minutes of Meeting van het CMD, 17 november 1995; **productie 125**; Telex van Caroline Tipper, Media Relations Shell Centre: "The following is the text of an advertisement which has been approved by CMD for use in UK Sunday newspapers. You may also wish to run these advertisements in your own country – NO changes to the text please."; Ook wordt gesteld in Briefing notes van John Barry aan Brian Anderson over het bezoek van Maarten van den Berg (indicator MGDMB), 1 februari 1995 (**productie 110**): "Environment and Communities public briefing notes are expected from SPDC (drafts by mid-February) following in the footsteps of the Ogoni Issue brief. These notes should fully

355. Ook Shells onderhandelingen met MOSOP over een verbetering van de situatie van de Ogoni 9 worden zowel in Nigeria als in Londen gevoerd, waarbij de strategie onderling wordt afgestemd.⁵¹¹ Na de veroordeling van de Ogoni 9 worden Anderson en Van den Broek van hogerhand geïnstrueerd om geen uitlatingen te doen over de rechtmatigheid van het proces.⁵¹²
356. Met het oog op deze vanuit de moedervernootschappen gecoördineerde groepsstrategie is het niet verrassend dat Anderson zich in gesprekken met Abacha als vertegenwoordiger van het Shell-concern opstelt.⁵¹³ Dat Anderson SPDC beschouwt als een opererende tak van het Shell-concern wordt tevens duidelijk wanneer hij stelt:

“We should seriously consider putting some Group money into the Washington lobby group that Mobil et al is involved with [...] I am worried that the US could turn out to be a greater threat in the end than the EU countries”.⁵¹⁴

8.8.6 De moedervernootschappen stuurden de onderhandelingen m.b.t. de NLNG

357. Grote nieuwe projecten werden vanuit de moedervernootschappen geïnitieerd, goedgekeurd en gefinancierd. Dit geldt ook voor het NLNG-project waarover een maand na de executie van de Ogoni 9 overeenstemming wordt bereikt tussen Shell en het Nigeriaanse regime. De keuze om niet in te grijpen en evenmin door stille diplomatie te trachten de verwachte uitkomst van het proces tegen de Ogoni 9 te beïnvloeden, werd dan ook vanuit de moedervernootschappen gemaakt.
358. Abacha's staatsgreep in november 1993 en de daarop volgende afkeurende reacties van de internationale gemeenschap⁵¹⁵ schrikken Shell niet af. Integendeel, in december 1993 versterkt zij haar samenwerking met het Nigeriaanse regime door onder anderen haar aandeel in NLNG te vergroten van 20% naar 24%.⁵¹⁶ In 1995 werden vervolgens door de moedervernootschappen nieuwe *off-shore licences* voor SNEPCO goedgekeurd en gefinancierd.⁵¹⁷ Ook NLNG was een investering door de Shell-groep⁵¹⁸ waartoe besloten werd doordat de moedervernootschappen (via het CMD en

reflect what was said to CMD”; Zie ook Privilege log (productie 198), documentnummers 16-17, 65, 80-85, waaruit blijkt van regelmatige overleggen tussen Tony Brak (head of Public Affairs van de Shell-groep) en Van den Broek.

⁵¹¹ Zie Interoffice Memorandum van Brian Anderson aan Alan Detheridge, 22 augustus 1995 (productie 116a) en zie ook hoofdstuk 8.6.3.

⁵¹² Public Deposition John Jennings, 26 februari 2004 (productie 34), p. 176.

⁵¹³ Nigeria Update van Brian Anderson, 23 juli 1995 (productie 116): Wanneer Abacha commentaar heeft op het mediabeleid van het Shell-concern als geheel (hij verwijst bijvoorbeeld naar uitspraken van een vertegenwoordiger van een Londense Shell-entiteit), blijft Anderson spreken van “we”, “us” en “our” en verdedigt hij het internationale mediabeleid van het Shell-concern met betrekking tot Nigeria; Highlights of Keynote Address, 19 april 1994, bijgevoegd bij Nigeria Update van Brian Anderson, 25 april 1994 (productie 91), waarin Anderson consistent spreekt vanuit “Shell”. Enkel wanneer het specifiek gaat om werknemers van SPDC wordt “SPDC” gebruikt..

⁵¹⁴ Productie 127: Nigeria Update, 11 december 1995.

⁵¹⁵ Zie hoofdstuk 3.3

⁵¹⁶ Document van de British High Commission in Lagos over het NLNG-project, januari 1994 (productie 263).

⁵¹⁷ Public deposition Brian Anderson, 13 februari 2003 (productie 17), pp. 52-53.

⁵¹⁸ De financiering voor NLNG was afkomstig vanuit de Shell-groep, zie public deposition Brian Anderson 13 februari 2003 (productie 17), p. 50.

de Conference).⁵¹⁹ Een dergelijke grootschalige investering wordt enkel goedgekeurd indien dit in het groepsplan past, en dus het belang van de moedervennootschappen dient.⁵²⁰

359. Binnen NLNG, een onderneming waarvan het Nigeriaanse regime 49% van de aandelen en Shell 24% van de aandelen houdt,⁵²¹ is er sprake van een “strong Shell management role”.⁵²² Zowel de *Managing Director* als de *Technical Director*, de *key management positions*, zijn afkomstig van Shell.⁵²³ Hoewel Shell Gas B.V. (een dochter van de moedervennootschappen) de aandelen houdt in het NLNG-project⁵²⁴ en ook de NLNG-*Managing Director* afkomstig is van Shell, lopen de onderhandelingen met Abacha en aansturingen daaromtrent via Anderson, de *Managing Director* van dochtervennootschap SPDC. Dit laat opnieuw zien dat de Shell-groep in Nigeria als één lichaam handelde.
360. De moedervennootschappen worden door Anderson van elke stap op de hoogte gehouden opdat zij input kunnen geven in het proces.⁵²⁵ Zo schrijft Anderson op 20 mei 1994 in een *Nigeria Update*:

“I have an appointment to see the Minister of Petroleum in Lagos on Tuesday Morning [...] I will inform him of the state of play and of any perceived problems (I hope to get a briefing from WA and PA before I leave for this meeting at 0830 hrs).”⁵²⁶

361. Anderson stelt ook voor dat een NLNG *Steering Committee* wordt opgericht, waarin het NLNG-project, de MOU-onderhandelingen met het Nigeriaanse regime, en de strategie voor de volgende maanden wordt besproken.⁵²⁷ Zowel de *service companies* als de moedervennootschappen werden actief betrokken bij de MOU-onderhandelingen.⁵²⁸ Naar Abacha presenteert Anderson zich consequent als vertegenwoordiger van de moedervennootschappen. Duidelijk is dat hij als zodanig optreedt, en niet in zijn rol van *Managing Director* van SPDC, dat zelf geen aandelen heeft in het project. Anderson spreekt dan ook van “*we in Shell*” wanneer hij

⁵¹⁹ Public Deposition Robert Sprague, 10 februari 2003 (productie 55), p. 89. Zo stelt GMD Van Den Bergh in een vergadering van de Conference dat “it was possible that a final investment decision would have to be taken soon”

⁵²⁰ Public Deposition Robert Sprague, 10 februari 2003, pp. 86-88 (productie 55).

⁵²¹ Shell houdt tegenwoordig 25,9% van de aandelen.

⁵²² Document van de British High Commission in Lagos over het NLNG-project, oktober 1994 (productie 264).

⁵²³ Document van de British High Commission in Lagos over het NLNG-project, januari 1994 (productie 263);

Document van de British High Commission in Lagos over het NLNG-project, oktober 1994 (productie 264).

⁵²⁴ Shareholders NLNG, te raadplegen via: <http://www.nigeriainl.com/Our-Company/Pages/Shareholders.aspx> <laatst bezocht op 29 mei 2017>.

⁵²⁵ Zie bijvoorbeeld Nigeria Update 20 mei 1994 (productie 93); Nigeria Update van Anderson, 16 oktober 1995 (productie 120), waarin hij over het NLNG-project stelt “I have kept you informed of progress during this week”.

⁵²⁶ WA is de verantwoordelijke voor Western Africa in de *service company*, op dat moment Dick van den Broek. PA slaat op Public Affairs en betreft een functie op groepsniveau.

⁵²⁷ Nigeria Update van Brian Anderson, 25 april 1994 (productie 91), p. 6.

⁵²⁸ Public Deposition Alan Detheridge, 3 februari 2003 (productie 21), p. 42: “I certainly gotten gauged in the discussion during 1994 and 1995”, zie ook p. 21: “there was an item on the CMD agenda that considered the memorandum of understanding, and the proposal, the negotiating strategy that was proposed by SPDC, whether that went to conference, I’m not sure [...] they reviewed it, they asked questions about it and as far as I can recall they considered the strategy sound”.

voorwaarden stelt voorafgaand aan het akkoord gaan met het NLNG-project ten tijde van de *Final Investment Decision* (FID); ook geeft hij aan dat het essentieel is dat het Nigeriaanse regime de aandeelhouders het vertrouwen geeft dat zij de *cash calls* die met het NLNG-project gepaard zullen gaan zal beantwoorden.⁵²⁹

362. De onderhandelingen over het NLNG-project gaan onvermoeid door tijdens het proces.⁵³⁰ Vlak voor aanvang van het proces bezoekt een van de *Managing Directors* van de moedervennootschappen SPDC, waarbij het Ogoni 9-proces en de onderhandelingen over het NLNG-project aan de orde komen.⁵³¹ Ook een maand voor de executies worden de kwesties door beide moedervennootschappen besproken.⁵³² Vier dagen na de executies van de Ogoni 9, en een week later opnieuw, houden de (*Managing Directors* van de) moedervennootschappen een vergadering met PA-verantwoordelijke Brak en SPDC-bestuursleden Van Den Broek en Sprague over het NLNG-project;⁵³³ het project wordt dezelfde maand nog gefinaliseerd.⁵³⁴

8.8.7 Ontmoetingen met het regime in Nigeria en Londen

363. Dat het Nigeriaanse regime te maken had met het Shell-concern als geheel, aangestuurd door de moedervennootschappen, blijkt verder uit het feit dat Dick van den Broek contact onderhield met vertegenwoordigers van het Nigeriaanse regime. Dick van den Broek rapporteerde direct aan één van de *Group Managing Directors*, en zat samen met hen in het bestuur van de Engelse *service company* SIPC. De eerdergenoemde Shonekan, rechterhand van Abacha, heeft meermaals afgesproken met Van den Broek.⁵³⁵ Van den Broek sprak in Londen ook met onder anderen de *Nigerian High Commissioner*, de Minister van Petroleum, de Minister van Financiën en de *Director-General* van Petroleum in Londen.⁵³⁶ Ook Alan Detheridge (*Area Coordinator for Nigeria*) en Tony Brak (*Head of Group Public Affairs*) hebben met de Minister van Petroleum gesproken.⁵³⁷

⁵²⁹ Nigeria Update van Brian Anderson, 23 juli 1995 (productie 116), pp. 2, 5.

⁵³⁰ Op 1 november 1995 update Anderson Shonekan nog over de status van het project, Nigeria Update van Brian Anderson, 2 november 1995 (productie 122), p. 2, op 6 december 1995 geeft Shonekan door dat Abacha erg blij is met het NLNG project, Nigeria Update van Anderson, 6 december 1995 (productie 126), p. 2.

⁵³¹ MGDMB briefing notes van John Barry aan Brian Anderson over het bezoek van Maarten van den Berg (indicator MGDMB), 1 februari 1995 (productie 110).

⁵³² Hierbij wordt gesteld "The trial of Ken Saro Wiwa could well culminate in his conviction", waarna met betrekking tot het NLNG-project wordt overwogen "it was possible that a final investment decision would have to be taken soon": Minutes of Conference, 11 oktober 1995 (productie 119), pp. 12-13.

⁵³³ Privilege log, documentnummer 66 en 80 (de laatste keer zonder Sprague) (productie 198).

⁵³⁴ Zie de website van NLNG, te raadplegen via: <http://www.nlng.com/Our-Company/Pages/The-Plants.aspx> <laatst bezocht op 27 juni 2017>.

⁵³⁵ Telex van Anderson gericht aan Dick van den Broek, 14 november 1995 (productie 123); Anderson stelt in zijn Nigeria Update "I suggest that you Dick contact S [Shonekan] in London and again just base to see what is happening that end", Nigeria Update 6 december 1995 (productie 126), p. 2

⁵³⁶ **Productie 109:** Bericht van Alan Detheridge aan Brian Anderson, 10 november 1994; **productie 112:** Interne memo van Alan Detheridge aan Brian Anderson, 16 maart 1995. Zie ook Public Deposition Richard van den Broek, 17 februari 2003 (productie 19), pp. 58-61, 72-78.

⁵³⁷ Bericht van Alan Detheridge aan Brian Anderson over een meeting met de "Hon. Minister", 10 november 1994 (productie 109); Public Deposition Alan Detheridge, 3 februari 2003 (productie 21), p. 41-43.

364. Volgens Herkströter, de voorzitter van het bestuur van de Nederlandse moederverenootschap en het CMD, was het binnen de Shell-groep normaal dat *“personnel employed by the group would meet with Nigerian officials and discuss events in Nigeria in the absence of representatives of SPDC”*.⁵³⁸
365. De *service companies* coördineerden hun mediabeleid met betrekking tot het proces zelfs met het Nigeriaanse regime. Dit blijkt uit een meeting tussen onder anderen Dick van den Broek, Alan Detheridge, Tony Brak en de *High Commissioner* en leger- en politievertegenwoordigers van het Nigeriaanse regime in *Shell-centre* in Londen.⁵³⁹ Wanneer de *Nigerian High Commissioner* voorstelt om een *“television/radio/press/leaflet-campaign”* te beginnen, weerhoudt Shell hem daarvan en legt haar eigen PA-strategie voor. Als de film die Shell wil maken wordt besproken, laat de *High Commissioner* niet na te stellen dat *“if [Shell] encountered any difficulties (with respect to permits, etc) in shooting the film we were to contact him and he would then “use his influence”*.” De conclusie van de bijeenkomst: *“I think that [the High Commissioner] came away with the impression that we were taking the appropriate action”*.⁵⁴⁰

8.9 Conclusie

366. Medeplichtigheid wordt naar Nigeriaans recht uit de handelwijze van betrokken partijen afgeleid. Blijkens de door Okafor besproken jurisprudentie kan daarbij een rol spelen dat:
- partijen zich hebben verenigd met een gemeenschappelijk doel en/of;
 - een partij de andere partij heeft ondersteund en/of;
 - een partij de andere partij heeft aangespoord of uitgelokt.⁵⁴¹
367. In casu is elk van deze omstandigheden van toepassing. In dit hoofdstuk is omschreven hoezeer Shell en het Nigeriaanse regime met elkaar waren verweven, en hoe intensief zij samenwerkten teneinde de olieopbrengsten in Nigeria te optimaliseren. Ten behoeve van dat doel werd de samenwerking geïntensiveerd toen de vrijheidsbeweging van de Ogoni in de jaren negentig haar opmars maakte en de oliewinning door Shell bedreigde.
368. Voor de terugkeer van Shell naar Ogoniland en de hervatting van de olieproductie aldaar, was noodzakelijk dat de opstand van MOSOP werd gebroken. Shell nam voor lief dat daarbij vele slachtoffers vielen, waaronder Kiobel, Bera, Eawo en Levula. Dat

⁵³⁸ Public Deposition Cornelius Herkströter, 14 april 2004 (productie 28), p. 177-178.

⁵³⁹ **Productie 113**: Record of the meeting held between the high-commissioner Alhaji Abubakar and four senior officials of Shell International Petroleum Company Ltd at Shell Centre, London, 16 maart 1995.

⁵⁴⁰ Interne memo van Detheridge aan Anderson, 16 maart 1995 (productie 112).

⁵⁴¹ Legal Opinion O.C. Okafor, 21 June 2017 (productie 198) en bijvoorbeeld *Akinlade v the State* (2010) LPER 8632 (productie 199), at 12: “One who knowingly, voluntarily and with common intent unites with the principal offender ... partaker of guilt; who aids or assists or is an accessory....who is guilty of complicity...either by being present and aiding and abetting it, or having advised and encouraged it, absent from place when it is committed”; Okafor, p.2: “Complicity can be inferred from the attainment of a common end”.

Shell en het regime zich hadden verenigd ten behoeve van een gemeenschappelijk doel, blijkt onder meer uit het feit dat Shell niet naliet het regime in relatie tot de protesten stelselmatig te wijzen op het gedeelde economische belang bij de olieproductie in Ogoniland (i). Het regime reageerde uit naam van Shell en ten behoeve van haar operaties met het haar kenmerkende disproportioneel geweld (ii). Ogoni die tijdens *Operation Restore Order* werden gearresteerd en gedetineerd, moesten voor hun vrijlating een verklaring ondertekenen dat zij hun protesten tegen Shell zouden staken (iii). Desalniettemin heeft Shell zich op geen enkel moment van het regime of het Ogoni 9-proces gedistantieerd (iv), terwijl zij niet naliet MOSOP en Saro-Wiwa openlijk te bekritisieren (v). Sterker, bij herhaling liet Shell Abacha weten dat zij het regime weliswaar niet openlijk kon steunen, maar dat zij een voortzetting en intensivering van de economische samenwerking nastreefde (vi). Die belofte bezegelde zij onder meer, toen een maand na de executies van de Ogoni 9 het NLNG-project werd beklonken (vii). Mede om het welslagen van dat project niet in gevaar te brengen, coördineerde Shell haar persstrategie rondom het Ogoni 9-proces met het regime (viii). Tijdens het proces gaf Shell fysiek blijk van hun gedeelde positie en doelstelling, toen haar advocaat zich met een *watching brief* voor Shell aan de zijde van de aanklager voegde (ix). Haar beweegredenen waren zonneklaar, toen Brian Anderson aan Owens Wiwa voorstelde dat Shell de uitkomst van het proces zou verhinderen, mits MOSOP haar toon zou matigen (x).

369. Ter verwezenlijking van hun gemeenschappelijke doel werkte Shell nauw met het regime samen en ondersteunde zij het regime, en in het bijzonder Okuntimo, bij hun acties om schoon schip te maken in Ogoniland en tijdens het proces dat uitmondde in de onrechtmatige executie van de Ogoni 9. Shell betaalde onder meer politie-agenten, MOPOL-agenten en mariniers (i); leverde logistieke ondersteuning door voertuigen en faciliteiten ter beschikking te stellen (ii) en schreef zelfs een wapen-tender uit (iii). Zij onderhield met het regime een eigen inlichtingendienst (iv), gaf het regime precieze informatie over de locaties van demonstraties (v) en leende stelselmatig Shell-medewerkers uit aan het Nigeriaanse staatsapparaat (vi). Shell onderhield nauwe contacten met RSISTF-commandant Paul Okuntimo, en betaalde hem voor zijn diensten met het oog op “*a favourable disposition in the future*” (vii). Ten tijde van het Ogoni 9-proces ontving Shell de rechters op haar *compound* (viii) en wisselde haar advocaat informatie uit met de aanklager tijdens het Ogoni 9-proces (ix). Haar advocaat was er ook toen aan getuigen geld en een betrekking bij Shell in het vooruitzicht werd gesteld in ruil voor hun belastende verklaring (x).
370. Gedurende jaren heeft Shell het Nigeriaans regime aangespoord om effectieve(re) maatregelen te nemen die haar terugkeer naar Ogoniland moesten verzekeren. Zij deed dat, ondanks het feit dat zij inmiddels uit ervaring had ondervonden dat het regime bij zijn optredens veelvuldig mensenrechten schond en velen daarbij de dood vonden. Shells aansporingen leidden tot *Operation Restore Order in Ogoniland* en tot het proces waarin negen Ogoni kopstukken definitief werden uitgeschakeld. Al die tijd bleef zij om interventies van het regime verzoeken (i). Steevast wees zij daarbij op de

economische gevolgen van de protesten voor de Nigeriaanse staat (ii). Zij gaf de locaties door waar gedemonstreerd zou worden (iii) en verstreekte het regime aantoonbaar onjuiste informatie over de aard en dreiging van die protesten (iv). Zonder concreet bewijs, en zich ten volle bewust van de consequenties, wees Shell Saro-Wiwa en MOSOP aan als schuldigen voor vernielingen en geweld in Ogoniland (v). Toen die beschuldiging eenmaal had geresulteerd in de onrechtmatige arrestatie en detentie van de Ogoni 9, poogde Shell de gevolgen van haar handelingen niet te corrigeren, maar voerde zij de druk verder op door, onder meer in het NLNG-project, de samenwerking met het regime te intensiveren (vi).

371. Kortom, Shell "*set the machinery in motion*" die leidde tot, onder meer, de dood van de echtgenoten van eiseressen.⁵⁴² Zowel voorafgaand, tijdens, als na afloop van het proces, bepaalde Shell mede hoe de geschiedenis zich zou ontfouwen. Wat Shell in die periode actief heeft ondernomen, heeft uitsluitend bijgedragen aan het lot van de Ogoni 9 en eiseressen.
372. Had Shell al een ander verloop van de geschiedenis – waarvan zij de afloop op voorhand kende – voor ogen gehad, dan was zij in de positie om het regime op andere gedachten te brengen. Dat Shell daartoe in geen enkel stadium van de gebeurtenissen een serieuze poging heeft ondernomen, toont wederom aan dat het regime in werkelijkheid uitvoering gaf aan een wens die door beide partijen werd gedeeld en ondersteund.

9 BEWIJSAANBOD

373. Eiseressen menen in het voorgaande hun stellingen voldoende te hebben onderbouwd en met bewijsstukken te hebben gestaafd. Voor zover uw rechtbank nadere bewijslevering geraden acht, bieden eiseressen aan hun stellingen nader te bewijzen, zonder daarbij enige bewijslast op zich te nemen die niet op hen rust. Daarbij denken zij aan het inschakelen van deskundigen en het horen van getuigen.
374. Onder meer Ledum Mitee, Femi Falana, Olisa Agbakoba, Uche Onyeagucha, Naayone Nkpah, Nick Ashton-Jones, Boniface Ejiogu en Blessing Kpuinen zouden ten overstaan van de rechtbank kunnen verklaren. Daarbij wordt wel opgemerkt dat geen van deze getuigen woonachtig is in Nederland en dat de meesten reeds een verklaring hebben overgelegd.
375. Tot slot zij gewezen op wat hiervoor onder 5.4 is opgemerkt over het bewijsmateriaal dat reeds in de Verenigde Staten werd overgelegd, maar daar als vertrouwelijk is gemarkeerd. Deze documenten hebben vermoedelijk vooral betrekking op Shell's interne communicatie en de relatie met en wijze van aansturing door de moedervernootschap.

⁵⁴² Legal opinion Okafor (productie 198).

10 TOELICHTING OP EIS EN SCHADE

376. Bij een schending van fundamentele rechten komt een rechter naar Nigeriaans recht een ruime beoordelingsmarge toe om te bepalen welke maatregelen in de omstandigheden passend zijn:

"The Preamble to the Fundamental Right Enforcement Rules, 2009 requires that for the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient. An applicant seeking redress for the infringement of this fundamental right is entitled to, in addition to the relief as to declarative and injunctive, award of damages. It is therefore safe to conclude that a finding that a fundamental right of a Nigerian citizen has been infringed upon attracts compensatory damages and in some cases, exemplary damages."⁵⁴³

377. Eiseressen vorderen in deze procedure een verklaring voor recht van onrechtmatigheid en aansprakelijkheid, alsmede een openbare verontschuldiging van Shell.
378. Slachtoffers van een schending van fundamentele rechten maken naar Nigeriaans recht van rechtswege aanspraak op schadevergoeding, zelfs indien geen specifiek bedrag wordt gevorderd:

"[...] The procedure for the enforcement of the Fundamental Human Rights was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed.' So, fundamental rights matters are placed on a higher pedestal than the ordinary civil matter, in which a claim for damages resulting from a proven injury has to be made specifically and proved."⁵⁴⁴

379. Hierbij wordt geen onderscheid gemaakt tussen inbreuken op mensenrechten door de Staat en door andere partijen, zoals Shell:

"The position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals, as in the instant case, such victims have rights against the individual perpetrators of the acts as they would have done against State actions. [...] It follows therefore that in the absence of clear positive prohibition which precludes an individual to assert a violation or invasion of his fundamental right against another individual, a victim of such invasion

⁵⁴³ Jide Arulogun v. Commissioner of Police, Lagos State & ORS (2016) LPELR-40190(CA) (**productie 205**), pp. 13-14, paras. A-A.

⁵⁴⁴ Jide Arulogun v. Commissioner of Police, Lagos State & ORS (2016) LPELR-40190(CA) (**productie 205**), pp. 13-14, paras. A-A.

can also maintain a similar action in a court of law against another individual for his act that had occasioned wrong or damage to him or his property in the same way as an action he could maintain against the State for a similar infraction."⁵⁴⁵

380. In de Nigeriaanse jurisprudentie wordt bij schadevergoeding voor mensenrechtenschendingen een onderscheid gemaakt tussen *compensatory damages* (compenserende schadevergoeding) en *exemplary damages* (punitieve schadevergoeding).⁵⁴⁶ De eerste vorm van schadevergoeding heeft als doel het slachtoffer te compenseren voor de geleden schade. De tweede vorm dient om de dader te straffen en ter voorkoming van recidive. Eiseressen maken aanspraak op beide vormen van schadevergoeding.
381. De schade van eiseressen bestaat uit zowel materiële als immateriële schade, welke naar Nigeriaans recht beide voor vergoeding in aanmerking komen.⁵⁴⁷ Daarnaast kunnen eiseressen vergoeding eisen voor de schade die hun echtgenoten hebben geleden als gevolg van de inbreuk op hun fundamentele rechten.⁵⁴⁸
382. De materiële schade voor eiseressen bestaat onder meer uit gederfd levensonderhoud gedurende het gevangenschap van hun echtgenoten en na hun executie. In alle gevallen was de echtgenoot de kostwinner van het gezin. Daarnaast hebben Esther Kiobel en Victoria Bera Nigeria moeten ontvluchten, waarna hun bezittingen in Nigeria zijn geconfisqueerd door het regime. Ook Blessing Kem Nordu heeft na de executie van haar man huis en haard moeten verlaten nadat zij werd verjaagd door haar dorpsgenoten. Zij heeft haar leven opnieuw moeten opbouwen in een ander dorp in Ogoniland. Esther Kiobel heeft medische kosten moeten maken als gevolg van de mishandeling en aanranding door Shell-protégée Paul Okuntimo.

⁵⁴⁵ *Alhaji Ibrahim Abdulhamid v. Talal Akar & Anor* (2006) LPELR-24(SC) SC.240/2001 (productie 201), pp. 22-23, paras. G-A, A-D.

⁵⁴⁶ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (productie 205), pp. 20-21, Paras. D-B; *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (productie 207), p. 134, paras. B-F, p. 137, paras. C-G; Zie ook *Joseph Odogu v. Attorney-General of the Federation & ORS* (1996) LPELR-2228(SC), SC.58/1993 (productie 206): "Exemplary damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like." (p. 12, paras. A-C); Als onderdeel van *compensatory damages* kunnen ook nog *aggravated damages* worden gevorderd, waarbij de motieven van de gedaagde bij het plegen van de onrechtmatige daad en het verergeren van de schade van belang zijn, zie *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (productie 207), p. 135, paras. C-E: "Aggravated Damages [...] may be awarded where the defendant's motives and conduct were such as to aggravate the injury to the plaintiff. They are a species of compensatory damages in that their purpose is to compensate the plaintiff for the injury to his feelings of dignity and pride and not the injury sustained."

⁵⁴⁷ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (productie 205), pp.14, 16-17; *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (productie 207), pp. 150-151; *Commissioner of Police, Ondo State & Anor v. Festus Ade Obolo* (1989) LPELR-20451(CA) CA/B/175/85 (productie 202), pp. 29-30, paras. F-F.

⁵⁴⁸ Zie hoofdstuk 7.1 en *Mrs. Precious Omonyahuy & Ors v. The Inspector-General Of Police & Ors* (2015) LPELR-25581(CA) (productie 209); *Nosiru Bello v. A.G, Oyo State* (1986) 5 NWLR (Pt.45) 828 (productie 210); *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (productie 207), p. 144, paras. B-E.

383. Zoals gezegd kunnen eiseressen tevens vergoeding claimen voor de schade die hun echtgenoten hebben geleden als gevolg van de onrechtmatige arrestatie en detentie, de onmenselijke behandeling en marteling in detentie, de schending van het recht op een eerlijk proces en de onrechtmatige executie.
384. Eiseressen hebben ook en vooral immateriële schade geleden door het verlies van hun echtgenoten, in de eerste plaats affectieschade die naar Nigeriaans recht voor vergoeding in aanmerking komt.⁵⁴⁹ Esther Kiobel en Victoria Bera zijn bovendien ook zelf het slachtoffer geworden van onrechtmatige detentie, en Esther eveneens van aanranding, mishandeling en een poging tot verkrachting door Shell-protégé Paul Okuntimo.
385. Eiseressen verzoeken de rechtbank om de precieze omvang van deze schadevergoeding in een schadestaatprocedure te laten vaststellen en eisen daartoe thans een verklaring voor recht.⁵⁵⁰
386. Daarnaast kent het Nigeriaans recht de mogelijkheid om een publieke verontschuldiging te eisen bij een inbreuk op mensenrechtenschendingen.⁵⁵¹ Een excuus is een passende maatregel in het licht van de schendingen en de lange weg naar gerechtigheid die eiseressen hebben moeten afleggen. Derhalve wordt thans ook geest dat Shell in het openbaar een verontschuldiging zal uitspreken voor haar rol in de omschreven gebeurtenissen.

⁵⁴⁹ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190 (CA) (productie 205).

⁵⁵⁰ *Ibid.*

⁵⁵¹ Vgl. FREP-rules en *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) CA/L/893/13 (productie 205), pp. 19-20, paras. E-A. Zie ter vergelijking ook Nigerian Constitution 1999, Chapter IV.

11 EIS

Eiseressen verzoeken uw rechtbank om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

- I. voor recht te verklaren dat gedaagden jegens eiseressen onrechtmatig hebben gehandeld en jegens hen hoofdelijk aansprakelijk zijn voor de schade die zij geleden hebben en nog zullen lijden als gevolg van de onrechtmatige gedragingen van gedaagden, welke schade is op te maken bij staat en te vereffenen volgens de wet, een en ander te vermeerderen met de wettelijke rente tot aan de dag der algehele voldoening;
- II. Gedaagden te gebieden binnen 21 dagen na vonnis een publieke verontschuldiging te doen uitspreken door de CEO van Royal Dutch Shell, althans de CEO van SPDC, voor de rol die Shell gespeeld heeft bij de gebeurtenissen die hebben geleid tot de dood van de echtgenoten van eiseressen, en de tekst van deze verklaring duidelijk zichtbaar op haar website te publiceren, op straffe van een dwangsom van € 20.000 per dag (of een ander door uw rechtbank in goede justitie te bepalen bedrag) waarop niet aan dit gebod is voldaan;
- III. gedaagden hoofdelijk te veroordelen tot vergoeding van de buitengerechtelijke kosten;
- IV. gedaagden hoofdelijk te veroordelen in de kosten van dit geding, inclusief de nakosten.

De kosten dezes €80,42

Advocaat

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- 254. Video persconferentie 22 mei 1994

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- 256. Howard W. French, "Nigeria Executes Critic of Regime; Nations Protest", *The New York Times*, 11 November 1995
- 257. Ian Black, Cameron Duodo, Anthony Bevins, Michael Durham en Polly Ghazi, "Shell fuels outrage over Saro-Wiwa with \$ 4 billion Nigerian gas deal", *The Observer*, 12 november 1995.
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- 259. Polly Ghazi, "Shell refused to help Saro-Wiwa unless protest called off", *The Observer*, 19 november 1995.

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- 260. Brief Ken Saro-Wiwa aan President Abacha, 1 november 1993
- 261. Brief Ken Saro-Wiwa aan zijn broer Owens Wiwa, 13 mei 1995

262. Brief van The Inspector General of Police aan Akinluyi, 17 augustus 1994
263. Document van de British High Commission in Lagos over het NLNG-project, januari 1994
264. Document van de British High Commission in Lagos over het NLNG-project, oktober 1994
265. Embassy Cable no. 09ABUJA1907_a, Shell MD discusses the Status of the Proposed Petroleum Industry Bill”, 20 oktober 2009
266. Issue paper Nigeria, Chronology of events January 1992 – February 1995, Immigration and refugee board of Canada
267. Lijst met gezochte MOSOP-leden, 4 maart 1996
268. Price Quotation XM Federal Limited, 1 augustus 1994
269. Price Quotation XM Federal Limited, 18 augustus 1994

13 VERKLARENDE WOORDENLIJST

ATCA	Alien Tort Claims Act, 28 U.S.C. §1350
ATS	Alien Tort Statute, 28 U.S.C. §1350
CMD	Committee of Managing Directors, een overlegorgaan waar de managing directors van de moederverenootschappen samenkwamen.
DMD	Deputy Managing Director en bestuurslid SPDC (Godwin Omene van 1992 – 1994)
EP	Exploration and Production Coordinator (John Jennings in 1991, Mark Moody-Stuart van 1992 – 1995)
EPO	Head of Operations and Liaison SIPM (Robert Sprague 1991 – 1994)
GMB	General Manager Business Development (Emeka Achebe 1992 – 1995)
GME	General Manager East (J.R. Udofia 1991 – 1993, Egbert Imomoh 1993 – 1995)
HoS	Head of State, Nigeria (Sani Abacha vanaf november 1993)
HSE	Head of Security Eastern Division (George Ukpong 1993 - 1995)
HSEE	Manager Health, Safety, Environment, Public Affairs (Precious Omuku 1993 – 1995)
HRW	Human Rights Watch
IA	Shell Industrial Area (Port Harcourt, Nigeria)
MD	Managing Director (SPDC: Philip Watts tot februari 1994, Brian Anderson vanaf februari 1994)
MOPOL/MPF	Mobile Police Force, beruchte mobiele eenheid van het Nigeriaanse regime
MOSOP	Movement for the Survival of Ogoni People, organisatie opgericht in 1990 die strijdt voor de rechten van de Ogoni
NLNG	Nigeria Liquefied Natural Gas Limited
NNPC	Nigerian National Petroleum Corporation
NPF	National Police Force Nigeria
NYCOP	National Youth Council of Ogoni People, jeugdbeweging van MOSOP
OMPADEC	Oil Mineral Producing Areas Development Commission
OPAPCO	Oil Production Area Police Command

PA	Head of Group Public Affairs (Tony Brak 1994 – 1995)
PAMR	<i>Head of Media Relations</i> SIPC (Eric Nickson 1994 – 1995)
PRC	<i>Provisional Ruling Council</i> , de autoriteit die de bevindingen van het Civil Disturbances Special Tribunal moet bevestigen
RDS	Royal Dutch Shell, plc, de moedervenootschap van Shell vanaf 20 juli 2005
RSISTF	<i>Rivers State Internal Security Task Force</i> , een paramilitaire eenheid onder leiding van Paul Okuntimo opgericht voor de <i>Operation Restore Order in Ogoniland</i> , mei 1994
SIPC	Shell International Petroleum Company, een <i>service company</i> van Shell gevestigd in Londen
SIPM	Shell Internationale Petroleum Maatschappij, een <i>service company</i> van Shell gevestigd in Den Haag
SPDC	Shell Petroleum Development Company of Nigeria Ltd
SPY-police	Shells politiedienst in Nigeria, ook wel supernumerary- of Shell police genoemd
SSS	State Security Service, de Nigeriaanse inlichtingen- en veiligheidsdienst
TNP	Trans Niger Pipeline
UNEP	United Nations Environmental Programme
UNPO	Unrepresented Nations and Peoples Organization
WA	Regional Coordinator West-Africa (Richard van den Broek 1992 – 1995)

14 VERKLARENDE PERSONENLIJST

Moederverenootschappen

Naam	1991	1992	1993	1994	1995	Rapporteerde aan
Bergh, Maarten van den	Bestuurslid SPDC	Bestuurslid SPDC Afwisselend: Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	
Herkströter, Cornelius	Group Managing Director (MGDCH)					
Jennings, John	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	In EP functie rapporteerde hij strikt genomen aan zichzelf.
Moody-Stuart, Mark	Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	In EP functie rapporteerde hij strikt genomen aan zichzelf.
Ruiter, Henny de	Group Managing Director (MGDHR)	Group Managing Director MGDHR	Group Managing Director MGDHR			

Service companies

Naam	1991	1992	1993	1994	1995	Rapporteerde aan
Basnett, Mike			Group Security Advisor SIPC (SYCL)	Group Security Advisor SIPC (SYCL)	Group Security Advisor SIPC (SYCL)	
Brak, Tony				Head of Group Public Affairs (PA)	Head of Group Public Affairs (PA)	
Broek, Richard (Dick) van den		Regional Coordinator for Latin America and Africa SIPC (WA) Bestuurslid SIPC Bestuurslid SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Bestuurslid SIPC Bestuurslid SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Bestuurslid SIPC Bestuurslid SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Bestuurslid SIPC Bestuurslid SPDC	Henny de Ruiter tot en met juni 1994, daarna Maarten van den Bergh
Detheridge, Alan	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Dick van den Broek
Kloppenburg, Ruud	Security Advisor SIPM	Security Advisor SIPM	Security Advisor SIPM	Head of Group Security SIPM	Head of Group Security SIPM	
Nickson, Eric				Head of Media Relations SIPC (PAMR)	Head of Media Relations SIPC (PAMR)	
Sprague, Robert (Bob)	Head of Operations and Liaison bij SIPM (EPO) Bestuurslid SPDC	Head of Operations and Liaison bij SIPM (EPO) Bestuurslid SPDC	Head of Operations and Liaison bij SIPM (EPO) Bestuurslid SPDC	Head of Operations and Liaison bij SIPM (EPO) Bestuurslid SPDC	Exploration and Production Coordinator (EP)	Mark Moody-Stuart

SPDC

Naam	1991	1992	1993	1994	1995	Rapporteerde aan
Achebe, Emeka		General Manager for Business Development, Public Affairs en bestuurslid SPDC (GMB)	General Manager for Business Development, Public Affairs en bestuurslid SPDC (GMB)	General Manager for Business Development, Public Affairs en bestuurslid SPDC (GMB)	General Manager for Business Development, Public Affairs en bestuurslid SPDC (GMB)	
Ahize, I.O.				Legal Adviser, East	Legal Adviser, East	
Anderson, Brian				Managing Director and chairman of the board of SPDC	Managing Director and chairman of the board of SPDC	Sprague, Detheridge, Colligan, Van Den Broek
Imomoh, Egbert	Exploration and Production Liaison SIPM	Exploration and Production Liaison SIPM	General Manager East en bestuurslid SPDC vanaf aug 1993 (GME)	General Manager East en bestuurslid Shell (GME)	General Manager East en bestuurslid (GME)	Sprague ten tijde van zijn werk bij SIPM, daarna Watts en Anderson
Lawson-Jack, Steve			Head Public Affairs	Head Public Affairs	Head Public Affairs	Precious Omuku
Omene, Godwin		Deputy Managing Director en bestuurslid SPDC (DMD)	Deputy Managing Director en bestuurslid SPDC (DMD)	Deputy Managing Director en bestuurslid SPDC (DMD)		
Omuku, Precious	Chief Geologist, SPDC	Chief Geologist, SPDC	Manager Health Safety Environment Public Affairs (HSEE)	Manager Health Safety Environment Public Affairs (HSEE)	Manager Health Safety Environment Public Affairs (HSEE)	
Osunde, Osazee	Electoral Officer in the National Electoral Commission	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	George Ukpog
Oteri, Victor	Security Advisor	Security Advisor	Security Advisor	Security Advisor	Security Advisor	
Shonekan, Ernest	Bestuurslid SPDC	Bestuurslid SPDC	Voorzitter van de Civilian Transitional Council, Interim President en rechterhand van Abacha	Rechterhand van Head of State Abacha	Rechterhand van Head of State Abacha	
Udofia, Joshua	General Manager Eastern Division (GME)	General Manager Eastern Division (GME)	General Manager Eastern Division (GME)			
Ukpog, George			Head of Security for	Head of Security for	Head of Security for	Precious Omuku

			the Eastern Division, SPDC a	the Eastern Division, SPDC	the Eastern Division, SPDC	
Watts, Philip	Managing Director and chairman of the board of SPDC	Managing Director and chairman of the board of SPDC	Managing Director and chairman of the board of SPDC	Managing Director and chairman of the board of SPDC (tot 24 februari 1994)	European coordinator for Shell	Sprague, Detheridge, Colligan, Van Den Broek
Wood, Nick				Communications Advisor	Communications Advisor	Emeka Achebe

Nigeriaanse regime

Naam	1991	1992	1993	1994	1995
Abacha, Sani	Minister van Defensie onder Babangida	Minister van Defensie onder Babangida	Head of State Nigeria	Head of State Nigeria	Head of State Nigeria
Abubakar, Alhaji					Nigerian High Commissioner in London, contactpersoon van het Nigeriaanse regime voor SIPC, indicator AAA
Ada-George, Rufus		Governor of Rivers State	Governor of Rivers State		
Ali, Hammid Ibrahim					Lieutenant-Colonel in het Nigeriaanse leger en rechter in het Ogoni 9-proces
Coomassie, Alhaji			Inspector General of the Nigerian Police Force (NPF)	Inspector General of the Nigerian Police Force (NPF)	Inspector General of the Nigerian Police Force (NPF)
Komo, Dauda Musa			Military Administrator Rivers State (vervangt Ada-George)	Military Administrator Rivers State	Military Administrator Rivers State
Okuntimo, Paul	Lid van de Second Amphibious Brigade	Lid van de Second Amphibious Brigade	Head of the Rivers State Internal Security Task Force	Head of the Rivers State Internal Security Task Force	Head of the Rivers State Internal Security Task Force
Shonekan, Ernest	Bestuurslid SPDC	Bestuurslid SPDC	Afwisselend voorzitter van de Civilian Transitional Council van het Nigeriaanse regime, Interim President en rechterhand van Abacha	Rechterhand van Head of State Abacha	Rechterhand van Head of State Abacha

Andere betrokkenen

Naam	Beschrijving
Agbakoba, Olisa	Een van de advocaten van de Ogoni 9, getuige in deze zaak
Arikpo, Etwoa Enyong	Eén van de drie rechters in het Ogoni 9-proces
Ashton-Jones, Nick	Journalist en milieuactivist, getuige in deze zaak
Auta, Ibrahim	Voorzitter van het Civil Disturbances Special Tribunal
Barima Wifa, Victor	Eiser in de Amerikaanse Kiobel-zaak
Bera, Baribor	Een van de Ogoni 9, geëxecuteerd in 1995
Bera, Victoria	Eiseres in deze zaak, weduwe van Baribor Bera
Danwi, Charles	Omgekochte getuige in het Ogoni 9-proces
Douglas, Oronto	Een van de advocaten van de Ogoni 9
Eawo, Blessing	Eiseres in deze zaak, weduwe van Nordu Eawo
Eawo, Nordu	Een van de Ogoni 9, geëxecuteerd in 1995
Ejiogu, Boniface	Rechterhand van Paul Okuntimo, getuige in deze zaak
Falana, Femi	Een van de advocaten van de Ogoni 9, getuige in deze zaak
Idigma, Tony Legbara	Eiser in de Kiobel-zaak
Ikari, Benson	Eiser in de Kiobel-zaak
John Miller, Anslem (Bishop)	Eiser in de Kiobel-zaak
Kiobel, Barinem	Een van de Ogoni 9, geëxecuteerd in 1995
Kiobel, Esther	Eiseres in deze zaak, weduwe van Barinem Kiobel
Kponee, Raphael	Lid van SPY police, en tussen 1991 tot 1998 werkzaam op de Shell Industrial Area, getuige in de Kiobel-zaak
Kunenu, Dule	Eiser in de Kiobel-zaak
Lete Allens, Gbarale	Inwoner van Ogoni-dorp Kpaen, getuige in de Kiobel-zaak
Levula, Charity	Eiseres in deze zaak, weduwe van Paul Levula
Levula, Paul	Een van de Ogoni 9, geëxecuteerd in 1995
Mitee, Ledum	Voormalig (vice-)president MOSOP, verdachte in het Ogoni 9-proces, getuige in deze zaak
Neebani , Princewill Nathan	MOSOP-activist met asielstatus in de Verenigde Staten, getuige in de Kiobel-zaak
Nkpah, Naayone	Omgekochte getuige in het Ogoni 9-proces, getuige in deze zaak
N-Nah, James	Eiser in de Wiwa-zaak
Nwidoh, Vincent	Lid van SPY police, en tussen 1988 en 1994 werkzaam op de Bonny Terminal, getuige in de Kiobel-zaak
Nwidor, Israel	Eiser in de Kiobel-zaak
Nwiyon , Eebu Jackson	Lid van MOPOL tussen augustus 1993 en augustus 1995 en enkele maanden lid van de RSISTF, getuige in de Kiobel-zaak

Okocha, O.C.J.	In 1991 en 1992 Attorney General and Commissioner of Justice van Rivers State, in 1994 en 1995 de advocaat die voor SPDC een watching brief tijdens bij het Ogoni 9-proces
Onyeakucha, Uche	Een van de advocaten van de Ogoni 9, getuige in deze zaak
Saro-Wiwa, Ken	MOSOP president, een van de Ogoni 9, geëxecuteerd in 1995
Siegel, Jordan I.	Associate Professor of Corporate Strategy aan de Michigan Ross School of Business, deskundige in de Kiobel-zaak
Ukala, Emmanuel	Een van de advocaten van de Ogoni 9, getuige in deze zaak
Whyte, Neil	General Manager van Willbros, de contractor van SPDC die de TNP aanlegde
Wiwa, Owens	Broer van Ken Saro-Wiwa, eiser in de Wiwa zaak

15 TIJDSLIJN VAN BELANGRIJKSTE GEBEURTENISSEN

- 1958** Shell begint oliewinning en –productie in Ogoniland
- 1990** MOSOP (Movement for the Survival of the Ogoni People) wordt opgericht door Ken Saro-Wiwa.
- SPDC's vraag om assistentie van de Mobile Police Force tegen demonstraties in het dorp Umuechem leidt tot tientallen doden en bijna vijfhonderd verwoeste huizen.
- 1993** *januari:* minstens 300.000 Ogoni protesteren tegen de gevolgen van de olie-exploitatie door Shell. SPDC ziet zich door de vele demonstraties in Ogoniland genoodzaakt zich terug te trekken.
- januari-februari:* Shell keert onder militaire bescherming terug naar Ogoniland om de Trans Niger Pipeline (TNP) aan te leggen.
- februari:* Meetings in Londen tussen vertegenwoordigers van de service companies en SPDC over de situatie in Ogoniland en de rol van Saro-Wiwa en MOSOP. Zij spreken af “*to keep each other more closely informed to ensure that movements of key players, what they say and to whom is more effectively monitored*”.
- 4 mei:* Gouverneur Ada-George stuurt op verzoek van SPDC een legereenheid naar Ogoniland die op gewelddadige wijze een protest tegen Shell beëindigt. Daarbij vindt één van de demonstranten de dood.
- juli – april 1994:* Honderden Ogoni vinden de dood en duizenden raken dakloos door 'etnische conflicten' waar het leger bij betrokken is en dat logistiek wordt ondersteund door Shell.
- 26 augustus – 17 november:* Ernest Shonekan, voormalig SPDC-bestuurslid, is drie maanden aan de macht.
- oktober:* SPDC gaat onder valse voorwendselen Ogoniland binnen beveiligd door 26 Nigeriaanse militairen onder leiding van Major Paul Okuntimo, teneinde vast te stellen wat voor veiligheidsmaatregelen nodig zouden zijn om de olieproductie in Ogoniland te hervatten. In Korokoro leidt het bezoek tot een gewelddadige confrontatie met de lokale bevolking waarbij twee dorpelingen komen te overlijden.
- 17 november – 8 juni 1998:* Sani Abacha aan de macht. Shonekan fungeert als vice-president.
- november-december:* De Europese Unie kondigt sancties aan tegen Nigeria, onder meer een beperking van de wapenhandel.
- 1 december:* SPDC-Managing Director Philip Watts verzoekt de Nigeriaanse *Police Inspector General* om SPDC's veiligheid te verhogen middels het inzetten van 1.200 politieagenten, bekend als de *Oil Production Area Police Command*. Shell belooft in ruil op te draaien voor de kosten, onder meer salarissen, onderdak, uniformen, automatische wapens en voertuigen.

13 december: Shell wijst Lt. Col. Komo, de *Military Administrator* van Rivers State, in een brief op de economische gevolgen van de protesten in Ogoniland en identificeert de plekken waar wordt gedemonstreerd.

28 december-5 januari: MOSOP-kopstukken Ledum Mitee en Owens Wiwa gedetineerd en Saro-Wiwa onder huisarrest geplaatst om massale protesten tijdens Ogoni Day te voorkomen.

1994 De *Rivers State Internal Security Task Force* (RSISTF) wordt opgericht. Major Paul Okuntimo (later Lt. Col) wordt benoemd als commandant.

25 februari 1994: Shell betaalt Okuntimo en zijn militie een extra toelage voor hun optreden in Korokoro en "*as a show of gratitude and motivation for a sustained favourable disposition towards SPDC in future assignments*".

SPDC onderhandelt met een wapenhandelaar naar keuze van het Nigeriaanse regime over de import van wapens voor meer dan een half miljoen dollar.

Tussen SPDC, de service companies en de moederverenootschappen vindt intensieve uitwisseling plaats over onder meer de wapenaanschaf, onrusten in Ogoniland en Ken Saro-Wiwa.

19 april: Egbert Imomoh (*General Manager East SPDC*) heeft een ontmoeting met Lt. Col. Komo, de *Military Administrator* van Rivers State.

21 april: Het regime kondigt intern *Operation Restore Order in Ogoniland* aan.

2 mei: Managing Director Brian Anderson wijst in een gesprek met Abacha de Ogoni en Saro-Wiwa aan als verantwoordelijken voor de vernieling van Shell-faciliteiten in Ogoniland.

12 mei: Okuntimo schrijft in zijn 'restricted' memo aan Komo: "*Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence*".

21 mei: In Gokana worden vier Ogoni-leiders vermoord.

22 mei: Vele Ogoni-kopstukken – waaronder Ken Saro-Wiwa en Barinem Kiobel – worden op bevel van Komo gearresteerd en zonder aanklacht gedetineerd.

mei-augustus: De RSISTF onderneemt strafexpedities in ten minste zestig dorpen in Ogoniland waarbij talloze mensen worden mishandeld, vermoord en huizen worden geplunderd en vernietigd. Honderden Ogoni's worden gearresteerd en gedetineerd in RSISTF-detentiefaciliteiten.

November: Oprichting van het *Ogoni Civil Disturbances Special Tribunal* om de Ogoni-kopstukken te berechten voor de moord op vier Ogoni-leiders.

1995 *6 februari:* Aanvang van het Ogoni 9-proces. Advocaat Okocha meldt zich met een *watching brief* voor SPDC.

16 en 27 februari: Twee getuigen verklaren onder ede dat zij zijn omgekocht om belastende verklaringen af te leggen in ruil voor geld en een baan bij Shell. Shells advocaat Okocha is volgens de getuigen aanwezig bij de omkoping.

16 maart: Ontmoeting in Londen tussen Shell-officials en vertegenwoordigers van het Nigeriaanse regime. Afspraak om mediabeleid omtrent het Ogoni 9-proces te coördineren.

maart: Shell richt de *Nigeria Issue Contact Group* op om een *Group Wide Action Plan* te implementeren.

16 april: Anderson spreekt in een interne memo de verwachting uit dat Saro-Wiwa ter dood zal worden veroordeeld.

april-mei: Anderson onderhandelt in drie meetings met Owens Wiwa over het lot van de verdachten in het Ogoni 9-proces. Anderson biedt aan de uitkomst van het Ogoni 9-proces te beïnvloeden als MOSOP haar internationale protesten staakt. Ken Saro-Wiwa slaat Shells aanbod vanuit de gevangenis af.

juni: Onafhankelijk waarnemer Birnbaum publiceert een vernietigend rapport over mensenrechtenschendingen bij het Ogoni 9-proces.

22 juni: De advocaten van de verdachten in het Ogoni 9-proces trekken zich uit protest terug.

23 juli: Anderson en Abacha spreken met elkaar over de achterstallige betalingen van het regime en toekomstige projecten. Anderson legt Abacha uit dat Shell het regime vanwege de internationale druk niet openlijk kan steunen.

31 oktober: Negen van de vijftien verdachten worden ter dood veroordeeld door het Special Tribunal.

10 november: De veroordeelden, onder wie Barinem Kiobel, Baribor Bera, Nordu Eawo en Paul Levula, worden ter dood gebracht.

november-december: de internationale gemeenschap legt sancties op aan Nigeria. De Wereldbank trekt zich uit projecten in Nigeria.

november-december: het NLNG-project, een samenwerking tussen - vooral - Shell en het regime, wordt beklonken.

8 december: Abacha bedankt Anderson voor het feit dat "*Shell had remained steady under pressure*" en spreekt zijn vreugde uit over de NLNG-deal.

- 1996** *8 november:* Verschillende nabestaanden van o.a. Saro-Wiwa en slachtoffers van het geweld in Ogoniland dagen Shell voor de Amerikaanse rechter.
- 2002** *1 september:* Esther Kiobel en elf andere (nabestaanden van) Nigeriaanse activisten uit het Ogoni-gebied dagen Shell voor de Amerikaanse rechter.
- 2009** Shell schikt met de eisers in de Amerikaanse Wiwa-procedure voor een bedrag van \$15,5 miljoen.
- 2013** Het Hooggerechtshof van Amerika beslist dat er in de Amerikaanse Kiobel-zaak geen rechtsmacht is.

**Prakken
d'Oliveira**



DAGVAARDING

Heden, de **achtentwintigste juni** tweeduizendzeventien, op verzoek van

- (1) mw. **Esther Duke Kiobel**, woonachtig te Dallas, Verenigde Staten van Amerika,
- (2) mw. **Victoria Bera**, woonachtig te Winnipeg, Canada,
- (3) mw. **Blessing Ken Nordu**, woonachtig te Giokoo, Gokana, Nigeria en
- (4) mw. **Charity Vureka Levula**, woonachtig te Bomu, Gokana, Nigeria,

allen te dezer zake woonplaats kiezende te Amsterdam (1092 CK) aan de Linnaeusstraat 2A ten kantore van Prakken d'Oliveira *Human Rights Lawyers*, van welk kantoor mr. Ch. Samkalden en mr. T. de Boer deze zaak behandelen en tot advocaat worden gesteld;

Heb ik

Maarten Koper, als toegevoegd gerechtsdeurwaarder werkzaam ten kantore van mr. Erik Jozef Maria van Hal, gerechtsdeurwaarder te 's-Gravenhage en aldaar kantoorhoudende aan het Nassauplein 21;

Met dien verstande dat de producties niet worden meebetekend, maar tijdig in het geding zullen worden gebracht,

gedagvaard:

- (1) de rechtspersoon naar vreemd recht **Royal Dutch Shell, plc**, statutair gevestigd te Engeland en Wales en kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan:

J.C. van Beckhoven, aldaar werkzaam

- (2) de naamloze vennootschap **Shell Petroleum N.V.** gevestigd te Den Haag, een rechtsopvolgster onder algemene titel van de naamloze vennootschap N.V. Koninklijke Nederlandsche Petroleum Maatschappij, kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan:

voormeld adres in gesloten envelop met daarop de vermelding als wettelijk voorgeschreven, omdat ik aldaar niemand aantrof aan wie rechtsgeldig afschrift kon worden gelaten

- (3) de rechtspersoon naar vreemd recht **the Shell Transport and Trading Company, limited**, gevestigd te Londen, Verenigd Koninkrijk en kantoorhoudende aan het Shell Centre te Londen, SE1 7NA, Verenigd Koninkrijk,

**Prakken
d'Oliveira**

waartoe ik, deurwaarder, uit kracht van art. 56 van het wetboek van Burgerlijke Rechtsvordering in mijn hoedanigheid van verzendende instantie als bedoeld in de Uitvoeringswet van de EG-Verordening nr 1393/2007 van de Raad van Europese Unie van 13 november 2007 (EU betekenisverordening), heden twee afschriften dezes heb verzonden naar de ontvangende instantie in Londen, Verenigd Koninkrijk, te weten:

Royal Courts of Justice
Room E16 Strand
WC2A 2LL Londen
Verenigd Koninkrijk

deze verzending heeft plaatsgevonden door middel van aangetekende post;

bijgevoegd is een vertaling van deze dagvaarding in de Engelse taal;

het formulier als bedoeld in art. 4, derde lid van genoemde verordening is door mij, deurwaarder ingevuld in de Engelse taal;

aan de ontvangende instantie heb ik verzocht om deze dagvaarding aan gerekwireerde te betekenen op de wijze als onder 5 in het hiervoor genoemde formulier "aanvraag om betekening en kennisgeving van stukken" omschreven, te weten betekening volgens de wet van de aangezochte staat (5.1 formulier) en mij, met het certificaat van betekening als bedoeld in art. 10 van genoemde verordening, één afschrift van het stuk terug te zenden afschrift van dit exploit, vergezeld van een vertaling in de Engelse taal wordt vandaag tevens per Fedex aan gerekwireerde toegezonden, onder mededeling dat de ontvangst van dit stuk kan worden geweigerd indien dit niet gesteld is in de Engelse taal, of een taal die gerekwireerde begrijpt, en dat het stuk bij weigering binnen een week vergezeld van het ingevulde formulier dient te worden geretourneerd aan mij gerechtsdeurwaarder;

(4) de rechtspersoon naar vreemd recht Shell Petroleum Development Company of Nigeria, limited,

gevestigd te Port Harcourt, Rivers State, Nigeria, kantoorhoudende aan de Rumuobiakani, Shell Industrial Area, P.O. Box 263,

mitsdien mijn exploit doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Den Haag aan de Prins Clauslaan 60 en twee afschriften dezes alsmede van vertaling hiervan in de Engelse taal latende aan:

aldaar werkzaam;

wordende afschrift dezes tevens per Fedex aan gerekwireerde toegezonden

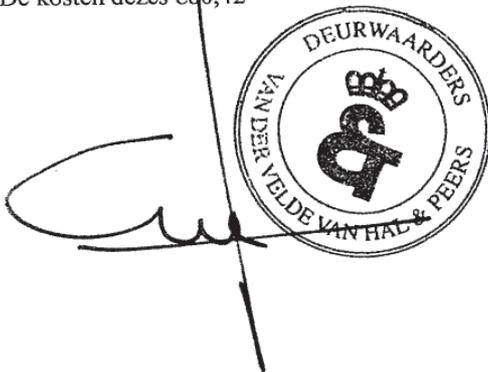
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11 EIS

Eiseressen verzoeken uw rechtbank om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

- I. voor recht te verklaren dat gedaagden jegens eiseressen onrechtmatig hebben gehandeld en jegens hen hoofdelijk aansprakelijk zijn voor de schade die zij geleden hebben en nog zullen lijden als gevolg van de onrechtmatige gedragingen van gedaagden, welke schade is op te maken bij staat en te vereffenen volgens de wet, een en ander te vermeerderen met de wettelijke rente tot aan de dag der algehele voldoening;
- II. Gedaagden te gebieden binnen 21 dagen na vonnis een publieke verontschuldiging te doen uitspreken door de CEO van Royal Dutch Shell, althans de CEO van SPDC, voor de rol die Shell gespeeld heeft bij de gebeurtenissen die hebben geleid tot de dood van de echtgenoten van eiseressen, en de tekst van deze verklaring duidelijk zichtbaar op haar website te publiceren, op straffe van een dwangsom van € 20.000 per dag (of een ander door uw rechtbank in goede justitie te bepalen bedrag) waarop niet aan dit gebod is voldaan;
- III. gedaagden hoofdelijk te veroordelen tot vergoeding van de buitengerechtelijke kosten;
- IV. gedaagden hoofdelijk te veroordelen in de kosten van dit geding, inclusief de nakosten.

De kosten dezes €80,42



A handwritten signature in black ink is written over a circular stamp. The stamp contains the text 'DEURWAARDERS' at the top, 'VAN DER VELDE VAN HAL & PEERS' around the bottom edge, and a central logo featuring a crown above a stylized 'S' and 'P'.



A handwritten signature in black ink is written above the word 'Advocaat'.

**Prakken
d'Oliveira**



DAGVAARDING

Heden, de **achtentwintigste juni** tweeduizendzeventien, op verzoek van

- (1) mw. **Esther Duke Kiobel**, woonachtig te Dallas, Verenigde Staten van Amerika,
 - (2) mw. **Victoria Bera**, woonachtig te Winnipeg, Canada,
 - (3) mw. **Blessing Ken Nordu**, woonachtig te Giokoo, Gokana, Nigeria en
 - (4) mw. **Charity Vureka Levula**, woonachtig te Bomu, Gokana, Nigeria,
- allen te dezer zake woonplaats kiezende te Amsterdam (1092 CK) aan de Linnaeusstraat 2A ten kantore van Prakken d'Oliveira *Human Rights Lawyers*, van welk kantoor mr. Ch. Samkalden en mr. T. de Boer deze zaak behandelen en tot advocaat worden gesteld;

Heb ik

Mr. Erik Jozef Maria van Hal,
gerechtsdeurwaarder gevestigd te 's-Gravenhage
en daar kantoorhoudende aan het Massauwplein 21

Met dien verstande dat de producties niet worden meebetekend, maar tijdig in het geding zullen worden gebracht,

gedagvaard:

- (1) de rechtspersoon naar vreemd recht **Royal Dutch Shell, plc**, statutair gevestigd te Engeland en Wales en kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan: *enr.*
- (2) de naamloze vennootschap **Shell Petroleum N.V.** gevestigd te Den Haag, een rechtsopvolgster onder algemene titel van de naamloze vennootschap N.V. Koninklijke Nederlandsche Petroleum Maatschappij, kantoorhoudende te Den Haag, aan de Carel van Bylandtlaan 30 (2596 HR), aldaar aan haar kantooradres mijn exploit doende en een afschrift dezes latende aan: *enr.*
- (3) de rechtspersoon naar vreemd recht **the Shell Transport and Trading Company, limited**, gevestigd te Londen, Verenigd Koninkrijk en kantoorhoudende aan het Shell Centre te Londen, SE1 7NA, Verenigd Koninkrijk,

waartoe ik, deurwaarder, uit kracht van art. 56 van het wetboek van Burgerlijke Rechtsvordering in mijn hoedanigheid van verzendende instantie als bedoeld in de Uitvoeringswet van de EG-Verordening nr 1393/2007 van de Raad van Europese Unie van 13 november 2007 (EU betekenisverordening), heden twee afschriften dezes heb verzonden naar de ontvangende instantie in Londen, Verenigd Koninkrijk, te weten:

Royal Courts of Justice
Room E16 Strand
WC2A 2LL Londen
Verenigd Koninkrijk

deze verzending heeft plaatsgevonden door middel van aangetekende post;

bijgevoegd is een vertaling van deze dagvaarding in de Engelse taal;

het formulier als bedoeld in art. 4, derde lid van genoemde verordening is door mij, deurwaarder ingevuld in de Engelse taal;

aan de ontvangende instantie heb ik verzocht om deze dagvaarding aan gerkwireerde te betekenen op de wijze als onder 5 in het hiervoor genoemde formulier "aanvraag om betekening en kennisgeving van stukken" omschreven, te weten betekening volgens de wet van de aangezochte staat (5.1 formulier) en mij, met het certificaat van betekening als bedoeld in art. 10 van genoemde verordening, één afschrift van het stuk terug te zenden afschrift van dit exploit, vergezeld van een vertaling in de Engelse taal wordt vandaag tevens per Fedex aan gerkwireerde toegezonden, onder mededeling dat de ontvangst van dit stuk kan worden geweigerd indien dit niet gesteld is in de Engelse taal, of een taal die gerkwireerde begrijpt, en dat het stuk bij weigering binnen een week vergezeld van het ingevulde formulier dient te worden geretourneerd aan mij gerechtsdeurwaarder;

(4) de rechtspersoon naar vreemd recht **Shell Petroleum Development Company of Nigeria, limited**,

gevestigd te Port Harcourt, Rivers State, Nigeria, kantoorhoudende aan de Rumuobiakani, Shell Industrial Area, P.O. Box 263,

mitsdien mijn exploit doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Den Haag aan de Prins Clauslaan 60 en twee afschriften dezes alsmede van vertaling hiervan in de Engelse taal latende aan:



aldaar werkzaam;

wordende afschrift dezes tevens per Fedex aan gerkwireerde toegezonden

11 EIS

Eiseressen verzoeken uw rechtbank om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

- I. voor recht te verklaren dat gedaagden jegens eiseressen onrechtmatig hebben gehandeld en jegens hen hoofdelijk aansprakelijk zijn voor de schade die zij geleden hebben en nog zullen lijden als gevolg van de onrechtmatige gedragingen van gedaagden, welke schade is op te maken bij staat en te vereffenen volgens de wet, een en ander te vermeerderen met de wettelijke rente tot aan de dag der algehele voldoening;
- II. Gedaagden te gebieden binnen 21 dagen na vonnis een publieke verontschuldiging te doen uitspreken door de CEO van Royal Dutch Shell, althans de CEO van SPDC, voor de rol die Shell gespeeld heeft bij de gebeurtenissen die hebben geleid tot de dood van de echtgenoten van eiseressen, en de tekst van deze verklaring duidelijk zichtbaar op haar website te publiceren, op straffe van een dwangsom van € 20.000 per dag (of een ander door uw rechtbank in goede justitie te bepalen bedrag) waarop niet aan dit gebod is voldaan;
- III. gedaagden hoofdelijk te veroordelen tot vergoeding van de buitengerechtelijke kosten;
- IV. gedaagden hoofdelijk te veroordelen in de kosten van dit geding, inclusief de nakosten.

De kosten dezes €80,42




Advocaat

EXHIBIT B

**Prakken
d'Oliveira**

WRIT OF SUMMONS:

On this day of two thousand and seventeen, at the request of

- (1) Mrs **Esther Duke Kiobel**, of Dallas, United States of America
- (2) Mrs **Victoria Bera**, of Winnipeg, Canada,
- (3) Mrs **Blessing Ken Nordu**, of Giokoo, Gokana, Nigeria and
- (4) Mrs **Charity Vureka Levula**, of Bomu, Gokana, Nigeria,

all choosing their address for service in this matter at Linnaeusstraat 2A in Amsterdam (1092 CK) at the offices of Prakken d'Oliveira, Human Rights Lawyers, of which firm Ms. Ch. Samkalden and Mr. T. de Boer are handling this case and acting as counsel;

I,

With the proviso that the exhibits will not be served together with the summons, but will be submitted into the proceedings in a timely fashion,

have summoned:

(1) the legal entity under foreign law **Royal Dutch Shell, plc**, with its registered office in England and Wales in accordance with the articles of association and its registered office in The Hague, at Carel van Bylandtlaan 30 (2596 HR), serving my writ there at its office address and leaving a copy of this writ with:

(2) the public company **Shell Petroleum N.V.**, with registered office in The Hague, a successor by universal title of the public company N.V. Koninklijke Nederlandsche Petroleum Maatschappij, with registered office in The Hague, at Carel van Bylandtlaan 30 (2596 HR), serving my writ there at its office address and leaving a copy with:

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(3) the legal entity under foreign law **the Shell Transport and Trading Company, limited**, with its registered office in London, United Kingdom and its principal place of business at the Shell Centre in London, SE1 7NA, United Kingdom,

for which I, bailiff, pursuant to Section 56 of the Dutch Code of Civil Procedure, in my capacity as transmitting agency as referred to in the Implementing Act of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 (EU Service Regulation), have on this day transmitted two copies of this writ to the receiving agency in London, United Kingdom, that is:

Royal Courts of Justice
Room E16 Strand
WC2A 2LL London
United Kingdom

this transmission has taken place by registered post;

an English translation of this summons is attached;

the form referred to in Article 4(3) of the above Regulation has been completed in English by me, bailiff;

I have asked the receiving agency to serve this summons on the respondent in the manner described under 5 in the above “request for service of documents” form, that is service according to the law of the state addressed (form 5.1) and to return to me, with the certificate of service referred to in Article 10 of the above Regulation, one copy of the copy of this writ to be returned, accompanied by an English translation, also transmitted to the respondent on this day by Fedex, giving notice that receipt of this document may be refused if it is not in English, or a language that the respondent understands, and that in the event of refusal the document must be returned to me, bailiff, within one week, accompanied by the completed form

(4) the legal entity organised under foreign law **Shell Petroleum Development Company of Nigeria, limited**,

with registered office in Port Harcourt, Rivers State, Nigeria, and principal place of business at Rumuobiakani, Shell Industrial Area, P.O. Box 263,

therefore serving my writ at the Public Prosecutor’s Office at the Court of The Hague at Prins Clauslaan 60 and leaving two copies of this writ and an English translation with:

employed at this office

and also sending a copy of this writ to the respondent by Fedex

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to:

appear, not in person but represented by counsel, at the hearing of the District Court of The Hague in the law courts at Prins Clauslaan 60 in The Hague on Wednesday the eleventh day of October 2017 at 10:00 a.m.;

with the express notification that:

- a. if a defendant fails to appoint counsel or fails to pay the court fee referred to below on time, and the prescribed time limits and formalities have been observed, the court will declare the defendant to be in default of appearance and will allow the claim described below, unless it finds that the claim is not justified or unfounded;
- b. if at least one of the defendants appears at the proceedings and has paid the court fee on time, one judgment will be given between all the parties, which will be regarded as a judgment in a defended action;
- c. on appearance of the defendant at the proceedings a court fee will be levied, to be paid within four weeks from the date of appearance;
- d. the amount of the court fees is given in the latest schedule to the Court Fees (Civil Cases) Act, which can for instance be found on the website: www.kbvg.nl/griffierechtentabel
- e. a court fee for persons of limited means determined by or pursuant to the law will be levied on a person of limited means if on the date on which the court fee is levied he has submitted:
 - a copy of the decision to assign counsel referred to in Section 29 of the Legal Aid Act or, if this is not possible by reason of circumstances that cannot reasonably be attributed to him, a copy of the application referred to in Section 24(2) of the Legal Aid Act, or
 - a statement of the board of the legal aid council referred to in Section 7(3)(e) of the Legal Aid Act showing that his income does not exceed the incomes referred to in the order in council pursuant to Section 35(2) of that Act;
- f. under Section 15 of the Court Fees (Civil Cases) Act, a joint court fee is levied once only on defendants who appear by the same counsel and deliver identical statements or put up an identical defence;

in order to hear the following claim put forward at this hearing:

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1. INTRODUCTION.

1. In this case four Nigerian widows hold Shell liable for the unlawful detention and execution of their husbands in 1995 and the damage they have suffered in connection with those events.
2. On 10 November 1995 the military regime in Nigeria hanged dr. Barinem Kiobel, Ken Saro-Wiwa, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levula, Felix Nuate, Baribor Bera, and John Kpuinen – together usually known as the ‘Ogoni 9’. The international community described their deaths as “judicial murder”; in the preceding show trial the fundamental rights of all concerned were frequently violated and elementary principles of the proper administration of justice were ignored.
3. Shell played a crucial role in the events leading to the deaths of the Ogoni 9. In this summons the claimants argue that Shell is an accessory to the violation of (inter alia) their husbands’ right to life, their right to a family life and their right to personal dignity and integrity.
4. Having taken Shell to court in the United States, surviving relatives of Saro-Wiwa, Dobe, Gbooko, Nuate and Kpuinen agreed an out-of-court settlement with Shell in 2009; Shell paid this group a sum of 15.5 million dollars. Kiobel too tried to bring her case before the court in the United States. In 2013 the Supreme Court declared itself incompetent in this regard. The claimants have to date been deprived of a judgment or settlement.
5. This summons consists of the following. The next chapter introduces the claimants and defendants in detail. Chapter 3, for a good understanding of the case, gives a brief description of the background against which the events in Nigeria unfolded in the 1990s. Chapter 4 describes the course of events surrounding the Ogoni 9 trial in 1994-1995 and therefore contains the facts forming the basis for the claimants’ claim. Chapter 5 takes a brief look at the trials previously held in the United States in this matter. Chapter 6 discusses the international competence of the Dutch court, while chapter 7 sets out the scope and content of Nigerian law. Chapter 8 contains further details of Shell’s complicity. In chapter 8.2 and 8.3 there is first an account of how Shell kept encouraging the regime to act and clear things up in Ogoniland, while knowing that this had already given rise to many fatalities and casualties. Chapter 8.4 shows the existence of a deep entanglement between the regime and Shell, so that nothing effectively happened without the knowledge and support of the other party: Shell paid the army and police, made vehicles and other facilities available and itself issued a tender for arms; Shell and the regime also ran a joint intelligence service and operated a revolving door policy. Although Shell itself publicly claimed that it did not want to take a political position, it certainly did not in fact follow an apolitical course – certainly not where the role of MOSOP was concerned (8.5). Shell also actively involved itself in the course of events during the trial (8.6 and 8.7); it delegated its own counsel, who in turn was involved with the bribery of witnesses; it received the judges who sat on the tribunal; it

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even offered to influence the outcome of the trial, provided that Saro-Wiwa moderated his tone (which he refused). The Ogoni 9 trial was unmistakably a show trial, whose tragic outcome was fixed in advance and was also known to Shell. Shell had the perfect opportunity and was perfectly placed to prevent the deaths of the claimants' husbands, but instead put its economic interests first and even carried on negotiating future projects with the regime during the trial (8.8). Chapter 8.9 shows that Shell operated continuously as one company in this regard, both SPDC and the parent companies effectively taking action and SPDC always being managed from the parent companies. The chapter ends with a conclusion (8.10), which briefly summarises why these circumstances lead to liability for complicity as set out in chapter 7.1. Chapters 9, 10 and 11 successively cover the offer of proof, the explanation of the claims and the claim for relief. For the sake of readability, the summons concludes with a list of abbreviations used, an explanatory list of persons and a timeline.

2. THE PARTIES

6. The claimants are the widows of four men who were members of the so-called "Ogoni 9", the group of Ogoni who were executed on 10 November 1995 following a show trial.
7. The defendants are all members of the Shell group of companies. They played a crucial role in the events leading to the death of the Ogoni 9.

2.1 Esther Kiobel

8. Esther Duke Kiobel (claimant) was born in Port Harcourt, Rivers State, Nigeria, on 1 April 1964. She is a Nigerian citizen and also has American nationality.
9. Esther Kiobel is the widow of dr. Barinem Nubari Kiobel, whom she married on 29 January 1991.¹² Barinem Kiobel was one of the nine men executed on 10 November 1995 by the Nigerian regime at the time following a show trial. During her husband's trial Esther Kiobel was herself the victim of unlawful detention and assault by army leader Paul Okuntimo, who was supported by Shell.
10. Following the execution of her husband Esther Kiobel fled to Benin, where she was granted refugee status on 13 September 1996.³ She resettled in the United States in February 1998, where she still lives and works today. In 2007, Esther graduated from Des Moines Area Community College, where she studied Science and Humanity. Esther currently works in the medical field as nurse.

¹ **Exhibit 1:** Affidavit of marriage, 8 mei 1991

² For the sake of clarity, the exhibits in the list of exhibits (Chapter 12) have been arranged by type and alphabetically; that is why the exhibits are not consecutively numbered in the text of the summons. The exhibits are printed in bold the first time they are mentioned.

³ **Exhibit 14:** Statement of the Benin Interior Ministry, 13 September 1996.

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2.1.1 *Dr. Barinem Nubari Kiobel*

11. Barinem Kiobel was born in Kpor, Rivers State, Nigeria, on 23 September 1959. Between 1979 and 1992 he lived in the United Kingdom, where he obtained a doctorate at the University of Glasgow. In 1992 he returned to Nigeria, where he accepted a senior lecturer position at the University of Science and Technology in Port Harcourt. **Exhibit 4** contains the Curriculum Vitae of dr. Barinem Nubari Kiobel.
12. After a year at the university Kiobel became chairman of the Publicity Committee of Kilsa Gokana, a group of prominent local residents dedicated to the development of this region, one of the six kingdoms of Ogoniland. From this position he became aware of the prevailing discontent about Shell and the regime among the Ogoni and he maintained contacts with all the parties concerned.
13. In January 1994, four months before his arrest, Kiobel became Honourable Commissioner of the Ministry of Trade, Industry and Tourism of Rivers State province. In this role he once again acted as a link between the government and the Ogoni. It was how he made a meeting possible between Lt. Col. Komo and seven Ogoni leaders.⁴
14. Kiobel was not actively involved in MOSOP. During his work as Commissioner however he did express criticism of the regime's actions in Ogoniland at various meetings. He also sought attention for MOSOP's demands on Shell and the regime.⁵ As a result of his presence at these meetings Kiobel was also aware of the regime's plan to intervene in Ogoniland with force, about which he openly disagreed with Lt. Col. Komo.⁶
15. In 1994 Kiobel forwarded a critical letter from the United States Congressional Human Rights Caucus to Lt. Col. Komo (**exhibit 3**). The letter from the American Congress included the following:

“We understand that the Rivers State Commissioner of Police issued a memo on April 21, 1994, outlining a plan for the Nigerian Army, Air Force, Navy, and Police to occupy the Ogoni territory to ‘restore and maintain law and order in Ogoniland and apprehend intruders who may wish to use the period to ferment further disturbances’. We are concerned about the safety of the Ogoni people especially unarmed civilians [...]. We ask you to do everything in your power to bring an end to human rights violations against the Ogoni people”.⁷

⁴ **Exhibit 2: Letter** to Barinem Kiobel, 5 May 1994 (Exhibit 2).

⁵ **Exhibit 37:** Public Deposition Esther Kiobel, vol. II, 5 December 2003, pp. 174, 362, 383-384; **Exhibit 51:** Public Deposition Precious Sotonye Omuku, 19 April 2004, pp. 140-141

⁶ Public deposition Esther Kiobel vol. II, 5 December 2003, p. 362 (exhibit 37).

⁷ Letter to Barinem Kiobel and letter from the U.S. Congressional Human Rights Caucus, 6 May 1994 (exhibit 3). The enclosed handwritten letter states: “Doc, Here are two copies of the U.S. Congressional letter stopping the proposed military occupation of Ogoni. Please keep one copy and send one copy to his Excellency the Military Administrator”.

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16. According to Esther Kiobel, it was this critical attitude that her husband as a relative newcomer adopted towards Shell and the regime that ultimately ensured he was picked up with the leaders of MOSOP on 22 May 1994 and was then tried at the Ogoni 9 trial. Kiobel was executed on 10 November 1995.

2.2 Victoria Bera

17. Victoria Bera (claimant) was born in Bori, Rivers State, Nigeria, on 10 October 1970. She is a Nigerian citizen and also has Canadian nationality.
18. Victoria is the widow of Baribor Bera, whom she married in Nigeria on 26 December 1990. Baribor was also executed by the Nigerian regime on 10 November 1995. Victoria was herself also unlawfully detained during the show trial leading to these executions.
19. Following the execution of her husband, Victoria Bera fled to Benin, with their child, who was born on 2 March 1995 during the Ogoni 9 trial. UNHCR granted her refugee status there and two years later she resettled in Canada, where she is still living today. She attended a training course in Canada and is currently working as a nurse.

2.2.1 Baribor Bera

20. Baribor Bera was born in Bera, Nigeria, in 1964. He worked as a mechanic and engineer. From the outset Baribor was a prominent member of MOSOP and NYCOP. With these organisations he fought for better conditions in Ogoniland and for better opportunities for young Ogoni. He attended many meetings and was often in the company of Ken Saro-Wiwa and Ledum Mitee, MOSOP president and vice-president respectively from 1993. With them he also took part in various demonstrations against Shell and Wilbros. Bera was arrested by the regime on 28 May 1994 and was executed on 10 November 1995.

2.3 Blessing Kem Nordu

21. Blessing Kem Nordu (claimant) was born in Biara, Rivers State, Nigeria, on 3 March 1958. She is the widow of Nordu Eawo, whom she married on 27 August 1981.⁸ Together they had five children. They lived in Nwe-ol, in Ogoniland. Following the execution of her husband Blessing and her children were forced out of Nwe-ol by the community. They now live in Giokoo, where she grows crops that she sells to get by. Over the years she has completely lost her sight and is supported by her children and the local church community.

⁸ **Exhibit 6:** Marriage Agreement regarding the marriage of Nordu Eawo and Mrs. Mkem Barima, 27 August 1981.

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2.3.1 Nordu Eawo

22. Nordu Eawo was born in Nwe-ol, Rivers State, Nigeria. He always lived in Ogoniland and worked as a lorry driver. In 1993 he joined NYCOP, seeking to stop the exploitation of the Ogoni and to provide them with better living conditions. He was an active member, and was open about it. He was arrested on 3 October 1994 and executed more than a year later, on 10 November 1995.

2.4 Charity Vureka Levula

23. Charity Levula (claimant, also known as Levura) was born in Bomu, Rivers State, Nigeria, in 1976. She is the widow of Paul Levula, whom she married on 8 August 1992.⁹ She still lives at the home of her deceased husband in Bomu. To get by she uses a small area of her family's land to grow crops which she sells. Occasionally she is supported by her church community.

2.4.1 Paul Levula

24. Paul Levula was born in Bomu, Rivers State, Nigeria, on 22 August 1965. He worked in his own business. He bought fish in Cameroon to sell in Nigeria; in Nigeria he bought clothes that he sold in Cameroon. Later he went to work for the Gokana Local Government Council. He supported Charity. Levula became a member of MOSOP in 1993 and was an active member of the organisation. He attended meetings regularly. Levula was arrested on 30 May 1994 and executed on 10 November 1995.

2.5 Shell Petroleum and Development Company of Nigeria, Ltd.

25. Shell Petroleum Development Company of Nigeria Ltd. (in short: SPDC) is a legal entity under the laws of Nigeria, registered in Lagos, Nigeria.
26. SPDC is the biggest private oil company in Nigeria and the biggest foreign company in Nigerian industry. SPDC is responsible for more than five thousand kilometres of oil pipelines in Nigeria and is the operator of the most important Nigerian joint venture, in which the Nigerian National Petroleum Corporation (NNPC), Elf Petroleum Nigeria Limited and the Nigerian Agip Oil Company Limited participate alongside SPDC. This joint venture is responsible for 50 per cent of oil extraction and exploitation in Nigeria.¹⁰ Oil production accounts for around 80 per cent of the Nigerian regime's income.¹¹

⁹ **Exhibit 7:** Marriage Agreement regarding the marriage of Paul B. Levula and Mrs. Vureka Charity Levula, 8 August 1992.

¹⁰ **Exhibit 136:** Letter from Watts (SPDC) to Alhaji Ibrahim Coomassie (Inspector General Of Police, Nigerian Police Force), 1 December 1993, p. 2.

¹¹ United Nations Environment Programme, Environmental Assessment of Ogoniland, 2011, p. 20, available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <accessed 22 June 2017>; p. 20; **Exhibit 246:** U. Idemudia, Assessing corporate–community involvement strategies in the Nigerian oil industry: An empirical analysis, Resources policy, 34(3), 2009, p. 135.

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27. As an operating company, SPDC has always been entirely under the control of the parent company or companies.¹² The parent companies appointed its managing directors,¹³ the Group Managing Director under whom the West Africa region fell was responsible for recommending the other board members of SPDC,¹⁴ and SPDC's oil revenues ultimately ended up in the books of the parent companies. The profit of SPDC therefore also accrues to the parent companies.¹⁵

2.6 Shell Petroleum N.V. (formerly Royal Dutch Petroleum Company (Koninklijke Nederlandse Petroleum Maatschappij N.V.))

28. At the time of the Ogoni 9 trial SPDC was a subsidiary of Royal Dutch Petroleum Company and Shell Transport and Trading Company plc through its holding company Shell Petroleum Company.¹⁶

29. Until 20 July 2005 these two legal entities collectively (Royal Dutch 60% and Shell T&T 40%) owned three holding companies: Shell Petroleum N.V., Shell Petroleum Company Ltd and Shell Petroleum Inc. The first two holding companies, also known as the Group Holding Companies, were shareholders of several service companies and operating companies.¹⁷ The three holding companies and the service and operating companies together formed the Royal Dutch/Shell Group of Companies (Shell Group). The parent companies together owned the Shell Group. As will be further explained in chapter 8.9, the parent companies exercised decisive influence over the operations throughout the Shell group of companies.

30. The restructuring of the Shell Group brought about a merger on 21 December 2005 between the Royal Dutch Petroleum Company as the legal entity ceasing to exist and its subsidiary, Shell Petroleum N.V. as the acquiring legal entity. Shell Petroleum N.V. consequently became a direct subsidiary of Royal Dutch Shell plc and successor by universal title of the Royal Dutch Petroleum Company.

31. Since the unification in 2005 Royal Dutch Shell plc has formally stood at the head of the Shell Group. According to the claimants, this unification is nothing more than a paper transition.¹⁸ The extent to which this is indeed the case is a matter that is currently before the Court of Appeal in The Hague in the cases of Milieudefensie [Friends of the

¹² SPDC is, through several holding companies, a wholly owned subsidiary of the parent companies and is registered as such in the annual accounts of the parent companies, see **Exhibit 159**: Annual Report 1992 Shell Transport and Trading, p. 24 and Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2015 (exhibit 172), p. 230.

¹³ **Exhibit 54** Declaration by Jordan I. Siegel, 5 February 2009, para. 12; **Exhibit 84**: Note "the following is issued at the request of the Committee of Managing Directors", appointment of Brian Anderson as managing director of SPDC, 11 January 1994; **Exhibit 34**: Public deposition John Jennings, 26 February 2004, pp. 118-119.

¹⁴ Public deposition John Jennings, 26 February 2004 (exhibit 34), pp. 123-125.

¹⁵ **Exhibit 160**: Annual report Royal Dutch/Shell Group of Companies 1995, pp. 50, 60; **Exhibit 54**: Declaration by Jordan I. Siegel, 5 February 2009, paras. 7, 18.

¹⁶ Public deposition John Jennings, 26 February 2004 (exhibit 34), p. 131.

¹⁷ These service companies provided services to the operating companies, usually in the form of technical, financial or legal advice.

¹⁸ See 2.8 below.

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Earth Netherlands] et al. versus Shell.¹⁹ For this reason it has been decided to call both the 'old' and the 'new' parent companies to account.

2.7 Shell Transport and Trading Company, ltd (formerly Shell Transport and Trading Company, p.l.c)

32. Before 2005 Shell Transport and Trading Company plc controlled 40% of the Shell Group. It jointly supervised the subsidiaries with the Royal Dutch Petroleum Company (see also chapter 2.6 and 8.9). So intensively did these legal entities work together, through the Committee of Managing Directors and the Conference, that they formed a single entity in the method of management of the Shell Group.²⁰ The description of the company structure in chapter 2.6 and 8.9 therefore applies by analogy to Shell Transport and Trading. Given that the two parent companies acted as a single entity, they are also jointly responsible. The fact that Shell Transport and Trading only held 40% of the shares does not affect the fact that the parent companies managed the Shell Group as a single entity.²¹

33. Shell Transport and Trading Company, plc became Shell Transport and Trading Company ltd. as from 20 July 2005. Shell Petroleum N.V. currently holds 100% of the shares in Shell Transport and Trading Company, Ltd.²²

2.8 Royal Dutch Shell plc

34. Royal Dutch Shell plc has been the parent company of Royal Dutch Petroleum Company and Shell Transport and Trading Company ltd since 20 July 2005.²³ The shares that shareholders held in the old parent companies were exchanged pro rata in the so-called unification for shares in Royal Dutch Shell. Following further restructuring Royal Dutch Shell became the direct owner of Shell Petroleum N.V. and indirect owner of Shell Transport and Trading Company ltd. As the new parent

¹⁹ Court of Appeal The Hague 18 December 2015, ECLI:NL:GHDHA:2015:3588, legal ground 2.2, available at: <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2015:3588> <accessed 28 April 2017>.

²⁰ The Court of Justice of the European Union considered this question in 2012. It had to decide whether "the two parent companies [...] were in a position analogous to that in which a single company holds the entire share capital of its subsidiary". The Court considered the facts as discussed hereafter in section 8.8.3 (the two parent companies were joint shareholders of the Group Holding companies, they jointly appointed the managing directors of these holding companies, they managed the entire Shell Group through the CMD) and therefore concluded that the way in which the two parent companies jointly operate is tantamount to the operation of a single parent company, see the Court of Justice of the European Union in case T-343/06 of 27 September 2012, ECLI:EU:T:2012:478, sections 47-51, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=127581&pageIndex=0&doclang=nl&mode=lst&dir=&occ=first&part=1&cid=52489> <accessed 21 June 2017>.

²¹ This was argued by Shell in the case against the European Commission, but the Court of Justice of the European Union did not share its view for the above reasons.

²² **Exhibit 171:** Form 20-F United States Securities and Exchange Commission Royal Dutch Shell plc, 2005, p. 6.

²³ Form 20-F United States Securities and Exchange Commission Royal Dutch Shell plc, 2005 (exhibit 171), p. 6.

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company, Royal Dutch Shell continued indirectly to own SPDC wholly following unification.²⁴

35. Apart from the unification and restructuring, the forms of control and supervision between the parent company or parent companies and the subsidiaries did not essentially change after 2005. What nowadays is known as the Executive Committee was known as the Committee of Managing Directors (CMD) before the unification of the two parent companies.²⁵ The name of the CMD was changed to Executive Committee in anticipation of unification in October 2004. The substance of the functions and powers of this body and its members did not change as a result.²⁶
36. The Board of Directors of Royal Dutch Shell effectively existed before unification, but at that time it was known as the “Conference”, which – in a more complex structure – had the same functions as the Board of Directors has now. Even before unification therefore the Shell Group operated as if there were only one parent company. As a result of unification there was then just formally a new top level in the business, which reflected the organisational structure effectively existing before then.
37. The claimants therefore believe that RDS can be held fully liable for acts at the time before this paper transition. As was stated in chapter 2.6, the question to which extent this is indeed the case is a matter that is currently before the Court of Appeal in The Hague in the cases of Milieudefensie [Friends of the Earth Netherlands] et al. versus Shell.²⁷ Partly for this reason, it has been decided to call both the ‘old’ and the ‘new’ parent companies to account.

3. FACTUAL BACKGROUND

3.1 Shell in Nigeria

38. The Anglo-Dutch company Shell has played an active role in what was then still British Colonial Nigeria since 1936, where it was involved in the search for oil fields and the first oil extraction in the Niger Delta from the 1940s. When a large-scale oil industry got going in Nigeria from 1958 Shell became the main player.²⁸ Even after the independence of Nigeria in 1960 oil exploitation in Nigeria remained largely in Shell’s hands.
39. The oil industry in Nigeria was initially the responsibility of foreign companies, until the Nigerian government started to become more actively involved from 1971. The

²⁴ Form 20-F United States Securities and Exchange Commission Royal Dutch Shell plc, 2005 (exhibit 171), p. 199; Annual report Royal Dutch Shell plc, 2015 (exhibit 172), p. 230.

²⁵ See chapter 2.6 about the CMD

²⁶ **Exhibit 170:** Annual Report on 2004, N.V. Koninklijke Nederlandse Petroleum Maatschappij N.V., p.118; Form 20-F United States Securities and Exchange Commission Royal Dutch Shell plc, 2005 (exhibit 171), p. 5.

²⁷ Court of Appeal The Hague 18 December 2015, ECLI:NL:GHDHA:2015:3588, legal ground 2.2, available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2015:3588> <accessed 28 April 2017>.

²⁸ See SPDC’s website, <http://www.Shell.com.ng/about-us/Shell-nigeria-history.html> <accessed 24 April 2017>

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Nigerian National Petroleum Company (NNPC) was set up for this purpose in 1977. The NNPC is responsible for regulating and supervising the oil industry in Nigeria and its formation brought about a new system of cooperation between the government and the different oil companies. From 1977 joint venture agreements, production sharing arrangements and service or risk contracts came into play.

40. Since 1984, SPDC has been the operator of a Nigerian joint venture of which it holds 30% of the shares.²⁹ As operator, Shell is responsible for all aspects of oil extraction and exploitation: the search for oil, the development of oil fields, the construction and maintenance of pipelines, the management of export terminals, the management of the crude oil in storage installations and the management of the operating budget. Consequently, there is a high degree of external control of the Nigerian oil industry, which is for the most part in the hands of Shell.
41. As the operator of the biggest joint venture in Nigeria, SPDC extracts large amounts of oil out of the ground; in the period 1991-1995 on average 13% of Shell's total oil production came from Nigeria.³⁰ According to its own figures, Shell produced on average 278,000 barrels of oil per day during this period in Nigeria.³¹ The importance of oil, and therefore the power and control of Shell in Nigeria, is evident from the fact that 95% of Nigeria's exports consist of oil and that oil accounts for 80% of the Nigerian regime's income.³²
42. Shell and the Nigerian government are mutually dependent. First of all, Shell depends on the Nigerian regime because it needs the permission of the regime to extract oil; under the law all natural resources in Nigeria belong to the federal government. Shell also depends on the regime for 55% of the funding of the operations and, as will be explained in chapter 8, for the protection of its facilities. The Nigerian regime in its turn depends on Shell for the entire process of oil extraction and exploitation. Not only does the regime receive 55% of the profits of the joint venture, SPDC also pays 85% taxes over their own profits to the regime.³³ Shell is therefore responsible for nearly half of the income of the Nigerian regime. As will be shown in chapter 8, Shell also regularly deploys its economic interest to apply pressure to the regime.

²⁹ The division of the shares is as follows: NNPC 55%, SPDC 30% and 15% for other oil companies; See SPDC's website, <http://www.Shell.com.ng/about-us/Shell-nigeria-history.html> <accessed 24 April 2017>.

³⁰ **Exhibit 162:** Form 20-F United States Securities and Exchange Commission, Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company, plc, 2005, p. 13.

³¹ Form 20-F United States Securities and Exchange Commission, Koninklijke Nederlandsche Petroleum Maatschappij en The Shell Transport and Trading Company, plc, 2005 (exhibit 162), p. 13.

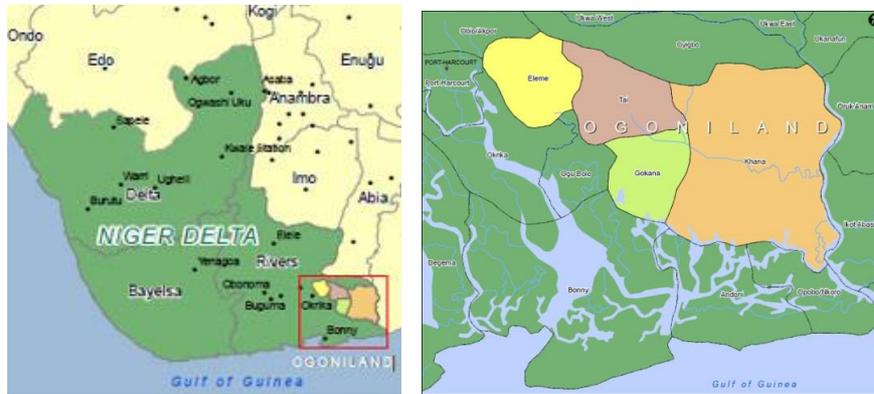
³² United Nations Environment Programme, Environmental Assessment of Ogoniland, 2011, p. 20, available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <accessed 24 April 2017>; U. Idemudia, Assessing corporate-community involvement strategies in the Nigerian oil industry: An empirical analysis, Resources policy, 34(3), 2009 (exhibit 246), p. 135.

³³ **Exhibit 142:** Letter of the Head of Media Relations of service company SIPC, Eric Nickson, to ms. G. Brooks of the Wall Street Journal, 20 April 1994, p. 2.

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3.2 Consequences of oil extraction in Ogoniland

43. Ogoniland has been the homeland of the Ogoni, a population group of around 500,000 people in 1994. Currently around 1.5 million people live in Ogoniland.



44. Because of the density of population Ogoniland is a difficult place for the exploitation and exploration of oil fields. Nevertheless, Shell has built a network of 12 oil fields, 116 wells, five flow stations,³⁴ different manifolds and kilometres of pipelines there.³⁵ Ogoniland was responsible for around 10% of Shell's oil production in Nigeria. The economic consequences of the protests of the Ogoni and the necessary cessation of production in Ogoniland in 1993 were therefore significant.³⁶
45. In 2011, following a comprehensive study, the United Nations Environmental Programme (UNEP) concluded that 50 years of oil and gas extraction in Ogoniland had had disastrous consequences for the environment in the area and the health of the local population.³⁷
46. Among the consequences that the oil pollution has had is that agricultural land in Ogoniland – which before the advent of the oil industry was known as the “breadbasket” of the region – has become permanently barren, rivers and creeks have become unsuitable for fishing and groundwater and drinking water are contaminated. The consequences for the local economy and public health are in line with this. The UNEP estimates that it would take 25 to 30 years and an investment running into billions to

³⁴ In Ebulu, Korokoro, Yorla and two in Bomu (K-dere).

³⁵ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, p. 24, available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <accessed 24 April 2017>.

³⁶ See for example the significant decline in oil production in 1994 and 1995, Security and Exchange Commission Form 20-F, Annual Report 1995 Koninklijke Nederlandsche Petroleum Maatschappij and the Shell Transport and Trading Company, plc (exhibit 162), p. 13; See also the Public Deposition of Robert Sprague, 10 February 2003 (exhibit 55), p. 108: “once we withdrew from Ogoniland it was, there was a large impact on production, so I am sure I prepared in some discussions because it was a big chunk of production which we didn't want to lose, so it is the kind of thing we worry about”. In 1991-1994, Sprague was Head of Operations and Liaison at service company SIPM. By virtue of his position, he was the first point of contact for SPDC. In 1994 he became Exploration and Production Coordinator. In both functions he reported directly to one of the Group Managing Directors.

³⁷ United Nations Environment Programme, *Environmental Assessment of Ogoniland*, 2011, pp. 9-11, available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf. <accessed 24 April 2017>.

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repair the damage in Ogoniland to some extent.³⁸ Despite the abundance of mineral resources, the Ogoni are one of the poorest population groups in Nigeria and 80% of the population of the Niger Delta live below the poverty line.³⁹

47. In 2002 the great environmental damage caused by the government and the oil companies in Ogoniland was recognised by the African Commission on Human and Peoples' Rights in the Ogoni case. This case was brought against the Nigerian government by representatives of the Ogoni population. The African Commission came to the conclusion that several human rights had been violated, including the right to a clean and healthy living environment, the right to life and a violation of the prohibition of discrimination. The African Commission had harsh words to say about the interaction between the Nigerian government and the oil companies:

“the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis [and] has allowed private oil companies to destroy food sources”.⁴⁰

48. The judgment also quoted a note verbale of the Nigerian government at the time, in which it asserted that “there is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area”.⁴¹
49. Critics accuse Shell of ‘ecological racism’, because it applies different environmental standards in its activities in Nigeria from those in the Western countries where it operates. For instance, Shell in Nigeria has for a long time accepted serious pollution, aboveground pipelines, gas flaring close to villages and inadequate compensation for land expropriation. In 2005 a Nigerian court convicted Shell in the Gbemre case of violating the basic right to a clean living environment and the right to life because of the harmful consequences of its gas flaring activities close to communities.⁴²

³⁸ Ibid, p. 12.

³⁹ **Exhibit 240:** C.A. Lutz, “The Niger Delta Conflict and Military Reform in Nigeria”, in: “The Politics of Military Reform” J. Rüland et al., 2012, p. 201.

⁴⁰ **Exhibit 218:** African Commission on Human & Peoples' Rights, ACHPR/COMM/A044/1, 27 May 2002, paras. 58, 66. The African Commission found that Nigeria violated the following articles of the African Charter on Human and Peoples' Rights: Articles 2 (non-discriminatory enjoyment of rights), 4 (right to life), 14 (right to property), 16 (right to health), 18 (family rights), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples to a satisfactory environment), p. 15.

⁴¹ Ibid., para. 42 (refers to *note verbale* 127/2000).

⁴² **Exhibit 204:** Federal High Court of Nigeria in the Benin Judicial Division, suit FHC/B/CS/53/05, 14 November 2005, *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005). In this case Shell was ordered to cease its gas flaring activities. When the case was due to return to court in 2006, the judge appeared to have been removed from the case.

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3.3 Nigeria in the 1990s

3.3.1 The Nigerian Junta

50. In the early 1990s Nigeria was governed by two successive military regimes. Major-General Ibrahim Babangida staged a coup in 1985 and remained in power until 1993. This was followed by the military dictatorship of Sani Abacha from November 1993.
51. There was large-scale corruption under Babangida's leadership. When the price of oil rose significantly in 1990, billions of dollars disappeared into his pockets.⁴³ Because of the corruption the Nigerian people saw little of the revenues from the oil industry and demanded a return to a democratically elected civilian government. Elections are organised in 1993. While Chief Abiola was known to be the winner, Babangida declared the results void before they were made official.⁴⁴ This gave rise to so much defiance and unrest that he nonetheless felt obliged to stand down in August 1993.
52. Consequently, an interim government under the leadership of Ernest Shonekan, until then director of SPDC,⁴⁵ is set up. This government lasts three months; in November 1993 General Sani Abacha, the Minister of Defence under Babangida, staged a coup and restored the military regime. Shonekan stays on as Abacha's right hand. The coup led to great international indignation and condemnation and the European Union imposed sanctions on Abacha's "military dictatorship".⁴⁶
53. Abacha used excessive force to secure his power; demonstrations were put down harshly and political opponents were detained and executed.⁴⁷ The suppression of the Ogoni population in particular attracted global attention, especially when the army occupied Ogoniland in 1994 and committed crimes against humanity there on a wide scale.⁴⁸
54. In 2014 it was confirmed that Abacha, who died in 1998, too had used his position for personal gain, when in a legal case in America it emerged that he had diverted more

⁴³ Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis By Michael M. Ogbeyi Associate Professor Department of History and Strategic Studies, University of Lagos, Nigeria, 2012, pp. 9, 13, 15, available at: http://www.unh.edu/nigerianstudies/articles/Issue2/Political_leadership.pdf <accessed 24 April 2017>; Why Government Should Release the Okigbo and Oputa Reports, Mobolaji Aluko, Burtonsville, MD, USA, 25 April 2004, available at: <https://dawodu.com/aluko88.htm> <accessed 24 April 2017>; How Ibrahim Babangida Promoted Corruption And Stagnated Nigeria's Economic Growth And Development, Terfa Naswem, 23 April 2015, Newsrescue, available at: <http://newsrescue.com/how-ibrahim-babangida-promoted-corruption-and-stagnated-nigerias-economic-growth-and-development-by-terfa-naswem/#ixzz4cAGfSjdr> <accessed 24 April 2017>.

⁴⁴ Encyclopaedia Britannica, Nigeria, military regimes 1983-1999, available at: <https://www.britannica.com/place/Nigeria/Military-regimes-1983-99>. <accessed 24 April 2017>

⁴⁵ See chapter 8.4.5.

⁴⁶ See also European Political Documentation Bulletin, Statement on Nigeria 93/272, 25 June 1993, Brussel, p. 346; European Political Documentation Bulletin, Statement on Nigeria, 93/305, 13 July 1993, Brussel, p. 3463; European Political Documentation Bulletin, Statement on Nigeria, 93/460, 19 November 1993, Brussels, "The European Union condemns the fact that the democratic process in Nigeria has been interrupted through the resumption of power by a military dictatorship", pp. 550-551 (**exhibit 230**). See also chapter 8.4.3.

⁴⁷ Encyclopaedia Britannica, Nigeria, military regimes 1983-1999, available at: <https://www.britannica.com/place/Nigeria/Military-regimes-1983-99> <accessed 24 April 2017>.

⁴⁸ See chapters 4 and 8.

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than 480 million dollars into foreign accounts. The Assistant Attorney General had the following to say about this:

“Rather than serve his country, General Abacha used his public office in Nigeria to loot millions of dollars, engaging in brazen acts of kleptocracy. [...] With this judgment, we have forfeited \$480 million in corruption proceeds that can be used for the benefit of the Nigerian people”.⁴⁹

55. In the 1990s the Nigerian population saw almost nothing of the revenues from the oil industry, which was a bitter outcome for the population of Ogoniland. As previously said, they are among the poorest population groups in Nigeria, while the oil is extracted from their territory, and they have been victims of human rights violations on a large scale.⁵⁰ The UN rapporteur for extrajudicial, summary or arbitrary executions said in his report (**exhibit 235**):

“Security forces were said to have used excessive force against participants in peaceful demonstration against the destruction of fields and crops without indemnification by Nigerian and multinational companies exploiting oil fields in the region”.⁵¹

56. As will be set out in more detail in chapter 8, Shell continued to collaborate closely with the regime during Abacha’s period of government and it regularly offered the regime a helping hand. Shell was prepared for instance to procure weapons, to maintain a network of informants and to make its means of transport available for military operations. It also ensured that the government knew where demonstrations were taking place, so it could bring them to an end. This attitude did not change during the military operation in Ogoniland in 1994 or during the show trial against the leaders of the Ogoni resistance in 1995 that finally turned Nigeria into a pariah state.⁵²
57. Shell’s joint action with Abacha’s military dictatorship ensured that the company came under fire. Nevertheless, Shell, which was responsible for almost half the income of the Nigerian regime,⁵³ launched different new projects in this period in cooperation with

⁴⁹ U.S. Department of Justice, “U.S. Forfeits More Than \$480 Million Stolen by Former Nigerian Dictator in Largest Forfeiture Ever Obtained Through a Kleptocracy Action” 7 August 2014, available at: <https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/u.s.-forfeits-more-than-480-million-stolen-by-former-nigerian-dictator-in-largest-forfeiture-ever-obtained-through-a-kleptocracy-action> <accessed 24 April 2017>.

⁵⁰ C.A. Lutz, “The Niger Delta Conflict and Military Reform in Nigeria”, in “The Politics of Military Reform” J. Rüländ et al., 2012 (exhibit 240), p. 201; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of 7 December 1993, E/CN.4/1994/7 (exhibit 235), p. 105.

⁵¹ **Exhibit 235**: Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of 7 December 1993, E/CN.4/1994/7, p. 105.

⁵² See chapters 4 and 8.

⁵³ Shell Nigeria alone – without the other Nigerian Shell companies – is responsible for 50% of oil production, and 80% of the government’s income derives from this oil production, see: **exhibit 137**: Letter Watts (SPDC) to Alhaji Ibrahim Coomassie (Inspector General Of Police, Nigerian Police Force), 1 December 1993, p. 2; United Nations Environment Programme, Environmental Assessment of Ogoniland, 2011, p. 20, available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf <accessed 24 April 2017>; U. Idemudia, Assessing

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Abacha.⁵⁴ In this way it made a significant contribution to the large-scale corruption and repression that took place in those years.⁵⁵

3.3.2 *MOSOP*

58. The dissatisfaction with the serious pollution and the exploitation of Ogoniland without the Ogoni sharing the benefit of it led in 1990 to the setting up of the Movement for the Survival of the Ogoni People (MOSOP). MOSOP sought (and continues to seek) social, legal and financial justice for the Ogoni population through peaceful protest against the regime and the oil companies, Shell in particular.
59. The MOSOP manifesto is set out in the Ogoni Bill of Rights and focuses in particular on greater political autonomy, fair compensation for the use of their land and raw materials by Shell and the regime, and restoration of the damage that has occurred through oil exploitation. MOSOP founder and leader Kenule (“Ken”) Beeson Saro-Wiwa⁵⁶ set out the reasons for setting up the movement as follows:

“The Ogoni took stock of their condition and found that in spite of the stupendous oil and gas wealth of their land, they were extremely poor, had no social amenities, that unemployment was running at over 70 percent, and that they were powerless, as an ethnic community in a country of 100 million people, to do anything to alleviate their condition. Worse, their environment was completely devastated by three decades of reckless oil exploitation or ecological warfare by Shell”.⁵⁷

60. A highlight of the resistance was a protest march against Shell and the regime organised by MOSOP on 4 January 1993, the day that, as of that moment, comes to be known as Ogoni Day, and is celebrated yearly by the Ogoni. Almost 300,000 Ogoni took part in the march, around 60% of the population of Ogoniland at the time.⁵⁸ Saro-Wiwa was travelling the world at this point, to draw attention to the fate of the Ogoni, and was embraced by the international community as an environmental and human rights activist.
61. Despite the international pressure, Shell has never recognised MOSOP as a legitimate representative of the Ogoni. Following the protest in 1993 Shell did decide to suspend

corporate–community involvement strategies in the Nigerian oil industry: An empirical analysis, *Resources policy*, 34, 2009 (exhibit 246), p. 135.

⁵⁴ See chapter 8.8.5.

⁵⁵ **Exhibit 242:** I. Okonta en O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003, p. 58, in reference to Project Underground: “Shell supplies fully half of the income to a brutal regime bent on suppressing dissent”.

⁵⁶ Saro-Wiwa was initially spokesman and from June 1993 chairman of MOSOP.

⁵⁷ I. Okonta and O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003 (exhibit 242), pp. 116-117.

⁵⁸ **Exhibit 225:** M. Birnbaum, *Nigeria Fundamental Rights Denied*, Report of the trial of Ken Saro-Wiwa and Others, June 1995, para. 3.4.

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its activities in Ogoniland until further notice (although it did return on several occasions thereafter without the consent of the population).⁵⁹ Shell refused to negotiate with MOSOP about damages and royalties. On the contrary, Shell complained about MOSOP to the military regime,⁶⁰ publically criticised MOSOP and shielded the regime when the resistance in 1994 and 1995 was put down harshly, in part also at Shells instigation and with its help. Even when the whole world was watching the MOSOP leadership being cleansed by Abacha, Shells support for his regime was unwavering.⁶¹ Chapter 8 considers Shell's role in these developments in greater detail.

4. THE Ogoni 9 SHOW TRIAL

4.1 Introduction

62. In 1994 a large-scale military operation known as “Operation Restore Order in Ogoniland” took place in Ogoniland.⁶² The aim of this operation was to restore order by breaking the resistance of MOSOP. The regime set up a special paramilitary unit for this that took charge of the military operation, which would last for months and during which crimes against humanity were committed on a large scale. The paramilitary unit, the Rivers State Internal Security Task Force (RSISTF), came under the leadership of Paul Okuntimo, a lieutenant colonel with a notorious reputation and ties to Shell.⁶³
63. As part of “Operation Restore Order in Ogoniland”, 15 Ogoni leaders were arrested in the months following May 1994, including Barinem Kiobel, Baribor Bera, Nordu Eawo and Paul Levula. The arrests followed the murder of four traditional Ogoni leaders at a meeting in Giokoo, a village in Ogoniland. From the outset the regime was clear that it suspected these men of involvement in the murders. More than 18 months later, on 10 November 1995, nine of the fifteen who were arrested, Barinem Kiobel, Ken Saro-Wiwa, Baribor Bera, John Kpuinen, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levula and Felix Nuate, were executed following a trial that came to be known as the Ogoni 9 trial. In the absence of any evidence against the suspects and because of the clearly corrupt nature of the judicial process the international community condemned the executions as judicial murder
64. It soon became clear that multiple human rights had been violated during the trial and the executions that followed it.⁶⁴ This was later confirmed by the African Commission on Human and Peoples' Rights, which determined that Nigeria violated art. 1, 4 through 7, 9 through 11, 16 and 26 of the African Charter (**exhibit 217**: African Commission

⁵⁹ See chapters 8.2.4, 8.2.5 and 8.2.6.

⁶⁰ See chapter 8.

⁶¹ See chapters 8.3 and 8.4.

⁶² See chapter 8.3.

⁶³ **Exhibit 17**: Public Deposition Brian Anderson, 13 February 2003, p. 78 . Okuntimo was known in Nigeria as “the beast of Ogoniland”, See (public depos 20); See also chapters 8.2.6, 8.3 and 8.5.3.

⁶⁴ See chapter 4.3 and the report of Michael Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, Article 19, June 1995 (exhibit 225).

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on Human and Peoples rights, Nigeria: *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* (2000)).

4.2 Arrests

4.2.1 Kiobel

65. On 19 May 1994 Kiobel was invited by the traditional leader of Giokoo, Gbenemene J.P. Bagia, to attend a meeting at the palace of the Gbenemene in Giokoo on 21 May 1994 as a speaker. Kiobel had at that time just been appointed Commissioner for Commerce, Industry and Tourism of Rivers State, having previously spent a long time living in the United Kingdom. In his early months as Commissioner he repeatedly expressed criticism of the actions of the regime and Shell towards the Ogoni population.
66. When Kiobel arrived in Giokoo at 10.00am on 21 May 1994, the meeting proved not to have started yet, so he returned home. Later that day he sent a motorcyclist to Giokoo to see whether the meeting had started. The motorcyclist told him that he had been unable to reach the palace because the area around it was full of angry young protesters. There was a rumour that Saro-Wiwa had been arrested by the army.
67. Kiobel immediately set off for Giokoo in an effort to calm things down, but the crowd of young people wanted nothing to do with him; stones were thrown at him and he was beaten. He decided to report the incident to the authorities, where he is asked to return to the palace to calm the young people down. Kiobel returned to Giokoo, where he was briefly able to talk to Bagia, but was soon sent away by the young people because he was a “Komo and Abacha agent”. He was forced to take flight. He did not know at this point that four traditional Ogoni leaders – Edward Kobani, Albert Badey, Samuel Orage and Theophilus Orage – had been murdered at the meeting where he was supposed to speak.⁶⁵
68. The reason for the murders was said to be a schism within MOSOP. From the spring of 1993 disagreement had arisen between Garrick Leton (at that time president of MOSOP) and Saro-Wiwa, including whether they should negotiate with Shell and the regime and whether the forthcoming national elections should be boycotted. Saro-Wiwa had set up new organisations under the umbrella of MOSOP, including the youth movement National Youth Council of Ogoni People (NYCOP). According to Leton, Saro-Wiwa was doing this to take over control within MOSOP; he and Edward Kobani then stepped down from the presidency and vice-presidency.⁶⁶ They were succeeded by Saro-Wiwa and Ledum Mitee, as a result of which a rift emerged in MOSOP between the Leton faction on the one hand and the Saro-Wiwa faction on the other. While it has never been established who committed the murders, the regime responded to the

⁶⁵ **Exhibit 8:** Memorandum Barinem Kiobel, 2 June 1994; **exhibit 173:** Affidavit Barinem Kiobel in support of motion, application for bail, undated, para. 13.

⁶⁶ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, June 1995 (exhibit 225), paras. 3.5-3.7..

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emerging split, in so far as it cannot be held accountable for creating it.⁶⁷ It was said to be NYCOP members who wanted to settle with their opponents (called ‘vultures’)⁶⁸ for good on 21 May 1994, urged on by Saro-Wiwa and Kiobel.

69. One day after the murders the Military Administrator of Rivers State, Lt. Col. Dauda Musa Komo, gave a press conference, which was broadcast live on television, to report that the parties guilty of the murder of the four Ogoni leaders were being arrested at that moment. He opened the press conference with a fierce anti-MOSOP speech, in which for example he said the following:

“Ogoni is bleeding and not by federal troops [...], but by irresponsible and reckless thuggery of the MOSOP elements which as I’ve said must stop immediately and I therefore call on you to report accurately these events and to stop you being used as propaganda tools conveniently for some dictators like Ken Saro Wiwa”.⁶⁹

70. Then it was the turn of Alhaji Mohammed Kobani, the brother of the murdered Edward Kobani, to speak. He revealed his injuries and Komo gave him every opportunity to refer to the part that Kiobel was supposed to have played:

“But before the arrival of these people, the commissioner [Kiobel] who were making the arrangements to receive came, you know, and viewed the environment there and left without a word. [...] Dr. Barinem Kiobel came back the second time and I [...] saw him addressing NYCOP group, there was a shout: “o shobey, hee!” twice like that, then he left.”⁷⁰

71. Kobani said that there was no intention that Kiobel would be present at the meeting: “So I keep wondering why the commissioner came their twice. I know he is a staunch member of NYCOP. He is a leader of NYCOP”.⁷¹ In response to the question from one of the journalists that it seemed on the basis of Kobani’s testimony that “one of your commissioners may have played a leading role in this incident”, Komo said: “I think

⁶⁷ In any event, Shell regards the role of the regime in this light, see **exhibit 70**: Telex Philip Watts to SIP and SIPM, 11 May 1993, in which he states: “Politically, it would appear that the government has succeeded in creating a split in the Ogoni solidarity [...]. This is yet to be proven”.

⁶⁸ This term would have an important part to play during the Ogoni 9 trial. It refers to individuals who were under the influence of Shell and the regime. According to MOSOP, most of the witnesses in the Ogoni 9 trial for example were under the influence of Shell and the regime, see chapter 8.6.1.

⁶⁹ **Exhibit 5**: Written transcript press conference, 22 May 1994, p. 3 (the file consists of ten pages, numbered: pp. 1-7 and pp. 1-3. This appears on the first page 1); **Exhibit 254**: Video Press conference 22 May 1994, 5:38 to 6:19.

⁷⁰ Written transcript press conference, 22 May 1994 (exhibit 5), pp. 5-6; Video Press conference 22 May 1994 (exhibit 254), 10:57 to 11:16, 12:57 to 13:16.

⁷¹ Written transcript press conference, 22 May 1994 (exhibit 5), p. 1 (the file consists of ten pages, numbered: pp. 1-7 and pp. 1-3. This appears on the second page 1); Video Press conference 22 May 1994 (exhibit 254), 17:02 to 17:30.

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I've made it clear that if anybody is involved, whether he's a commissioner or not, we'll arrest him".⁷²

72. Kiobel was arrested shortly after and was eventually locked up at Bori Camp, the headquarters of Okuntimo's RSISTF, together with the others under arrest.
73. On 3 June 1994 Kiobel wrote a letter to Komo in which he pleaded his innocence and begged him to order his release. He also asked Komo to withdraw the army from Gokana: "This appeal is made because of indiscriminate shootings, killing of innocent persons including small children, old men and women thus making Gokana desolate."⁷³ Komo ignored Kiobel's plea and on 29 July 1994 advised him that he had been relieved of his position as Commissioner.⁷⁴

4.2.2 *Bera*

74. The day of the murders in Giokoo coincided with the (two week long) period of mourning for Bera's mother, who had passed away earlier that month. On 21 May 1994, Bera was with his wife at his father's house to accept condolences. When the rumour that Ken Saro-Wiwa was dead reached them, they fled into the jungle in panic, together with everyone else from the village and the surrounding villages. There they heard that the four Ogoni leaders had been murdered and that MOSOP members were being sought. They spent a week in the jungle. When they thought it safe, they returned to their village Bera, in Ogoniland. Nearly all the houses in the village had been destroyed: their house had also ben damaged such that they were forced to move in with a family member. At this point Victoria and Baribor did not yet know that Baribor was being sought by the Nigerian regime. It was however clear that nowhere was yet safe for MOSOP members.
75. A woman had informed Victoria of the fact that the regime was looking for Baribor in connection with the murders. Baribor was eventually arrested by the army and detained for a week in Kpor, before he too was taken to Bori Camp, where he spent the rest of his detention.

4.2.3 *Eawo*

76. On the day of the murders in Giokoo Eawo was in Nowan, in the Local Government Area Tai in Rivers State, where there was more work than in his place of residence New-ol. On 3 October 1994, nearly five months after the murders, Eawo was arrested in Nowan, where he had remained. His wife, Blessing, was told about this by the owner of the house where Eawo was living at the time. She told Blessing that five men had

⁷² Written transcript press conference, 22 May 1994 (exhibit 5), p. 3 (the file consists of ten pages, numbered: pp. 1-7 and pp. 1-3. This appears on the second page 3). Video press conference 22 May 1994 (exhibit 254), 20:45 to 21:02.

⁷³ **Exhibit 9:** Memorandum Barinem Kiobel, 3 June 1994, p. 2.

⁷⁴ **Exhibit 13:** Termination of Appointment, D.M. Komo to Barinem Kiobel, 29 July 1994.

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come in and beaten Eawo with sticks and their rifle butts, after which they took him with them. Nothing was said about why he was arrested.

77. Eawo was detained for over two months at the police station in Kpor. Then he spent time in Bori Camp, after which he was transferred to the State Intelligence Investigation Bureau (SIIB), where he remained in detention until his execution.

4.2.4 *Levula*

78. On the day of the murders in Giokoo Levula was not in Ogoniland. He was arrested on 30 May 1994, nine days after the murders. Four men entered his home at night and beat him with sticks and their rifle butts. His wife tried in vain to stop them taking him. Nothing was said about why her husband was being arrested.
79. From 31 May 1994 Levula was detained in Bori camp. Then he was taken to the SIIB in Port Harcourt.
80. During the Ogoni 9 trial Levula said that Peter Fii had brought the army to his home to arrest him and that he and Peter Fii were embroiled in a legal case about a stolen bicycle. Peter Fii was one of the witnesses who it was subsequently alleged had been bribed by Shell and the regime.⁷⁵

4.2.5 *Manhunt in Ogoniland*

81. In total 15 Ogoni leaders were arrested who would later be brought to trial for alleged complicity in the murders. The murders were used as an excuse to put MOSOP in even more of a poor light. During the press conference on 22 May 1994 a journalist stated that “[MOSOP’s] program and irresponsible activities has contributed a lot to the disturbances in this state” and Komo was asked whether it would not be better to ban MOSOP. Komo’s reply was short and to the point: “We are going after them”.⁷⁶ In the days following the incident many other innocent parties were therefore picked up – and murdered – in the course of manhunts by Okuntimo’s RSISTF.⁷⁷ Okuntimo’s troops left a trail of devastation behind them in different villages, villagers being punished for alleged support of MOSOP. The UN rapporteur for extrajudicial, summary or arbitrary executions had the following to say about this:

“Renewed military attacks against Ogoni villages were reported to have occurred during the first two weeks of June 1994, leading to the killing of at least 40 civilians. Fears were expressed for the lives of a large number of others who were reported to have been detained [...]

⁷⁵ **Exhibit 194:** Declaration Paul Levula ; See also section 8.6.1.

⁷⁶ Written transcript press conference, 22 May 1994 (exhibit 5), p. 2 (the file consists of ten pages, numbered: pp. 1-7 and pp. 1-3. This appears on the second page 2); Video press conference 22 May 1994 (exhibit 254), 19:29 to 19:53.

⁷⁷ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, June 1995 (exhibit 255), paras. 1.4, 3.9; See also at 233 until 235.

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The Special Rapporteur also transmitted to the Government allegations he had received concerning the killing of [56] persons [...] all of them said to belong to the Ogoni ethnic community, by soldiers of the “internal security unit”.⁷⁸

82. Okuntimo would later describe this operation as ‘psychological warfare’, intended to bring about a ‘constructive dialogue’.⁷⁹

4.3 Ogoni Civil Disturbances Special Tribunal

83. The 15 suspects were held in custody until the beginning of 1995, with no access to a lawyer and without an official charge, even though it was clear that they were suspected of the murders of the four traditional Ogoni leaders. For a long time it was unclear what would happen to the suspects and whether they would be tried within the jurisdiction of the Rivers State province or by the federal government.

84. On 4 November 1994 the Ogoni Civil Disturbances Special Tribunal was set up by decree by President Abacha and was appointed to try Kiobel and his fellow detainees for the murder of the four Ogoni leaders.⁸⁰ Abacha relied on a law from 1987 in which the government is permitted to set up a special tribunal when civil disturbances occur that stands outside the normal legal system.⁸¹ The Special Tribunal was authorised to sentence people to death for acts committed before the tribunal was set up; it had to impose the death penalty when murder was proven, and was allowed to have the death penalty put into effect without the possibility of appeal.⁸² Any sentence was simply submitted to a military commission (Armed Forces Ruling Council), not to an ordinary independent court.⁸³ The tribunal consisted of three members personally appointed by Abacha: two judges – presiding Justice Ibrahim Nadhi Auta⁸⁴ and Justice Etowa Enyong Arikpo – and a military member, Lieutenant Colonel Hammid Ibrahim Ali.⁸⁵

85. The setting up of the tribunal led to alarmed reactions worldwide. The UN rapporteur for extrajudicial, summary or arbitrary executions expressed his concerns about the Special Tribunal in his report of 14 December 1994 as follows:

⁷⁸ **Exhibit 236:** Report of Special Rapporteur Bacre Waly Ndiaya on Extrajudicial, Summary or Arbitrary Executions, of 14 December 1994, E/CN.4/1995/61, p. 76

⁷⁹ **Exhibit 222:** Human Rights Watch, Nigeria the Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, July 1995, p. 11; See also **exhibit 248:** Documentary The Drilling Fields, 23 May 1994, (tape 4) 35:00 tot 35:20.. See also chapter 8.3.1 about these events.

⁸⁰ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, June 1995 (exhibit 225), para. 4.16 para. 4.16.

⁸¹ Ibid, appendices 2 and 3 for 1987 Decree and decree of establishment Abacha.

⁸² Ibid, paras. 1.6, 18.5-18..

⁸³ Ibid, para. 8.14.

⁸⁴ Ibrahim Auta is currently Chief Judge of the Federal High Court of Nigeria, see the website of the Federal Judicial Service Commission : <http://fjsc.gov.ng/hon-justice-ibrahim-ndahi-autaofir/> <accessed 24 April 2017>.

⁸⁵ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, June 1995 (exhibit 255), para. 9.6-9.7; African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (exhibit 217).

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“special jurisdictions, especially when set up to deal speedily with situations of unrest, very often entail serious restrictions of the safeguards and guarantees for defendants, particularly when they face the death penalty. The Special Rapporteur therefore calls upon the authorities of Nigeria to ensure that proceedings before the special tribunal conform to the standards for fair trial proceedings as contained in pertinent international instruments.”⁸⁶

86. The European Parliament also expressed criticism of the trial, and requested the immediate release of “Ken Saro-Wiwa and other political union leaders, who have been detained because of their struggle for justice and democracy in Nigeria” and “in particular demands that Nigeria release the 28 persons concerned unconditionally and no longer use force to suppress the protests.”⁸⁷

87. The Law Society of England and Wales and the Bar Human Rights Committee of England and Wales delegated Michael Birnbaum as an independent observer. He published a damning report (**exhibit 255**) – while the trial was still in progress – in which he wrote about the obvious political motivations behind the setting up of the tribunal:

“There is no sensible pragmatic reason for the appointment of a [Special Tribunal] other than the desire of the Federal Military Government that any trial relating to the Giokoo killings should take place before a tribunal which it hopes will favour the prosecution and a desire to avoid the scrutiny of its case by the ordinary courts.”⁸⁸

88. The first group of suspects, consisting of Saro-Wiwa, Mitee, Kiobel, Kpuinen and Bera, was only officially indicted on 28 January 1995.⁸⁹ This was months after false evidence was obtained⁹⁰ and just 11 days before the tribunal’s opening session. The indictments show that Kiobel, Saro-Wiwa and Mitee were suspected of inciting the murders⁹¹ and that Kpuinen and Bera were suspected of committing the murders. On 28 February 1995 two further groups of five suspects, including Nordu Eawo and Paul Levula, were officially accused of participating in the murders.⁹²

⁸⁶ Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1994/82, E/CN.4/1995/61, 14 December 1994, p. 77 (exhibit 236).

⁸⁷ European Parliament, Resolution on the violations of human rights in Nigeria, 16 February 1995 (exhibit 229).

⁸⁸ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, June 1995 (exhibit 255), para. 2.4 (1).

⁸⁹ Summons to accused to Barinem Nubari Kiobel, 28 January 1995 (exhibit 178).

⁹⁰ Birnbaum (exhibit 255), para. 9.16

⁹¹ Birnbaum (exhibit 255), para. 1.5: “to have counselled and procured (that is encouraged)”, 5.1.

⁹² Birnbaum (exhibit 255), para. 1.5. Group A consists of: 1. Ken Saro Wiwa; 2. Ledum Mitee; 3. Barinem Kiobel; 4. John Kpuinen and 5. Baribor Bera. Group B consists of: 6. Pogbara Afa; 7. Saturday Dobe; 8. Monday Donwin; 9. Felix Nuate; 10. Nordu Eawo. Group C consists of: 11. Paul Levula; 12. Joseph Kpante; 13. Michael Vizor; 14. Daniel Gbokoo; 15. Albert Kagbara.

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89. Birnbaum believed that the summaries of the evidentiary material drawn up by the prosecutor provided insufficient reason to suppose that the suspects had committed an offence, a requirement referred to in the Civil Disturbances Decree of 1987 for letting a trial start.⁹³ For example, Birnbaum qualifies the summary of the evidence against Kiobel as “misleading and tendentious”.⁹⁴ This conclusion was confirmed when the prosecutor only passed the full statements of the witnesses to the defence on 29 March 1995, when the trial had long since begun, following continued pressure.⁹⁵ Birnbaum concluded that the indictment was mainly based on a single statement, that of the brother of one of the murdered leaders, Alhaji Kobani.⁹⁶ From Kobani’s statement the prosecutor inferred that Kiobel had goaded the crowd, which would make him responsible for the murders.⁹⁷ The other evidentiary material however is consistent with Kiobel’s own statement that he simply tried to calm things down.⁹⁸ Different exculpatory statements, by Gbenemene Bagia among them, were ignored by the prosecutor and different defence witnesses were not allowed to give evidence.⁹⁹ Despite the fact that the summaries of the evidence provided insufficient reasons to suppose that the suspects had committed an offence, Judge Auta allowed the trial to begin.

90. Birnbaum described the judicial process of the tribunal as contrary to different fundamental rights of the suspects, in the first place their right to a fair trial:

“it is my view that the breaches of fundamental rights I have identified are so serious as to arouse grave concern that any trial before this tribunal will be fundamentally flawed and unfair.”¹⁰⁰

91. His standpoint was supported by the following findings:

- a) The tribunal was not independent and was under the supervision of the government.¹⁰¹

⁹³ Birnbaum, para. 1.17, and appendices 2 and 3 for 1987 Decree and decree of establishment Abacha: Decree No. 2 1987, section 4:

“1. The trial of offences under this Decree shall commence by way of an application, supported by a summary of evidence or affidavit made to the tribunal by the prosecutor.

2. Where after the perusal of the application and the summary of evidence, affidavit or any further evidence in such form as the Tribunal May consider necessary, the tribunal is satisfied that any person appears to have committed an offence referred to in this Decree, it shall cause that person to be brought before the tribunal on such date and at such time as it May direct.”

⁹⁴ Birnbaum (exhibit 255), para. 22.12.

⁹⁵ **Exhibit 184:** Transcripts 29 March 1995, p. 2; Birnbaum (exhibit 255), para. 10.7.

⁹⁶ **Exhibit 177:** Submissions Fawehinmi regarding the application for bail.

⁹⁷ **Exhibit 186:** Transcripts 22 May 1995, p. 71; Birnbaum (exhibit 255), para. 22.10.

⁹⁸ Birnbaum (exhibit 255), para. 23.15: “The evidence against Kiobel appears consistent with the claim that he was trying to stop the violence”; **exhibit 174:** Counter-affidavit Barinem Kiobel, undated.

⁹⁹ Birnbaum, (exhibit 255), para. 22.12. See also para. 10.7: “Further, the summary in relation to Kiobel was unfair: it exaggerated the effect of the evidence against him and omitted crucial evidence in his favour.”

¹⁰⁰ Birnbaum (exhibit 255), para. 2.6.

¹⁰¹ Birnbaum (exhibit 225), para. 2.4 (1); The Secretary-General of the United Nations says of this “The fact that the judges were appointed by the Executive calls seriously into question the independence and impartiality of the tribunal. [...] the presence of a military officer on the tribunal is contrary to the standard of impartiality and independence set out in article 7(1)(d) and article 26 of the African Charter of Human and Peoples’ Rights and

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- b) The tribunal was biased in favour of the government and the public prosecutor. For example, the tribunal allowed the cases of 11 suspects against whom the prosecutor had submitted no concrete evidence and granted the prosecutor permission, for the same tribunal, to conduct three cases simultaneously with regard to different groups of suspects on the basis of the same evidentiary material.¹⁰² This for example meant that it could happen that a suspect had no chance to refute a witness statement given in one of the other two cases.¹⁰³ The right to hear both sides was therefore violated. The tribunal also stated that it was up to President Abacha to decide how many trials would be instigated. This was a flagrant violation of the tribunal's duty to protect individuals against the power of the state.¹⁰⁴ In addition, legitimate questions regarding the tribunal's jurisdiction were ignored by the judges. Although the law required that an investigation committee is appointed by the president and there was no indication that this had taken place, judge Auta simply stated that the defence could not prove that the president had not done this.¹⁰⁵
- c) The suspects were not permitted to speak to a lawyer before the start of the trial. Even after the start of the trial they were only allowed to speak to a lawyer in the presence of Lieutenant Colonel Okuntimo.¹⁰⁶ In any event Okuntimo played a conspicuously big part during the trial.¹⁰⁷
- d) Different suspects were detained for months without charge, some even for nine months (including Kiobel).¹⁰⁸
- e) No forensic investigation was carried out into the murders.¹⁰⁹
- f) There was convincing evidence of intimidation of the suspects' lawyers by Okuntimo's security forces.¹¹⁰
- g) Witnesses proved unreliable, but were used nonetheless.¹¹¹ For instance, two witnesses, Charles Danwi and Naayone Nkpah, made statements under oath in which they said that they had been offered money and a job by the regime and

article 14(1) of the International Covenant on Civil and Political Rights)", see Note by the Secretary General on the Situation of Human Rights in Nigeria, 22 October 1996, A/51/538 (**exhibit 234**), p. 20.

¹⁰² Birnbaum (exhibit 225), para. 2.4 (2).

¹⁰³ Birnbaum (exhibit 225), para. 11.28-11.39.

¹⁰⁴ Birnbaum (exhibit 255), para. 11.40.

¹⁰⁵ Birnbaum (exhibit 225), paras. 11.12-11.13.

¹⁰⁶ Birnbaum (exhibit 255), para. 2.4 (3); **exhibit 233**: Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 14; Transcripts 23 February 1995 (**exhibit 181**), p. 25: A. Oso; "Another very major constraint is the Military Camp. Lt. Col. Paul Okuntimo would not allow us to see our clients"

¹⁰⁷ Birnbaum (exhibit 255), para. 13.1 – 13.12. See also chapter 8.5.3.

¹⁰⁸ Birnbaum (exhibit 255), para. 2.4 (4); Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 14

¹⁰⁹ Birnbaum (exhibit 255), para. 1.19.

¹¹⁰ Birnbaum (exhibit 255), para. 2.4 (5), 16.4; Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 14

¹¹¹ Birnbaum (exhibit 255), para. 1.19.

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Shell in exchange for incriminating testimony.¹¹² As explained in greater detail in chapter 8.6.1 this exculpatory evidence was not admitted by the tribunal.

- h) There was no opportunity of an appeal, which was especially severe given the good chance that the death penalty would be imposed.¹¹³
92. The suspects' lawyers were thwarted at every stage.¹¹⁴ During the session on 7 June 1995 Alhaji ('Fatai') Oso, Kiobel's lawyer, had the opportunity to question Alhaji Kobani.¹¹⁵ He wanted to confront Kobani with the statements he had made at the press conference on 22 May 1994, but said that the subpoena to obtain the video tape had been rejected by the tribunal clerk.¹¹⁶ The prosecutor denied that it was in possession of video recordings of the press conference. Judge Auta concluded that the defence was not allowed to introduce any evidence at this stage of the trial.¹¹⁷ On 19 June 1995 Judge Auta allowed Oso's request, but two days later this proved a Pyrrhic victory; Komo's Chief Press Secretary (Fidelis Agbiki) testified before the tribunal that the tape on which the press conference had been recorded had been used for other recordings.¹¹⁸
93. According to lawyer Oso, the crucial video tape had been deliberately withheld. Lawyer Falana shared this conclusion:
- "In the circumstance, Sir, I urge your Lordship to come to the only irresistible inference which is that there is a conspiracy between the official media of this State and the government that is prosecuting the accused persons to deny them fair hearing."¹¹⁹
94. This argument was rejected by Judge Auta and the video would ultimately never be shown in the courtroom. The lawyers saw in this yet more evidence of flagrant violations of fundamental rights in a political trial whose outcome had been decided in advance.
95. The witness statements of Nkpah and Danwi, in which they stated that they had been bribed by Shell and the regime, were not admitted by the tribunal.¹²⁰ As this evidence was crucial for Kiobel's defence, lawyer Oso announced that he felt compelled to

¹¹² See section 8.6.1

¹¹³ Birnbaum (exhibit 255), para. 2.4 (6), 18.8-18.10; Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 7.

¹¹⁴ The defence lawyers were Femi Falana, Uche Onyeagucha, Olisa Agbakoba, Gani Fawehinmi, Alhaji ('Fatai') Oso, Orono Douglas, Emmanuel Ukala and Nnaemeka Amaechina.

¹¹⁵ **Exhibit Fout!** Verwijzingsbron niet gevonden.: Transcripts 7 June 1995.

¹¹⁶ Transcripts 7 June 1995 (exhibit 190), p. 67; **exhibit 191**: Transcripts 18 June 1995, p. 3; Mitee also said that it was at least remarkable that the secretariat decided on such a request, and not the tribunal itself, see Transcripts 7 June 1995 (exhibit 190), p. 68

¹¹⁷ Transcripts 7 June 1995 (exhibit 190), p. 73; Judge Auta went along with this, see p. 74.

¹¹⁸ **Exhibit 192**: Transcripts 21 June 1995, p. 3-5.

¹¹⁹ Transcripts 21 June 1995 (exhibit 192), p. 8.

¹²⁰ Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 15.

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discontinue this.¹²¹ When Judge Auta asked Kiobel what he thought of this, he replied as follows:

“I cannot force him, equally I will not accept any other person than that one. If justice is to be done, I plead the Tribunal has to look into that. Let that video tape be played for the whole world to see. So that whatever decision you take would be seen to be just.”¹²²

96. On 22 June 1995 lawyer Amaechina announced that all the lawyers were withdrawing permanently out of protest.¹²³

4.4 Ill-treatment of the suspects

97. From their arrest the suspects were detained in appalling conditions, most in a military prison at Bori Camp, which was highly unusual.¹²⁴ They were under the authority of the RSISTF and were subjected to physical and mental abuse and torture on a daily basis.¹²⁵
98. Saro-Wiwa, who suffered from a heart condition, was even locked up in chains for a long period of time.¹²⁶ His health deteriorated to such a degree during the trial that there came a time when he was no longer able to attend the sessions. On 7 April 1995 Judge Auta was forced to postpone the trial for a lengthy period because of Saro-Wiwa's rapidly deteriorating health.¹²⁷
99. Kiobel too was treated inhumanely during his imprisonment. For instance, he was denied structurally necessary medical care and was fed poorly. As a result of this in October 1994 he suffered serious stomach problems. He paid N15,000 for medical care, but never received it.¹²⁸
100. Victoria Bera stated that when she saw her husband for the first time following his arrest, she hardly recognised him because his face was so badly swollen and covered in

¹²¹ Transcripts 21 June 1995 (exhibit 192), p. 15; Public Deposition Esther Kiobel, vol. II, 5 December 2003 (exhibit 37), p. 297.

¹²² **Exhibit 193**: Transcripts 22 June 1995, p. 4.

¹²³ Transcripts 22 June 1995 (exhibit 193), pp. 2-3.

¹²⁴ Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960, (exhibit 233), p. 14: “During this period they were held in inhuman conditions [...] access to counsel was limited by the condition of detention of the accused in a military base”; Transcripts 6 February 1995 (exhibit 179), p. 16: “Fawehinmi: My Lord, what is the business of the Army in this case? You would recall Sir, that even in the Federal High courts, I have never heard of an Order being made irrespective of the accused person to be kept in the Military Barracks, whether Bonny Camp or elsewhere.”

¹²⁵ Human Rights Watch 1995 (exhibit 222), pp. 21-22; See also **exhibit 219**: Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995, pp. 9-10.

¹²⁶ **Exhibit 24**: Public Deposition Boniface Ejiogu, vol. I, 22 May 2004, p. 57-59 Boniface Ejiogu was Okuntimo's right-hand man during Operation Restore Order in Ogoniland, see further chapter 8.3; Transcripts 6 February 1995 (exhibit 179), p. 19: “Fawehinmi: He became sick because for sixty-four days when he was arrested, he was manacled, chained and beaten up by the Army at the age of 54 years. The second accused person was also manacled and chained for sixty-four days as well. This is an evidence of degrading treatment frowned against by our Constitution.”

¹²⁷ **Exhibit 185**: Transcripts 7 April 1995, pp. 9-11

¹²⁸ Affidavit Barinem Kiobel in support of motion, application for bail, undated (exhibit 173), paras. 34-36.

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blood. Nor was he able to walk independently. She had taken food for him, but Baribor was not allowed to eat it. On 27 February 1995, in the courtroom, Ukala, Bera's lawyer, talked about the serious torture that his client underwent following his arrest.¹²⁹ His hands and feet were tied, after which he was beaten a hundred times with a copper cable. Then a mixture of water and tear gas was thrown over his seriously injured body. His false teeth were broken with a rifle and he was forced to swallow the broken pieces.¹³⁰ Photos of Bera's scars were submitted as exhibit 251.¹³¹

101. Nordu Eawo told the tribunal that one of the prosecution witnesses had beaten him on his arrest and had cut his genitals and head with a sharp stick.¹³² In detention he was exposed to further torture: he was beaten, they used lighters to burn his skin, and a broomstick was inserted into his sexual organ. His wounds became infected, which made him very ill. Apart from the antibiotics he obtained from a police officer, he was not given any other medical care.¹³³
102. Levula stated that the police in Port Harcourt had twice suspended him for a long time by his hands.¹³⁴ His wife also said that during his detention a broomstick was inserted into his sexual organ.
103. On 24 January 1995, at the request of the wives of Saro-Wiwa, Mitee and Kiobel, the lawyers sent an urgent letter to the Brigade Commander of Bori military prison, entitled 'Official Starvation of Ken Saro-Wiwa, Ledum Mitee and Dr. Kiobel.' In it they described how Okuntimo forbade the women from speaking to their husbands in the prison. Nor were they any longer allowed to bring in food for their husbands, so that the men were at risk of starving. The lawyers said:

“We are very much concerned about these latest violations of our clients rights which we consider rather inhuman. We have to point out that our Clients, like all Nigerian citizens including Lt. Col. Okuntimo are presumed innocent unless adjudged guilty by a court of law and are consequently entitled to all rights least of all the right to have access to their families and to be fed.”¹³⁵

¹²⁹ **Exhibit** Fout! Verwijzingsbron niet gevonden.: Transcripts 27 February 1995.

¹³⁰ Transcripts 27 February 1995 (exhibit 182), p. 41 et seq.; Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995, p. 7 (exhibit 219).

¹³¹ In a *counter-affidavit* Okuntimo states that Bera was left with his injuries from a skin disease that he was supposed to have suffered when he escaped. This reading is not shared by Bera and witnesses, and is completely implausible. See also Ukala's observations about this at the session: Transcripts 6 February 1995 (exhibit 182), p. 44 - 45. Ukala also refers in this connection to the earlier detention of Esther Kiobel, who was said to have been admitted to a psychiatric hospital according to Okuntimo, but who it later transpired had been detained at the police station in Kpor (p. 45); see also chapter 4.5. Attorney Ledum Mitee also witnessed Bera being abused with a copper cable, whereafter he was barely able to stand upright on his own. Bera was also deprived of the necessary medical attention, see Declaration Ledum Mitee, 2 May 2017 (**exhibit 41**), para. 9.

¹³² Amnesty International Nigeria: The Ogoni Trials and Detentions, 15 September 1995(exhibit 219), p. 6.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ **Exhibit 10:** Ukala, 24 January 1995, Official starvation of Ken Saro-Wiwa, Ledum Mitee and Dr. Kiobel.

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104. Trust in the authorities was so low that it was feared the suspects would be poisoned. This mistrust was understandable as Okuntimo told the claimant that he would ensure that her husband would be sentenced to death, since it had not been possible to poison his food.¹³⁶
105. On 28 February 1995 the problem was broached again at the tribunal. Fawehinmi stated that the women had to give the food to the soldiers with all the risks that entailed. Judge Auta responded:

“I am saying that the food should be given to the security men there to hand it over to their husbands. If there is any case of poisoning, then Chief Fawehinmi should hold Lt. Col. Okuntimo liable.”¹³⁷

4.5 Ill-treatment of lawyers and family members

106. Both lawyers and family members of the suspects were seriously intimidated, threatened and even ill-treated during the trial.¹³⁸
107. On several occasions the lawyers were denied access to the heavily protected court.¹³⁹ For example, at the session of 21 February 1995 Fawehinmi related how that morning he was forced by Lt. Hassan, who worked directly under Okuntimo, under threat of violence, to board a police bus. Lawyer Falana was beaten in the same incident.¹⁴⁰ These two lawyers were also unlawfully detained by the regime during (the run-up to) the trial.¹⁴¹
108. Oso, Kiobel’s lawyer, related how he became the victim of serious intimidation. On arrival at the courthouse he was told to leave after which his driver was beaten up and his car destroyed.¹⁴² That same morning Saro-Wiwa’s 74-year-old mother was beaten up on the instructions of Lt. Hassan when she tried to enter the court.¹⁴³

¹³⁶ **Exhibit 38:** Declaration Esther Kiobel, 12 February 1995.

¹³⁷ **Exhibit 183:** Transcripts 28 February 1995, pp. 38-39.

¹³⁸ Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 14: “The military was involved in all phases of the trial, as a result of which serious allegations were made affecting the credibility of witnesses, freedom of access to the tribunal and intimidation of the accused, their relatives and other members of the public”.

¹³⁹ Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, supra, p. 14: “The defence counsel were harassed by the military personnel by requiring them to request permission of them to enter the courts and submitting them in the process to hardship, indignities and waste of time”.

¹⁴⁰ **Exhibit 180:** Transcripts 21 February 1995, p. 4-5; Birnbaum (exhibit 255), para. 13.3, 13.4.

¹⁴¹ **Exhibit 108:** Nigeria Update 24 October 1994: “Release of Gani Fawehinmi [...] this radical lawyer has been released from jail on bail [...] he is also the main defense lawyer for all those activists who have been put away, including Saro Wiwa”. **Exhibit 187:** Transcripts 24 May 1995, pp. 1-2. **Exhibit 188:** Transcripts 26 May 1995, p. 2 et seq. **Exhibit 189:** Transcripts 31 May 1995, p. 10: Falana notes here : “I have been to detention for almost fifty times but they have never charged me for anything.”

¹⁴² Transcripts 21 February 1995 (exhibit 180), p. 7.

¹⁴³ Transcripts 21 February 1995 (exhibit 180), p. 5.

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109. When Kiobel was asked on 22 June 1995 whether he could arrange another lawyer since Oso had stopped his defence, he stated, to the annoyance of Judge Auta, how his family was being harassed by the army:

“I have been detained since last year. I have no access to anybody to go and get any further information for anything or get a capable lawyer who will be able to stand to defend me. Surprisingly, Thursday last week, even my family at home and secretary to the Chief of my village are being chastised by the Armed Forces because of this matter.”¹⁴⁴

110. Earlier in the trial Esther Kiobel fell victim to Okuntimo’s practices. When she brought food for her husband, Okuntimo said that she could only do so if she went to bed with him. When she refused, Okuntimo ill-treated her in his office.¹⁴⁵ Esther reported this to the Brigade Commander, who she also told that Okuntimo had sworn to her that her husband would be hanged as a result of the legal case.¹⁴⁶ Okuntimo then instructed the police to arrest Esther each time she tried to visit her husband.¹⁴⁷
111. On 19 February 1995, when Esther again tried to visit her husband, she was locked up by Okuntimo and tied naked to a chair. Then she was beaten with a koboko and sexually harassed and assaulted by Okuntimo.¹⁴⁸ Then she was kept prisoner by him for some time.¹⁴⁹ When this was raised at the tribunal, the prosecutor said that she had been admitted to a psychiatric hospital. In reality however she was, as later became apparent, being held at the police station in Kpor.¹⁵⁰
112. Victoria Bera was also twice unlawfully detained. The first time was at Bori Camp when she tried to take her husband food. On her way to her husband she was locked up. She was pregnant at the time. She was taunted with the following: “If you get your baby, you can replace your husband”. She was held all day and at the end of that day she was released without explanation. The second time she was arrested was the day after the executions, on 11 November 1995. Bera was on her way home with her sister and her baby. They were all arrested without explanation and held in Gokana. Okuntimo was present there too. After more than eight hours’ detention, she was again released without explanation.

¹⁴⁴ Transcripts 22 June 1995 (exhibit 193), p. 4.

¹⁴⁵ See **exhibit 175**: written affidavit Barinem Kiobel: "Earlier on 29/12/94 while I was at Afam. He denied access to me by my wife unless she goes to bed with him. When my wife refused, Paul Okuntimo had her beaten up in his office".

¹⁴⁶ Transcripts 21 February 1995 (exhibit 180), pp. 8-9.

¹⁴⁷ Written affidavit Barinem Kiobel (exhibit 175).

¹⁴⁸ Written affidavit Barinem Kiobel (exhibit 175); Transcripts 21 February 1995 (exhibit 180), p. 8

¹⁴⁹ Counter-affidavit Barinem Kiobel, undated (exhibit 174), pp. 4-5; Public Deposition Esther Kiobel, vol. II, 5 December 2003 (exhibit 37), p. 361.

¹⁵⁰ Transcripts Ogoni 9 trial, 6 February 1995 (exhibit 179), p. 45

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4.6 Death penalty for the Ogoni 9

113. On 31 October 1995 the tribunal imposed the death penalty on nine suspects.
114. Kiobel's father sent a letter to Abacha seeking clemency on 7 November 1995 (**exhibit 11**), wherein he writes: "there is a misunderstanding, he tries to make peace".¹⁵¹ The wives of those sentenced to death, including Esther Kiobel and Victoria Bera, also made an appeal to Abacha on 8 November 1995 (**exhibit 12**):

"As Your Excellency is no doubt aware there is no right of appeal against the judgment of the Tribunal that convicted and sentenced our husbands so there is no forum to test the correctness or otherwise of the said decision. Besides, our husbands have to do without the services of lawyers of their choice through no fault of theirs mid way their trial; Even at the point of conviction our husbands still maintained and we are convinced of their innocence. [...] Let your verdict not make us widows and our children fatherless."¹⁵²

115. The wives explicitly refer to the lack of the possibility to initiate an appeal. The Decree of 1987 after all rules out a (more senior) court, independent of the tribunal and the regime, hearing the case again in its entirety and rectifying any legal errors. Section 7 of the Decree does say that any sentence imposed by the tribunal may not take effect until confirmed by 'the confirming authority'.¹⁵³ However, this authority cannot overturn the sentence. It is also unclear whether refusal of confirmation is possible and whether refusal would be the same as acquittal.
116. The authority required to confirm the findings of the tribunal, the Armed Forces Ruling Council, was part of the military regime. At the time of the trial the powers of this body had transferred to the Provisional Ruling Council (PRC), newly set up by Abacha.¹⁵⁴ The members of the PRC met on 8 November 1995. A memo of the meeting (**exhibit 176**) shows that Abacha was the chairman of this meeting and that:

"He was of the view that no sympathy should be shown on the convicts so that the sentence would be a lesson to everybody. He stated that the Ogoni issue had lingered on for a very long time and should be addressed once and for all."

117. The Secretary-General of the United Nations said of the PRC: "The PRC confirmed the conviction and sentence even before the records of the trial were received," and "the haste with which the sentences were confirmed by the Provisional Ruling Council

¹⁵¹ **Exhibit 11**: Plea for clemency for Dr Barinem Kiobel, 7 November 1995.

¹⁵² **Exhibit 12**: Plea for clemency on behalf of our convicted husbands, 8 November 1995.

¹⁵³ Decree No. 2 1987, section 7 (see Birnbaum (exhibit 255), para. 8.14: "Any sentence imposed by the Tribunal shall not take effect until the conviction or sentence is confirmed by the confirming authority. The confirming Authority may confirm or vary the sentence of the Tribunal.")

¹⁵⁴ Birnbaum (exhibit 255), para. 18.7.

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(PRC) implies that the Government had made up its mind and was not interested in a fair consideration of the case.”¹⁵⁵ The memo of the meeting also shows that reconsideration of the sentence imposed by the tribunal was never an option for the members of the PRC. To prevent the regime coming across as weak, the execution had to be put into effect as soon as possible.¹⁵⁶

118. Meanwhile, complaints about the trial were also considered by the African Commission on Human and Peoples’ Rights.¹⁵⁷ When the African Commission became aware that the sentence had been confirmed by the PRC, provisional measures were imposed on the Nigerian government to prevent irreparable damage: Nigeria was to postpone the executions until the Commission had had the opportunity to discuss the case with the government.¹⁵⁸ This call was ignored by the Nigerian regime and the next day, 10 November 1995, the nine convicts, despite national and international protests,¹⁵⁹ were brought to death by hanging in the Federal Prisons in Port Harcourt.¹⁶⁰
119. The African Commission stated regarding the executions and the ignoring of the provisional measures:

“Execution in the face of the invocation of rule 111 defeats the purpose of this important rule. [...] This is a blot on the legal system of Nigeria which will not be easy to erase. To have carried out the execution in the face of pleas to the contrary by the Commission and world opinion is something which we pray will never happen again. That this is a violation of the Charter is an understatement.”¹⁶¹

5. PROCEEDINGS IN THE UNITED STATES

5.1 Introduction

120. Following the execution of their husbands, the claimants were subject to constant threats and harassment by the Nigerian regime.¹⁶² Esther Kiobel, like many other

¹⁵⁵ Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 7.

¹⁵⁶ **Exhibit 176:** PRC, Confirmation of the judgement of the Ogoni Civil Disturbance (Special) Tribunal (Secret Memo Abacha PRC).

¹⁵⁷ African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (exhibit 217), para. 2

¹⁵⁸ *Ibid.*, paras. 8-9, 29-31.

¹⁵⁹ Two United Nations Special Rapporteurs have, on two occasions, sent joint urgent appeals to Abacha regarding the Ogoni 9. These have been published in press releases. The last one was sent the day after the decision of the PRC. See the report of Special Rapporteur Bacre Waly Ndiaya, on Extrajudicial, Summary or Arbitrary Executions of 25 January 1995, E/CN.4/1996/4 (**exhibit 237**), p. 81.

¹⁶⁰ **Exhibit 33:** Public Deposition Blessing Israel, 28 May 2004, pp. 41-44.

¹⁶¹ African Commission on Human and Peoples rights, Nigeria: International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998) (exhibit 217), paras. 114-115.

¹⁶² Esther Kiobel and Victoria Bera therefore fled to Benin. Before Esther decided to flee, her house is in the city was set on fire. Shortly after her departure, her country house was also burned to the ground. Blessing Nordu stated that she continued to be harassed for a long time by Celestine Miebe [Meabe], one of the witnesses in the Ogoni 9 trial who it was said was bribed by Shell (see chapter 8.6.1). Blessing also calls him one of the “Shell agents”.

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Nigerians who became victims of Shell and the military regime, resettled in the United States from the refugee camp in Benin. In the United States two groups of victims and surviving dependants demanded damages from Shell in a civil action. The Saro-Wiwa case ended in an out-of-court settlement (see section 5.2). In the case brought by *inter alia* claimant 1, Esther Kiobel, the American Supreme Court ultimately did not consider that the American courts had jurisdiction to judge the case (see section 5.3).

121. For clarification we briefly consider these American proceedings in this chapter.

5.2 Wiwa case

122. On 8 November 1996 various surviving dependants of the Ogoni 9, and various victims of the violence in Ogoniland, summoned Shell to appear before the American courts. The summons was initially served on Royal Dutch Petroleum Company and Shell Transport and Trading Company (Royal Dutch/Shell). In 2001 Brian Anderson, Managing Director of SPDC between 1994 and 1996, was also summoned. In 2003 the case was again extended and subsidiary SPDC was itself also summoned.
123. The defendants were accused of complicity in various human rights violations and crimes committed against the Ogoni in Nigeria, including summary executions, crimes against humanity, torture, inhuman treatment, arbitrary arrest and detention, criminally negligent homicide, indecent assault and ill-treatment. The cases were brought under the Alien Tort Claims Act (ATCA, also known as the Alien Tort Statute, ATS) and the Torture Victim Protection Act (TVPA). In the case against Royal Dutch/Shell it was also argued that the company acted contrary to the Racketeer Influenced and Corrupt Organizations (RICO) Act.
124. Following the discovery phase, in which evidentiary material was gathered and submitted, and years of legal wrangling over the jurisdiction of the American courts, the District Court of Southern New York accepted jurisdiction on 23 April 2009. The hearing of the substance of the case, which by then had been pending for 13 years, began on 26 May 2009. On 3 June 2009 the Court of Appeal of the Second Circuit decided that Shell must grant even greater access to business information, confidential or otherwise, than had previously been permitted by the District Court.
125. On 8 June 2009, with the trial on the point of starting, Shell and the claimants agreed an out-of-court settlement. Shell paid the claimants a sum of \$15.5 million in damages. The sum was used in part to set up a trust fund for the Ogoni population.

5.3 Kiobel case

126. On 1 September 2002 Royal Dutch Petroleum Company and Shell Transport & Trading Company were summoned by Esther Kiobel (also on behalf of her executed spouse dr. Barinem Kiobel) and 11 other (surviving dependants of) Nigerian activists from the

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Ogoni area. In 2004 subsidiary SPDC was also summoned. Legally and substantively the case was largely the same as the Wiwa case discussed above.

127. In contrast to the Wiwa case the parties in the Kiobel case did not reach an out-of-court settlement. Instead the question of jurisdiction was fought out all the way to the Supreme Court of the United States. In a case attracting global attention, the Supreme Court decided that the territoriality principle (and therefore the “presumption against extraterritoriality”) precluded the jurisdiction of the American courts under the Alien Tort Claims Act.¹⁶³ Shell could only be held liable under the ATCA if a case had sufficient connection to the American legal sphere. The Supreme Court decided that this was not the case, because Shell was an Anglo-Dutch company and the events had taken place in Nigeria. After eleven years of litigation, Esther Kiobel had ended up empty handed.

5.4 Evidentiary material

128. in the so-called discovery for the benefit of the Wiwa and Kiobel cases in the United States, Shell has had to submit a large amount of evidentiary material. The substantiation of this summons is for an important part based on evidence originating from these discovery proceedings.¹⁶⁴
129. Some of the evidence however is protected by a confidentiality agreement, on the basis of which confidentiality in respect of that material and the return or destruction of that material after the proceedings was required. In a judgment of 24 January 2017, the District Court of the Southern District of New York ordered Shell’s lawyers Cravath, Swaine & Moore LLP on application of Esther Kiobel (again) to submit the material in the Wiwa and Kiobel cases previously given up.¹⁶⁵ The enforceability of this judgment is suspended pending the appeal that Cravath has brought against it.
130. To avoid further delay, and because the claimants think they already have sufficient evidentiary material at their disposal to substantiate their claim, they have decided not to await the course of the appeal proceedings in the United States. It is however an established fact that the documents requested were submitted at the time because of their direct relevance to this case. The claimants therefore find that under Section 21 of the Code of Civil Procedure (CCP) Shell has an obligation to submit the documents concerned to the court in the Netherlands too. They ask your court to consider ordering Shell to do so under Section 22 of the CCP. If necessary, the claimants also invoke Section 843a of the CCP for this purpose.

¹⁶³ **Exhibit 197:** Kiobel, Individually and on behalf of her late husband Kiobel, et al. v. Royal Dutch Petroleum Co. et al., 133 S.Ct. 1659 (2013).

¹⁶⁴ Non-confidential documents that were part of the casefile are accessible through the American online electronic public access service Pacer, available at: <https://pacer.login.uscourts.gov/csologin/login.jsf> <accessed 24 April 2017>. Several media, among which www.shellguilty.com, have publicized material as well.

¹⁶⁵ **Exhibit 196:** District Court of the Southern District of New York, per Judge Hellerstein, In Re Petition of Esther Kiobel, Opinion and Order Granting Petition, 24 January 2017.

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131. The non-confidential evidentiary material that came to light in the American discovery proceedings, including a large number of witness interviews with victims, eye witnesses and Shell employees, is being used in this summons. The statements made under oath for the purposes of the American case – which were set down in writing – are to be regarded by your court as written evidence. Since this written record is a literal representation of what was said by all those present, the judge who will rule in the principal action has sufficient to go by to assess each statement on its merits.¹⁶⁶

6. INTERNATIONAL JURISDICTION OF DUTCH COURTS

6.1 Jurisdiction under the Brussels I Regulation

132. Shell Petroleum NV and Royal Dutch Shell plc have their registered offices in The Hague. It is therefore an established fact that under article 4(1) in conjunction with article 63 of the recast Brussels I Regulation the Dutch courts have jurisdiction to hear disputes in respect of these parties.¹⁶⁷ The district court of The Hague has subject-matter jurisdiction.

6.2 Jurisdiction under of art. 7(1) CCP

133. The claimants' claims against Shell Petroleum NV and Royal Dutch Shell are inextricably bound up with their claims against Shell Transport and Trading and SPDC. The claimants after all claim that both the parent company and SPDC were complicit in human rights violations towards themselves and their executed husbands. In this summons the claimants give more detailed substantiation of the active role SPDC and the parent company jointly played in this regard, in so doing acting at all times as a single entity.

134. Under article 7(1) CCP a Dutch court that has jurisdiction in respect of a defendant also has jurisdiction in respect of other defendants involved in the proceedings, provided that there is such a connection between the claims against the different defendants that reasons of efficiency justify a joint hearing.

135. The claimants base their claims against the Dutch and non-Dutch defendants on the same facts and legal grounds. It is therefore efficient to hear these cases together. The joint action on which the complicity of Shell is based demonstrates a coordinated approach that cannot actually be split up into separate acts by the different defendants. The connection between the claims is therefore so close that good administration of

¹⁶⁶ Such as Court of Rotterdam, 8 August 2012, para. 5.9, 2012: ECLI:NL:RBROT:2012:BX4521; Court of Appeal Amsterdam, 24 October 1996, roll no. 490/96 SKG, NIPR 1997/120.

¹⁶⁷ Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), via: <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32012R1215>.

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justice requires their simultaneous hearing and adjudication, in order also to avoid incompatible decisions being given in separate adjudication of the cases.¹⁶⁸

136. It should also be noted that the declaration in the Wiwa-case of (former) lawyer Mr. J.K. Franx of law firm De Brauw submitted by Shell in the American proceedings shows that Shell also takes the view that the Dutch courts have jurisdiction to judge on the present matter (**exhibit 170**: Declaration of J.K. Franx, 21 March 1997).

6.3 Alternative jurisdiction under forum necessitatis

137. Alternatively the claimants rely on article 9(c) CCP with regard to the jurisdiction of the Dutch courts. This article stipulates that the Dutch courts have jurisdiction in the absence of jurisdiction under art. 2 to 8 CCP, when a case that has to be initiated by summons is sufficiently connected to the Dutch legal sphere and that it is unacceptable to expect the claimant to submit the case to the judgment of a court of a foreign state.
138. The claims against SPDC are closely connected to the Dutch legal sphere since SPDC is a wholly owned subsidiary of the parent company/companies in The Hague, acted as a single entity with the parent company/companies and also received its instructions from The Hague.
139. Given the background to the case and the pivotal role that the Nigerian regime and the Nigerian legal system have played in the events, these events also having led to refugee status for Kiobel and Bera, as well as for several witnesses, the claimants cannot now be expected to submit their case to the judgment of Nigerian jurisdiction. Not only do they have no prospect of a fair trial there, a judicial process in Nigeria would plainly be traumatic and dangerous for them.
140. The judges who sat on the tribunal at the time continue to be part of the Nigerian legal system. Following the events of 1995, and despite the massive international criticism, it has not exactly put its house in order. Judge Auta in fact is currently Chief Judiciary in the federal court of Nigeria.¹⁶⁹ Since November 2016 he has been the subject of an investigation as part of a bribery scandal within the judiciary.¹⁷⁰

¹⁶⁸ Cf. with regard to 6 Brussels I Regulation (currently art. 8 Brussels II Regulation): EU CofJ 27 September 1988, case 189/87, Jur. 1988, p. 5565, NJ 1990/425, m.nt. J.C. Schultsz (*Kalfélis/Bank Schröder*), available at: <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A61987CJ0189> <accessed 24 April 2017>.

¹⁶⁹ The person in question is Ibrahim Auta, then Chairman of the Special Disturbances Tribunal (see chapter 4.3), currently Chief Judge of the Federal High Court: see the website of the Federal Judicial Service Commission: <http://fjsc.gov.ng/hon-justice-ibrahim-ndahi-autaofr/> <accessed 24 April 2017>.

¹⁷⁰ See "Chief Judge of Nigeria's Federal High Court implicated In 1.3\$ Million Bribery Arrest, 11 October 2016, available at: <http://saharareporters.com/2016/10/11/chief-judge-nigeria%E2%80%99s-federal-high-court-implicated-13-million-bribery-arrest> <accessed 24 April 2017>.

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141. Large-scale corruption in Nigeria and within the Nigerian judiciary has for a long time been a clear problem.¹⁷¹ Consequently, a proper judicial process cannot be guaranteed in Nigeria. Regarding article 9 the Court of Appeal in The Hague has stated:

“absence of a proper judicial process [...] is not in the opinion of the court an impossibility as described in article 9, preamble and under b CCP (absolute impossibility). Such a circumstance may however give rise to serious onerousness that must be taken into consideration in the context of article 9, preamble and under c CCP in the sense that it may mean that it is unacceptable to expect a claimant to submit the case to the judgment of the courts of the state in question”¹⁷²

142. This is confirmed by A-G Vlas:

“art. 9(c) CCP requires that it is unacceptable to expect the claimant to submit the case to the judgment of a court of a foreign state (for example, because a proper judicial process (fair trial) in the foreign proceeding is not guaranteed)”.¹⁷³

7. NIGERIAN LAW

143. Under section 3 of the Unlawful Acts (Conflict of Laws) Act applying at the time, the present case is subject to Nigerian law, since the unlawful act was committed in Nigeria and the damage – in the first instance – also occurred in Nigeria.

7.1 Complicity in human rights violations under Nigerian law

144. Claimants accuse Shell of complicity in the unlawful arrest and detention, and the violation of the personal integrity of their husbands and, in the case of Esther Kiobel and Victoria Bera, themselves, and in the violation of their right to a fair trial and their right to life, and the right to a family life of the claimants. These fundamental rights form part of unwritten international law, and are also embedded in the Nigerian legal system.

145. Among the rights the Constitution of the Federal Republic of Nigeria 1979 (**exhibit 215**) guarantees are the fundamental right to life (article 30), to personal integrity or dignity (article 31), the right to freedom (article 32), and the right to a fair trial (article 33).

146. These rights are also embedded in the International Covenant on Civil and Political Rights and in the African Charter on Human and Peoples' Rights (**exhibit 216**) ratified

¹⁷¹ **Exhibit 227**: Transparency International, “Nigeria: Evidence of corruption and the influence of social norms”, 26 September 2014, p. 10. **Exhibit 241**: F.A.R. Adeleke & O.F. Olayanju “The role of the judiciary in combating corruption: aiding and inhibiting factors in Nigeria”, *Commonwealth Law Bulletin*, 2014, 40(4), pp. 604-605.

¹⁷² Court of Appeal The Hague, 15 October 2013, ECLI:NL:GHDHA:2013:3895, at 11.3.

¹⁷³ Conclusion of A-G Vlas in the Supreme Court 20 February 2015, ECLI:NL:PHR:2014:2344, at 2.5.

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by Nigeria. Since the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, this human rights covenant forms a direct part of the Nigerian legal system. The African Charter protects the aforementioned rights in articles 4 to 7:

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:

- a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
- c. The right to defence, including the right to be defended by counsel of his choice;
- d. The right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed.

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No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

147. Horizontal effect is also granted to these rights. In 2006 the Nigerian Supreme Court (again) confirmed the line that had previously been developed in a long list of legal cases:

The position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals, as in the instant case, such victims have rights against the individual perpetrators of the acts as they would have done against state actions. It follows therefore that in the absence of clear positive prohibition which precludes an individual to assert a violation or invasion of his fundamental rights against another individual, a victim of such invasion can also maintain a similar action in a court of law against another individual for his act that has occasioned wrong or damage to him or his property in the same way as an action he could maintain against the State for a similar infraction. See *Onwo v. Oko & Ors.* (1996) 6NWLR (PT 456) at 603; and *Ogugu v. The State* (1994) 9 NWLR (PT 366).¹⁷⁴

148. For a more detailed explanation of human rights under Nigerian law, see the legal opinion of Obiora Okafor, which is submitted as **exhibit 198**. Okafor is currently attached to the Osgoode Hall Law School of York University in Toronto, Canada, as professor in Human Rights Law. He also works as a barrister in Nigeria. Currently Okafor is also a member of the UN Human Rights Council Advisory Committee. Okafor makes clear that under Nigerian law companies can be held to account for violations of human rights, and also for complicity in such violations.

“...it should be noted that it is clearly an established aspect of Nigerian law that legal persons (natural or otherwise) who are complicit in the commission of certain improper and/or illegal acts are themselves

¹⁷⁴ *Abdulhamid v. Akar and another* (2006) LPELR-24. R.N. (**exhibit 201**); Legal Opinion O.C. Okafor, 21 June 2017 (**exhibit 198**), p.5.

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responsible for the acts in question. This is an uncontroversial point.”¹⁷⁵

149. Complicity may exist under Nigerian law for example if a party has encouraged or promoted the conduct alleged to have taken place:

“One who knowingly, voluntarily and with common intent unites with the principal offender ... partaker of guilt; one who aids and assists or is an accessory ... one who is guilty of complicity ... either by being present and aiding or abetting it ... or having advised and encouraged it, though; absent from place when it is committed.”¹⁷⁶

150. The Nigerian Supreme Court has ruled in this regard that for the assumption of complicity it is not necessary that these parties themselves took part in or even had knowledge of the specific violating event(s) (“the conspirators need not know themselves or be in direct communication”). Complicity may be derived from the combination of acts, and for example the joint purpose of the parties concerned.¹⁷⁷

151. This applies in full to companies or other legal entities:

The Nigerian courts including the Supreme Court of Nigeria- have consistently and firmly held that a company or other legal person may be held legally responsible for procuring, provoking or even encouraging an agency or agent of the Government of Nigeria to commit an improper or illegal act against another, and/or for violating that other person’s human rights.¹⁷⁸

152. In his opinion Okafor discusses a great number of Nigerian cases in which complicity in human rights violations was assumed.¹⁷⁹ In many of these cases it is a matter of encouraging or causing an unlawful arrest or detention. In one of these cases SPDC was found complicit in the unlawful arrest and detention of a former employee.¹⁸⁰

153. The case law shows that complicity is not only accepted as a concept in a criminal context, but also that liability for complicity can also be assumed on a purely human rights basis.¹⁸¹ In *Akwa Savings and Loans Ltd v. Ime Wilson Udoumana & 2 Others* (**exhibit 215**),¹⁸² a proceeding on the basis of the former Fundamental Rights

¹⁷⁵ Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198), p. 2.

¹⁷⁶ *Akinlade v. the State*, (2010) LPER 8632 (**exhibit 199**), at p.12.

¹⁷⁷ *The State v. James Gwangwan* (Suit No. 504/2012, *Supreme Court of Nigeria*, 3 July 2015 (not published) (**exhibit 214**); *Kayode Babarinde & 2 Others v. The State* (2014) 3 NWLR (Part 1395) (**exhibit 208**), p.568, at 614; *Osuagwu v. The State* (2013) LPELR-19823 (**exhibit 211**), at p.33, paragraphs A-F. See Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198), p. 2.

¹⁷⁸ Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198), p. 3.

¹⁷⁹ Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198), p. 3-5.

¹⁸⁰ *S.P.D.C (NIG) Ltd v. Olarewaju* (2002) 16 NWLR (Part 792) (**exhibit 212**), 38; *S.P.D. C v. Olarewaju* (2008) LPELR 3046 (**exhibit 213**), pp.26-28.

¹⁸¹ Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198), p. 5.

¹⁸² *Akwa Savings and Loans Ltd v. Ime Wilson Udoumana & 2 Others* (2009) LPELR-8861.

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(Enforcement Proceeding) Rules 1979, even the – also defendant – police officers were not liable for the violation of fundamental rights, but the instigator of the arrest and detention was.

154. For clarification it should also be noted in this connection that liability for (complicity in) human rights violations in Nigeria is a different concept from that of liability for an unlawful act (tort). Violations of human rights may well lead to liability under Nigerian law, but they are not contained (unlike Dutch law) in the torts category. There is a separate legal proceeding open for human rights violations in Nigeria.¹⁸³
155. Finally, it is established under Nigerian law that as a surviving dependant Esther Kiobel may stand up for the fundamental rights of Barinem Kiobel.¹⁸⁴

7.2 No limitation of claims by reason of human rights violations in Nigeria.

156. For the sake of completeness, it is noted that Nigerian law makes no provision for limitation of claims by reason of human rights violations. The Fundamental Rights (Enforcement Proceeding) Rules 2009 govern not only the proceeding for such claims – provisions that do not currently apply through the prevalence of the *lex fori* – but also their – substantive – limitation. In this connection Order III states:

ORDER III – LIMITATION OF ACTION

1. An Application for the enforcement of Fundamental Rights shall not be affected by any limitation Statute whatsoever.

157. In his opinion Okafor explains that this provision also applies to human rights violations that took place before the introduction of these rules in 2009. This follows to begin with from the following provisions of Order XV:

ORDER XV – TRANSITIONAL PROVISIONS

1. The Fundamental Rights (Enforcement Proceeding) Rules 1979 are hereby abrogated.
2. From the commencement of these Rules, pending Human Rights applications commenced under the 1979 Rules shall not be defeated in whole or in part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed, for failure to comply with these Rules provided the applications are in substantial compliance with the Rules.

¹⁸³ Cf. Fundamental Rights (enforcement and Proceeding) Rules 2009 (**exhibit 215**).

¹⁸⁴ *Mrs. Precious Omonyahuy & Ors V. The Inspector-General Of Police & Ors*, (2015) LPELR-25581(CA) (dealing with this issue under the FREP-rules 2009) (**exhibit 209**); *Nosiru Bello V. A.G, Oyo State* (1986) 5 NWLR (Pt.45) 828 (dealing with this issue under the FREP-rules 1979) (**exhibit 210**).

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3. Such pending Human Rights applications may continue to be heard and determined as though they have been brought under these Rules.

158. From this it follows that claimants could have brought their case in Nigeria under the Fundamental Rights (Enforcement Proceeding) Rules 2009, and that under these same Rules no limitation could be invoked against them.¹⁸⁵ The Fundamental Rights (Enforcement Procedure) Rules do not only apply to new cases, but also to cases that have already been brought under the old Fundamental Rights (Enforcement Procedure) Rules.

159. See also in this context Okafor's legal opinion:

And so, the overarching position of Nigerian law is that since Ms. Kiobel (or any other human rights claimant) is entitled to bring her matter under the 2009 FREPRs, and since these Rules do *not* at all allow for human rights claims to be dispensed with on the technicality of the passage of time, and instead now allow such claims to be brought before the Nigerian courts regardless of how long ago they arose, Ms. Kiobel's claim is not at all statute barred. The above stated position of Nigerian law is now so clearly established that the Court of Appeal has recently gone as far as declaring, in *Mallam Nasir Ahmad ElRufai v. Senate of the National Assembly & Others* (2014) LPELR-233115 at p.47 paragraphs B-E, that:

"It is therefore, clear[,] that an action for the enforcement of a person's fundamental right *cannot be defeated by the provisions of a statute of limitation*. This point has been made clear and plain by Order 3 of the FREP Rules, 2009 which came into force on the 1st day of December, 2009."

8. SHELL IS COMPLICIT IN THE HUMAN RIGHTS VIOLATIONS AGAINST THE OGONI 9 AND THE CLAIMANTS.

8.1 Introduction

160. As explained in the previous chapter, under Nigerian law encouraging or inciting human rights violations, promoting or contributing to them, sharing in making them possible or facilitating them leads to complicity.

161. On the basis of the circumstances described in this chapter, Shell is an accomplice to the human rights violations described in chapter 4 that were committed by the Nigerian

¹⁸⁵ Cf. Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198).

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regime against the claimants' husbands and against the claimants themselves. In particular they are the following human rights, which form part of Nigeria's legal order:

- The right to life (Article 4 of the ACHPR and Section 30 of the Nigerian Constitution 1979)
- Right to dignity of the person and the prohibition of torture and cruel or inhuman punishment and treatment (Article 5 of the ACHPR, Section 31 of the Nigerian Constitution 1979)
- The right to personal liberty and the security of the person; the prohibition of arbitrary arrest and detention (Article 6 of the ACHPR, Section 32 of the Nigerian Constitution 1979)
- The right to a fair trial (Article 7 of the ACHPR, Section 33 of the Nigerian Constitution)
- The right to family life (Article 18 of the ACHPR, Section 34 of the Nigerian Constitution 1979)

162. Shell and the military regime formed an alliance in the events leading to the deaths of the Ogoni 9. Their relationship was one of mutual dependence: the Nigerian state was dependent on the income from oil that Shell generated; in turn, Shell was dependent on the benevolence and protection of the regime to pursue its activities in Nigeria and in this way realise a substantial part of its turnover.¹⁸⁶

163. Shell and the regime were also inextricably bound up with each other in their operation. Shell supported a great many government tasks in the period 1990-1995 and sometimes carried them out itself. Shell collaborated with the secret service in maintaining a spy network in Ogoniland, was prepared to purchase arms for the police, itself maintained a large police force, provided all kinds of support to different government departments and even placed its own people in them.

164. In the run-up to the start of Operation Restore Order in Ogoniland, the major military operation that the regime intended to end the resistance in Ogoniland in 1994,¹⁸⁷ Shell was repeatedly behind excessively violent action by the regime against the Ogoni and other population groups that were protesting against Shell (chapter 8.2). The purpose of this intervention was to enable Shell to pursue its activities in spite of the protests and to safeguard its economic interests. Shell repeatedly and emphatically reminded the regime of the economic interests of its activities in Ogoniland and the economic consequences of the uprisings aimed at Shell. Shell also several times named MOSOP as principal offender and therefore contributed to the regime's image of the enemy. In

¹⁸⁶ See chapter **Fout! Verwijzingsbron niet gevonden..**

¹⁸⁷ See chapter 4.

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view of the regime's previous actions, Shell knew that it would therefore feel the need to take a rigorous approach to set things straight.

165. In this way Shell urged the regime to start Operation Restore Order in Ogoniland, of which the purging of the leadership of the Ogoni resistance was part (8.3). Shell then also actively supported the regime during its violent action in Ogoniland by providing vehicles and paying notorious militias such as MOPOL (8.4). Shell also maintained close ties with Paul Okuntimo, the army leader responsible for the military operation in Ogoniland who also played an important part during the Ogoni 9 trial.
166. The Ogoni 9 trial was the inevitable climax of the attempts by Shell and the regime to resume oil extraction in Ogoniland. Instead of distancing itself from the obvious show trial, at least keeping itself away from it, Shell had its own counsel take part in it (8.6). Shell then misled the public by publicly stating that it had withdrawn its counsel, while in reality it maintained its instructions in full force. During the trial Shell was also in direct contact with the Tribunal judges and Shell's counsel assisted the regime in bribing witnesses (8.7). During the trial Shell kept in close touch with President Abacha, the person primarily responsible for the excesses.
167. Statements by Shell that it was steering an apolitical course, and could not therefore be held responsible for the human rights violations, are not supported by the facts. At no time did Shell distance itself from the regime, which in itself must be regarded as a political course in a period in which the international community condemned Nigeria unanimously. On the other hand, it remained extremely critical of MOSOP and the struggle of the Ogoni both publicly and in contacts with the regime. Economic interests prevailed, even when it was clear that crimes against humanity were being committed on a large scale in Ogoniland in Shell's name. The conclusion of a major Liquid Natural Gas deal one month after the executions of the Ogoni 9 is a good example of this (8.7).
168. The inevitable conclusion is that the unlawful executions of the Ogoni 9 took place because of Shell. Even if Shell had not meddled in the trial – which it did – and its attitude was nothing more than opportunism, it can be held co-responsible for its inescapable outcome because it did nothing to influence or prevent the events it set in train. That Shell saw itself as capable of doing this is evident from the fact that it made an offer to Ken Saro-Wiwa to influence the outcome of the trial (8.6.3). To this however it attached the perfidious condition that MOSOP should discontinue its protest against Shell. When this offer was rejected, Shell continued supporting the regime behind the scenes, while publicly hiding behind an apolitical course. The great economic dependence of the Nigerian regime, invariably highlighted by Shell when it asked the regime to intervene in demonstrations, was at no time used to dissuade the regime. On the contrary, up to the end Shell tried to stay on the right side of Abacha and his ministers because the Group did not want to put its economic interests at risk. In so doing the Group invariably acted as a single entity (8.8): not only did the parent

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companies determine the course that SPDC had to steer, they were also themselves actively involved in it.

169. In this way the alliance that Shell entered into with the military regime led to the deaths of nine innocent Ogoni, described in chapter 4, among them Barinem Kiobel, Baribor Bera, Nordu Eawo and Paul Levula; and to the molestation of Esther Kiobel and Victoria Bera. Shell not only encouraged these events, it also facilitated, supported and influenced them. This complicity will be set out in more detail below.

8.2 Shell was at the basis of excessively violent action by the regime

8.2.1 Introduction

170. In the 1980s Shell increasingly had run-ins with the local population in the Niger Delta, who openly opposed the exploitation of their land. Shell repeatedly called upon the police, who often brought the demonstrations to an end heavy-handedly. In 1983 for example the intervention in a protest against Shell led to the arrest and ill-treatment of demonstrators. And in 1987 Shell's request for intervention by the Mobile Police Force (MOPOL or MPF) – a special mobile police unit with a violent reputation – led to two deaths, the destruction of 40 homes and 350 homeless people.¹⁸⁸ MOPOL was assisted in this by Shell, which made its boats available.¹⁸⁹
171. Despite these fatal incidents, Shell continued to request the authorities to intervene when its operations were disrupted by protests. To this end Shell repeatedly passed on the precise locations of the usually peaceful demonstrations to the regime, putting up with the many dead and injured. Again in 1993, when the mass protests in Ogoniland led to a cessation of Shell's activities in Ogoniland, Shell constantly and expressly held out to the regime the prospect of its return to Ogoniland if the protests stopped. Shell returned to Ogoniland several times during this period without the consent of the local population and under military protection, which always led to (often fatal) violence.
172. The close collaboration between Shell and the military regime in the period from 1990 to early 1994, when Operation Restore Order in Ogoniland was announced, is described below. Shell's involvement in various violent incidents in Ogoniland in the period 1990-1994 is considered one incident at a time: the Umuechem bloodbath in 1990 (8.2.2), the fatalities arising from interventions at the Bonny Terminal (1992) and the Trans Niger Pipeline (1993) (8.2.4), Shell's logistical support of the army during fake ethnic conflicts between the Ogoni and neighbouring population groups (1993) (8.2.5) and paying Paul Okuntimo following an excess of violence in the Ogoni village of Korokoro (1993) (8.2.6). Section 8.2.3 discusses the deployment and support of

¹⁸⁸ In Iko, see e.g. A. Rowell, J. Marriott and L. Stockman, *The Next Gulf: London, Washington and Oil Conflict in Nigeria*, London: 2005 (exhibit 239), p. 83; Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 1999 (exhibit 223), p. 128.

¹⁸⁹ A. Rowell, J. Marriott and L. Stockman, *The Next Gulf: London, Washington and Oil Conflict in Nigeria*, London: 2005 (exhibit 239), p. 83.

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MOPOL by Shell, despite the incidents of violence in Umuechem and before. This accumulation of incidents shows that Shell knew what its requests for help and facility support to the military regime led to, but that it nevertheless kept inviting the regime to do this time and time again.

8.2.2 *Shell contributed to the 'Umuechem massacre'*

173. In 1990, Shell's request to the authorities to terminate a peaceful demonstration in Umechem, a village just outside of Ogoniland, resulted in a two-day long punitive expedition by MOPOL. Dozens of people were killed, even more injured and many hundreds became homeless.
174. The protest from the inhabitants of Umuechem was aimed at the inadequate electricity and water supplies in Umuechem and the lack of reasonable compensation for the expropriation and exploitation of their land.¹⁹⁰ They were moreover frustrated by the environmental damage caused by the extraction of oil and the impossibility of obtaining compensation for it.¹⁹¹
175. When the peaceful demonstration by the inhabitants of Umuechem had continued for two weeks, Shell's divisional manager James Udofia wrote a letter to the Nigerian Commissioner of Police on 29 October 1990 (**exhibit 129**). In it he referred to an "impending attack" on Shell facilities and requested deployment of MOPOL which, as a result of previous incidents, was now known as the 'kill and go mob':

"[W]e request that you urgently provide us with security protection (preferably Mobile Police Force) [...] to enable us have the peaceful and safe operating environment necessary to achieve our planned crude oil production targets".¹⁹²

176. When Udofia, on 31 October, wrote another letter, stating that Shell's employees felt threatened by the violent behaviour of the protesters, the authorities factually sent MOOPL to the village of Umuechem.¹⁹³ That very same day MOPOL used brute force to break up the peaceful demonstration with arms and tear gas.¹⁹⁴ MOPOL returned very early the next day to undertake a punitive expedition in Umuechem. During this

¹⁹⁰ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, March 1991 (**exhibit 220**), p. 2. Shell too wrote to the regime that the demonstration related to a "demand for social amenities which, in recent times, has become an order of the day with most communities in our areas of operation", Letter J.R. Udofia (Divisional Manager East, SPDC) to the Commissioner of Police, 29 October 1990 (**exhibit 129**).

¹⁹¹ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, March 1991 (**exhibit 220**), pp. 2-3. The Commission noted that just 1.5% of the oil revenues benefit the oil producing states and describes this as "grossly inadequate". The commission proposes raising the percentage to 15% (p. 4).

¹⁹² Letter Udofia to the Commissioner of Police, 29 October 1990 (**exhibit 129**).

¹⁹³ **Exhibit 224**: Judicial Commission of Inquiry into Umuechem Disturbances, January 1991, para. 5.

¹⁹⁴ Human Rights Watch 1995 (**exhibit 222**), p. 9; Human Rights Watch, The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities, 1999 (**exhibit 223**), pp. 112-113.

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expedition, 495 houses were set alight in their entirety.¹⁹⁵ Many people got injured and internal Shell documents as well as a Human Rights Watch report speak of a death toll of 80.¹⁹⁶

177. The commission of inquiry investigating the incident at the request of the Government of Rivers State in its report on the events in March 1991 spoke of a “reckless disregard for lives and property” by MOPOL, which acted in Umuechem like “an invading army that had vowed to take the last drop of the enemy’s blood”.¹⁹⁷ The commission found no evidence of an “impending attack”, as Shell had stated in its letter, nor of any violence by the demonstrators.¹⁹⁸
178. The Attorney General of Rivers State at the time, O.C.J. Okocha, did not follow up on the commission of inquiry’s recommendation to prosecute the MOPOL members, to pay the inhabitants compensation and to have the houses rebuilt.¹⁹⁹ No further investigation is conducted into Shell’s role in this incident.
179. According to his own declaration in the American Kiobel case (**exhibit 49**), Okocha had at that time already been attached to Shell as a lawyer for three years.²⁰⁰ Later he would be present at the Ogoni 9 trial in that capacity and be involved in the bribery of witnesses.²⁰¹

8.2.3 Shell carried on supporting MOPOL and seeking its deployment

180. After ‘Umuechem’ Shell publicly kept its distance from MOPOL and said it would no longer seek the assistance of this unit in crisis situations.²⁰² Nevertheless, the ties between MOPOL and Shell continued to exist and the unit would act for Shell on

¹⁹⁵ Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, March 1991 (exhibit 220), p. 7.

¹⁹⁶ **Exhibit 104**: Nigeria Update 8 August 1994; Human Rights Watch 1995 (exhibit 222), p. 9.

¹⁹⁷ Judicial Commission of Inquiry into the Umuechem Disturbances, January 1991 (exhibit 224), para. 47. According to the commission, MOPOL was guilty of “acts of homicide, [...] grievous harms, malicious damage to property and arson”. See also Conclusions of the Government of Rivers State on the Report of the Judicial Commission of Inquiry into the Umuechem Disturbances, March 1991 (exhibit 220), p. 7.

¹⁹⁸ Judicial Commission of Inquiry into Umuechem Disturbances, Rivers State of Nigeria, January 1991, (exhibit 224) para. 38. Shell maintained to the commission, as well, that the protesters had been violent.

¹⁹⁹ See Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities*, 1999 (**exhibit 223**), pp. 112-113; Human Rights Watch 1995 (exhibit 222), p. 9.

²⁰⁰ Declaration O.C.J. Okocha, 8 December 2003 (exhibit 49), para. 3 (“From 1990 to 1992 I served as the Attorney General of Rivers State”) and para. 7 (“I have served as an external solicitor to [SPDC] since 1987”).

²⁰¹ See chapter 8.5.2 and 8.6.1

²⁰² Human Rights Watch 1999 (exhibit 223), p. 162; Public Deposition Alan Detheridge, vol. 1, 3 February 2003 (**exhibit 21**) pp. 124-125: “Anderson gave instructions that in the event of any community disturbance, certainly in any peaceful community disturbance then the police were not, any form of police were not to be called and that he expressed a view that we should not be responsible for calling in the mobile police”; SPDC, Response to Human Rights Watch/Africa publication – *The Ogoni Crisis: A Case-study of Military Repression in South-Eastern Nigeria*, July 1994 (**exhibit 146**), p. 2: “after the Umuechem incident we disassociated ourselves from the intensity of the police action”; See also Public Deposition T. Cloughly (General Manager of Operations SPDC), 11 February 2003 (**exhibit 20**), pp. 69-70: “I seem to remember that mobile police were involved at Umuechem and I think it went badly wrong. Was it the mobile police that were called in? I suspect it probably was and a lot of deaths resulted. We were very concerned about any suggestion of the mobile police because, I mean, they had the reputation of maybe over-reacting.” In internal Shell documents, as well, MOPOL is referred to as “mach and trigger happy”, see public deposition Mike Basnett, 18 June 2003 (**exhibit 18**), p. 116.

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various occasions. In his testimony in the American Kiobel case (**exhibits 57 and 58**) George Ukpong, Shell's Head of Security for the Eastern Division in Nigeria at the time, for example stated that Shell had placed its boats at MOPOL's disposal to patrol the areas around Shell's facilities.^{203,204} For this Shell paid "duty allowances" to MOPOL members.²⁰⁵ Ukpong also specifically requested the deployment of MOPOL for the protection of Shell facilities.²⁰⁶ In his deposition he compared MOPOL with the regular police and said that MOPOL members "are toughened and better placed to have more confidence to provide countermeasures to whatever situation they find themselves".²⁰⁷ In his view, the response of the regular police was "slower than what you get from the mobile police".²⁰⁸

181. The use of Shell helicopters, boats and cars to take MOPOL to Shell sites even after 'Umuechem' was also confirmed by Osazee Osunde in his deposition in the American Kiobel case (**exhibit 53**). At the time of the disturbances in Ogoniland Osunde was SPDC's Head of Intelligence and Surveillance East and Ukpong's subordinate.²⁰⁹ In his deposition he said about MOPOL: "it depends on where they're working or where they're deployed to. So what we do is assist ferry them, either by boat or by chopper".²¹⁰ For instance, Shell provided transport for MOPOL in cases of community disturbances, such as in the course of problems at the Bonny terminal:

"At the time the well head was shut, they [the community] gave us some problems. [...] I think the government deployed MOPOL there, and we helped ferry them to and fro."²¹¹

182. This was confirmed by the deposition in the American Kiobel case of Eebu Jackson Nwiyon (**exhibit 48**), who between August 1993 and August 1995 was a member of MOPOL and also part of Okuntimo's Rivers State Internal Security Task Force (RSISTF) for a few months.²¹² He testified that Shell hired him several times to protect its facilities.²¹³ According to Nwiyon, Shell paid him and the other MOPOL members well for this and Shell also took care of rations, transport and overnight stays.²¹⁴ Likewise as a member of the RSISTF Nwiyon in his own words received money directly from Shell.²¹⁵

²⁰³ Public Deposition George Akpan Ukpong, vol. I, 23 October 2003 (exhibit 57), pp. 176-180; Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58).

²⁰⁴ See also chapter **Fout! Verwijzingsbron niet gevonden.**

²⁰⁵ Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), p. 466.

²⁰⁶ Ibid, pp. 237, 462-474.

²⁰⁷ Ibid, pp. 469-470.

²⁰⁸ Ibid.

²⁰⁹ Public Deposition Osazee Osunde, 22 October 2003 (**exhibit 53**), pp. 10-11.

²¹⁰ Ibid, pp. 47-53 (quote p. 52).

²¹¹ Ibid, pp. 48-49.

²¹² See on Okuntimo's RSISTF, chapters. 4.1 and 8.3.

²¹³ Public Deposition Eebu Jackson Nwiyon (**exhibit 48**), 24 May 2004, pp. 37-38.

²¹⁴ Ibid, pp. 37-38, 46-69.

²¹⁵ Ibid.

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183. Vincent Nwidoh, who was a member of Shell's police force (SPY Police) for more than five years and who between 1988 and 1994 worked at the Bonny Terminal, testified in the American Kiobel case that MOPOL members were present at Bonny Terminal on various occasions and sometimes even spent the night there (**exhibit 46**).²¹⁶ When incidents occurred, MOPOL arrived on a Bristow helicopter, the helicopters used by Shell, or by Shell boat (which belonged to Modant Marine²¹⁷ and Oil Lion²¹⁸). He also testified that MOPOL members also escorted Shell managers and Shell staff members, including George Ukpong.²¹⁹
184. We have to conclude that Shell carried on its collaboration with MOPOL just as intensively and that there was no question of Shell distancing itself from MOPOL as it had held out in prospect. MOPOL was actively deployed on security operations and also facilitated the regime with achieving national security objectives, which included protecting Shell facilities and putting down protests.

8.2.4 Shell's requests for assistance led to deaths at the Bonny Terminal and the Trans Niger Pipeline

185. In the years following Umuechem there were more demonstrations against Shell, which the army or the police brought to an end heavy-handedly. Here too there were fatalities. Shell's General Manager Business Development (GMB) Emeka Achebe for example reported to the service companies on 12 May 1993 that an inhabitant of Bonny had died and two others had been seriously injured at demonstrations at the Bonny Terminal on 20 and 21 July 1992, following intervention at a demonstration by a 51-strong Rapid Intervention Force (**exhibit 73**).²²⁰ According to the same Achebe, this Rapid Intervention Force was a predecessor of the notorious RSISTF.²²¹
186. As a result of the constant demonstrations against its presence in the area, Shell withdrew from Ogoniland in January 1993. In official documents Shell has said the following about this:

²¹⁶ Public Deposition Vincent Tornebamri Nwidoh, 25 May 2004 (**exhibit 46**), p. 85: "The regular police came [...], and when they saw that they cannot really protect the situation MOPOL were later brought through helicopter". See also pp. 13-15, 85, 88.

²¹⁷ Public Deposition George Akpan Ukpong, vol. I, 23 October 2003 (**exhibit 57**), p. 180.

²¹⁸ Public Deposition Vincent Tornebamri Nwidoh, 25 May 2004 (**exhibit 46**), pp. 13-15, 85.

²¹⁹ Public Deposition Vincent Tornebamri Nwidoh, 25 May 2004 (**exhibit 46**), pp. 18-19, 65-67, 121-122. According to Nwidoh, the MOPOL agent who escorted Ukpong was called Omotara.

²²⁰ Fax Emeka Achebe (SPDC) to SIPC London and SIPM The Hague, 12 May 1993 (**exhibit 73**): "A contingent of 51 Rapid Intervention Force men were airlifted to Bonny Terminal". The Rapid Intervention Force was also called the Quick Intervention Force. Greenpeace about this incident: "In 1992, one person was killed, 30 shot and 150 beaten when local villagers from Bonny demonstrated against Shell", Greenpeace, Shell shocked: The Environmental and Social Costs of Living with Shell in Nigeria, July 1994 (**exhibit 221**), p. 19.

²²¹ **Exhibit 15**: Public Deposition Emeka Achebe, vol. II, 6 February 2003, pp. 5-6. See on Okuntimo's RSISTF, chapters. 4.1 and 8.3. Otherwise the Bonny Terminal was permanently guarded by the Nigerian navy, see letter Eric Nickson (Head Media Relations SIPC) to Paul Brown and Andy Rowell, 6 November 1996 (**exhibit 156**), pp. 4-5.

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“We will not resume production in Ogoni land with military protection but only with the cooperation and peaceful disposition of the communities.”²²²

187. Despite its official withdrawal, Shell however continued to transport oil through Ogoniland and its facilities were permanently guarded by police and MOPOL units paid by Shell.²²³ Shell also continued with the construction of a new oil pipeline, the Trans Niger Pipeline (TNP), through the conflict area.
188. Even though Shell had been allowing for the potential problems to which the construction of the pipeline could lead before its official withdrawal from Ogoniland – in December 1992 Shell advised Willbros West Africa, the company building the pipeline, that “the ever increasing tension in the area would result in an inevitable confrontation with the possibility of individuals suffering personal and physical injury”²²⁴ – it nonetheless continued with the pipeline’s construction following its withdrawal from Ogoniland.
189. The continued construction of the TNP was against the wishes of MOSOP and a large part of the Ogoni population and was contrary to Shell’s promise only to develop economic activities in Ogoniland in partnership with the local population. Internal Shell correspondence, dated 23 February 1993 (**exhibit 68**), reveals that Neil Whyte, the General Manager of Willbros in Nigeria, was very critical of Shell’s approach and anticipated major difficulties:

“Neil Whyte stated that clearly there are two alternative courses of action namely, to apply maximum military presence which GME [the General Manager East] rightly says will attract a potential confrontation which may have catastrophic results, or to dramatically increase our public relations effort. His opinion is quite clear – Shell has an apparent unclear policy with respect to construction operations security. He also believes that Shell has a lack of sensitivity for the villagers, has poor lead time planning in relation to negotiating with the villagers prior to bull dozers arriving to destroy farmland, and is willing to accept lengthy delays in resolving villagers claims [...]. Unfortunately, his view is shared by the majority of the SPDC and contractor staff I with on my visits [...]”.²²⁵

²²² SPDC, Response to Human Rights Watch/Africa publication – The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, July 1994 (exhibit 146), p. 2.

²²³ Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), pp. 237-238; **exhibit 62**: Public Deposition Owens Wiwa, 9 December 2003, p. 86.

²²⁴ Reproduced in the report of Willbros to SPDC, *Review of events leading to the withdrawal of workforce from the Bomu Area*, 3 May 1993 (**exhibit 135**).

²²⁵ Memo from William Dick (HSEL, Head of Health, Security and Environment in Lagos, SPDC) to Godwin Omene (DMD), 23 February 1993 (**exhibit 68**).

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190. According to the memo, Whyte suspected that the situation had already run too far out of control and that Shell was now compelled to show “considerable ‘muscle’ in the form of a substantial military presence”, where “the military [...] warn[...] the communities that if there is the slightest bit of interference with the pipeline operations, they will respond with ‘deliberate’ force”.²²⁶ The memo went on to say:

“History has proven that if military personnel are initially used as a deterrent only, it only requires one shot to be fired in their direction or one act of violence for them to respond with the intention to kill. Shell’s image in the world would suffer (as it has done so in the not so distant past) and this time, the implications may be a lot more serious.”²²⁷

191. Shell however ignored the predictions that a military presence would lead to violent confrontations and its own official policy not to work under military protection²²⁸ and decided to have the pipeline built under the protection of the Nigerian army.²²⁹ MOSOP and the local population continued to protest against the construction of the TNP.

192. In letters of 16 December 1992, 7 January, 19 February and 19 March 1993 Shell identified the places where demonstrations were being held and asked Rufus Ada George, the Governor of Rivers State and a former Shell employee, to intervene so that the pipeline could be built without hindrance (**exhibitions 129, 133**). While doing so, Shell kept emphasizing the economic importance of its activities:

“We feel very worried about these stoppages and their resultant impact on our ability to meet the Nation’s production target.”²³⁰

“the TNPL Project is very crucial to our capacity to meet our National Production Target”.²³¹

“We therefore humbly solicit Your Excellency’s intervention to enable us carry out our operations given the strategic nature of our business to the economy of this nation”.²³²

²²⁶ Memo from William Dick to Godwin Omene, 23 February 1993 (exhibit 68).

²²⁷ Ibid.

²²⁸ See e.g. Nigeria Update Brian Anderson, 12 August 1994 (**exhibit 105**), p. 2: “Whilst [this] impinges on our “no military protection” stance”; SPDC, Response to Human Rights Watch/Africa publication – The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria, July 1994 (exhibit 146); Memo from William Dick to Godwin Omene, 23 February 1993 (exhibit 68), p.2: “SPDC has stated publicly that it will not operate under military protection and has not operated in the Ogoni area since 1993”.

²²⁹ **Exhibit 69**: File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 March 1993; SPDC, Nigeria Letter: Ogoni and the Niger Delta, August 1997 (**exhibit 166**); Public deposition Precious Omuku, 19 April 2004 (exhibit 51), pp. 66-67; The official instructions for the army according to the guidelines provided on 23 January 1993 were: “TO KEEP PEACE AND ENSURE SAFETY, PROVIDE AND MAINTAIN SECURITY, PROTECTION AND ASSISTANCE IN ASSURING CONTINUITY OF WORK OPERATIONS ALONG PIPELINE ROUTE”, Enclosure to letter Willbros to SPDC, 23 January 1993 (**exhibit 131**).

²³⁰ Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 7 January 1993 (**exhibit 130**).

²³¹ Ibid.

²³² Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 19 March 1993 (exhibit 133).

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193. A Shell File Note dated 18 March 1993 (**exhibit 69**) shows that before the letter of 19 March 1993 Shell's General Manager East (GME) J.R. Udofia had a meeting with Rufus Ada George. In it Ada George expressed his concern about the presence of the army and said that he wanted to withdraw the army. Udofia however emphasised the importance of the army's presence and "suggested that the Military be allowed to give adequate protection to personnel while Government on its part should show more involvement towards arresting the consistent disruption to operations by the Communities".²³³ Ada George responded by saying that he was determined to ensure that the work in Ogoniland could continue and that he would talk to the MOSOP leaders, but he also expressed a "strong indication to withdraw the Military from the site".
194. After the meeting with Ada George, Udofia and Achebe went to Bori Camp to speak to Brigadier General T. Ashei, Commanding Officer of the Second Amphibious Brigade.²³⁴ They once again stressed to Ashei the importance of a military presence and asked him at his meeting with Ada George to emphasise the security risks that would arise if the army were to be withdrawn. Ashei agreed to do this and assured Udofia and Achebe of his full commitment to the restoration of order. He expressed the expectation that "following the arrest/detention of the Rumuekpe Youths, some sanity will be restored in the area". Achebe then impressed upon Ashei that these young people would not be released until agreement on a "trouble free operation" had been reached with the more moderate villagers, to which Ashei promised to raise this with Ada George.²³⁵
195. The day after these meetings, Udofia, by letter of 19 March 1993, again requested intervention with reference to the economic importance for Nigeria. Shortly afterwards, on 7 April 1993, MOSOP protested, by letter to Willbros, against the presence and conduct of the army in Ogoniland. According to MOSOP, the soldiers were guilty of "illegal and provocative activities [...] such as the arrest and detention of Ogoni men under grave, inhuman conditions".²³⁶
196. Then, on 30 April 1993 the expected confrontation between the army and the Ogoni demonstrators took place. Greenpeace wrote the following about this (**exhibit 221**):

"As the peaceful protest against the pipelaying culminated in a demonstration of 10,000 people, soldiers opened fire on the crowd, wounding at least 10 and leaving Mrs Karalolo Korgbara, a mother of

²³³ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 maart 1993 (exhibit **Fout! Verwijzingsbron niet gevonden.**).

²³⁴ Ibid. Major Paul Okuntimo was second-in-command of the Second Amphibious Brigade, which would later also supply the majority of the members of the RSISTF (Human Rights Watch 1995 (exhibit **Fout! Verwijzingsbron niet gevonden.**), p. 14, voetnoot 44).

²³⁵ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 March 1993 (exhibit 69).

²³⁶ Letter MOSOP to Willbros, 7 April 1993 (exhibit 134).

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five, in a critical condition. She later lost her arm because of her injury.”²³⁷

197. With the protests then intensifying, on 3 May 1993 Shell and Willbros decided to suspend work on the pipeline. On 4 May Udofia explained Shell’s decision in a letter to Governor Ada George (**exhibit 136**), in which he asked him – again referring to the economic importance of the project – to ensure that the project could be resumed:

“I regret to inform you that work on the Bomu end of the line has been forced to stop because of some community intervention. [...] As at now, work has been suspended in this area of the line which carries a significant portion of the crude oil production from Shell and Elf operations. We humbly request the usual assistance of his Excellency to enable the project to proceed”.²³⁸

198. In his deposition in the American Kiobel case (**exhibit 56**) Udofia stated that by “the usual assistance” he meant something other than military intervention, that is “[to] mediate, engage, clear the road so that we can talk and get things going”.²³⁹ This explanation however is inconsistent with the foregoing facts and the standpoints described above that Udofia had always expressed to Ada George. On 18 March 1993 Udofia had already told Ada George that mediation with the local population had produced no result at all, because “the Government Agents [...] who went on site were rebuffed by the Communities”.²⁴⁰ In the meantime Willbros had already requested military assistance following an incident on 17 February 1993²⁴¹ and Udofia and Achebe had insisted on retaining a military presence with both Ada George and Brigadier General Ashei. Ada George’s willingness to deploy the soldiers was apparent during the protest that was put down violently some days before. Shell’s request could therefore only be seen as a request for military intervention to enable the work to continue.
199. Shell for that matter, even if it had not been referring to military intervention, had to understand that Ada George would interpret this request as such, given his promise to guarantee the continuation of the work on the TNP, if need be by military means.
200. Following Udofia’s request of 4 May 1993, Ada George sent an army unit to the location Shell had identified that very same day and it brought the protests to an extremely violent end. One of the demonstrators, Agbarator Otu, was killed.²⁴² Willbros

²³⁷ Greenpeace, Shell shocked, July 1994 (exhibit 221), p. 19.

²³⁸ Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (exhibit 136).

²³⁹ Public Deposition J.R. Udofia, 24 October 2003 (**exhibit 56**), p. 141.

²⁴⁰ File note SPDC, Egbert Imomoh (GME) meeting with Chief Rufus Ada George 18 March 1993 (exhibit 69).

²⁴¹ Ibid.

²⁴² Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, of 7 December 1993, E/CN.4/1994/7 (exhibit 235), p. 106: “Agbarator Otu, who was said to have been killed when security forces opened fire on Ogoni people demonstrating against oil companies. See also Greenpeace, Shell shocked, July 1994 (exhibit 221), p. 19; Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995 (exhibit 228), pp. 22-23.

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would eventually, at the government's request, pay the medical expenses of the injured and Otu's funeral expenses.²⁴³

201. As a result of these developments Philip B. Watts, at that time Managing Director of SPDC, sent an urgent telex (**exhibit 72**) to the service companies in London and The Hague in which he said that "the ongoing difficulties in the Ogoni area [...] give rise for serious concern".²⁴⁴ This was no surprise to Shell: "You are aware that we had been anticipating this and hence our efforts to upgrade our contingency plans, public affairs, PA effort and security cover".²⁴⁵ Regarding the security of the Shell facilities Watts went straight to the point: his telex showed that on 11 May 1993 (less than a week after the violence at the TNP) he and Achebe had had meetings with Chief Shonekan, who at that time was head of the Civilian Transitional Council and thereby responsible for the "day-to-day affairs of government"²⁴⁶ and who had still been a board member of SPDC less than a year before,²⁴⁷ the Inspector-General of the police and the Director-General of the State Security Service. Shell emphasizes the need for the presence of police and army units to protect Shell's facilities and offered the authorities logistical support for these units.²⁴⁸ Although Watts was satisfied that the Nigerian regime was taking the case seriously, he still said "but we will have to encourage the follow through into real action".²⁴⁹
202. The fatal incidents in Umuechem, at the Bonny Terminal and the TNP evidently did not give rise to greater caution at Shell; even after these experiences it asked the Nigerian regime to deploy additional police and army units for the protection of its facilities.

8.2.5 *Shell supported the army in fake 'ethnic conflicts'*

203. Between July 1993 and April 1994 hundreds of Ogoni were killed and thousands became homeless as a result of apparent ethnic conflicts between the Andoni, the Okrika and Ndoki and the Ogoni population groups. The biggest attack took place on the Ogoni village of Kaa on 4 and 5 August 1993, when an estimated 35 to 124 villagers died; widespread looting also took place and possessions and homes were destroyed.²⁵⁰ Despite repeated requests to this effect from MOSOP to Rufus Ada George and

²⁴³ **Exhibit 71**: Minutes of meeting between Willbros, SPDC, MOSOP and the Nigerian regime, 11 May 1993.

²⁴⁴ Urgent Telex van Watts aan SIPC en SIPM, 11 mei 1993 (exhibit 72).

²⁴⁵ Ibid, p. 1.

²⁴⁶ **Exhibit 266**: Issue paper Nigeria, Chronology of events January 1992 – February 1995, Immigration and refugee board of Canada, p. 8.

²⁴⁷ **Exhibit 157**: Annual Accounts SPDC 1992, pp. 3, 19.

²⁴⁸ Watts says: "We informed [Shonekan] about our efforts to work with the police, providing logistic support for their protection of key locations", "The opportunity was taken to stress the need for extra police presence in strategic locations and offer logistic support (since they are incapable to doing it themselves)" and "reiterate our requests for support from the police and army" in Urgent Telex from Watts to SIPC London and SIPM The Hague, 11 May 1993 (exhibit 72).

²⁴⁹ Urgent Telex from Watts to SIPC London and SIPM The Hague, 11 May 1993 (exhibit 72).

²⁵⁰ Human Rights Watch 1995 (exhibit 222), pp. 11-13; Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995, (exhibit 228), p. 24.

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President Abacha, the Nigerian regime did not intervene in this period.²⁵¹ The regime later proved involved in the attacks itself, with Shell providing a helping hand.

204. In 1995 Human Rights Watch revealed that “the government played an active role in fomenting [...] ethnic antagonism, and indeed that some attacks attributed to rural minority communities were in fact carried out by army troops in plainclothes”.²⁵² The UN rapporteur on extrajudicial, summary or arbitrary executions also expressed his concern about the involvement of the Nigerian regime.²⁵³ He had also sent urgent appeals to the Nigerian regime in which he expressed his concerns about “reports of the killing of about 20 persons in clashes between members of the Ogoni and Ndoki ethnic groups, the latter allegedly being supported by the security forces, in early April 1994”.²⁵⁴
205. Human Rights Watch noted statements of soldiers and other witnesses showing that soldiers from the adjoining territories had attacked the Ogoni.²⁵⁵ Several witnesses testified that on various occasions Okuntimo had with some pride claimed responsibility for the attacks.²⁵⁶ The use of professional arms during the attacks, the absence of previous animosity between the population groups and the fact that the army and the police had been recalled from the area three weeks before the attacks for reasons that were unclear were also seen by Human Rights Watch as evidence of regime involvement.²⁵⁷
206. Though Shell has always denied involvement,²⁵⁸ various witnesses in the American Kiobel case testified that Shell had offered help to the regime in the attacks on the Ogoni. For instance, Eebu Jackson Nwiyon, member of MOPOL between August 1993 and August 1995 and involved with the attack on Kaa in that capacity, has stated that the army and the police used Shell speedboats and helicopters during the operation, that MOPOL members, himself included, received money from Shell for their participation in the operation, and that he was himself flown by helicopter from the helipad at Shell’s

²⁵¹ Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995 (exhibit 228), p. 24; Letter Ken Saro-Wiwa to President Abacha, 1 November 1993 (**exhibit 260**).

²⁵² Human Rights Watch 1995 (exhibit 222), p. 11. The fact that the regime is the cause of the increase in ethnic tensions has also been acknowledged by Shell: On 27 September 1994 Anderson tells the CMD that: “Ethnic differences had been exacerbated by the government, undermining national unity, and the security situation had deteriorated markedly”, Public Deposition Cornelius Herkströter, 14 april 2004 (**exhibit 28**), p. 100.

²⁵³ Report of Special Rapporteur Bacre Waly Ndiaya on Extrajudicial, Summary or Arbitrary Executions, of 14 December 1994, E/CN.4/1995/61 (exhibit 236), p. 76; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of 7 December 1993, E/CN.4/1994/7 (exhibit 235), p. 105

²⁵⁴ Report of Special Rapporteur Bacre Waly Ndiaya on Extrajudicial, Summary or Arbitrary Executions, of 14 December 1994, E/CN.4/1995/61 (exhibit 236), p. 76

²⁵⁵ Human Rights Watch 1995 (exhibit 222), pp. 11-13.

²⁵⁶ Human Rights Watch 1995 (exhibit 222), p. 13.

²⁵⁷ Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995 (exhibit 228), pp. 24-25; Human Rights Watch 1995 (exhibit 222), pp. 11-13.

²⁵⁸ Nigeria Brief 1996 (exhibit 166), p. 10.

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Industrial Area to the Andoni area by a Shell pilot, bringing arms and ammunition with him.²⁵⁹

207. The statements of Shell's security officers Ukpong and Osunde and former Shell Police member Nwidoh certainly show that the Nigerian authorities used Shell helicopters, boats and other company vehicles during their operations.²⁶⁰ Ukpong and Precious Omuku, the person in charge of Shell's security department in Nigeria and in that role Ukpong's manager, confirmed that these helicopters were stationed at Shell's Industrial Area.²⁶¹ Nwidoh has stated that armed soldiers were regularly transported in Shell-helicopters.²⁶²
208. Various other witnesses in the American Kiobel case made statements confirming the use of Shell helicopters during the Ogoni/Andoni conflict.²⁶³

8.2.6 Shell rewarded Okuntimo following excess of violence at Korokoro

209. At the beginning of October 1993 the Rivers State authorities started peace negotiations between the Ogoni and Andoni. Shell and MOSOP were also invited to them, even though Shell was not a party to the agreement.²⁶⁴ Others present were "OMPADEC, the Military, the S.S.S. (State Security Service), the warring parties and Police representatives".²⁶⁵ To the surprise of Owens Wiwa, who was present on behalf of MOSOP, Paul Okuntimo also joined the talks:

"to our surprise, the surprise of Ken and I, we saw Okuntimo walking with two Shell staff and they sat together at one edge of the table"²⁶⁶

210. The result of the negotiations was a draft peace agreement that included a provision that the economic activities in Ogoniland would resume with immediate effect.²⁶⁷ This controversial passage was one of the reasons why Ken Saro-Wiwa did not initially sign

²⁵⁹ Public Deposition Eebu Jackson Nwiyon, 24 May 2004 (exhibit 48), pp. 14-27, 69-71. When he climbed aboard the helicopter he saw a Shell representative – in his own words George Ukpong, Shell Nigeria's Head of Security for the Eastern Division – talking to his manager.

²⁶⁰ See also above, 8.2.3.

²⁶¹ Public Deposition George Akpan Ukpong, vol. I, 23 oktober 2003 (exhibit 57), p. 32; Public Deposition Precious Sotonye Omuku, 19 April 2004 (exhibit 51), p. 83.

²⁶² Public Deposition Vincent Tornebamri Nwidoh, 25 mei 2004 (exhibit **Fout! Verwijzingsbron niet gevonden.**), pp. 22-24. Nwidoh stelt ook dat Air Operation Staff "flight logs of the whereabouts and itineraries of the helicopters" bijhielden. (ibid., p. 23-24).

²⁶³ **Exhibit Fout! Verwijzingsbron niet gevonden.**: Public Deposition Tony Idigma, vol. I, 24 juli 2003, pp. 167-168; **exhibit Fout! Verwijzingsbron niet gevonden.**: Public Deposition Benson Ikari, vol. I, 28 juli 2003, pp. 171-180; **exhibit Fout! Verwijzingsbron niet gevonden.**: Public Deposition Princewill Nathan Neebani, 13 mei 2004, pp. 152-157; **exhibit Fout! Verwijzingsbron niet gevonden.**: Public Deposition Israel Nwidor, 24 september 2003, pp. 106-118; **exhibit Fout! Verwijzingsbron niet gevonden.**: Public Deposition Victor Barima Wifa, 2 april 2004, pp. 262-270.

²⁶⁴ **Exhibit 83**: Shell Inter-office Memorandum from E.U. Imonoh, 8 November 1993.

²⁶⁵ Shell Inter-office Memorandum from E.U. Imonoh, 8 November 1993 (exhibit 83).

²⁶⁶ **Exhibit 63**: Public Deposition Owens Wiwa, Vol. II, 24 May 2004, p. 388. One of the two Shell employees according to Wiwa was Precious Omuku.

²⁶⁷ Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995 (exhibit 228), p. 25: "immediate resumption of all full economic and social activities within Ogoni and Andoni areas".

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the agreement on behalf of MOSOP. In protest the president of the negotiations, Professor Claude Ake, did not attend the signing either and said of the agreement: "I am amazed that the Peace Agreement was signed without prior consultation with the communities and ratification by them".²⁶⁸ Eventually Ken Saro Wiwa signed the agreement with the proviso that immediate resumption of the economic activities was non-negotiable for MOSOP and the Ogoni.²⁶⁹

211. A report by Egbert Imomoh, SPDC's General Manager East (GME), to Philip Watts among others, shows that immediately after the signing of the agreement the Rivers State Government asked SPDC to resume its activities in Ogoniland.²⁷⁰ In part at the request of the regime a meeting then took place with representatives of MOSOP, representatives of the regime and SPDC. At this meeting it was put to MOSOP that SPDC wanted to enter Ogoniland to ensure that its installations were properly sealed and that there were no oil leaks. MOSOP consented to a visit to Ogoniland by Shell for this purpose.²⁷¹
212. Between 20 and 26 October 1993 Shell then undertook an inspection mission in Ogoniland, under the protection of 26 soldiers led by Paul Okuntimo.²⁷² The real objective of this Joint Patrol by SPDC and the Armed Forces personnel however was not only to monitor the flow stations, but, it follows from an internal SPDC report also to "inspect SPDC oil installation [sic] in Ogoni area", "ascertain the type and mode of security needed for SPDC to commence operations", and "ascertain the possibility of SPDC commencing operations in the area".²⁷³ In short, Shell wants to ascertain if the time is right to return to Ogoniland.
213. The arrangement was a new breach of Shell's "commitment not to operate with military support, but only with community cooperation and backing".²⁷⁴ In various places the mission therefore encountered resistance.

²⁶⁸ Ibid., p. 25. Ake wrote this in a letter to Rufus Ada George, the Governor of Rivers State, see also the footage of the sittings of the Oputa Panel where Ledum Mitee read from this letter (**exhibit 253**), Oputa Panel Video 2, Ogoni Speech, van 44:10 – 51:54.

²⁶⁹ Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995, (exhibit 228), p. 25.

²⁷⁰ **Exhibit 78**: Report from Imomoh to Philip Watts, 26 October 1993; **exhibit 79**: Shell Communication about Korokoro, 25 December 1995; **exhibit 30**: Public Deposition Egbert Imomoh, Vol. I, 17 June 2003, p. 69. In his writing to Philip Watts, 26 oktober 1993 (exhibit 78) Imomoh stated: "In response to the Rivers State Government's call for SPDC to resume oil operations in the Ogoni fields, a joint inspection team comprising representatives of law enforcement agencies (24 armed personnel) and SPDC was set up", The Shell communication about Korokoro states: "The civilian Governor of River State asked Shell to resume operations in Ogoniland October 1993, following the signing of the Ogoni/Andoni accord after ethnic clashes that left many dead and many more homeless."

²⁷¹ Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), p. 57-59: "the assurances we were able to get that day was that SPDC could go back to closing, to shut the stations down properly".

²⁷² **Exhibit 86**: Inter Office Memo from Osazee Osunde, 25 February 1994.

²⁷³ **Exhibit 80**: SPDC Report on the Joint Location Visit by SPDC and Armed Forces Personnel to Ogoni Area Oil Fields.

²⁷⁴ Shell, Nigeria Brief: Ogoni and the Niger Delta, 1996 (exhibit 166), p. 10.

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214. In the village of Korokoro the visit by Shell and the troops on 25 October 1993 led to a violent confrontation with the local population.²⁷⁵ One villager, Uebari N-Nah, is shot and two villagers were seriously injured.²⁷⁶ James N-Nah, the brother of one of the victims who died, testified in the American proceedings that Okuntimo entered the village aggressively and returned to Korokoro the day after the murder to arrest and detain him and other villagers.²⁷⁷ The documentary *The Drilling Fields* (**exhibit 249**) shows footage of the funeral of N-Nah and interviews with victims.²⁷⁸
215. An internal Shell memo entitled “Honourarium for Armed Forces Personnel on Special Assignment” shows that some months after the incident, on 25 February 1994, Okuntimo’s team was paid an additional allowance for its action “as a show of gratitude and motivation for a sustained favourable disposition towards SPDC in future assignments”.²⁷⁹ This payment was made by Osazee Osunde, who was present on behalf of Shell during the visit to Korokoro, and authorised by George Ukpong.²⁸⁰ According to Shell, the decision to pay was made “after repeated harassment from Major Okuntimo”.²⁸¹ According to his own statement, Osunde took the money personally to Bori Camp, Okuntimo’s army camp.²⁸² The persons concerned were also treated to lunch, as can be seen from the memo:

“arrange to prepare advance on company business from entertaining 26 armed forces personnel for lunch at the restaurant of their choice for the cost of 20,000 naira only. Also prepare normal special duty allowance for 26 men for 5 days work at the rate of 80 naira only per day”.²⁸³

216. Although Shell has admitted that the payment was made to Okuntimo, it has always denied that villagers were killed or wounded during the incident in Korokoro. According to Shell and Okuntimo, thanks to decisive action by Okuntimo and his men there were no fatalities on either side. Osunde however subsequently stated in the American Kiobel case that the troops were first attacked by the young people from

²⁷⁵ Shell said that the reason for the visit was the confiscation of two fire engines by the local population, following a false fire alarm two days before. This version was contradicted in the American Kiobel case by the plaintiffs. According to them the visit would have been unannounced.

²⁷⁶ Public Deposition James B. N-Nah, 16 October 2003 (**exhibit 44**), pp. 37-56, 57-61, 67-69, 89. Documentary *The Drilling Fields* (exhibit 249), 40:00 – 40:40. Paul Sunday, who was seriously wounded, was interviewed in this documentary (39:30-39:50). According to N-Nah a second villager later died of his injuries.

²⁷⁷ Public Deposition James B. N-Nah, (exhibit 44), pp. 18-19, 40-41, 46-47, 92.

²⁷⁸ Documentary *The Drilling Fields* (exhibit **Fout! Verwijzingsbron niet gevonden.**), 39:30-41:00.

²⁷⁹ Inter Office Memo from Osazee Osunde, 25 February 1994 (exhibit 86). See also Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), pp. 164-167.

²⁸⁰ Public Deposition Osazee Osunde, (exhibit 53), p. 164-166; Public Deposition George Akpan Ukpong (exhibit 57), p. 84..

²⁸¹ **Exhibit 31**: Public Deposition Egbert Imomoh, vol. II, 2 February 2004, p. 302; See also Shell Communication about Korokoro, 25 December 1995 (exhibit 79).

²⁸² Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), pp. 164-166.

²⁸³ Inter Office Memo from Osazee Osunde, 25 February 1994 (exhibit 86); at the time of the abuses in Ogoniland the average salary in Nigeria was 700 naira per month and the exchange rate with the dollar 22-1, Human Rights Watch 1995 (exhibit 222), pp. 11-13, footnote 66 .

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Korokoro and that three of Okuntimo's men were killed in the process.²⁸⁴ Following intimidation by Okuntimo he would not however have included these murders in his report of the incident.²⁸⁵

217. To wit, no independent investigation into the incident has been conducted. The fact is that Shell's (pecuniary) allowance was granted to all 26 soldiers involved in the Korokoro incident.²⁸⁶ There appears to be no mention therefore of the death of three of the soldiers mentioned by Osunde. What is clear is that Shell wanted to ensure itself of the support of Okuntimo's military unit, a unit that would play a major role in Operation Restore Order in Ogoniland, in the future as well.

8.3 Shell facilitated Operation Restore Order in Ogoniland

218. In 1994 the Nigerian regime of Sani Abacha began a large-scale military offensive in Ogoniland to break the population's resistance to Shell's activities and to clear the way to a resumption of oil production. Not long after the offensive was announced, the leaders of MOSOP and any other prominent Ogoni were arrested, resulting in the death of the Ogoni 9 in 1995.

219. Shell played a crucial role in the setting up and execution of Operation Restore Order in Ogoniland. Not only because of its incessant insistence on intervention, but also through its active support of the operation, for instance through payments and logistical support to Okuntimo and his RSISTF.

8.3.1 Shell encouraged the intervention against MOSOP

220. In its correspondence with the Nigerian government Shell invariably linked the protests ("community disturbances") in Ogoniland to lower production figures and loss of profit and then linked this to a request to intervene. The previously described violent excesses did not make this any different. The sheer necessity of stopping the activities in Ogoniland had major consequences for Shell's production and similar consequences for its revenues and those of the regime.²⁸⁷ Shell encouraged the regime to make short work of the insurrections, even if it meant using force, and it could depend on the regime to do so.

221. In December 1993 Shell wrote to A.J. Oyekan, the director of the Department of Petroleum Resources:

"It is alarming to note that the cumulative crude oil shut-in resulting from community disruptions from January 1993 to 13th December

²⁸⁴ Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), pp. 98-101.

²⁸⁵ Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), pp. 109-113.

²⁸⁶ Inter-office Memo Osazee Osunde (exhibit **Fout! Verwijzingsbron niet gevonden.**), 25 February 1994.

²⁸⁷ See Chapter 3.2.

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1993 is 8,988,660 barrels. We would therefore appreciate any assistance you can give to minimise these disruptions.”²⁸⁸

222. The letter referred to a letter of 13 December 1993 from GME Egbert Imonoh to Lieutenant Colonel Dauda Musa Komo, who had then just taken up the position of Military Administrator of Rivers State, concerning “Oil production deferment caused by community disturbances/blockade and sabotage for November 1993” (**exhibit 138**). In this letter Shell accurately identified the problem areas, including different places in Ogoniland where Shell had already not officially been operating for a year.
223. It was in this period that the regime forged plans to restore order in Ogoniland. Komo played a key part in this. On 26 December 1993 he invited Owens Wiwa, the brother of Ken Saro Wiwa, to ask what MOSOP was planning on Ogoni Day (4 January).²⁸⁹ When Wiwa told him that peaceful demonstrations against Shell were planned, Komo said that he intended to ban them. That same day Wiwa received a visit from Major Tunde Odina, who made it clear to him that he had to leave Ogoniland, which Wiwa refused to do. The next day Owens Wiwa and the prominent MOSOP figure Ledum Mitee were both arrested by Odina with the support of the army and were then detained by Okuntimo.²⁹⁰ It was not until the evening of Ogoni Day that they were released again.²⁹¹ Ken Saro Wiwa himself was placed under house arrest until 5 January 1994, the day after Ogoni Day. All the planned MOSOP activities on the public holiday were banned, the regime permitting only a church ceremony under the supervisory eye of the army.²⁹²
224. On 21 April 1994 the regime announced the “Operation Restore Order in Ogoniland” action plan,²⁹³ for which the Rivers State Internal Security Task Force (RSISTF) had been set up three months before.²⁹⁴ The RSISTF, which included the troops that assisted Shell in Korokoro, has been described by Human Rights Watch as follows:

“Members of the Rivers State Internal Security Task Force are drawn primarily from the Second Amphibious Brigade, which is based at Bori Military Camp in Port Harcourt. It also includes contingents from the national mobile police force, air force, and navy. Many Task Force

²⁸⁸ Letter SPDC to A.J. Oyekan, Department of Petroleum Resources, 16 December 1993 (exhibit 139).

²⁸⁹ Public Deposition Owens Wiwa, Vol. II, 24 May 2004 (exhibit 63), p. 380.

²⁹⁰ Public Deposition Owens Wiwa, Vol. II, 24 May 2004 (exhibit 63), p. 371-384. See also the declaration of Ledum Mitee during the Oputa Panel proceedings, Oputa Panel Video 2 (exhibit 253), Ogoni Speech, 1:21:00 to 1:25:19.

²⁹¹ Public Deposition Owens Wiwa, Vol. II, 24 May 2004 (exhibit 63) p. 384.

²⁹² Documentary The Drilling Fields, 23 May 1994 (exhibit 249), 42:50 to 44:35; Documentary Delta Force (exhibit 250), 26:00 to 27:44.

²⁹³ The Commissioner of Police, Restoration of Law and Order in Ogoniland, Operation Order 4/94, 21 April 1994, see Project Underground report “All for Shell” by Andy Rowell and Stephen Kretzmann, first version 1 November 1996, most recently updated 4 March 1997 (exhibit 226), p. 11; see also the footage of the Oputa Panel Proceedings where Ledum Mitee cites from the Operation Order, Oputa Panel Video 2 (exhibit 253), Ogoni Speech, 1:31:30 to 1:32:45.

²⁹⁴ Human Rights Watch 1995 (exhibit 222), p. 14; see about the RSISTF also 4.1 and 8.2.3. It is interesting that a meeting took place between Egbert Imonoh and Military Admins two days before the announcement of Operation Restore Order in Ogoniland. However, it is not known what was discussed during this meeting.

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members were previously part of the National Guard, a paramilitary unit disbanded when General Abacha seized power. Lieutenant-Colonel Paul Okuntimo is the commander of the Task Force.”²⁹⁵

225. Okuntimo was put in charge of the operation. A few weeks later, on 12 May 1994, a restricted memo from Okuntimo addressed to Komo surfaced. In it Okuntimo set out the following goals:

“Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence”.

“Wasting operations during MOSOP and other gatherings making constant military presence justifiable”.

“Wasting targets cutting across communities and leadership cadres especially vocal individuals”.

“Wasting operations coupled with psychological tactics of displacement/wasting as noted above”.

“Restriction of unauthorised visitors especially those from Europe to the Ogoni”.

“Surveillance on Ogoni leaders considered as security risks/MOSOP propellers”.

“Ruthless operations and high level authority for the task force effectiveness”

226. Okuntimo also called on the government “[to] pressure oil companies for prompt regular inputs” to fund these operations.²⁹⁶

227. In its official documents on the Ogoni question Shell referred to the Nigerian regime’s standpoint that the memo had been forged.²⁹⁷ Shell added: “Even if it is genuine, it does not describe an action taken by Shell”.²⁹⁸ With this argument, Shell disregards that the core of the accusation at its address is that it played an indispensable role in the ensuing events. Regardless the question of whether the memo had been forged – evidence of which has never been provided – it emerged from several sources that while Shell did not itself perform violent acts in Ogoniland, the regime did in fact act in Shell’s name,

²⁹⁵ Human Rights Watch 1995 (exhibit 222), p. 14, footnote 44.

²⁹⁶ Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria, 1995 (exhibit 228), Annex 4, Facts Sheet, p. 44.

²⁹⁷ See e.g. Shell, *Nigeria Letter: Ogoni and the Niger Delta*, 1996 (exhibit 166), p. 12: “The government has asserted that the document is a fake”.

²⁹⁸ Shell, *Nigeria Letter: Ogoni and the Niger Delta*, 1996 (exhibit 166), p. 12.

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with the aim of enabling Shell to return to Ogoniland. It also turned out that Shell actively supported the repression.

228. In this period there was regular contact between SPDC and those directly involved in Operation Restore Order. On 19 April 1994 for example, two days before the announcement of the plan, a discussion took place between Egbert Imonoh and Military Administrator Lt. Col. Komo.²⁹⁹ And Brian Anderson himself, from January 1994 the new Managing Director of SPDC, had a meeting with Abacha on 2 May 1994. He reported on this in one of his Nigeria Updates – reports from Anderson describing important events in Nigeria circulated weekly and sometimes almost daily within the Shell Group. At this meeting, less than three weeks before the arrests of Ken Saro-Wiwa and Kiobel, he told Abacha that he considered Saro-Wiwa jointly responsible for the destruction of Shell facilities in Ogoniland:

"I raised the problem of the Ogonis and Ken Saro Wiwa, pointing out that Shell had not been in the area now for almost a year. We told him of the destruction they had created at our sites, of which he was apparently unaware."³⁰⁰

229. A few days before the murders of the four Ogoni leaders on 21 May 1994 Shell held a media briefing in Lagos and London at which it was said that “[a]cts of sabotage have been tacitly acknowledged by Mr. Ken Saro-Wiwa”. Shell also linked Saro-Wiwa directly to violence:

“Mr. Saro-Wiwa apparently feels that he has not had an adequate response from the Government. So he has started to raise the stakes and put pressure on Shell by making wild accusations and disrupting SPDC operations in the Ogoni by direct violence”.³⁰¹

230. Shell knew that Abacha would respond firmly to these insinuations. In the Nigeria Update of 2 May 1994 Anderson, after he had informed Abacha of various demonstrations in Ogoniland, said:

"I sense [...] that [Abacha] will intervene with either the military or the police. [...] The HoS said that he would be calling elders and military administrators from the regions involved to a meeting at which he said

²⁹⁹ **Exhibit 118:** Letter from Alan Detheridge to Anderson of 27 September 1995, p. 4. See also Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), p. 114-115. These documents do not deal with the substance of the discussion.

³⁰⁰ **Exhibit 92:** Nigeria Update, 2 May 1994; see also Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), pp. 71-74.

³⁰¹ Outline for approach to Media by Shell Participants, media briefing in London and Lagos prior to May 23, Channel 4 screening of Catma Films’ production (**exhibit 143**).

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that he would be making the military administrators responsible for any future problems."³⁰²

231. When Anderson, at his meeting with Abacha on 2 May 1994, linked Shell's long absence from Ogoniland to the destruction of its facilities,³⁰³ Shell therefore knew what it was inviting him to do.
232. On 22 May 1994 and in the weeks that followed the first prominent Ogoni and Shell critics were arrested, among them Saro Wiwa, Kiobel, Bera, Levula and (a few months later) Eawo. As described in chapter 4, the arrests followed the unsolved murder of four traditional Ogoni leaders the day before in Giokoo. Most of those arrested were locked up in Bori Military Camp, Okuntimo's headquarters.
233. The murders were also seized by the regime as an opportunity to declare a state of siege in Ogoniland. Between May and August 1994 the Nigerian army, under the leadership of Okuntimo's RSISTF, undertook extremely violent punitive expeditions to at least 60 villages in Ogoniland to eliminate so-called MOSOP elements.³⁰⁴ (Alleged) MOSOP sympathisers were abused, raped, tortured, murdered and blackmailed, while villages were looted and numerous homes were destroyed.³⁰⁵ Paul Okuntimo played a leading role during the military operations. Eyewitness reports from Human Rights Watch of both victims and soldiers show that he was personally involved in torture, murder and rape.³⁰⁶ At a press conference broadcasted by the Nigerian Television Authority Okuntimo explained how he went about his work:

"The first three days of the operation, I operated in the night. Nobody knew where I was coming from. What I will just do is that I will just take some detachments of soldiers, they will just stay at four corners of the town. They ... have automatic rifle[s] that sound death. If you hear the sound you will freeze. And then I will equally now choose about twenty [soldiers] and give them ... grenades – explosive – very hand one[s]. So we shall surround the town at night ... The machine gun with five hundred rounds will open up. When four or five like that open up and then we are throwing grenades and they are making 'eekpuwaal' what do you think the ... and they know I am around, what do you think the people are going to do? And we have already put roadblock[s] on the main road, we dont want anybody start running ... so the option we made was that we should drive all these boys, all these

³⁰² Nigeria Update, 2 May 1994 (exhibit 92); Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), p. 77.

³⁰³ Nigeria Update, 2 May 1994 (exhibit 92).

³⁰⁴ See e.g. Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (exhibit 228), pp. 29-30; Human Rights Watch 1995 (exhibit 222), pp. 14-24.

³⁰⁵ See e.g. Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (exhibit 228), pp. 29-30; Human Rights Watch 1995 (exhibit 222), pp. 14-24.

³⁰⁶ Human Rights Watch 1995 (exhibit 222), pp. 19-21, 23.

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people into the bush with nothin except the pant[s] and the wrapper they are using that night.”³⁰⁷

234. Hundreds of Ogoni fell victim to arbitrary detention during the operation, in particular in Bori Military Camp and Kpor Detention Center; at least 50 Ogoni were summarily executed.³⁰⁸ The extent of the destruction and acts of violence can be seen in the documentary *Delta Force* (**exhibit 250**) and they were extensively documented on the basis of eyewitness accounts in a report by Human Rights Watch.³⁰⁹
235. Interviews conducted by Human Rights Watch show that prisoners were questioned about their links with MOSOP and their knowledge of the involvement of MOSOP, NYCOP and Saro Wiwa in the murder of the four Ogoni leaders.³¹⁰ The military operation therefore also explicitly served the aim of collecting incriminating material against the suspects in the Ogoni 9 trial, who were then still detained in Bori Military Camp without official charge, together with the other political prisoners apprehended during the army raids.³¹¹

8.3.2 Okuntimo worked partly on behalf of Shell

236. Okuntimo repeatedly and publicly stated that he conducted the operation in part on behalf of Shell.³¹² In the American proceedings, Boniface Ejiogu, who at the time of the Ogoni crisis was Okuntimo’s assistant, furthermore stated that he had witnessed the handing over of money by Shell to Okuntimo three times, twice by George Ukpong (**exhibits 24 and 25**).³¹³ Ejiogu also stated that Ukpong and Okuntimo met each other regularly, usually in Ukpong’s office in the Industrial Area, but also at Ukpong’s home.³¹⁴ Shell also assisted the RSISTF in the form of rations, ammunition and transport.³¹⁵ The payments to Okuntimo by Shell were confirmed by another witness, Raphael Kponee, who was a member of Shell’s police unit and who worked at Shell’s

³⁰⁷ Press conference footage on the Nigerian Television Authority, see documentary *Delta Force* (exhibit 250), 37:23 to 38:46; See for a transcription of Okuntimo’s words Human Rights Watch 1995 (exhibit 222), pp. 15-16; See also Greenpeace, *Shell shocked: The Environmental and Social Costs of Living with Shell in Nigeria*, July 1994 (exhibit 221), p. 21.

³⁰⁸ See e.g. Richard Boele/UNPO, Report of the UNPO Mission to Investigate the Situation of the Ogoni of Nigeria (exhibit 228), pp. 29-30; Human Rights Watch 1995 (exhibit 222), pp. 14-24.

³⁰⁹ Human Rights Watch 1995 (exhibit 222), pp. 14-19.

³¹⁰ *Ibid*; Statements made to the police by Ogoni prisoners at the time of the Ogoni 9 trial also show that they were questioned about MOSOP and NYCOP. Okuntimo was involved in these arrests and interrogations.

³¹¹ Declaration Ledum Mitee, 2 May 2017 (exhibit 41), para. 8.

³¹² E.g. Tony Idigma has declared that he heard Okuntimo state that “it was Shell Oil Company that brought them into Ogoni”, Public Deposition Tony Idigma, vol. I, 24 July 2003 (exhibit 29), pp. 167-168.

³¹³ Public Deposition Boniface Ejiogu, vol. II, 23 May 2004 (exhibit 25), pp. 162-182, 193-203, 213-217; Public Deposition Boniface Ejiogu, vol. I, 22 May 2004 (exhibit 24), pp. 35-46, 96-105; For Ukpong’s role see also chapters 8.3-8.6. The payments were in cash, which was regular in Nigeria, as is also apparent from the statement of Shell’s security manager Osunde, Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), pp. 155-166.

³¹⁴ Public Deposition Boniface Ejiogu, vol. I, 22 May 2004 (exhibit 24), pp. 15-19, 25-28, 32-34, 49; Ejiogu provides a very detailed description of Ukpong’s workroom and the Industrial Area, Public Deposition Boniface Ejiogu, vol. II, 23 May 2004 (exhibit 25), pp. 162-182.

³¹⁵ Public Deposition Boniface Ejiogu, vol. I, 22 May 2004 (exhibit 24), pp. 28-29, 34, 46-47, 49-53, 72-75, 105-107. According to Ejiogu, Ukpong also asked the RSISTF to intervene in Shell’s Industrial Area, see pp. 26-28.

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Industrial Area (**exhibit 39**).³¹⁶ In the American proceedings, Shell employee Osazee Osunde also testified that he had seen Ukpong and Okuntimo together on Shell's Industrial Area.³¹⁷

237. Human Rights Watch confirmed the regular meetings between Shell and Okuntimo:

“a highly placed government source in Rivers State told Human Rights Watch that SPDC representatives meet regularly with the director of the Rivers State Security Service and Lieutenant-Colonel Paul Okuntimo, the commander of the Rivers State Internal Security Task Force”.³¹⁸

238. On 17 December 1995 the UK newspaper *The Sunday Times* published an article about the “close relationship between local branches of [Shell] and General Sani Abacha's brutal military regime”.³¹⁹ Okuntimo told the journalists that he had regularly received money from Shell at the time of Operation Restore Order in Ogoniland:

“Interviewed by *The Sunday Times* in Nigeria last week, Okuntimo initially admitted being paid by Shell while he was in charge of crushing Ogoni protests against the company. 'Shell contributed to the logistics through financial support. To do this, we needed resources and Shell provided these,' he said.”

239. Although Okuntimo would later deny the above statement, the *Sunday Times* journalists found other sources who confirmed the payments to Okuntimo by Shell:

“The evidence against [Okuntimo] is supported by a conversation between Okuntimo and Nick Ashton-Jones, a British environmentalist, and Oronto Douglas, a Nigerian journalist, in June [1994]. Ashton-Jones, who had worked for Shell in eastern Nigeria, said the colonel, then a major, felt badly let down by Shell.

Ashton-Jones recalled: "He said he was doing a wonderful job for the government and he was disappointed that Shell had stopped paying him. He said that everything he was doing was for Shell." [...]

Ledum Mittee [sic], the lawyer who stood trial with Saro-Wiwa and was the only defendant acquitted, built up a close relationship with Okuntimo during his detention. Mittee said: "He admitted he was being paid by Shell. He said he was angry with Shell because they were no

³¹⁶ Public Deposition Raphael Kponee, 26 May 2004 (exhibit 39), p. 12, 22-24. He admitted Okuntimo into the Shell Industrial Area and saw bags of money being lifted into his car.

³¹⁷ Public Deposition Osazee Osunde, 22 October 2003 (exhibit 53), p. 179-180.

³¹⁸ Human Rights Watch 1995 (exhibit 222), p. 38.

³¹⁹ Frank Kane, Steven Haynes, Christina Lamb, “Shell axes 'corrupt' Nigeria staff”, *The Sunday Times*, 17 December 1995 (exhibit 255).

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longer paying as much for the upkeep of his boys. He felt they were not grateful enough." Mittee explained that Shell provided vehicles for military operations and rewarded Okuntimo personally."³²⁰

240. Okuntimo had arrested Douglas, Ashton-Jones and also the lawyer Uche Onyeagucha – one of the Ogoni 9 lawyers – and detained and ill-treated them for a few days when they wanted to visit Ledum Mitee in Bori Camp.³²¹ Ashton-Jones's account was confirmed in the American Kiobel case by Orono Douglas:

"While we were in the vehicle with him, Lt. Col. Okuntimo spoke to us freely about his relationship with Shell. He stated that he had been helping Shell, had performed all types of services for Shell and that he was upset because he had been doing all this work for Shell but that they were not treating him well as they used to."³²²

241. In his declaration of 15 June 2017 (**exhibit 52**), Onyeagucha confirms that Okuntimo had made such statements: "he told me that he worked for Shell, was paid by Shell and that Shell actively supported his task force by buying vehicles and other material for them".³²³ Ledum Mitee, the current chairman of MOSOP, has also confirmed the representation of his discussions with Okuntimo by The Sunday Times:

"Okuntimo told us about Shell and how much he worked for them, that they had paid him money for all that he had done, because it benefited him. Shell still owed him money, for his work".³²⁴

242. Other witnesses in the American Kiobel case also testified that Okuntimo personally entrusted them to receive payments from Shell.³²⁵
243. In addition, various Ogoni who had been arrested during Operation Restore Order testified in the American Kiobel case that, before they were released by the RSISTF, they had to sign a statement that they would no longer protest against Shell.³²⁶ Dumle Kunenu, one of the claimants in the American Kiobel case, said for example:

³²⁰ Ibid.

³²¹ **Exhibit 23**: Declaration Orono Douglas, 4 February 2009, paras. 19-24; **exhibit 52**: Declaration Uche Onyeagucha, 15 June 2017; For instance, with a hundred lashes with an electric cable, see also Birnbaum (exhibit 225), pp. 44-45.

³²² Declaration Orono Douglas, 4 February 2009 (exhibit 23), para. 23.

³²³ Declaration Uche Onyeagucha, 15 June 2017 (exhibit 52).

³²⁴ Declaration Ledum Mitee, 2 May 2017 (exhibit 41), para. 10.

³²⁵ Public Deposition Nathan Neebani, 13 mei 2004 (exhibit 43) pp. 188-189: "[Okuntimo is] always like he's complaining that they're not giving him what he want, that he's doing a dirty job for them"; Public Deposition Owens Wiwa vol. II, 24 mei 2004 (exhibit 63), pp. 354, 386-387; Public Deposition Tony Idigma, vol. I, 24 juli 2003 (exhibit 29), p. 171; See also: Human Rights Watch 1995, (exhibit 222) p. 38; Birnbaum (exhibit 225), p. 45, appendices 5 en 5A, pp. 92-94.

³²⁶ Public Deposition Israel Nwidor, 24 September 2003 (exhibit 47), pp. 199-200; Public Deposition Victor B. Wifa, 2 April 2004 (exhibit 61), pp. 131, 133-135; Public Deposition Legbara Tony Idigma, 24 July 2003 (exhibit 29), p. 70; Public Deposition Nathan Neebani, 13 May 2004 (exhibit 43), p. 133.

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“After then, they give me a document that I should sign if only I want to be released. That was under duress. The content of the document was that I should not protest against Shell again. And Okuntimo that very day he told me that didn't I know that Shell and the government are partners. Didn't I know they are the same. So that if I want to have my peace, I should not ever again demonstrate against Shell because if I do, he will kill me”³²⁷

244. This also underlines the extent to which the military operation in Ogoniland was geared towards breaking the resistance against the return of Shell, something which various witnesses say Okuntimo had himself repeatedly stated.³²⁸
245. As follows from the testimony of Ukpong, the fact that Okuntimo felt that he was working for Shell is illustrated by the fact that he asked George Ukpong whether Shell could hire him after he finished his work for the RSISTF.³²⁹

8.4 Shell and the regime operated in tandem

246. Not only did Shell stand at the cradle of the aforementioned excesses by requesting the intervention of MOPOL or the RSISTF again and again, it also factually enabled the regime to do this by providing it with arms, personnel and money. As such, Shell facilitated the excessive actions by the regime, but also fulfilled typical government tasks itself.
247. The strong entanglement of Shell and the regime is evident *inter alia* from the following facts and circumstances, some of which have previously been discussed above:
- Shell paid and maintained part of the Nigerian police force.
 - Shell was prepared to purchase arms for the regime.
 - Shell provided the regime with crucial information about community disturbances, such as the locations of demonstrations, and requested intervention.
 - Shell facilitated Operation Restore Order in Ogoniland
 - Shell maintained a network of informants in Ogoniland in conjunction with the regime.

³²⁷ **Exhibit 40:** Public Deposition Dumle J. Kunenu, 14 May 2004, p. 18.

³²⁸ Public Deposition Blessing Israel, 28 May 2004 (exhibit 33), pp. 24-31; Public deposition Israel Nwidor, 24 September 2003 (exhibit 47), p. 72: “When Okuntimo arrested Mr Nwidor on the 25th of May 1994, Okuntimo said: ‘we have got those ones who have been working against Shell’”; Public Deposition Bishop John Miller, vol. I, 25 July 2003 (**exhibit 35**), pp. 80-83; Human Rights Watch 1995 (exhibit 222), p. 38.

³²⁹ Public Deposition Ukpong, vol. I, 23 oktober 2003 (exhibit 57), pp. 20-21.

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- Shell paid the police, MOPOL, the army and the RSISTF allowances and made regime operations possible by paying allowances and providing facilities and vehicles.
- Shell had puppets in place up to the highest level of the Nigerian government as a result of its revolving door policy, under which former employees of Shell work for the regime and vice versa.
- Shell fed the distrust of the regime towards Saro Wiwa and MOSOP and in this way increased the urgency of intervening in Ogoniland.

248. As will be substantiated in detail below, Shell cannot therefore actually be seen as being separate from the regime in the period 1990-1995.

8.4.1 Shell paid police officers, MOPOL officers and marines

249. Shell's police force in 1994 numbered more than 1,200 officers (known as supernumerary police, SPY Police or Shell Police). They were officers who officially belonged to the Nigerian police force, but who were fully paid by Shell (**exhibit 88**: Briefing Notes on a meeting between Brian Anderson (Managing Director SPDC) and the Inspector General of Police, 17 March 1994). A report of a visit by SPDC's Managing Director Brian Anderson to the Inspector General of the Nigeria Police Force on 17 March 1994 shows that in addition to these police officers Shell also had 41 marines and 128 MOPOL members – from whom it was supposed to keep its distance following the Umuechem incident in 1990 – on its payroll for Special Duty.³³⁰ According to the report there was “a strong competition amongst the rank and file of the NPF to be selected for SPDC service”, because Shell officers were paid twice as much as ordinary NPF members.³³¹
250. Brian Anderson himself said in a keynote address in 1994 that in total the Shell-operated joint venture employed around 2,470 security staff.³³² This meant that it employed one security guard for every two SPDC employees. These security measures cost nearly 18 million dollars.³³³
251. Shell was itself therefore a direct and active part of (all ranks of) the government apparatus that had to maintain ‘order’ in Ogoniland and to this end violated human rights on a wide scale. This de facto situation is inconsistent with Shell's argument that

³³⁰ Briefing Notes on a meeting between Brian Anderson (Managing Director SPDC) and the Inspector General of Police, 17 March 1994 (exhibit 88)

³³¹ Ibid.

³³² This means the security of the entire joint venture, not just SPDC.

³³³ **Exhibit 91**: Nigeria Update 25 April 1994, Annex: Highlights of keynote address on “Major issues and challenges of energy investments in Nigeria” by Mr. B.R.H. Anderson, Chairman and Managing Director of SPDC at the International Energy Investment Seminar, Sheraton Hotel and Towers, Lagos, 19 April 1994, appended to Nigeria Update of 25 April 1994: “The Shell operated JV has some 2470 security staff. This implies a ratio of 2 security men for every 2 SPDC employees. All this costs a great deal of money (US\$17.8m)”.

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it had nothing to do with the actions of the regime and that it followed a non-political course.

252. As the unrest in Ogoniland increased, Shell increasingly needed the regime's support. This is evident from an internal memo from Philip B. Watts, the Managing Director of Shell in Nigeria at the time, who offered Shell vice-president Shonekan logistical support for the police.³³⁴ Likewise when Watts made the importance of a greater police presence known to the Inspector-General of the police, he advised that Shell would offer logistical support.³³⁵
253. Shell also asked the regime to expand its own police force and said that the Beretta pistols that the force had at its disposal had to be supplemented with semi-automatic weapons.³³⁶ On 1 December 1993 Watts wrote a letter to this effect to the Nigerian Police Inspector General Alhaji Coomassie, in which he stressed that Shell's interests coincided with those of Nigeria:

"It is recognised that in these current troubled times, it may be easy to release the number of resources required to adequately protect SPDC's facilities. However, we must emphasise that SPDC produces more than 50% of Nigeria's oil, which has consequential major impact on the country's economy. To secure a continuation of operations at the present level requires the provision of maximum protection. We request therefore that you give consideration of providing such resources as are available at this time and to bring these up full strength when a relative calm prevails."³³⁷

254. The same letter referred to the plan of the oil and gas companies in Nigeria to set up their own 2,000-strong police unit, the Oil Production Area Police Command (OPAPCO).³³⁸ The plan for OPAPCO stated the following:

"In a recent move dictated by the increase in tension amongst the communities in the Oil Producing Regions, SPDC plans to deploy Out of State Police (OPAPCO) to protect oil production facilities in the Niger Delta oil province. This force will provide protection for SPDC

³³⁴ Urgent Telex from Watts to SIPC London and SIPM The Hague, 11 May 1993 (exhibit 70): "We informed [Shonekan] about our efforts to work with the police, providing logistic support for their protection of key locations." See also chapter 8.2.4, at 201.

³³⁵ Ibid.

³³⁶ Letter Phil Watts to Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force), 1 December 1993 (exhibit 137).

³³⁷ Ibid.

³³⁸ Ibid.; the number of 2,000 is given in Briefing Notes on a meeting between Brian Anderson (Managing Director SPDC) and the Inspector General of Police, 17 March 1994 (exhibit 88).

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through provision of arm mobile patrols and some static guard duties."³³⁹

255. In his letter, Watts emphasized that Shell is prepared to organise OPAPCO's establishment and is willing to pay for its costs:

"SPDC has given a commitment to provide complete logistics, accoutrement and welfare support to the OPAPCO police force which will be assigned to SPDC's operations. You stated that the provision of the OPAPCO force would require Federal approval. In this respect, we would be pleased to assist in preparing any papers which describe the deployment, operating and welfare philosophy as well as the relationship between OPAPCO and SPDC."

"SPDC will fully support the cost of setting up and maintaining the contingents."³⁴⁰

256. In March 1994 Watts' successor Brian Anderson wrote that SPDC was prepared to contribute 7.20 million dollars per year to OPAPCO.³⁴¹
257. On 30 March 1995 Brian Anderson announced that there would be no OPAPCO, because the OPTS (the Oil Producers Trade Section, an umbrella organisation of the oil and gas companies in Nigeria) was unwilling to fund the plan.³⁴²

8.4.2 Shell provided vehicles and facilities

258. It was characteristic of the relationship between Shell and the regime that "for relationship rapport" Shell regularly honoured all kinds of requests from the police and the security service, ranging from the payment of boat repairs to the purchase of air conditioning and office furniture.³⁴³ Shell even offered logistical support of its own volition.³⁴⁴ It also regularly paid field allowances for MOPOL³⁴⁵ and – as previously discussed in section 8.2.3 – vehicles and buildings were made available. Shell not only arranged the transport for MOPOL, but it was also common to take care of transport in

³³⁹ **Exhibit 50:** Public Deposition Dosee Okonkwo, 19 June 2003, pp. 59, 68-69. The plan for OPAPCO is included in the "five year corporate security development plan 1993 to 1998", dated 9 November 1993.

³⁴⁰ Letter of Phil Watts to Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force) 1 december 1993 (exhibit **Fout! Verwijzingsbron niet gevonden.**).

³⁴¹ Briefing Notes on a meeting between Brian Anderson (Managing Director SPDC) and the Inspector General of Police (exhibit 88), 17 March 1994.

³⁴² **Exhibit 154:** Letter Brian Anderson to OMPADEC, 30 March 1995.

³⁴³ Public Deposition George Akpan Ukpong, vol. I, 23 October 2003 (exhibit 57), p. 149-152; Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), pp. 288-290, 297. "SSS is seeking our assistance in the provision of some items in support of their operations", e.g. "boat repairs, photocopier, five air conditioners, fifteen office tables, thirty office chairs and eighty tyres"; Also, the Assistant Commissioner of Police wrote to Ukpong: "it is being strongly suggested that your organisation should think of the possibility of necessary assistance in the area of logistic support and general welfare", Public Deposition George Akpan Ukpong (exhibit 57), p. 170.

³⁴⁴ See section 8.2.48.2.4, at 201.

³⁴⁵ See for example at 182, 206 and 215.

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the situations in which Shell asked the regime for “assistance”, as in the examples referred to sections 8.2.3 and 8.2.4.³⁴⁶ The Nigerian police also remained present in Ogoniland, which by then was already a no-go area for Shell, after 1993, with the aim of protecting Shell property.³⁴⁷ Among other things Shell paid the salaries and the meals of these officers.³⁴⁸ On request Shell provided operational maps to the Nigerian army, displaying all Shell’s activities.³⁴⁹

8.4.3 Shell itself took action to provide the police force with arms

259. In the period in which the setting up of OPAPCO and the expansion of Shell’s police force were under discussion SPDC’s security adviser Victor Oteri asked the regime for consent to import more than half a million dollars of arms.³⁵⁰ The order included:

- 130 SMG Beretta 9 mm Calibre
- 200,000 Rounds of 9 mm bullets/ammunitions
- 40 Berretta Pistols (to replace unserviceable ones)
- Pump Action Shotgun 12 GA, 6 shots including slings
- 50,000 rounds cartridges for Pump Action Shot Guns
- 20,000 rounds Shotgun rubber bullets
- 500 Smoke Hand Grenades³⁵¹

260. Oteri’s first request was made on 31 March 1994 and a few further requests followed, in which Oteri referred to the above letter from Watts of 1 December 1993.³⁵²

261. The Nigerian police consented to the purchase, under the condition that the arms were primarily being acquired for the Nigerian police force and that the Shell police (which was part of it) would be allowed to use them:

“Approval is hereby given for the purchase of such semi automatic riffles [sic] to be decided upon by your representative and this office.
The weapons would however be procured for the Nigeria Police Force.

³⁴⁶ E.g. Eric Nickson, Head Media Relations at Shell International, “On a number of occasions Shell has requested additional protection from the police where its own security measures were thought not to be adequate against criminal activities. SPDC has provided transport for the police on such occasions”, Letter from Eric Nickson to Paul Brown and Andy Rowell, 6 November 1996 (exhibit 156), p. 3.

³⁴⁷ Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), p. 237-238, 294-295.

³⁴⁸ Ibid., pp. 238, 246.

³⁴⁹ Ibid., pp. 227, 229.

³⁵⁰ Letter V. Oteri to Inspector General of Police, 31 May 1994 (**exhibit 140**); Letter V. Oteri to Inspector General of Police, 18 April 1994 (**exhibit 141**); Letter V. Oteri to The Inspector General of Police, 24 June 1994 (**exhibit 144**); Letter V. Oteri to The Inspector General of Police, 17 August 1994 (**exhibit 147**)

³⁵¹ Letter V. Oteri to the Inspector General of Police, 17 August 1994 (exhibit 147).

³⁵² Letter Phil Watts to Alhaji Coomassie (Inspector General Of Police, Nigerian Police Force), 1 December 1993 (exhibit **Fout! Verwijzingsbron niet gevonden.**), see section 8.4.1.

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The Force would take full custody and monitor the deployment of the weapons within your establishment.”³⁵³

262. Shell also agreed to procurement of the arms from an arms dealer of the regime’s choice (“we will be prepared to pay the cost of acquisition by your nominated dealer/supplier”).³⁵⁴ This dealer was Chief G.O. Akinluyi of Humanitex Nigeria Ltd. who represented the international arms company XM Federal Ltd.. On 1 and 18 August 1994 XM Federal Limited made a price proposal, both in excess of half a million dollars.³⁵⁵
263. On 8 September 1994 Akinluyi wrote to Shell to say that delivery was subject to some delay because it was only possible through the intervention of a third party on account of an arms embargo against Nigeria (more of which below), but that this hurdle had then been overcome (**exhibit 149**).³⁵⁶ However, four days later Shell allowed the deal with Akinluyi to collapse over the invoice-amount, as is evident from a letter from Brian Anderson to Alhaji Coomassie of 12 September 1994 (**exhibit 150**):

“In our letter of 1/12/93, we stipulated the number and type of arms which we wished to procure in order to improve our defensive capability in Lagos and in the Eastern and Western Divisions of SPDC. Recently, we received a quotation for the required arms from a chief G.O. Akinluyi of Humanitex Nigeria Limited whom we understand is the sole appointed agent for any transaction of this nature between the NPF and SPDC. We consider this quotation to be excessive, based upon own investigations from other sources of supply. Consequently, we may have to suspend all activity on arms procurement until further notice [...]. [We] hope that at some time in the future, we can re-initiate this project.”

264. On 6 February 1995 Shell issued its own tender.³⁵⁷ At that time Operation Restore Order in Ogoniland, with its violent excesses, was at a peak and the Ogoni 9 trial had just begun.³⁵⁸
265. It is worth noting that the international community announced sanctions against Nigeria starting from Abacha’s coup in November 1993. The European Union for instance

³⁵³ Letter The Inspector General of Police to Anderson, 27 July 1994 (**exhibit 145**). See also letter from The Inspector General of Police to Akinluyi, 17 August 1994 (**exhibit 262**); letter from The Inspector General of Police to V.A. Oteri, 18 August 1994 (**exhibit 148**).

³⁵⁴ Letter V. Oteri to Inspector General of Police, 18 April 1994 (exhibit 141).

³⁵⁵ Price Quotation XM Federal Limited, 1 August 1994 (**exhibit 268**); Price Quotation XM Federal Limited, 18 August 1994 (**exhibit 269**).

³⁵⁶ Letter Chief G.O. Akinluyi to Shell, 8 September 1994 (**exhibit 149**).

³⁵⁷ Letter W.J.C. Dick to Humanitex (Nig) Ltd., 6 February 1995 (**exhibit 152**).

³⁵⁸ See also Polly Ghazi and Cameron Duodu, “How Shell tried to buy Berettas for Nigerians”, 11 February 1996 (**exhibit 258**): “The request was issued at the height of worldwide protests against the military regime's brutal suppression of the Ogoni minority people.”

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announced various sanctions against Nigeria in December 1993, with the aim of suspending all support for the military regime and restricting the arms trade:

“In the statement on Nigeria published on 19 November 1993, in which the European Union condemned the fact that the democratic process in Nigeria had been interrupted through the resumption of power by a military dictatorship, the European Union decided to examine without delay the consequences of the setback to the democratic process in Nigeria. In a press release published on 7 December 1993, the Presidency announced [...] that the Member States of the European Union, inter alia, would make a case-by-case examination, with a presumption of refusal, of all new export licences for defence equipment. The Member States of the Union agreed that this measure on defence equipment would apply to all categories of arms, ammunition and military equipment, i.e. weapons designed to kill and ammunition for them, weapon platforms, non-weapon platforms and auxiliary equipment.”³⁵⁹

266. These arms trade restrictions did not therefore prevent Shell from taking steps itself to provide the military regime with arms. It is reported that in March 1995 Shell made a choice from the tender it had issued, but in the end there was no actual procurement of arms.³⁶⁰ On 20 November 1995 the EU announced a total arms embargo against Nigeria.³⁶¹

8.4.4 Shell and the regime operated a joint intelligence service

267. Together with the State Security Service (“SSS”, the national intelligence and security service) Shell maintained its own network of informants. According to George Ukpong, Shell had daily contact with the commissioner of police of Rivers State and the director of the SSS in this period.³⁶² The SSS, according to Ukpong, “is one of the security agencies rendering valuable assistance in support of SPDC security operations in the state”; the SSS “has provided assistance in meeting some of our staff training needs” and “has been of particular assistance to [Shell] in the area of crime intelligence acquisition”.

³⁵⁹ Written question No. 3578/95 by Edith Müller, Wilfried Telkämper to the Council. EU arms embargo against Nigeria, OJ C 280, 25 September 1996 (**exhibit 232**), p. 3 (emphasis added). Other measures announced by the EU: - suspension of military cooperation, - visa restrictions for members of the military or the security forces, and their families, - suspension of visits of members of the military, - restriction of movement of all military personnel of Nigerian diplomatic missions, - cancellation of training courses for all Nigerian military personnel, - suspension of all high-level visits that are not indispensable to and from Nigeria, suspension of any further cooperation aid, see European Political Documentation Bulletin, 93/305, Statement on Nigeria, 13 juli 1993 (exhibit 230), p. 364.

³⁶⁰ See Jędrzej Georg Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (**exhibit 244**), p. 55: “Following revelations in the British press on Shell’s arm dealings in 1996, a Shell International spokesman later admitted that one of three bids for arms purchases had been ‘selected’ by Shell in March 1995, although the arms deal had not gone ahead.”

³⁶¹ EU Common Position on Nigeria, 95/515/CFSP, 20 November 1995 (**exhibit 231**).

³⁶² Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), p. 279.

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268. Shell and the SSS exchanged information about the situation in Ogoniland and elsewhere, in order for Shell to remain informed about potential unrest and potential risks to its assets.³⁶³ Information was obtained from informants among the Ogoni who worked for the SSS or for Shell.³⁶⁴ Shell also regularly sent Shell police into Ogoniland to gather information incognito³⁶⁵ and tasked the SSS to gather such information at Shell's expense.³⁶⁶ The statements of four former members of Shell Police that they received money from Shell to gather information in Ogoniland and if necessary to bribe villagers was in line with this approach.³⁶⁷

8.4.5 Shell had puppets in place in crucial positions within the regime (and vice versa)

269. The intensive alliance between Shell and the regime is also evident from the so-called "revolving door policy" they employed. Nigerian government officials – usually those responsible for national energy policy – and Shell personnel were systematically rotated, to guarantee and prolong the cooperation.

270. Various government officials who were involved in the repression of the Ogoni had worked for Shell. Chief Ernest Shonekan was for some years a Shell board member of SPDC.³⁶⁸ He relinquished this position in the period between May 1992 and May 1993³⁶⁹ and on 4 January 1993 was appointed chairman of the Civilian Transitional Council of the Nigerian regime. Shonekan then managed "the day-to-day affairs of government".³⁷⁰ On 26 August 1993 Shonekan was officially installed as leader of the interim government, following Babangida's resignation.³⁷¹ Even then he was seen as an Abacha puppet, who at that point was minister of defence.³⁷² When Abacha launched a coup after three months and became Head of State, Shonekan continued to act as his

³⁶³ Ibid., p. 279.

³⁶⁴ Ibid., pp. 292-296, 477-478; Public Deposition George Akpan Ukpog, vol. I, 23 October 2003 (exhibit 57), p. 175 (Public depos, 15); Public Deposition of Egbert Imomoh, 17 June 2003 (exhibit 30), p. 72.

³⁶⁵ Public Deposition George Akpan Ukpog, vol. II, 24 March 2004 (exhibit 58), pp. 506-507.

³⁶⁶ Public Deposition George Akpan Ukpog, vol. I, 23 October 2003 (exhibit 57), pp. 175-176: request "[to] task your operatives to move into the area to enable us to get relevant and up-to-date intelligence on the general security situation". It is also worth noting that Shell requested intelligence from the British Secret Service, see Nigeria Update of Anderson (exhibit 97), 27 June 1994: "I am in touch with the British Secret Service representative in Lagos. He has agreed to keep me informed on any developments that might be of interest to Shell".

³⁶⁷ I. Okonta and O. Douglas, *Where vultures feast: Shell, Human Rights and Oil*, Sierra Club Books, 2003 (exhibit 242), pp. 59-60, referring to Project Underground: "to gather intelligence and bribe and befriend villagers wherever there was an oil spill. These villagers would then instigate conflict in the village over competing claims for money, a situation Shell would subsequently exploit, claiming that it would not pay any compensation since the community was divided on the issue of who would get what".

³⁶⁸ **Exhibit 60**: Public Deposition Philip Beverly Watts, vol. II, 17 April 2004, pp. 155-158; see also Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), pp. 56-57; **exhibit 65**: Minutes of the meeting of the Board of Directors of SPDC, 5 September 1991.

³⁶⁹ Corporate Accounts Shell Nigeria 1992 (exhibit 157), pp. 3, 19

³⁷⁰ Issue paper Nigeria, Chronology of events January 1992 – February 1995, Immigration and refugee board of Canada (exhibit 266), p. 8

³⁷¹ Ibid., p. 11

³⁷² Issue paper Nigeria, Chronology of events January 1992 – February 1995, Immigration and refugee board of Canada (exhibit 266), p. 11; See also the New York Times article on 18 November 1993: <http://www.nytimes.com/1993/11/18/world/nigerian-military-leader-ousts-interim-president.html> <last visited on 16 April 2017>.

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number two.³⁷³ Former Shell board member Shonekan was an ideal access point to Abacha for Shell³⁷⁴ and a fixed point of contact with the Nigerian regime.³⁷⁵

271. Chief Rufus Ada George, the Governor of Rivers State, had also previously worked for Shell in Port Harcourt,³⁷⁶ Osazee Osunde had worked at the National Electoral Commission before he started at Shell,³⁷⁷ and Godwin Omene, the subsequent chairman of the Niger Delta Development Commission, was a former Deputy Managing Director of Shell in Nigeria.³⁷⁸ Shell's dedicated lawyer O.C.J. Okocha, who also looked after its interests during the Ogoni 9 trial and was present at the bribery of witnesses, was also for some time Attorney General of Rivers State.³⁷⁹
272. As a result of this interdependence the mutual solidarity and influence was unmistakable. Additionally, in this way Shell kept itself informed about what went on in the government.
273. Shell facilitated informal contact between the highest echelons of the regime and the company, for example through its own senior staff club in Port Harcourt, with a swimming pool, football, hockey and rugby pitches, tennis and squash courts, a bar and a restaurant. Membership of this club was open not only to Shell employees, but also to highly placed government officials. Egbert Imomoh, General Manager East and board member of Shell Nigeria, said the following about this:

“[M]embers of Port Harcourt military police also had membership of the club. [...] [W]e used to extend membership to people like the Governor, the Chief Justice, and a few others, what I call senior people in society, so that we extend that courtesy to those senior people in Government in Rivers State”³⁸⁰

274. According to Olisa Agbakoba, one of the defense lawyers in the Ogoni 9 Trial, the lawyers visited Shell's club for relaxation after court days of the Civil Disturbances Tribunal.³⁸¹

³⁷³ Nigeria Update Brian Anderson, 23 July 1995 (exhibit 116), pp. 8-9: “Shonekan is very close to him”.

³⁷⁴ Public deposition Brian Anderson (exhibit 17), p. 140.

³⁷⁵ Nigeria Update Brian Anderson, 23 July 1995 (exhibit 116), p. 8.

³⁷⁶ To whom the request for “the usual assistance” was sent, letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993 (exhibit 136). The fact that he worked for Shell appears in Public Deposition George Akpan Ukpong, vol. II, 24 March 2004 (exhibit 58), pp. 281-282.

³⁷⁷ Public Deposition Osazee Osunde, 23 October 2003 (exhibit 53), p. 8

³⁷⁸ Nigeria Update from Omene (SPDC Lagos) to SIPC London and SIPM The Hague, 10 July 1995 (exhibit 115); Letter from G.E. Omene (Deputy Managing Director, SPDC) to A.J. Oyekan (Director, Department of Petroleum Resources), 16 December 1993 (exhibit 139); Public deposition Dosee Okonkwo, 19 June 2003 (exhibit 50), p. 16.

³⁷⁹ Declaration O.C.J. Okocha, 8 December 2003 (exhibit 49), para. 3: “From 1990 to 1992 I served as the Attorney General of Rivers State” and para. 7: “I have served as an external solicitor to [Shell Nigeria] since 1987”. See also chapter 8.2 on ‘Umuechem’.

³⁸⁰ Public Deposition Egbert Imomoh, vol. I, 17 June 2003 (exhibit 30), pp. 24-26.

³⁸¹ See Chapter 8.7.2 and in the same chapter also the declaration of lawyer Onyeagucha, who states that the lawyer's were accommodated at Shell's residential area.

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275. The extent of Shell's infiltration of Nigerian politics later became clear from the messages from the American embassy in Nigeria published by WikiLeaks. In them Executive Vice President of Shell in Africa at the time, Ann Pickard, boasted to the American ambassador that the Nigerian government had forgotten that Shell had seconded people to every ministry in the Nigerian government and was therefore aware of everything happening there:

“Pickard said Shell had good sources to show that their data had been sent to both China and Russia. She said the GON had forgotten that Shell had seconded people to all the relevant ministries and that Shell consequently had access to everything that was being done in those ministries.”³⁸²

276. Shell was therefore not actually independent from the regime; it had branched out to all its ranks. As such, Shell not only effectively cooperated with the Nigerian regime's agenda, it was also aware of the excesses committed in its name in Ogoniland.

8.5 The Ogoni 9 trial served to safeguard the common interests of Shell and the regime

8.5.1 Introduction

277. The Ogoni 9 trial was the culmination of Operation Restore Order in Ogoniland. With the Ogoni 9 trial Abacha disposed of the Ogoni's main political representatives in an extreme attempt to finally break the resistance. The trial served a common goal, the resumption of oil extraction in Ogoniland, and followed the ceaseless urging of Shell to bring order to matters. Professor Olubayo Oluduro said about this:

“Although Ken Saro-Wiwa and the other eight Ogonis were ostensibly charged and tried for murder, it is obvious to the world that they were actually arrested and executed for expressing their discontent with the environmental harm caused by Shell and the Government in their native Ogoniland.”³⁸³

278. As was explained in chapter 4, the Ogoni 9 trial, which commenced 6 February 1995, was a carefully prepared show trial. The 15 suspects had, when the trial started, already been held in custody for more than eight months without official charge, although it was clear that they had been apprehended on suspicion of involvement in the murder of the four traditional Ogoni leaders on 21 May 1994. Ken Saro-Wiwa, Barinem Kiobel and Baribor Bera did not hear the official charge until 28 January 1995, while Nordu Eawo and Paul Levula received the indictment on 28 February 1995. In this period the

³⁸² Embassy Cable no. 09ABUJA1907_a, Shell MD discusses the Status of the Proposed Petroleum Industry Bill”, 20 October 2009 (**exhibit 265**).

³⁸³ O. Oluduro, Oil Exploitation and Human Rights Violations in Nigeria's oil Producing Communities, dissertation, Intersentia, 2014 (**exhibit 243**), p. 237.

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hearings of the specially set up Ogoni Civil Disturbances Special Tribunal also started. Footage of these hearings is submitted as **exhibit 247**. Fragments from them can also be seen in the revealing documentary “In-Remembrance Ken Saro-Wiwa” (**exhibit 252**).³⁸⁴ The trial would last until 31 October 1995 and end with the death penalty being carried out on nine of the fifteen suspects, who were executed on 10 November 1995. The serious human rights violations to which the suspects were exposed during the trial and that ultimately led to the executions are described in chapter 4.

279. Because it soon became clear that the suspects would not receive a fair trial and were in fact political prisoners because of their opposition to Shell, all eyes were on the company. Shell falsely claimed to be following an apolitical course whilst exerting its influence through quiet diplomacy. In reality, it was very much involved with the course of the events during the trial, and in the meantime fully dedicating itself to its negotiations with the regime regarding the NLNG project which would be settled at the same time. At no time whatsoever did Shell reveal any dissatisfaction with the course of events, not even when it sent a tepid letter to Abacha just before the execution of the Ogoni 9 with a request for a pardon, for which it had apologised to the regime in advance.³⁸⁵ While Nigeria had by then been internationally degenerated into a pariah state, Shell continued to collaborate with the regime just as intensively.
280. The fact that Shell’s involvement in the trial went beyond implicit support is evident from the following facts and circumstances, which are explained below:
- Shell itself sent a lawyer to the trial, who kept it well informed and supported the position of the prosecutor by means of a so-called watching brief;
 - Shell lied publicly about the role that its lawyer fulfilled at the trial;
 - during the trial Shell maintained contacts with the judges who had been appointed to decide on the case;
 - Shell’s lawyer was present at the bribing of witnesses who had to give incriminating statements against the “Ogoni 9”; they were offered compensation and a position at Shell;
 - Shell’s protégé Okuntimo played a dominant role during the trial;
 - at no time did Shell publicly or discretely distance itself from the course of events during the trial;
 - Shell kept emphasising its economic interests to the regime and during the trial negotiated with the regime regarding new projects in Nigeria. One month after the executions the large-scale National Liquid Natural Gas project was

³⁸⁴ In *Remembrance, Ken Saro-Wiwa*, directed by Glenn Ellis, 1996, Channel 4 (**exhibit 252**), at 00:57-01:40, 10:37-13:00, 13:39-14:16, 15:34-18:20, and 19:58-10:57.

³⁸⁵ See below, at 325 and 326.

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announced, by which the collaboration between the regime and Shell was extended for many years.

8.5.2 Shell sent its lawyer to look after its interests

281. Shell sent its own lawyer O.C.J. Okocha and his colleagues to the tribunal with a so-called ‘watching brief’. A watching brief in the Nigerian legal system is a way for a third party to keep informed of developments in proceedings in order to safeguard its direct interests in them. To this end the lawyer who has the watching brief usually works closely with the public prosecutor. Nigerian jurisprudence shows that a watching brief may be refused if a party has no interest in the trial:

“...the practice of watching brief is not unknown to our Courts. It is part of our unwritten rules of practice in our Criminal Courts. . . . My understanding of this system which applies only in criminal cases is that a person seeking to watch brief in a case must not necessarily be a party to that case but he must have an interest in the case which he seeks to protect. Such a person then appoints a Counsel to appear in Court and watch the proceedings on his behalf to ensure that his interest is not willfully jeopardized. A Counsel so appointed then enters an appearance as watching brief, sits and watches the proceedings and may take notes of the proceedings which he can use in reporting to his client.”³⁸⁶

282. Oronto Douglas, one of the suspects’ lawyers, described this role in his declaration in the American proceedings as follows:

“A third party may participate through counsel in a Nigerian criminal proceeding through a procedure known as a watching brief. The purpose of a watching brief is to protect the client's interest. A lawyer holding a watching brief participates in the proceeding, which often includes providing informal assistance to the prosecutor. To participate by watching brief, a party must have a legal interest to protect that is at stake in the proceedings.”³⁸⁷

283. Shell’s regular lawyer O.C.J. Okocha was instructed by Shell’s Legal Adviser East I.O. Ahize on 1 December 1994 as follows:³⁸⁸

“As Shell has various interests in the Ogoni area which were adversely affected by the disturbances, we consider it necessary to brief a lawyer to follow up the proceedings in case Shell would be expected to testify

³⁸⁶ *Federal Republic of Nigeria v. Abiola* [1994] FHCLR 156, 160 (exhibit 203).

³⁸⁷ Declaration Oronto Douglas, 4 February 2009 (exhibit 23), para. 8.

³⁸⁸ See also re Okocha section 8.2.2, at 178 (Umuechem): in 1990 Okocha was the public prosecutor of Rivers State who decided that criminal prosecution of those responsible for the Umuechem bloodbath was unnecessary.

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before the panel. We therefore request you to hold a watching brief on behalf of Shell during the proceedings. We expect you to:

- attend the sittings of the panel on a regular basis.
- report the outcome of the proceedings of each sitting to Shell.
- in case Shell is to testify before the panel, document and conduct the presentation of Shell's case to the panel.
- pursue and obtain copy of the panel's final report, recommendation or judgment for Shell's records.³⁸⁹

284. The transcripts of the trial show that at the beginning of the hearing Shell's lawyer stressed that he was present on Shell's behalf with a watching brief.³⁹⁰

285. Shell argued publicly that it had withdrawn its lawyer when it became apparent that the trial was not about the disturbances in Ogoniland, but exclusively about the murders:

“SPDC had no connection with the tribunal. Our lawyer attended the first day as an observer because we understood the tribunal was concerned generally with civil disturbances in Ogoniland, which had affected our staff and facilities. When it became clear on the first day of the tribunal that this was a murder case, the lawyer was withdrawn.”³⁹¹

286. And Brian Anderson said in the American proceedings that after the first day of the trial Shell only received public information about the trial:

³⁸⁹ Letter I.O. Ahize, Legal adviser SPDC, to O.C.J. Okocha, “Re: Ogoni Disturbances Representation at the Sittings of the Tribunal”, 1 December 1994 (**exhibit 151**); See also Payment by SPDC to O.C.J. Okocha, 8 February 1995 (**exhibit 153**); Declaration Oronto Douglas, 4 February 2009 (exhibit 23); Declaration O.C.J. Okocha, 8 December 2003 (exhibit 49).

³⁹⁰ Transcripts day 1, 6 February 1995 (**exhibit 179**), p. 9: “MR. BAYO FADUGBA: My Lord, I am holding brief for Chief O.C.J. Okocha. My Lord, we have a watch brief for Shell Development Company of Nigeria”; p. 10: “MR. FADUGBA: My Lord, In my introduction, I said that I am holding brief for Chief O. C.J. Okocha who has a watching brief on behalf of Shell Development Company and I would like to be on record, Sir. CHAIRMAN: I have already written that. MR. FADUGBA: I am much obliged, my Lord.”

³⁹¹ Shell, Nigeria Letter: Ogoni and the Niger Delta, 1996 (exhibit 166), p. 7. Cf. WCC Report “Ogoni – the struggle continues” Comments by Shell (exhibit 167), pp. 21, 22: “When it became clear on the first day that the tribunal was for the trial of murder of four Ogonis, Mr. Fadugba announced the withdrawal of his representation in court. It is understood that Mr. Okocha attended the trial subsequently on a number of days. It is a matter of public record that this was in his capacity as the chairman of the Rivers State Bar Association, and not as representative of SPDC”. Shell's lack of knowledge of what the tribunal was about is actually implausible given its close ties with the regime (cf. chapter 8.4, in particular 8.4.4 and 8.4.5) and the public interest in the trial and the lengthy detention of the Ogoni 9. At the time that it gave Okocha instructions in December 1994 and when the hearing of the case started at the sitting on 16 January 1995 the newspapers had been full of the trial for months and it was perfectly clear who the suspects were and of what they were suspected. The legal objections to the specially created Civil Disturbances Special Tribunal had also been long and widely known at this time (see chapter 4.3).

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“Q. Did you receive reports on the progress of the trial of the Ogoni nine?

A. At the very beginning I had the reports and afterwards it was public information.

Q. Can you explain what you mean by in the very beginning you had the reports?

[...]

A. I received a report the first day of the activities of the court.

Q. After receiving a report of the activities of the court on the first day did you receive any other reports on the progress of the trial other than what you have learned through the media?

A. No.”³⁹²

287. Indeed, on 21 February 1995, the second court day of the trial in Nigeria, O.C.J. Okocha suddenly announced that he was no longer present as Shell’s representative,³⁹³ but was there “on behalf of the Nigeria Bar Association [...] as Official Observer”.³⁹⁴

288. Nothing was further from the truth, however. Both Shell and Okocha later admitted that Okocha – not as Shell said publicly – did indeed continue participating in the trial on Shell’s behalf:

“On further discussions with SPDC, my firm held a watching brief of the proceedings so that legal advice could be given when and if allegations should be made against SPDC”.³⁹⁵

289. Shell was not open about Okocha’s actual role in the trial until, in the American discovery proceedings, it relied upon the confidentiality of lawyer-client correspondence so as not to have to give up the Okocha & Okocha reports that were sent to Shell. This led to Shell indeed not having to submit the correspondence relating to the Ogoni 9 trial in the American proceedings. However, a description of these documents is included in the so-called privilege log (**exhibit 198**).

290. The privilege log shows that Shell, in contrast to its earlier statements, was kept informed of each sitting by Okocha or one of his colleagues. The lawyers carried on

³⁹² Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), pp. 127-128.

³⁹³ Transcripts day 2, 21 February 1995 (exhibit 180), pp. 65-66.

³⁹⁴ Transcripts day 2, 21 February 1995 (exhibit 180), p. 2.

³⁹⁵ Declaration O.C.J. Okocha, 8 December 2003 (exhibit 49), p. 6. Cf. Defendants’ supplemental interrogatory responses, 17 December 2008 (**exhibit 195**), p. 4, in which Shell admits that Okocha & Okocha “held a watching brief of the proceedings so that it could give legal advice if and when allegations were made against SPDC”.

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observing for Shell until the end of the trial³⁹⁶ – by which time the lawyers of the Ogoni 9 had long since withdrawn on account of the evident violations of the fundamental rights of their clients – and kept sending reports of it to Shell. Even Brian Anderson, entirely contrary to what he had previously testified, received at least nine written reports on the developments in the Ogoni 9 trial.³⁹⁷ Okocha later testified in the American Kiobel case:

“I or my designees had attorney-client communications on the Tribunal proceedings. My designees included S.N. Atabe, B. Akang, O.A. Solagbade, I.A. Uzakah, and B. Fadugba, among others. Each of those individuals was a Junior solicitor with my firm, and each was therefore authorized and able to convey attorney-client communications to SPDC regarding proceedings before the Tribunal.”³⁹⁸

291. It concerns a total of 97 reports, marked in the privilege log as “Communication from counsel regarding proceeding before the Ogoni Civil Disturbances Tribunal”.³⁹⁹ The reports were sent to Shell employee Ahize. Azihe in his turn reported to the board of SPDC (including Anderson, Achebe and Imomoh) and representatives of the service companies.
292. Persons present at the trial stated that – entirely in line with the comments above about a watching brief – Okocha and his colleagues only spoke to the representatives of the government and the prosecutor, Chief Umeadi San, and attended the sittings at their side (**exhibit 26**: Declaration Femi Falana, 16 June 2017).⁴⁰⁰

8.5.3 The role of Shell’s protégé Okuntimo

293. Okuntimo demanded such a dominant role during the Ogoni 9 trial that Birnbaum dedicated a separate chapter to it in his report.⁴⁰¹ For example, Okuntimo personally monitored all the visits of lawyers to the suspects and the lawyers were not permitted to visit their clients without his consent.⁴⁰² Client discussions took place in his presence and within his earshot.⁴⁰³ Okuntimo was also responsible for the security of the court room and during the sittings maintained direct contact with the chairman of the tribunal, Justice Auta, who called him “Paul”. To the astonishment of the suspects’ lawyers Auta

³⁹⁶ This is also evident from the Defendants’ supplemental interrogatory responses, 17 December 2008, Appendix A (exhibit 195). They reveal that in total Bayo Fadugbo attended 61 sitting days for Shell, Okocha attended four sitting days and other lawyers from Okocha’s office (Okocha & Okocha) attended between 20 and 30 other sitting days.

³⁹⁷ Privilege log *Wiwa v. Royal Dutch Petroleum Company, et al, Kiobel v. Royal Dutch Petroleum Company, et al*, October 2003 (**exhibit 198**), pp. 9-11.

³⁹⁸ Declaration O.C.J. Okocha, 8 December 2003 (exhibit 49), pp. 6-7.

³⁹⁹ Privilege log *Wiwa v. Royal Dutch Petroleum Company, et al, Kiobel v. Royal Dutch Petroleum Company, et al*, October 2003 (exhibit 198).

⁴⁰⁰ See also: Declaration Ledum Mitee, 2 May 2017 (exhibit 41), paras. 13-15; Declaration Uche Onyeagucha, 15 June 2017 (exhibit 52).

⁴⁰¹ See Birnbaum (exhibit 255), pp. 44-48.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*, p. 46.

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appeared to be in possession of information about their clients at the hearing that could only have come from the circles around Okuntimo.⁴⁰⁴

294. Okuntimo was seen by those concerned as the administrator of the regime in Ogoniland and the key player behind the trial (**exhibit 181**: Transcripts 23 February 1995).⁴⁰⁵ Charity Levula and Blessing Kpuinen said that Okuntimo was responsible for the arrest of their husbands. During the Ogoni 9 trial Esther Kiobel said that Okuntimo had told her he would ensure her husband would be sentenced to death, since it had not been possible to poison his food. She also saw Okuntimo and Alhaji Kobani, the important prosecution witness, talking together in Okuntimo's office in Bori Camp.⁴⁰⁶ During a conversation between observer Birnbaum and the public prosecutor, Okuntimo personally pulled up a chair, uninvited.⁴⁰⁷
295. As described in chapter 4, Okuntimo was also responsible for the ill-treatment of Esther Kiobel and the harassment of suspects, their family members and lawyers.⁴⁰⁸

8.6 Shell contributed to the outcome of the Ogoni 9 trial

8.6.1 Shell was involved in the bribery of witnesses

296. Already during the trial in 1995 two witnesses testified that they had been bribed to make incriminating statements in exchange for money and a job at Shell. Charles Danwi and Naayone Nkpah made a statement under oath on video on 16 and 27 February 1995 respectively, which was submitted as an affidavit to the Civil Disturbances Tribunal.⁴⁰⁹ The Tribunal however disregarded the evidence.
297. In their statements Nkpah and Danwi named a number of other witnesses who were bribed by Shell and the regime, that is Celestine Meabe, Kevin Badara,⁴¹⁰ Limpah Bah, Peter Fii, Saturday Iye and David Keenom (**exhibit 45**: Public Deposition Naayone Nkpah, 19 March 2004, pp. 19-22; **exhibit 21**: Affidavit Charles Danwi, 16 February 1995).⁴¹¹ The false statements of these bribed witnesses were decisive in the conviction of the Ogoni 9.⁴¹²

⁴⁰⁴ Ibid, p. 47: "These incidents suggest at the least that tribunal sometimes receives information from a military or police source".

⁴⁰⁵ On the third sitting day the prosecutor said of Okuntimo: "at moment, he is in charge", p. 31.

⁴⁰⁶ Declaration Esther Kiobel, 12 February 1995 (exhibit 38).

⁴⁰⁷ M. Birnbaum, Nigeria Fundamental Rights Denied, Report of the trial of Ken Saro-Wiwa and Others, Article 19, June 1995 (exhibit 255), p. 46: "After about an hour Okuntimo walked in uninvited and sat down. I did not ask him to leave. It was not for me to do so and I was curious to see whether anyone else would ask him to go. Nobody did. He stayed for about half an hour. From time to time he got up and strolled around the room. He made a few contributions to his own to the discussion. When I asked about the legal qualification of Lt-Col Ali, it was Okuntimo who told me what they were. He used words to the effect that he (Okuntimo) was the Chief of Ogoniland."

⁴⁰⁸ See chapters 4.4, 4.5 and also 8.3.2.

⁴⁰⁹ See for parts of the footage on which Danwi and Nkpah can be seen writing their statements the documentary In Remembrance: Ken Saro-Wiwa (exhibit 252), 14:06-15:34.

⁴¹⁰ Called Kevin Badella in the Public deposition of Nkpah and Kenwim Badara in Danwi's affidavit.

⁴¹¹ Meabe, Bah and Badara have since died. Blessing Eawo said that Celestine Meabe had been bribed by Shell before the trial and had tried to persuade her husband to discontinue with NYCOP.

⁴¹² See Birnbaum (exhibit 225), appendix 9, pp. 104-116, for an overview of these incriminating witness reports.

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298. The statements of Danwi and Nkpah show that shortly after the murders of the traditional Ogoni leaders they were pressured by the main prosecution witnesses Alhaji Kobani (the brother of the murdered Edward Kobani) and Priscilla Vikue⁴¹³ to sign a false statement in which they accused the since apprehended MOSOP and NYCOP leaders of the murders.⁴¹⁴ Initially they refused to do this, whereupon they were placed under house arrest for some time. Danwi testified that he was then promised the following:

“I was promise[d] that after the case in Court I will be given a house any place in the country, a Contract from Shell and OMPADEC and some amount of money to buy my musical instrument. [...] On another date of meeting in Kobani’s House, representative from Shell, OMPADEC, security agents, Govt officials and the Kobani, Orage and Badey’s family were present and they all agreed. The family gave some money say that the money come from Govt. and Shell. In my case I was given N 30,000,- from Shell and Govt.”⁴¹⁵

299. Nkpah testified to the same effect and in his fuller statement in the American Kiobel case also said who was involved in the bribery. Apart from Alhaji Kobani and some other family members of the murdered Ogoni chiefs, they were also various representatives of the regime and the oil industry, among them Shell’s lawyer O.C.J. Okocha.⁴¹⁶ Nkpah was also promised a house, 30,000 naira and a contract at Shell, OMPADEC or the government.⁴¹⁷ In his deposition he said that Celestine Meabe had asked Alhaji Kobani where the 30,000 naira came from, to which Kobani replied:

“This money come from Shell, government of Nigeria. This is why the chairman, the lawyer representative is here.”⁴¹⁸

300. Kobani introduced this Shell lawyer to Nkpah as O.C.J. Okocha.⁴¹⁹ Nkpah also said that Kobani had told him that “anything that is being given to us [...] basically is from the government and the Shell and Ubadek [OMPADEC]”.⁴²⁰

⁴¹³ Vikue is also well-known to Shell, as is apparent from the public deposition of Precious Omuku (Manager Health Safety Environment Public Affairs SPD), see public deposition Precious Omuku, 19 April 2004 (exhibit 51), p. 238.

⁴¹⁴ Affidavit Charles Suanu Danwi, 16 February 1995 (exhibition 21); Public Deposition Naayone Nkpah, 19 March 2004, p. 97-100.

⁴¹⁵ Affidavit Charles Suanu Danwi, 16 February 1995 (exhibit 21).

⁴¹⁶ Public Deposition Naayone Nkpah, 19 March 2004 (exhibit 45), p.21; Nkpah also gave a description of Okocha, see pp. 114-115.

⁴¹⁷ Public Deposition Naayone Nkpah, 19 March 2004 (exhibit 45), pp. 113-121.

⁴¹⁸ Ibid, p. 113.

⁴¹⁹ Ibid, p. 114.

⁴²⁰ Ibid, p. 19.

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301. Just like Danwi, in exchange for signing the false testimony Nkpah was given a job in the transport section of the municipality of Gokana where, in addition to the 30,000 naira, he received a monthly salary without actually being employed.⁴²¹
302. Gani Fawehinmi, the suspects' lawyer, introduced Danwi's statement on the second day of the Ogoni 9 trial (on 21 February 1995):
- “My Lord, he [Charles Danwi] is number 22 on the list of witnesses. He has sworn to an Affidavit and he has exhibited what is called a principal statement. He accused the Government [and] Shell Development Company for bribing him with thirty thousand naira (N30.000) and a house. He has made a full disclosure that what they have was not his statement [...].”⁴²²
303. Although Kiobel's lawyer Alhaji Oso again tried to stress the importance of the bribery on the third day⁴²³ and explained that the reliability of the witnesses was the basis of the case,⁴²⁴ Nkpah and Danwi's affidavits were not admitted as exculpatory evidence.⁴²⁵ At that point, Danwi and Nkpah had already gone into hiding out of fear for repercussions by the regime and could not therefore give evidence to the hearing. Their fear proved to be well-founded: both men were put on the regime's blacklist.⁴²⁶ Ultimately they were forced to flee Nigeria and they were accepted as refugees in Benin.⁴²⁷
304. Nkpah is currently living in the United States and is prepared to substantiate his statements in detail as a witness if necessary. Danwi's current whereabouts are unknown.

8.6.2 Shell maintained direct contact with the judges of the Special Tribunal during the trial

305. Despite the fact that, according to Nigerian law, Shell was an interested party to the proceedings as a result of the watching brief,⁴²⁸ Shell, in full accordance with its custom

⁴²¹ Ibid, pp. 119-121.

⁴²² Transcripts Ogoni Civil Disturbances Special Tribunal, day 2, 21 February 1995 (exhibit 180), pp. 18-27. (quote p. 18).

⁴²³ Transcripts Ogoni Civil Disturbances Special Tribunal, day 3, 27 February 1995 (exhibit 182), pp. 34-39.

⁴²⁴ Transcripts Ogoni Civil Disturbances Special Tribunal, day 3, 27 February 1995 (exhibit 182), p. 39: “I am inviting you to look at it because this is the basis of the case for the prosecution. All the people mentioned here are all Witnesses [Oso referred to the names of bribed witnesses who Danwi named in his affidavit]. If the statement made by each of them is inherently flawed, then, it is mere elephant feet of clay [...]. In summary, I submit that prima facie, the quality of the evidence is poor. The character of the evidence before the Tribunal is quantitative. To sway you against the application, it must be qualitative. The affidavit of Charles Suanu Danwi is a very serious issue which must not be taken lightly by this Tribunal”.

⁴²⁵ See also: Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, 28 May 1996, A/50/960 (exhibit 233), p. 15.

⁴²⁶ List with wanted MOSOP members from the Deputy Inspector General of Police, addressed to Major Obi Umahi, Okuntimo's successor, 4 March 1996 (exhibit 267).

⁴²⁷ Public Deposition Naayone Nkpah, 19 March 2004 (exhibit 45), pp. 179-180, 184-186. Nkpah made a full statement about the bribery in the American proceedings. He was resettled to the United States from Benin in 1998 and lives there still. Danwi was to have been called as a witness in the American Kiobel and Wiwa cases, but because of the outcome in those cases this never happened, see chapter 5.

⁴²⁸ See chapter 8.5.2 and the declaration of Femi Falana, 16 June 2017 (exhibit 26), para. 6(g).

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of inviting highly placed officials of the Nigerian regime to its Residential Area, organised a welcome dinner there for the judges of the Tribunal just prior to the start of the trial. In any case, Judge Auta, chairman of the tribunal, was present at this dinner. Femi Falana, the lawyer who represented Saro-Wiwa at the trial, and Ledum Mitee, one of the suspects, testified to this.⁴²⁹

306. Lawyers Onyeagucha (exhibit 52) and Agbakoba (**exhibit 16**) have confirmed the contacts between the judges of the Tribunal and Shell. They stated that the judges, who had come to Port Harcourt for the trial, were escorted to the Shell's Residential Area on Aba Road after court days where they stayed and relaxed in Shells senior staff club:

“We knew that Shell, the prosecutor and the members of the tribunal were working hand in glove with each other. The hearings of the tribunal started between 9 and 10 AM and took until 2 or 3 PM. The judges were subsequently driven away by the military to Shell's premises at Aba Road. Those judges did not normally live in Port Harcourt and Shell had a really good and modern club. They probably went there for relaxation. I believe that they were also accommodated at Shell's premises.

[...]

It was baffling to me that Okuntimo, Shell and the Tribunal members were openly cooperating.”⁴³⁰

307. Onyeagucha stated:

“[T]he justices were [...] accommodated by Shell. After every day in court, the justices of the Civil Disturbances Tribunal were escorted by Paul Okuntimo and the army to the Shell premises on Aba Road in Port Harcourt. [...] The justices of the tribunal were also known to have repeatedly visited the facilities of Shell's club in the Shell Residential Area.”⁴³¹

8.6.3 *Shell offered to influence the outcome of the trial in exchange for MOSOP ceasing its protest*

308. It is evident from the three meetings that Owens Wiwa, Ken Saro-Wiwa's brother, had with Brian Anderson during the Ogoni 9 trial, that Shell's primary concern in this period was its image and its economic interests. Owens Wiwa asked the British High Commissioner to put him in touch with Brian Anderson to discuss his brother's trial.

⁴²⁹ Declaration Femi Falana, 16 June 2017 (exhibit 26), para. 6(g); Declaration Ledum Mitee, 2 May 2017 (exhibit 41), paras. 16-17.

⁴³⁰ Declaration Olisa Agbakoba, 2 May 2017 (exhibit 16), paras. 10 and 14.

⁴³¹ Declaration Uche Onyeagucha, 15 June 2017 (exhibit 52), para. 7: “In addition, we had lawyers who were close to the lawyers working for Shell. They informed us that Shell was involved with the judges.”.

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Owens was then invited for drinks with the British High Commissioner's residence.⁴³² Olisa Agbakoba, one of the Ogoni 9's lawyers, was also present.⁴³³ There, Owens Wiwa and Agbakoba spoke to Anderson, who offered to do something about the execution of Saro-Wiwa under the condition that MOSOP would stop its international protest against Shell.⁴³⁴ After the meeting at the High Commissioner's, two other meetings followed between Owens Wiwa and Brian Anderson during which Shell's proposal was further specified and discussed. According to Owens Wiwa the details of the proposal were as follows:

“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.”⁴³⁵

309. In a confidential memo dated 22 August 1995, Anderson – who is not yet aware of Owens Wiwa's view on the proposal – gave a different account of Shell's proposal (**exhibit 116a**):

“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.”

310. That Anderson had promised “humanitarian aid” – whatever that would have amounted to in practice – in exchange for a radically different political stance of MOSOP is contradicted by the testimony of Olisa Agbakoba, who was present during the first

⁴³² Public Deposition Owens Wiwa, Vol. I, 12 September 2003 (exhibition 62), p. 203; Public Deposition Owens Wiwa, Vol. II, 24 May 2004 (exhibition 63), pp. 544-545; Declaration Olisa Agbakoba 2 May 2017 (exhibit 16), paras. 3-7.

⁴³³ Public Deposition Owens Wiwa, vol. II, 24 May 2004 (exhibit 63), pp. 544-545; Declaration Olisa Agbakoba, 2 May 2017 (exhibit 16), para. 6: “I think that I was invited for this meeting, because I was considered to be a moderate human rights lawyer, in contrast to Femi Falana and Gani Fawehinmi. They probably thought that it would be easier to strike a deal with me”.

⁴³⁴ Public Deposition Owens Wiwa, vol. I, 9 December 2003 (exhibit 62), pp. 247-249; Documentary In Remembrance Ken Saro-Wiwa (exhibit 252), 29:11-30:37; Declaration Olisa Agbakoba, 2 May 2017 (exhibit 16); see also Ken Saro-Wiwa's response to this meeting in the letter from Ken Saro-Wiwa to his brother Owens Wiwa, 13 May 1995 (**exhibit 261**) and Polly Ghazi, “Shell refused to help Saro-Wiwa unless protest called off”, *The Observer*, 19 November 1995 (**exhibit 259**).

⁴³⁵ Deposition Owens Wiwa, vol. I, 9 December 2003 (exhibit **Fout! Verwijzingsbron niet gevonden.**), pp. 247-249.

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meeting between Anderson and Wiwa. In his declaration he confirms Wiwa's version of the events:

"I [...] remember a meeting with Brian Anderson, then Country Managing Director of Shell. Ken Saro-Wiwa's brother, Owens, was also present during that meeting. The British High Commissioner created the opportunity and told us that Mr Brian Anderson would like to meet us. The meeting took place at the British High Commissioner's residence under cover of the usual Embassy Reception with drinks to create a good atmosphere for political deal-making.

The meeting was not fruitful though. Brian Anderson made a proposal. He made clear to us that the matter, simply meaning the trial, could be resolved if Ken would renounce his statements against Shell. I never forgot the arrogance of Brian Anderson during that meeting, he was not there to negotiate. His attitude was take it or leave it. Shell just wanted to have the international criticism off its back.

There is no doubt in my mind that Shell could have influenced the outcome of the trial. Brian Anderson told us that the trial could end in several ways, and that he could have the case dropped. He also said to Owens Wiwa that he could create an outcome that was good for his brother."⁴³⁶

311. Saro-Wiwa gave his brother instructions from prison not to accept Shell's proposal.⁴³⁷ In response, in his memo to Detheridge, Anderson wrote that in that case he would not be willing to improve the situation of the Ogoni 9, *inter alia* because this might upset the regime. Anderson stated: "we need something in return [...]. Don't forget that the government see MOSOP as terrorists and our dealing with them could be misconstrued".⁴³⁸ At the same time, negotiations were taking place in London between representatives of MOSOP and the service companies of which Anderson wrote: "we [Shell] should NOT allow minutes to be taken".⁴³⁹
312. The negative outcome of the negotiations with Owens Wiwa had an impact on another attempted negotiation by Shell described by Ledum Mitee in his declaration. Mitee was visited in prison by Eddie Wikina, an employee of SPDC, and described Wikina's role as follows:

"After the suggestion of Okuntimo, we managed to smuggle a then Shell-representative into Bori Camp to talk to him. His name is Dr.

⁴³⁶ Declaration Olisa Agbakoba, 2 May 2017 (exhibit 16), paras. 3-5, 7.

⁴³⁷ Letter from Ken Saro-Wiwa to his brother Owens Wiwa, 13 May 1995 (exhibit 261); Declaration Olisa Agbakoba, 2 May 2017 (exhibit 16), para. 7.

⁴³⁸ Interoffice Memorandum van Brian Anderson aan Alan Detheridge, 22 augustus 1995 (exhibit 116a).

⁴³⁹ Ibid.

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Eddie Wikina, he was also a friend of mine. The idea was to solve this issue through the back-door, because the the issue was really between Shell and MOSOP: Shell would be able to intervene. Shell was aware of the fact that Wikina was meeting with Ken and me. Wikina said that he would take the matter up with the people higher up in Shell and the would get back to me with their response. However, something came up. Dr. Owens Wiwa had a meeting with Brian Anderson and that went to the press. That blocked every possibility that could have come up through Wikina. Shell was scared that we would go public, so nothing happened.”⁴⁴⁰

313. Shell’s use of Wikina as a contact for MOSOP was confirmed by Shell employee Precious Omuku.⁴⁴¹
314. These efforts to negotiate with MOSOP about the fate of the Ogoni 9 reveal that Shell deemed itself able to influence their situation,⁴⁴² but was only prepared to do so if MOSOP would meet its terms. At the same time, Shell knew what the consequences of its refusal to help were, to wit, the continuation of the unlawful detention, the abuse suffered by the detainees and their possible execution (see also the next section). It is clear from Anderson’s memo that Shell did not want to upset the regime and was only prepared to wield its influence if they could offer Abacha something that was in his interest, in this case the termination of MOSOP’s resistance against Shell and the regime. It is clear that Shell’s actions were guided by the shared commercial interests with the regime, which were not to be negatively affected by a deal with MOSOP.

8.7 Shell, knowing how the trial would end, allowed its commercial interests to prevail over the fate of the Ogoni 9

315. Through its close involvement with the case and with the regime Shell knew at an early stage that the suspects would not have a fair trial. In July 1995, more than three months before the tribunal was to pass judgment, Anderson reported on a conversation he had had with President Abacha:

“I conclude 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”.⁴⁴³

⁴⁴⁰ Declaration Ledum Mitee, 2 May 2017 (exhibit 41), para. 11.

⁴⁴¹ Public Deposition Precious Omuku, 19 April 2004 (exhibit 51), pp. 133-134: “Eddie Wikina, this person who authored this notice, an Ogoni man who works in Shell – and I got him to arrange for me to talk with MOSOP people. We tried to talk”.

⁴⁴² See also **Exhibit** Fout! Verwijzingsbron niet gevonden.: Public Deposition Nick Wood, 16 June 2003, p. 112: “Mr. Anderson said that if some trust and reconciliation would be achieved between Shell and MOSOP then this might affect the government’s attitude in relation to Mr. Saro-Wiwa” (quote from *A prepared response to a public statement by Owens Wiwa*). According to Wood he drafted this response on the basis of discussions with “the people who were at the meetings” with Owens Wiwa: Achebe en Anderson, pp. 107-108.

⁴⁴³ **Exhibit 116:** Nigeria Update, 23 July 1995.

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316. Anderson had long been expecting Saro-Wiwa to be sentenced to death. On 16 April 1995 he wrote in a Nigeria Update to the Shell Group (**exhibit 114**, p. 2):

“The BHC [British High Commissioner] believes that although the charges should not stick the government will make sure that he is found guilty. He would be sentenced to death, and reprieved after giving in to pressure from outside, but be incarcerated for a very long time. The feeling is that the trial will go the way of all others of the kind in the past here: nobody has ever been found innocent.”

317. Despite this knowledge, Shell did not modify its tone regarding Saro-Wiwa and MOSOP, nor its relationship with Abacha; not before Operation Restore Order, not during the Ogoni 9 trial, nor in the run-up to the executions of the Ogoni 9. While Shell publicly stated that it was trying to persuade the regime to abandon the trial using quiet diplomacy, in reality it continued supporting the regime, while negotiating new projects. It also continued actively involving itself in the course of events during the trial.

318. Shell was clearly in a position to prevent the executions. The conversation between Brian Anderson and Owens Wiwa shows that Shell was well aware of this,⁴⁴⁴ as does the fact that in other cases Shell had, with success, asked the authorities to drop charges and release suspects.⁴⁴⁵

319. At the time that the Ogoni 9 were sentenced to death on 31 October 1995, Nigeria had degenerated into an international pariah state.⁴⁴⁶ In spite of the many requests to Shell to apply its influence on the regime to prevent the executions, Shell however continued to rely on its supposed apolitical course.⁴⁴⁷

320. In a press release on 19 November 1995, nine days after the execution of the Ogoni 9, Shell shifted the blame to the parties that had openly turned against the Nigerian regime, because this was supposedly at odds with the potentially successful approach of Shell’s quiet diplomacy:

⁴⁴⁴ See chapter 8.7.3.

⁴⁴⁵ See Public Deposition George Ukpog, vol II, 24 March 2004 (**exhibit 58**), pp. 521-522: “I recall that the police command had instituted charges of either disruption or attempted disruption of oil operations and wanted to take the suspected leaders to court and, by the time the operations went on smoothly without any disturbance, we had to follow up with this letter to say that there was no problem and, therefore, if you have instituted charges, please withdraw them”. See also *ibid.* pp. 282-284 and Public Deposition George Akpan Ukpog, Vol. I, 23 October 2003 (**exhibition 57**), which shows that Ukpog requested Okuntimo to release the young people arrested.

⁴⁴⁶ Two days after the executions Nigeria was suspended by the Commonwealth, see the website of the Commonwealth, available at: <http://thecommonwealth.org/history-of-the-commonwealth/nigeria-suspended-commonwealth> <accessed 26 April 2017>; The EU condemned the executions, reaffirmed the measures from 1993, introduced an embargo on arms, munitions and military equipment and suspended development cooperation with Nigeria, see Common Position of 20 November 1995 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Nigeria (**exhibit 231**).

⁴⁴⁷ See e.g. press release from Brian Anderson, 8 November 1995 (**exhibit 164**). The fact that this apolitical course was a cover for what was actually a very political course and Shell’s symbiotic relationship with the regime is described in chapter 8.5.

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“First, did discreet diplomacy fail? Perhaps we should ask instead why the worldwide protests failed. Our experience suggests that quiet diplomacy offered the very best hope for Ken Saro-Wiwa. Did the protesters understand the risk they were taking? Did the campaign become more important than the cause?”⁴⁴⁸

321. Nothing has become evident of the quiet diplomacy that Shell claims to have practised.⁴⁴⁹ Nor is it in any way evinced in the reports of the talks with the government officials that Brian Anderson circulated within the Shell Group (the aforementioned Nigeria Updates). On the contrary: as will be substantiated below, these reports reveal a far more servient attitude and an attempt to keep the government satisfied.⁴⁵⁰
322. The Nigeria Updates show how Shell also put its economic interests first during the Ogoni 9 trial. It continued negotiating with the regime regarding a large-scale National Liquefied Natural Gas (NLNG) project and a new Memorandum of Understanding for the period 1996-2000.⁴⁵¹ It is clear that Shell never considered withdrawing from Nigeria or otherwise attaching consequences to the human rights violations committed by the Abacha regime.
323. On 23 July 1995, as the Ogoni 9 trial was approaching its conclusion, Brian Anderson had a meeting with President Abacha. Anderson did not bring up the trial during this conversation, but emphasised the concerns of shareholders about overdue payments by the regime and made a link with the success of the NLNG project:

“I made a strong case for the payment process being resolved as soon as possible, as it would allow us to have confidence to pick up our investment rate in the upstream oil and gas business, and at the same time give our shareholders confidence that the government would pay its full share of any NLNG cash calls after FID.

I made it quite clear that I believed that this single issue outweighed all others at this time”⁴⁵²

324. After an hour and a half Abacha had to raise the Ogoni issue himself at this meeting,⁴⁵³ where he appeared to be irritated by Shell’s lack of open support as “the biggest company in Nigeria, w[ith] the best knowledge of the activities on the ground in the

⁴⁴⁸ Shell, “Clear thinking in troubled times”, 19 November 1995 (**exhibit 165**); Press release from Brian Anderson MD, 8 November 1995 (**exhibit 164**); Letter Eric Nickson (Head Media Relations Shell) to Glen Ellis, 1 November 1996 (**exhibit 155**), pp. 3-4.

⁴⁴⁹ Ibid, see also the letter from Philip Watts to Brian Anderson of 24 January 1996 (**exhibit 128**).

⁴⁵⁰ See below.

⁴⁵¹ Nigeria Update, 19 April 1994 (**exhibit 91**), p. 6; Nigeria Update, 20 May 1994 (**exhibit 93**), pp. 4-5; Nigeria Update 12 June 1994 (**exhibit 96**), p. 4; Nigeria Update, 10 July 1994 (**exhibit 98**), p. 5; Nigeria Update, 28 July 1995 (**exhibit 116**); Nigeria Update 16 October 1995 (**exhibit 120**), pp. 1-2, 4; Nigeria Update 2 November 1995 (**exhibit 122**), pp. 2-3; Nigeria Update 8 December 1995 (**exhibit 126**), p. 2.

⁴⁵² Nigeria Update, 28 July 1995 (**exhibit 116**).

⁴⁵³ Nigeria Update, 28 July 1995 (**exhibit 116**), p. 6: “After I had finished with my part (which had lasted about 1 ½ hours) he said he had something he wanted to raise with me. The Ogoni issue!”

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Ogoni area”.⁴⁵⁴ The document shows that Shell then too hid behind its supposed apolitical attitude:

“I tried to defuse the situation by going over the non-political stance that we had taken mentioning that our job was to try and do our best to help the government develop its oil and gas reserves as efficiently as possible, and that we could not take sides with the government on such a sensitive issue. I must say that after explaining he calmed down a bit, but I was left with the distinct impression that he was not really happy nevertheless!”⁴⁵⁵

325. Anderson made clear that he was aware of the criticism that the regime was having to endure (“I told him that we were very conscious of the government’s irritation with the public villification it was getting on the Ogoni issue”), but that it could mean a PR disaster if Shell openly sided with the regime:

“I told him of the pressures we as Shell were under on the Ogoni issue internationally and that we had to tread extremely carefully in order to try and minimise the potential (or actual) damage such an issue could cause worldwide business.”⁴⁵⁶

“He wants us to support him, but I think he now understands better that we have some very clear limits to what we can do publicly, or in private for that matter”⁴⁵⁷

326. The Updates mainly show that Shell was worried about the reputational damage it could suffer as a result of the Ogoni 9 trial and the potential consequences for the NLNG project:

“We are naturally most concerned at the potential for problems arising from the forthcoming judgment in the trial of Ken Saro Wiwa and other Ogonis in PH, slated for 31st October [...] I feel particularly exposed at this time in the lead-up to the NLNG FID!”⁴⁵⁸

327. Shell however was in absolutely no way prepared to lay down conditions for continuing cooperation with the regime. On the contrary, Shell wanted above all to satisfy Abacha in order to safeguard its economic interests (Anderson: “I suspect that we have to do something to keep him happy!”).⁴⁵⁹ In the period following this meeting with Abacha Shell made no demonstrable efforts to change the regime’s mind and the negotiations

⁴⁵⁴ Nigeria Update, 28 July 1995 (exhibit 116), p. 6.

⁴⁵⁵ Nigeria Update, 28 July 1995 (exhibit 116), pp. 6-7

⁴⁵⁶ Nigeria Update, 28 July 1995 (exhibit 116), p. 7.

⁴⁵⁷ Nigeria Update, 28 July 1995 (exhibit 116), p. 7.

⁴⁵⁸ Nigeria Update, 16 October 1995 (exhibit 120).

⁴⁵⁹ Nigeria Update, 28 July 1995 (exhibit 116), p. 5.

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for the NLNG project and the MOU went on unrelentingly.⁴⁶⁰ To ensure that the NLNG deal could be concluded without too much international protest, Anderson even sent Achebe to Abuja to talk to someone from the Foreign Ministry and “the Security people” (probably the SSS):

“to see if he [Achebe] could do something about the confluence of events [...] the NLNG project and the trial that were coming at the same time. [...] I think it was around the middle of November there was a final decision required on the NLNG project. At the same time we were seeing the end of the trial of Saro Wiwa”

“Q: And the problem you sent him to speak about was the end of the trial and its timing in relationship to the NLNG; is that correct? A: The two things were coming – looked like they were coming exactly the same time”⁴⁶¹

328. On 2 November 1995, two days after the death sentence on the Ogoni 9 and eight days before the executions, Anderson wrote a report for the Shell Group on his meeting with Ernest Shonekan, Vice-President under Abacha and former board member of SPDC.⁴⁶² At this meeting Anderson told Shonekan that Shell was playing with the idea of sending a letter of clemency to Abacha to plead for a pardon or reduction of sentence for Saro-Wiwa, which Shonekan discouraged him from doing.⁴⁶³ Anderson however stressed that Shell had to defend itself to the outside world:

“I emphasised that Shell would be obliged to defend itself against criticism from many quarters, both locally and internationally, over the next weeks and that we could not take the government’s corner. [Shonekan] accepted this as a matter of fact. He did however remind me of the HOS’s [Head of State’s/Abacha’s] demand that Shell be more (publicly) supportive, and he said that the HoS felt that the government were doing what they could to help Shell.”⁴⁶⁴

329. Anderson therefore felt obliged to as good as apologise to Shonekan for the fact that Shell did not publicly side with the regime. The alliance between Shell and the regime was also emphasised by Shonekan’s request to Shell to support the regime more visibly and his reminder of the fact that the regime was making an effort to serve Shell’s interests.⁴⁶⁵

⁴⁶⁰ Ibid, pp. 4-5; Nigeria Update 16 October 1995 (exhibit 120), pp. 1-2, 4; Nigeria Update 2 November 1995 (exhibit 122), pp. 2-3; Nigeria Update, 8 December 1995 (exhibit 126), p. 2.

⁴⁶¹ Public Deposition Brian Anderson, 23 February 2003 (exhibit 17), pp. 166-168.

⁴⁶² Nigeria Update 2 November 1995 (exhibit 122). For Shell’s revolving door policy see chapter 8.4.5.

⁴⁶³ Nigeria Update, 2 November 1995 (exhibit 122), pp. 1-3.

⁴⁶⁴ Ibid.

⁴⁶⁵ The same is evident from the meetings that Anderson had with Abacha, see for example above, at 321 et seq.

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330. Following the meeting with Shonekan, Anderson was pleased to tell the Shell Group that “Abacha seemed to have valued our last talk very highly and he felt that he would welcome a fairly frequent dialogue of this kind [...] This bodes well if true”.⁴⁶⁶
331. Shortly thereafter, Shell sent the letter it had announced to the regime, in which it asked the regime to consider not carrying out the executions for humanitarian reasons.⁴⁶⁷
332. On 8 December 1995, nearly a month after the executions, Shonekan conveyed Abacha’s compliments to Anderson, who again reported this to the Shell Group:

“The HoS [Head of State, Abacha] told S[honekan] that he was very happy that Shell had remained steady under pressure, and asked him to convey his thanks to me. [...] He was particularly happy about the NLNG Project.”⁴⁶⁸

333. The regime and Shell had already reached an agreement about the NLNG project, which was made public in December 1995, in November, only days after the executions.⁴⁶⁹ The World Bank had by then already withdrawn from the billion-dollar project because of the political situation in Nigeria. Various countries also recalled their ambassadors and the EU stopped development aid and enacted an arms embargo.⁴⁷⁰

8.8 Shell Nigeria Shell operated as a single entity

8.8.1 Introduction

334. In the period 1990-1995 SPDC did not act independently, but expressly as part of the Shell Group. Not only did it convey this to the outside world,⁴⁷¹ but it was also evident from its internal organisation, communication and lines of accountability. The parent companies exerted influence and control over SPDC, directly and through the service companies, but also involved themselves directly in the Ogoniland issue, the NLNG project and the Ogoni 9 trial. Since the course described in the previous chapter was pre-eminently determined by the parent companies, both the parent companies and

⁴⁶⁶ Nigeria Update, 2 November 1995 (exhibit 122).

⁴⁶⁷ Defendants’ supplemental responses to Wiwa plaintiffs’ second set of interrogatories pursuant to the Court’s November 6, 2008 order, 17 December 2008 (exhibition 195), p. 9: according to Shell, the letter was delivered personally to the Nigerian High Commissioner in London on 8 November 1995, he would make sure that Abacha would receive it. Shell therefore believes that the letter was delivered to Abacha in any case before 10 November 1995.

⁴⁶⁸ Nigeria Update, 6 December 1995 (exhibit 126).

⁴⁶⁹ See NLNG’s website, available at: <http://www.nlng.com/Our-Company/Pages/The-Plants.aspx> <last accessed 27 June 2017>; Nigeria Update 11 December 1995, p. 2 (exhibit 127); Despite repeated requests to Shell to cease its cooperation with the project, see Ian Black, Cameron Duodo, Anthony Bevins, Michael Durham and Polly Ghazi, “Shell fuels outrage over Saro-Wiwa with \$ 4 billion Nigerian gas deal”, 12 November 1995 (exhibit 257).

⁴⁷⁰ See Howard W. French, “Nigeria Executes Critic of Regime; Nations Protest”, *The New York Times*, 11 November 1995 (exhibit 256): “The United States, Britain and other countries withdrew their ambassadors, the Commonwealth countries were considering whether to expel or suspend Nigeria and the World Bank announced it would not support a \$100 million loan to Nigeria for a huge project to develop liquefied natural gas.”

⁴⁷¹ **Exhibit 59:** Public Deposition Philip Beverly Watts, 16 April 2004. Watts states: “So our joint venture partners, they not only get SPDC as the operator; they also know that there is a wealth of support from the Shell group world wide giving support and help to SPDC to do a world class job.”, pp. 64-65.

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SPDC are complicit in the violations of fundamental rights of the claimants and their late spouses.

8.8.2 Identical interest

335. As substantiated in chapter 3.1, oil exploitation in Nigeria was very important to the Shell Group: in the years 1991-1995 Nigeria was on average responsible for 12.9% of the Shell Group's total oil production and therefore the third most important country of production for Shell.⁴⁷² In his deposition in the American Kiobel case Robert Sprague, Head of Operations and Liaison at SIPM and board member of SPDC from 1991-1994, said that SPDC was one of the Shell Group's important operating units.⁴⁷³ Chapter 3.2 sets out how the production in Ogoniland in its turn was very important for the revenues in Nigeria. The withdrawal from Ogoniland therefore had a major impact on Shell's production in Nigeria.⁴⁷⁴
336. The profit that SPDC made was paid out as a dividend to Shell's shareholders and ended up almost entirely in the books of the parent companies.⁴⁷⁵ The ability to resume the activities in Ogoniland – which the regime tried to effectuate with Operation Restore Order in Ogoniland – was therefore very important, not only for SPDC, but also for Shell as a whole.

8.8.3 A single, centrally managed Shell organisation

337. The parent companies exercised a great deal of influence over the operations of the various companies within the Shell Group. This influence is reflected first of all in the institutional structure. Up until 2004, the parent companies named the Managing Directors of both Group Holding Companies.⁴⁷⁶ The Managing Directors of both parent companies were also in the so-called Committee of Managing Directors (CMD).⁴⁷⁷ The CMD had an important role in the Shell Group. The Group Governance Guide (GGG) of the Royal Dutch/Shell Group describes the management approach in the Shell Group before 2005 and says the following about the CMD:

⁴⁷² 20-F Form United States Securities and Exchange Commission, 1995, N.V. Koninklijke Nederlandsche Petroleum Maatschappij and The Shell Transport and Trading Company, plc, p. 13 (exhibit 162).

⁴⁷³ Public Deposition Robert Sprague, 10 February 2003 (exhibit 55), pp. 10, 106-107 “once we withdrew from Ogoniland it was, there was a large impact on production, so I am sure I prepared in some discussions because it was a big chunk of production which we didn't want to lose, so it is the kind of thing we worry about”.

⁴⁷⁴ See chapter 3.2 (around 10%).

⁴⁷⁵ Annual accounts year 1992 SPDC (exhibit 157), p. 3. This document shows that 480 million dollars of the 498.8 million dollars' profit were transferred. 96% of the profit was therefore paid to one of the Group Holding Companies, which in turn paid it to the two parent companies; Public Deposition John Jennings, 26 February 2004 (exhibit 34), pp. 83-84, 135; Annual report Koninklijke Nederlandsche Petroleum Maatschappij 1995 (exhibit 160), pp. 50, 60; Public Deposition Alan Detheridge, 24 February 2003 (exhibit 21), p. 64: “Q: When Royal Dutch petroleum and Shell Transport and Trading issued an annual report [...] the financial information is the accumulation of the financial information of all the operating companies; is that correct? A: It is the financial accumulation of the group, which is largely, of course, the operating companies because that's where the income comes from”.

⁴⁷⁶ Group Governance Guide Royal Dutch/Shell Group, December 2001 (exhibit 169), p. 2.

⁴⁷⁷ Annual Accounts 1997 Royal Dutch Petroleum Company (exhibit 167), p. 16.

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“CMD advises the Group Holding Companies on investments in Shell companies and on the exercise of shareholder rights for these companies. CMD guides the Group by providing strategic direction, support and appraisal to Group Business. The strategy, planning, appraisal and assurance cycle [...] ensures that Group strategy is aligned with the interests of the Parent Companies.”⁴⁷⁸

338. The Managing Directors of the parent companies were also called the Group Managing Directors (GMDs). Not only did they form the CMD, they also sat on the boards of the two Group Holding Companies.⁴⁷⁹
339. The Group Managing Directors came together with the other board members of the two parent companies and Group Holding Companies in the Conference. Formally, the Conference was a consultative body in which “Group strategy, organisation, plans and performance, as well as risks and the system of internal control” were discussed.⁴⁸⁰ In practice important decisions for the Shell Group were taken in these consultations, rendering separate discussions in the different boards superfluous.⁴⁸¹ Through the CMD and the Conference the two parent companies effectively functioned as a single organisation and they had a great deal of influence over the performance of the companies in the Shell Group.
340. Operating companies in the different countries where Shell operates are responsible for the actual extraction and exploitation of oil and gas fields.⁴⁸² SPDC is one of these companies. The GGG says the following about this:

“The Group Holding Company boards, supported by CMD, set clear expectations as to how such companies are to be run, by providing guidance on policy and strategy. Even where the Group does not have a controlling interest in a Shell company, the Group Holding Companies still try to influence how such companies are run, particularly where necessary to protect Group reputation.”⁴⁸³

341. Through the managing directors of the parent companies (the Group Managing Directors) on the CMD and on the boards of the Group Holding Companies, the parent companies ensured that all the companies in the Shell Group acted in the group interest, especially when Shell’s reputation was at stake. The operating companies’ operations

⁴⁷⁸ Group Governance Guide Royal Dutch/Shell Group, December 2001 (exhibit 169), p. 4.

⁴⁷⁹ Group Governance Guide Royal Dutch/Shell Group, December 2001 (exhibit 169), p. 2. The chairman of the Group Holding Companies was also the chairman of one of the parent companies, see public deposition John Jennings, 26 February 2004 (exhibit 34), p. 116.

⁴⁸⁰ Group Governance Guide Royal Dutch/Shell Group, December 2001 (exhibit 169), p. 3.

⁴⁸¹ The substantive discussions and decision-making took place in the Conference, the decisions were subsequently formally confirmed by the two boards in separate board meetings, declaration Jordan I. Siegel, 5 February 2009 (exhibit 54), para. 5; public deposition John Jennings, 26 February 2004 (exhibit 34), pp. 129-130.

⁴⁸² Annual accounts 1997 Royal Dutch Petroleum Company (exhibit 167), p. 1.

⁴⁸³ Group Governance Guide Royal Dutch/Shell Group, December 2001 (exhibit 169), p. 3.



were therefore centrally coordinated.⁴⁸⁴ This happened for instance through the assessment of an annual Country Business Plan (CBP) as part of Group policy. To this end the CBPs were discussed in the service companies in The Hague and London (SIPM and SIPC) and then submitted to the CMD and the Conference by a representative of SPDC and service company SIPC for approval by the parent companies.⁴⁸⁵

342. SPDC was also managed directly by the parent companies in practice. The Group Managing Directors were also the managing directors of the two parent companies and they both sat on the boards of both the two holding companies and the service companies SIPC and SIPM.⁴⁸⁶ As Group Managing Director, John Jennings was responsible for Exploration and Production from 1987-1991, while at the same time he acted as Exploration and Production coordinator at service company SIPM;⁴⁸⁷ the same applied to Mark Moody-Stuart, who was GMD from 1991 and also exploration and production coordinator at SIPM.⁴⁸⁸ In their role as exploration and production coordinator at SIPM both Mark Moody-Stuart and John Jennings therefore technically had to report to themselves as Managing Director.⁴⁸⁹
343. Not only did the Group Managing Directors occupy different positions in the Shell Group. The service company contacts to whom the Managing Director of SPDC also had to report were also on the board of SPDC. Robert Sprague, employed at SIPM and a board member of SPDC, for instance, had to report to Mark Moody-Stuart, employed at (and a board member of) SIPM and a board member of the UK parent company Shell Transport and Trading.⁴⁹⁰
344. Board members of SPDC and board members of the parent companies therefore came together in the service companies. In the case of SIPC too there was a direct line of communication from SPDC to the parent companies: Dick van den Broek, employed at (and a board member of) SIPC and a board member of SPDC, reported directly to

⁴⁸⁴ Public Deposition John Jennings, 26 February 2004 (exhibit 34), pp. 23-24: "All those activities run through local operating companies [...] the activities of all those companies are coordinated centrally."; Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), pp. 84-85: Group Planning were a specialist group in Shell that helped operating companies think through and build scenarios, which is a process that Shell uses for assisting in planning. [...] The draft is prepared [...] with the help of the Group Planning people, the specialists in the technology, if you like, for developing scenarios, which is a thing we do – we used to do in Shell."

⁴⁸⁵ Public Deposition Sprague, 10 February 2003, pp. 54-59 (exhibit 55); Minutes of meeting Conference 14 October 1992 (**exhibit 66**): CBP was also submitted to the Conference; Public Deposition Cornelius Herkströter, 14 April 2004 (exhibit 28), p. 20: "There was a structure for reports by operating companies to the Committee of Managing Directors. The larger operating companies, and SPDC was one of the larger operating companies, would come in once a year to present to the Committee of Managing Directors their plan for the coming year."; Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), p. 83; See also Public Deposition John Jennings, 26 February 2004 (exhibit 34), pp. 129-130.

⁴⁸⁶ **Exhibit 42**: Public Deposition Mark Moody-Stuart, 15 April 2004, pp. 17-21; Public Deposition John Jennings, 25 February 2004 (exhibit 34), pp. 116-117; Cf. Annual Accounts Shell International Petroleum Company 1992 (exhibit 158), p. 1. The Chairmen of the parent companies were usually also the chairmen of the Group Holding Companies, see Public Deposition John Jennings, 26 February 2004 (exhibit 34), p. 116.

⁴⁸⁷ Public Deposition John Jennings, 26 February 2004 (exhibit 34), pp. 27-28.

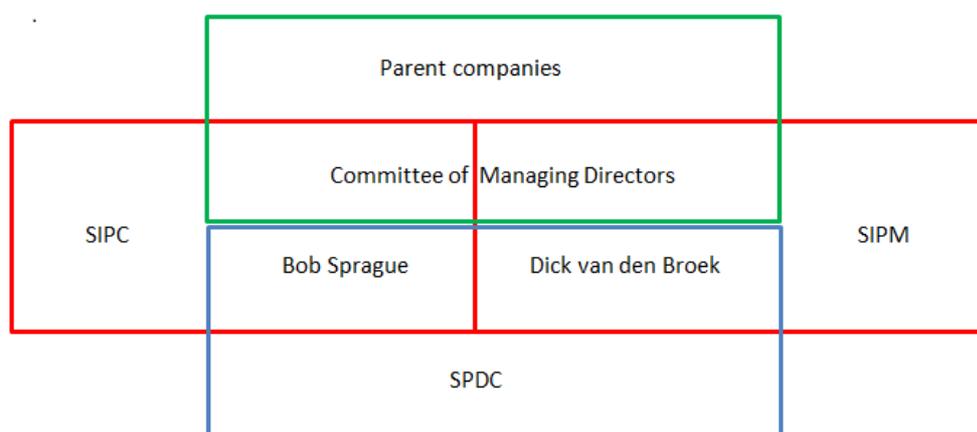
⁴⁸⁸ Public Deposition Mark Moody-Stuart, 15 April 2004 (exhibit 42), p. 14.

⁴⁸⁹ Public Deposition Mark Moody-Stuart, 15 April 2004 (exhibit 42), p. 14.

⁴⁹⁰ Directors Report and Accounts, Shell International Petroleum Company, 1992 (exhibit 158), p. 1; Corporate accounts SPDC 1992 (exhibit 157), p. 3; Public Deposition Mark Moody-Stuart, 15 April 2004 (exhibit 42), pp. 17-18.

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Henny de Ruiter, a board member of SIPC and a board member of the Dutch parent company Royal Dutch Petroleum Company.⁴⁹¹ On occasion the hat swapping was cut out altogether and reports were made direct to the parent company.⁴⁹² This overlapping corporate structure is shown schematically below:



8.8.4 International staff worked for the Shell Group

345. The Shell employees who held important positions at SPDC, such as Anderson and Watts, but also international staff in lower positions, were recruited, coached and supervised by the service companies, in which the members of the Committee of Managing Directors served. International staff were in fact employed by Shell International, which not only determined their career from London or The Hague, but also - wholly or partially - paid their salary. There they kept, even when they were placed in an operating company, a mentor who gave them guidance according to a parenthood system.⁴⁹³ A subsequent posting was also set by London or The Hague; upon dismissal, expats were of the opinion that “their interests in ‘the Hague’ had not been defended well”⁴⁹⁴: the international staff was accountable to the central organization within the Shell Group in The Hague or London, not to the operating company where they were employed. In all the crucial positions therefore the lines of accountability ran directly to the service companies and the parent company. This process, according to Robert Sprague, Head of Operations and Liaison at SIPM, is “one

⁴⁹¹ **Exhibit 19:** Public Deposition Richard van den Broek, 17 February 2003, p. 12. See also the Annual Accounts Shell International Petroleum Company, 1992 (**exhibit 158**), p. 1; Annual Accounts 1992 SPDC (**exhibit 159**), p. 3.

⁴⁹² On 17 January 1994 Brian Anderson sent an update directly to two managing directors of the parent companies, that is Mark Moody-Stuart, who at that time was also Exploration and Production Coordinator (indicator “EP”), and Henny de Ruiter (indicator MGDHR) (**exhibit 85**); On 14 November 1995 he sent a telex to Maarten van den Bergh about his meeting with Shonekan the day before, asking that it be forwarded to Dick van den Broek (**exhibit 123**).

⁴⁹³ **Exhibit 245:** History of the Royal Dutch Shell, part 3, Keetie Sluyterman, p. 288. Shell describes this as “the disciplinary effect of the ‘godfathers’”.

⁴⁹⁴ *Ibid.*, pp. 288-289.

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of the critical success factors for our business”, in which “our business” is described as “The Shell exploration and production business”.⁴⁹⁵

8.8.5 *The parent companies determined the course and attitude of SPDC in the Ogoni crisis*

346. Due to the economic importance of SPDC to the Shell Group and the reputational risk involved with the Ogoni crisis, Shell decided at an early stage to tackle the problems in Nigeria at Group level. To this end it, set up a Nigeria Issue Group and kept itself informed of everything through the SPDC’s Managing Director’s Nigeria Updates.

347. The previous chapter has already shown that SPDC determined its course in consultation with and managed by the parent company, *inter alia* through visits, telephone conversations and the Nigeria Updates. The contact intensified as the unrest and, in light of the Ogoni 9 trial, the public interest grew. According to John Jennings:

“It would be perfectly normal, particularly given the circumstances in Nigeria, for there to be regular telephone conversations between Brian Anderson and Van den Broek certainly, and maybe Brak, and maybe Van Den Bergh.”⁴⁹⁶

348. By the end of 1992, Philip Watts, then the Managing Director of SPDC, had already sent a memo to, among others, Dick van den Broek (Regional Coordinator West Africa) and Mark Moody-Stuart (Group Managing Director) in which the need for far-reaching coordination and cooperation within the Group was stressed and consolidated.⁴⁹⁷ The memo gave a description of the “growing pressures” in Nigeria and referred to Ken Saro-Wiwa. Watts told the Group that “efforts have been made to enhance relations with Government officials at all levels” and “efforts have been made to establish closer link with the Governors and Deputy Governors in each of the states”.

349. The situation in Ogoniland prompted Shell to arrange a meeting in February 1993, at which both service company representatives as SPDC-representatives (Nmaemeka Achebe, Dozie Okonkwo en Precious Omuku) were present. The minutes of the meeting (**exhibit 132**) show that Ken Saro-Wwiwa and MOSOP are regarded a threat to Shell’s international reputation, and that this requires “urgent attention”.⁴⁹⁸

350. The Shell Group decides that the most important activists should be carefully monitored, in order to prevent further reputational damage:

⁴⁹⁵ Public deposition Robert Sprague, 10 February 2003 (exhibit 55), pp. 96-99.

⁴⁹⁶ Public Deposition Jennings, 26 February 2004 (exhibit 34), p. 166.

⁴⁹⁷ Letter from Philip Watts to, amongst others, Dick van den Broek (Regional Coordinator West Africa) and Mark Moody-Stuart (Group Managing Director), 4 December 1992 (**exhibit 67**).

⁴⁹⁸ The minutes state: “Ken Saro-Wiwa is using his influence at a number of meetings [...]. [He] will be using every opportunity made available by 1993 being the UN’s declared Year of Indigenous Peoples. [...] The main thrust of the activists now seems to be directed at achieving recognition of the problems of oil-producing areas by using the media and pressure groups. By concentrating accusations against Shell, especially internationally, they feel that the publicity generated will have greater impact. Herein lies risk for Shell. Urgent attention, therefore, is being directed to the issue.”.

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“SPDC and SIPC PA [Public Affairs] departments to keep each other more closely informed to ensure that movements of key players, what they say and to whom is more effectively monitored to avoid unpleasant surprises and adversely affect the reputation of the Group as a whole”.⁴⁹⁹

351. Internal Shell documents confirm that it did indeed keep a close eye on Saro-Wiwa and MOSOP in the years that followed.⁵⁰⁰
352. The Public Affairs staff of the Shell Group were deployed to ensure that Shell’s international reputation was not damaged too much by the Ogoni crisis. This policy was decided by the parent companies.⁵⁰¹ In particular when the Ogoni crisis increasingly attracted international attention from 1993, the communication within the Group was strengthened. Additional visits were also scheduled, by an Exploration and Production team and a Public Affairs team and by the PA coordinator.⁵⁰²
353. At the time of the disturbances in 1993, there was, through the Nigeria Updates and (other) telex messages, direct contact several times a week between Managing Director Watts and the service companies,⁵⁰³ among others with Mark Moody Stuart, Exploration and Production coordinator at SIPM (“EP”) and Group Managing Director. The reporting referred for instance to arming the police, to demonstrations in Ogoniland and to talks that took place between SPDC and Ken Saro Wiwa.⁵⁰⁴ On 17 January 1994 SPDC’s Managing Director sent a summary of the main developments in Nigeria directly to two managing directors of the parent companies.⁵⁰⁵ Messages were also regularly sent to Carl Herkströter (MGDCH, Group Managing Director), Maarten van

⁴⁹⁹ Ibid.

⁵⁰⁰ Background Briefing Note SPDC regarding the press conference about Ken Saro-Wiwa dated 24 May 1993 in The Hague (**exhibit 74**); Telex SIPC to SPDC, 2 June 1993 (**exhibit 75**): “We heard on the grapevine [...] that a meeting would take place with Ken Saro-Wiwa on 15/5 [...] We would have appreciated it if group PA could have been advised directly sooner”; Ogoni Briefing Note: Recent Events at Korokoro, 5 November 1993 (**exhibit 82**); Nigeria Update, 27 June 1994 (**exhibit 97**), p. 4; Nigeria Update, 13 April 1994 (**exhibit 90**), p. 4; Nigeria Update, 2 May 1994 (**exhibit 92**).

⁵⁰¹ For example **exhibit 81**: Background to the Nigerian Issue, 1993. SPDC and Group PA produce a leaflet together in March 1993 for use in Nigeria and other external purposes. The Shell Group also produces a briefing note for internal and external use, see p. 10.

⁵⁰² Background to the Nigerian Issue, 1993 (**exhibit 81**), pp. 10, 13.

⁵⁰³ Nigeria updates: 17 January 1994 (**exhibit 85**), 14 March 1994 (**exhibit 87**), 5 April 1994 (**exhibit 89**), 13 April 1994 (**exhibit 90**), 25 April 1994 (**exhibit 91**), 2 May 1994 (**exhibit 92**), 20 May 1994 (**exhibit 93**), 30 May 1994 (**exhibit 94**), 6 June 1994 (**exhibit 95**), 12 June 1994 (**exhibit 96**), 27 June 1994 (**exhibit 97**), 10 July 1994 (**exhibit 98**), 20 July 1994 (**exhibit 99**), 26 July 1994 (**exhibit 100**), 28 July 1994 (**exhibit 101**), 4 August 1994 (**exhibit 102**), 5 August 1994 (**exhibit 103**), 8 August 1994 (**exhibit 104**), 12 August 1994 (**exhibit 105**), 22 August 1994 (**exhibit 106**), 23 August 1994 (**exhibit 107**), 24 October 1994 (**exhibit 108**), 6 April 1995 (**exhibit 114**), 10 July 1995 (**exhibit 115**), 23 July 1995 (**exhibit 116**), 25 September 1995 (**exhibit 117**), 16 October 1995 (**exhibit 120**), 2 November 1995 (**exhibit 122**), 6 December 1995 (**exhibit 126**), 11 December 1995 (**exhibit 127**).

⁵⁰⁴ **Exhibit 76**: Letter Philip Watts 13 August 1993; **Exhibit 77**: Letter Philip Watts 17 August 1993.

⁵⁰⁵ Situation review from the managing director of SPDC to, among others, Henny de Ruiter (indicator MGDHR) and Mark Moody-Stuart (indicator SIPM EP), 17 January 1994 (**exhibit 85**).

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den Bergh (MGDMB, Group Managing Director), and Tony Brak (PA, Head of Public Affairs),⁵⁰⁶ or completely to all the Group Managing Directors.⁵⁰⁷

354. From March 1995 a Group-wide Nigeria Issue Contact Group was set up, one of whose tasks was to implement a Group Wide Action Plan.⁵⁰⁸ In the context of this, SIPC held a two-day workshop about the situation in Nigeria.⁵⁰⁹ Press releases and other public documentation were also monitored by the Committee of Managing Directors (CMD), with or without the intervention of the service companies, prior to publication; Public Affairs, in short, was a Group matter.⁵¹⁰
355. Shells negotiations with MOSOP regarding an amelioration of the situation of the Ogoni 9 were also conducted from both Nigeria and London; the strategy was coordinated.⁵¹¹ Following the conviction of the Ogoni 9, Anderson and Van den Broek were instructed by the powers that be not to make any statements about the legitimacy of the trial.⁵¹²
356. In light of this group strategy that was coordinated by the parent companies, it is not surprising that Anderson acts as a representative of the Shell Group in talks with Abacha.⁵¹³ The fact that Anderson regarded SPDC as an operational arm of the Shell Group also became clear when he said:

“We should seriously consider putting some Group money into the Washington lobby group that Mobil et al is involved with [...] I am worried that the US could turn out to be a greater threat in the end than the EU countries”.⁵¹⁴

⁵⁰⁶ Nigeria Update, 4 August 1994 (exhibit 102); and Nigeria Update, 22 August 1994 (**exhibit 106**).

⁵⁰⁷ Nigeria Update, 23 July 1995, p. 8 (exhibit 116).

⁵⁰⁸ **Exhibit 111**: Note Martin Christie to at least 16 recipients within the Shell Group, 10 March 1995: “One of the actions from the International Workshop on the Nigeria Issue (Pennyhill Park) was to establish an e-mail network to keep all informed of the latest developments. This is now in place and this note contains the first instalment.”.

⁵⁰⁹ **Exhibit 121**: Telex from M. Christie to the Nigeria Issue Contact Group, 23 October 1995.

⁵¹⁰ **Exhibit 119**: Minutes of meeting of the Conference, 11 October 1995, pp. 12-13; **exhibit 124**: Minutes of Meeting of the CMD, 17 November 1995; **Exhibit 125**: Telex from Caroline Tipper, Media Relations Shell Centre: “The following is the text of an advertisement which has been approved by CMD for use in UK Sunday newspapers. You may also wish to run these advertisements in your own country – NO changes to the text please.”; In the Briefing Notes from John Barry to Brian Anderson regarding the visit of Maarten van den Bergh (indicator MGDMB), 1 February 1995 (**exhibit 110**): “Environment and Communities public briefing notes are expected from SPDC (drafts by mid-February) following in the footsteps of the Ogoni Issue letter. These notes should fully reflect what was said to CMD”; See also the Privilege log (exhibit 198), document numbers 16-17, 65, 80-85, which show regular meetings between Tony Brak (head of Public Affairs of the Shell group) and Van den Broek.

⁵¹¹ See interoffice Memorandum Brian Anderson to Alan Detheridge, 22 August 1995 (exhibit 116a) and see also chapter 8.6.3.

⁵¹² Public Deposition John Jennings, 26 February 2004 (exhibit 34), p. 176.

⁵¹³ Nigeria Update from Brian Anderson, 23 July 1995 (exhibit 116): When Abacha has comments on the media policy of the Shell Group as a whole (he refers for example to statements by a representative of a London Shell entity), Anderson continues to talk of “we”, “us” and “our” and he defends the Shell Group’s international media policy with regard to Nigeria; Highlights of Keynote Address, 19 April 1994, appended to Nigeria Update from Brian Anderson, 25 April 1994 (exhibit 91), in which Anderson consistently speaks from “Shell”. Only when it is specifically about employees of SPDC is “SPDC” used.

⁵¹⁴ **Exhibit 127**: Nigeria Update from Anderson, 11 December 1995, p. 5.

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8.8.6 *The parent companies directed the negotiations regarding the NLNG*

357. Major new projects were initiated, approved and financed by the parent companies. This was likewise true of the NLNG project, about which agreement was reached between Shell and the Nigerian regime a month after the execution of the Ogoni 9. The decision not to intervene, nor to try to influence the expected outcome of the trial against the Ogoni 9 through quiet diplomacy was therefore made by the parent companies.
358. Abacha's coup in November 1993 and the disapproving reactions of the international community that followed⁵¹⁵ did not deter Shell. On the contrary, in December 1993 it strengthened its partnership with the Nigerian regime by, for instance, increasing its share in NLNG from 20% to 24%.⁵¹⁶ In 1995 the parent companies then approved and financed new off-shore licences for SNEPCO.⁵¹⁷ NLNG too was an investment by the Shell Group⁵¹⁸ on which the parent companies decided (through the CMD and the Conference).⁵¹⁹ Such a large-scale investment is only approved if it is in line with the Group plan and therefore serves the interest of the parent companies.⁵²⁰
359. Within NLNG, a company in which the Nigerian regime held 49% of the shares and Shell 24% of the shares,⁵²¹ there was talk of a "strong Shell management role".⁵²² Both the Managing Director and the Technical Director, the key management positions, came from Shell.⁵²³ While Shell Gas B.V. (a subsidiary of the parent companies) held the shares in the NLNG project⁵²⁴ and the NLNG Managing Director also came from Shell, the negotiations with Abacha and guidance on this went through Anderson, the Managing Director of subsidiary company SPDC. This again shows that the Shell Group in Nigeria acted as a single entity.
360. The parent companies were kept informed by Anderson of every step so that they could give input in the negotiations.⁵²⁵ Anderson for example wrote in a Nigeria Update on 20 May 1994:

"I have an appointment to see the Minister of Petroleum in Lagos on Tuesday Morning [...] I will inform him of the state of play and of any

⁵¹⁵ See Chapter 3.3.

⁵¹⁶ Document from the British High Commissioner in Lagos regarding the NLNG project, January 1994 (**exhibit 263**).

⁵¹⁷ Public deposition Brian Anderson, 13 February 2003, (exhibit 17), pp. 52-53.

⁵¹⁸ The financing for NLNG came from the Shell Group, see Public Deposition Brian Anderson, 13 February 2003 (exhibit 17), p. 50.

⁵¹⁹ Public Deposition Robert Sprague, 10 February 2003 (exhibit 55), p. 89. GMD Van Den Bergh states, for example, at a meeting of the Conference that "it was possible that a final investment decision would have to be taken soon".

⁵²⁰ Public Deposition Robert Sprague, 10 February 2003 (exhibit 55), pp. 66-68.

⁵²¹ Shell currently holds 25.9% of the shares.

⁵²² Document of the British High Commission in Lagos about the NLNG project, October 1994 (**exhibit 264**).

⁵²³ Document of the British High Commission in Lagos about the NLNG project, January 1994 (exhibit 263); Document of the British High Commission in Lagos about the NLNG project, October 1994 (exhibit 264).

⁵²⁴ NLNG shareholders, available at: <http://www.nigerianlmg.com/Our-Company/Pages/Shareholders.aspx> <accessed 29 May 2017>.

⁵²⁵ See for example Nigeria Update 20 May 1994 (**exhibit 93**); Nigeria Update from Anderson, 16 October 1995 (exhibit 120), in which he said of the NLNG project "I have kept you informed of progress during this week".

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perceived problems (I hope to get a briefing from WA and PA before I leave for this meeting at 0830 hrs).⁵²⁶

361. Anderson also proposed setting up an NLNG Steering Committee, in which the NLNG project, the MOU negotiations with the Nigerian regime and the strategy for the following months was discussed.⁵²⁷ Both the service companies and the parent companies were actively involved in the MOU negotiations.⁵²⁸ Anderson consistently presented himself to Abacha as representative of the parent companies. It is clear that he acted in this capacity and not in his role of managing director of SPDC, which did not itself hold any shares in the project. Anderson also referred to “we in Shell” when attaching conditions to the approval of the NLNG project at the time of the Final Investment Decision (FID); he also said that it was essential that the Nigerian regime gave shareholders the confidence that it would respond to the cash calls that would accompany the NLNG project.⁵²⁹
362. The negotiations about the NLNG project continued unrelentingly during the trial.⁵³⁰ Just before the start of the trial one of the managing directors of the parent companies paid a visit to SPDC, at which the Ogoni 9 trial and the negotiations for the NLNG project were discussed.⁵³¹ A month before the executions the Ogoni 9 trial was also discussed by both parent companies.⁵³² Four days after the executions of the Ogoni 9, and again a week later, the (managing directors of the) parent companies held a meeting with PA coordinator Brak and SPDC board members Van Den Broek and Sprague about the NLNG project.⁵³³ The project was finalised that same month.⁵³⁴

8.8.7 Meetings with the regime in Nigeria and London

363. The fact that the Nigerian regime dealt with the Shell Group as a whole, managed by the parent companies, is also evident from the fact that Dick van den Broek maintained contact with representatives of the Nigerian regime. Dick van den Broek reported directly to one of the Group Managing Directors, and sat with them on the board of the

⁵²⁶ WA is the person responsible for Western Africa in the service company, at that time Dick van den Broek. PA refers to Public Affairs and is a position at Group level.

⁵²⁷ Nigeria Update from Brian Anderson, 25 April 1994 (exhibit 91), p. 6.

⁵²⁸ Public Deposition Alan Detheridge, 3 February 2003 (exhibit 21), p. 42: “I certainly gotten gauged in the discussion during 1994 and 1995”; see also, p. 21: “there was an item on the CMD agenda that considered the memorandum of understanding, and the proposal, the negotiating strategy that was proposed by SPDC, whether that went to conference, I’m not sure [...] they reviewed it, they asked questions about it and as far as I can recall they considered the strategy sound”.

⁵²⁹ See NLNG’s website, available at: <http://www.nlng.com/Our-Company/Pages/The-Plants.aspx> <accessed 27 June 2017>.

⁵³⁰ On 1 November 1995 Anderson updated Shonekan on the status of the project, Nigeria Update from Brian Anderson, 2 November 1995 (exhibit 122), p. 2, on 6 December 1995 Shonekan reported that Abacha was very happy with the NLNG project, Nigeria Update from Anderson, 6 December 1995 (exhibit 126), p. 2.

⁵³¹ MGDMB briefing notes from Barry to Anderson about the visit of Maarten van den Berg (indicator MGDMB), 1 February 1995 (exhibit 110).

⁵³² In these discussions it was stated that “The trial of Ken Saro-Wiwa could well culminate in his conviction”, after which the following is considered regarding the NLNG project: “it was possible that a final investment decision would have to be taken soon”: Minutes of Conference, 11 October 1995 (exhibit 119), pp. 12-13.

⁵³³ Privilege log, document number 66 and 80 (the last time without Sprague) (exhibit 198).

⁵³⁴ Nigeria Update 6 December 1995 (exhibit 127), p. 2: “I told Hand that the NLNG Project had been committed”

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UK service company SIPC. The aforementioned Shonekan, Abacha's number two, had several appointments with Van den Broek.⁵³⁵ Van den Broek also met such individuals as the Nigerian High Commissioner, the Minister of Petroleum, the Minister of Finance and the Director-General of Petroleum in London.⁵³⁶ Alan Detheridge (Area Coordinator for Nigeria) and Tony Brak (Head of Group Public Affairs) also met the Minister of Petroleum.⁵³⁷

364. According to Herkströter, the chairman of the board of the Dutch parent company and the CMD, it was normal within the Shell Group that “personnel employed by the group would meet with Nigerian officials and discuss events in Nigeria in the absence of representatives of SPDC”.⁵³⁸
365. The service companies even coordinated their media policy regarding the trial with the Nigerian regime. This is evident from a meeting between the likes of Dick van den Broek, Alan Detheridge, Tony Brak and the High Commissioner and army and police representatives of the Nigerian regime at Shell Centre in London.⁵³⁹ When the Nigerian High Commissioner proposed starting a “television/radio/press/leaflet campaign”, Shell discouraged him from doing so and presented its own PA strategy. When the film that Shell wanted to make was discussed, the High Commissioner did not fail to indicate that “if [Shell] encountered any difficulties (with respect to permits, etc) in shooting the film we were to contact him and he would then “use his influence”.” The conclusion of the meeting: “I think that [the High Commissioner] came away with the impression that we were taking the appropriate action”.⁵⁴⁰

8.9 Conclusion

366. Under Nigerian law, complicity is inferred from the actions of the parties involved. According to the case law that Okafor discussed, the following can play a role in this:
- that the parties joined forces for a common purpose and/or;
 - one of the parties supported the other party and/or;
 - one of the parties encouraged or incited the other party.⁵⁴¹

⁵³⁵ Telex from Anderson addressed to Dick van den Broek, 14 November 1995 (exhibit 123); Anderson said in his Nigeria Update “I suggest that you Dick contact S [Shonekan] in London and again just base to see what is happening that end”, Nigeria Update 6 December 1995 (exhibit 126), p. 2.

⁵³⁶ **Exhibit 109:** Report from Alan Detheridge to Brian Anderson, 10 November 1994; **exhibit 112:** internal memo from Alan Detheridge to Brian Anderson, 16 March 1995. See also Public Deposition Richard van den Broek, 17 February 2003 (exhibit 19), pp. 58-61, 72-78.

⁵³⁷ Report from Alan Detheridge to Brian Anderson, 10 November 1994 (exhibit 109); Public Deposition Alan Detheridge, 3 February 2003 (exhibit 21), pp. 41-43.

⁵³⁸ Public Deposition Cornelius Herkströter, 14 April 2004 (exhibit 28), pp. 177-178.

⁵³⁹ **Exhibit 113:** Record of the meeting held between the high-commissioner Alhaji Abubakar and four senior officials of Shell International Petroleum Company Ltd at Shell Centre, London, 16 March 1995.

⁵⁴⁰ Internal memo from Detheridge to Anderson, 16 March 1995 (exhibit 112).

⁵⁴¹ Legal Opinion O.C. Okafor, 21 June 2017 (exhibit 198) and, for example, *Akinlade v the State* (2010) LPER 8632 (Exhibit 199), at 12: “One who knowingly, voluntarily and with common intent unites with the principal

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367. Each of these circumstances applies in the case at issue. This chapter describes the extent to which Shell and the Nigerian regime were linked and how intensively they collaborated for the purpose of optimising the oil proceeds in Nigeria. The collaboration was intensified when the freedom movement of the Ogoni increased in the 1990s and threatened the oil production by Shell.
368. For Shell to return to Ogoniland and resume its oil production, it was necessary to put down MOSOP's protests. Shell accepted the fact that this entailed many victims, including Kiobel, Bera, Eawo and Levula. That Shell and the regime had joined forces for a common purpose is *inter alia* demonstrated by the fact that Shell made sure that the shared economic interest in the oil production in Ogoniland was consistently pointed out to the regime in relation to the protests (i). In Shell's name and to protect Shell's operations, the regime responded with its characteristic disproportionate violence (ii). Ogoni who had been arrested and detained during *Operation Restore Order* had to sign a statement that they would cease their protests against Shell before they were released (iii). Despite this, Shell failed to distance itself from the regime or the Ogoni 9 trial at any time (iv), even though Shell did not fail to openly criticise MOSOP and Saro-Wiwa (v). What is more, Shell repeatedly told Abacha that even though Shell could not openly support the regime, it pursued a continuation and intensification of the economic collaboration (vi). Shell *inter alia* lived up to this promise when the NLNG project was clinched; this was one month after the Ogoni 9 had been executed (vii). In part so as not to jeopardise the success of this project, Shell coordinated its press strategy around the Ogoni 9 trial with the regime (viii). During the trial, Shell physically demonstrated their shared position and goal, when its attorney joined with the prosecutor with a *watching brief* for Shell (ix). Its motives were crystal clear when Brian Anderson suggested to Owens Wiwa that Shell would thwart the outcome of the trial, provided that MOSOP would moderate its tone (x).
369. To realise their common goal, Shell closely collaborated with and supported the regime, in particular Okuntimo, in their actions to clean up in Ogoniland; during the trial, this resulted in the wrongful execution of the Ogoni 9. Shell *inter alia* paid police officers, MOPOL officers and marines (i); provided logistics support by making vehicles and facilities available (ii) and even issued an arms tender (iii). Shell maintained its own intelligence service with the regime (iv), provided the regime with precise information regarding the locations of demonstrations (v) and consistently hired out Shell employees to the Nigerian state machine (vi). Shell maintained close contacts with RSISTF Lt. Col. Paul Okuntimo, and paid him for his services with a view toward "*a favourable disposition in the future*" (vii). At the time of the Ogoni 9 trial, Shell received the judges at its compound (viii) and its attorney exchanged information with the prosecutor during the Ogoni 9 trial (ix). Its attorney was also present when witnesses

offender ... partaker of guilt; who aids or assists or is an accessory....who is guilty of complicity...either by being present and aiding and abetting it, or having advised and encouraged it, absent from place when it is committed"; Okafor, p.2: "Complicity can be inferred from the attainment of a common end".

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were promised money and a job with Shell in exchange for their incriminating statements (x).

370. For years, Shell encouraged the Nigerian regime to take (more) effective measures designed to ensure Shell's return to Ogoniland. Shell did this despite the fact that it had meanwhile learned from experience that in its actions, the regime frequently violated human rights and many people were killed. Shell's encouragement led to *Operation Restore Order in Ogoniland* and to the trial in which nine Ogoni leaders were sentenced to death. All this time, Shell continued to request the regime to intervene (i). In this context, Shell invariably pointed out the economic consequences that the protests had for the Nigerian state (ii). Shell passed on the locations where protests were to be held (iii) and provided the regime demonstrably incorrect information regarding the nature and threat of those protests (iv). Without any concrete evidence and fully aware of the consequences, Shell identified Saro-Wiwa and MOSOP as the parties that were guilty of destruction and violence in Ogoniland (v). After this accusation had resulted in the wrongful arrest and detention of the Ogoni 9, Shell did not attempt to correct the consequences of its actions, but increased the pressure by intensifying the collaboration with the regime, *inter alia* in the NLNG project (vi).
371. In brief, Shell "*set the machinery in motion*" that among other things led to the death of the spouses of the claimants.⁵⁴² Before, during and after the end of the trial, Shell in part determined how history would unfold. All the actions that Shell actively undertook in that period only contributed to the fate of the Ogoni 9 and the claimants.
372. If Shell had envisaged a different course of history - the outcome of which it already knew in advance - it was in the position to make the regime change its mind. The fact that Shell failed to take any serious attempt to this end at any stage of the events again demonstrates that in reality, the regime implemented a wish that was shared and supported by both parties.

9. OFFER OF PROOF

373. The claimants believe they have substantiated their statements sufficiently above and supported them with evidence. In so far as the court considers further provision of evidence appropriate, the claimants offer to prove their statements in more detail, without assuming any burden of proof that does not rest with them. This includes calling in experts and hearing witnesses.
374. Ledum Mitee, Femi Falana, Emmanuel Ukala, Olisa Agbkoba, Uche Onyeakucha, Naayone Nkpah, Nick Ashton-Jones, Boniface Ejiogu and Blessing Kpuinen, among others, could testify before the court. It should be noted that none of these witnesses is resident in the Netherlands and that most of them have already submitted a statement.

⁵⁴² Legal opinion Okafor (Exhibit 198198).

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375. Finally, the considerations listed under chapter 5.4 regarding the evidence that has already been submitted in the United States but was marked confidential, should be noted. These documents presumably concern Shell's internal communication and the relationship with as well as the management by the parent company.

10. EXPLANATION OF CLAIM AND DAMAGE

376. In the event of a violation of fundamental rights, under Nigerian law a court has broad discretion to decide what measures are appropriate in the circumstances:

“The Preamble to the Fundamental Right Enforcement Rules, 2009 requires that for the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient. An applicant seeking redress for the infringement of this fundamental right is entitled to, in addition to the relief as to declarative and injunctive, award of damages. It is therefore safe to conclude that a finding that a fundamental right of a Nigerian citizen has been infringed upon attracts compensatory damages and in some cases, exemplary damages.”⁵⁴³

377. In these proceedings the claimants are seeking a declaratory decision of unlawfulness and liability, and a public apology by Shell.

378. Victims of a violation of fundamental rights are automatically entitled to compensation under Nigerian law, even if no specific sum is claimed:

“[...] The procedure for the enforcement of the Fundamental Human Rights was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed.’ So, fundamental rights matters are placed on a higher pedestal than the ordinary civil matter, in which a claim for damages resulting from a proven injury has to be made specifically and proved.”⁵⁴⁴

379. No distinction is made here between infringements of human rights by the State and by other parties, such as Shell:

“The position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals, as in the instant case, such victims have rights against the individual

⁵⁴³ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (exhibit 205), pp. 13-14, paras. A-A.

⁵⁴⁴ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (exhibit 205), pp. 13-14, paras. A-A.

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perpetrators of the acts as they would have done against State actions. [...] It follows therefore that in the absence of clear positive prohibition which precludes an individual to assert a violation or invasion of his fundamental right against another individual, a victim of such invasion can also maintain a similar action in a court of law against another individual for his act that had occasioned wrong or damage to him or his property in the same way as an action he could maintain against the State for a similar infraction.”⁵⁴⁵

380. Under Nigerian case law a distinction is made between compensatory damages and exemplary damages in the case of compensation for human rights violations.⁵⁴⁶ The purpose of the first form of compensation is to compensate the victim for the damage suffered. The second serves to punish the perpetrator and to prevent recidivism. The claimants are claiming both forms of compensation.
381. The damage suffered by the claimants consists of both material and immaterial damage, both of which are eligible for compensation under Nigerian law.⁵⁴⁷ The claimants can also claim compensation for the damage that their husbands suffered as a consequence of the infringement of their fundamental rights.⁵⁴⁸
382. The material damage for the claimants consists among other things of lost financial support during the imprisonment of their husbands and following their execution. In all cases the husband was the family breadwinner. Esther Kiobel and Victoria Bera also had to flee Nigeria, whereupon their possessions in Nigeria were confiscated by the regime. Blessing Kem Nordu also had to leave her home following the execution of her husband after her fellow villagers drove her out. She had to rebuild her life in another village in Ogoniland. Esther Kiobel incurred medical expenses as a result of the ill-treatment and assault by Shell protégé Paul Okuntimo.

⁵⁴⁵ *Alhaji Ibrahim Abdulhamid v. Talal Akar & Anor* (2006) LPELR-24(SC) SC.240/2001 (exhibit 201), pp. 22-23, paras. G-A, A-D.

⁵⁴⁶ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (exhibit 205), pp. 20-21, Paras. D-B; *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (exhibit 207), p. 134, paras. B-F, p. 137, paras. C-G.; See also *Joseph Odogu v. Attorney-General of the Federation & ORS* (1996) LPELR-2228(SC), SC.58/1993 (exhibit 206): “Exemplary damages are usually awarded whenever the defendant’s conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like.” (p. 12, paras. A-C); *aggravated damages* can also be demanded as part of *compensatory damages*, the motives of the defendant in committing the unlawful act and aggravating the damage being important, see *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (exhibit 207), p. 135, paras. C-E: “Aggravated Damages [...] may be awarded where the defendant’s motives and conduct were such as to aggravate the injury to the plaintiff. They are a species of compensatory damages in that their purpose is to compensate the plaintiff for the injury to his feelings of dignity and pride and not the injury sustained.”

⁵⁴⁷ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (exhibit 205), pp. 14, 16-17; *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (exhibit 207), pp. 150-151; *Commissioner of Police, Ondo State & Anor v. Festus Ade Obolo* (1989) LPELR-20451(CA) CA/B/175/85 (exhibit 202), pp. 29 30, paras. F-F.

⁵⁴⁸ See chapter **Fout! Verwijzingsbron niet gevonden.** and *Mrs. Precious Omonyahuy & Ors V. The Inspector-General Of Police & Ors* (2015) LPELR-25581(CA) (exhibit 209); *Nosiru Bello V. A.G, Oyo State* (1986) 5 NWLR (Pt.45) 828 (exhibit 210); *Julius Berger Nigeria Plc & Godwin Obado v. Mrs. Philomena Ugo*, Court of Appeal in Nigeria, 5 February 2015, CA/OW/146/201 (exhibit 207), p. 144, paras. B-E.

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383. As was stated, the claimants can also claim compensation for the damage that their husbands suffered as a result of their unlawful arrest and detention, their inhuman treatment and torture in detention, the violation of their right to a fair trial and their unlawful execution.
384. The claimants have also and above all suffered immaterial damage through the loss of their husbands, first of all emotional loss, which is eligible for compensation under Nigerian law.⁵⁴⁹ Esther Kiobel and Victoria Bera were also themselves victims of unlawful detention, and Esther also of assault, ill-treatment and attempted rape by Shell protégé Paul Okuntimo.
385. The claimants ask the court to have the precise extent of this compensation determined in follow-up proceedings for the determination of damages and to this end now demand a declaratory decision.⁵⁵⁰
386. Nigerian law also provides for the option of demanding a public apology, in the case for example of unlawful arrest and detention.⁵⁵¹ In light of the violations and the long road to justice for the claimants, an apology is an appropriate measure. Consequently, claimants also request that Shell makes a public apology for its role in the events described in this writ.

⁵⁴⁹ *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) (exhibit 205).

⁵⁵⁰ *Ibid.*

⁵⁵¹ Cf. FREP rules and *Jide Arulogun v. Commissioner of Police, Lagos State & ORS* (2016) LPELR-40190(CA) CA/L/893/13 (exhibit 205), pp. 19 20, paras. E-A. See for comparison also Nigerian Constitution 1999, Chapter IV.



11. CLAIM

The claimants request the court to enter judgement, provisionally enforceable as far as possible:

- I. to rule that the defendants acted unlawfully towards the claimants and are jointly and severally liable to them for the damage that they have suffered and will suffer in the future as a result of the defendants' unlawful actions, which damage is to be assessed during separate follow-up proceedings and settled according to the law, all this plus the statutory interest up to the date of settlement in full;
- II. to order the defendants within 21 days of the judgment to compel the CEO of Royal Dutch Shell, in any case the CEO of SPDC, to make a public apology for the role that Shell played in the events leading to the death of the claimants' spouses and to publish the text of this statement clearly visible on its website, subject to a penalty of €20,000 per day (or a sum to be determined by the court in accordance with the proper administration of justice) that they fail to comply with this order;
- III. to order the defendants jointly and severally to pay the extrajudicial costs;
- IV. to order the defendants, jointly and severally, to pay the costs of these proceedings, including the subsequent costs.

The cost of this: €80.42



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13. GLOSSARY

ATCA	Alien Tort Claims Act, 28 U.S.C. §1350
ATS	Alien Tort Statute, 28 U.S.C. §1350
CMD	Committee of Managing Directors, a committee in which the managing directors of the parent companies came together.
DMD	Deputy Managing Director and board member SPDC (Godwin Omene 1992 – 1994)
EP	Exploration and Production Coordinator (John Jennings in 1991, Mark Moody-Stuart 1992 – 1995)
EPO	Head of Operations and Liaison SIPM (Robert Sprague 1991 –1994)
GMB	General Manager Business Development (Emeka Achebe 1992 – 1995)
GME	General Manager East (J.R. Udofia 1991 – 1993, Egbert Imomoh 1993 – 1995)
HoS	Head of State, Nigeria (Sani Abacha starting november 1993)
HSE	Head of Security Eastern Division (George Ukpong 1993 - 1995)
HSEE	Manager Health, Safety, Environment, Public Affairs (Precious Omuku 1993 – 1995)
HRW	Human Rights Watch
IA	Shell Industrial Area (Port Harcourt, Nigeria)
MD	Managing Director (SPDC: Philip Watts until February 1994, Brian Anderson starting February 1994)
MOPOL/MPF	Mobile Police Force, infamous mobil unit of the Nigerian regime
MOSOP	Movement for the Survival of Ogoni People, an organisation established in 1990 that fought for the rights of the Ogoni people.
NLNG	Nigeria Liquefied Natural Gas Limited, a liquefied gas project in Nigeria
NNPC	Nigerian National Petroleum Corporation

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NPF	National Police Force Nigeria
NYCOP	National Youth Council of Ogoni People, youth movement of MOSOP
OMPADEC	Oil Mineral Producing Areas Development Commission
OPAPCO	Oil Production Area Police Command
PA	Head of Group Public Affairs (Tony Brak 1994 – 1995)
PAMR	Head of Media Relations SIPC (Eric Nickson 1994 – 1995)
PRC	Provisional Ruling Council, the body that had to confirm the ruling of the Civil Disturbance Special Tribunal.
RDS	Royal Dutch Shell, plc, Shell's parent company starting 20 July 2005
RSISTF	Rivers State Internal Security Task Force, paramilitary unit under the command of Paul Okuntimo, established for the Operation Restore Order in Ogoniland, May 1994
SIPC	Shell International Petroleum Company, Shell service company based in London
SIPM	Shell Internationale Petroleum Maatschappij, Shell service company based in the Hague
SPDC	Shell Petroleum Development Company of Nigeria Ltd
SPY-police	Shells policeforce in Nigeria, also known as the supernumerary- or Shell police
SSS	State Security Service, the Nigerian intelligence and security
TNP	Trans Niger Pipeline
UNEP	United Nations Environmental Programme
UNPO	Unrepresented Nations and Peoples Organization
WA	Regional Coordinator West-Africa (Richard van den Broek 1992 – 1995)

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14. REGISTER OF PERSONS INVOLVED

Parent companies

Name	1991	1992	1993	1994	1995	Reported to
Bergh, Maarten van den	Boardmember SPDC	Boardmember SPDC Alternately: Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	Group Managing Director (MGDMB)	
Herkströter, Cornelius	Group Managing Director (MGDCH)					
Jennings, John	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	Group Managing Director (MGDJJ)	In EP function, strictly speaking he reported to himself
Moody-Stuart, Mark	Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	Exploration and Production Coordinator SIPC (EP) Group Managing Director (MGDMS)	In EP function, strictly speaking he reported to himself
Ruiter, Henny de	Group Managing Director (MGDHR)	Group Managing Director MGDHR	Group Managing Director MGDHR			

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Service companies

Name	1991	1992	1993	1994	1995	Rapporteerde aan
Basnett, Mike			Group Security Advisor SIPC (SYCL)	Group Security Advisor SIPC (SYCL)	Group Security Advisor SIPC (SYCL)	
Brak, Tony				Head of Group Public Affairs (PA)	Head of Group Public Affairs (PA)	
Broek, Richard (Dick) van den		Regional Coordinator for Latin America and Africa SIPC (WA) Board member SIPC Board member SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Board member SIPC Board member SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Board member SIPC Board member SPDC	Regional Coordinator for Latin America and Africa SIPC (WA) Board member SIPC Board member SPDC	Henny de Ruitert until June 1994, after that Maarten van den Bergh
Detheridge, Alan	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Area Coordinator for Nigeria, Angola and Brazil (WA2) Head of Regional Finance for the Western Hemisphere and Africa (WA5)	Dick van den Broek
Kloppenburg, Ruud	Security Advisor SIPM	Security Advisor SIPM	Security Advisor SIPM	Head of Group Security SIPM	Head of Group Security SIPM	
Nickson, Eric				Head of Media Relations SIPC (PAMR)	Head of Media Relations SIPC (PAMR)	
Sprague, Robert (Bob)	Head of Operations and Liaison SIPM (EPO) Board member SPDC	Head of Operations and Liaison SIPM (EPO) Board member SPDC	Head of Operations and Liaison SIPM (EPO) Board member SPDC	Head of Operations and Liaison SIPM (EPO) Board member SPDC	Exploration and Production Coordinator (EP)	Mark Moody-Stuart

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SPDC

Name	1991	1992	1993	1994	1995	Rapporteur de aan
Achebe, Emeka		General Manager for Business Development, Public Affairs and board member SPDC (GMB)	General Manager for Business Development, Public Affairs and board member SPDC (GMB)	General Manager for Business Development, Public Affairs and board member SPDC (GMB)	General Manager for Business Development, Public Affairs and board member SPDC (GMB)	
Ahize, I.O.				Legal Advisor, East	Legal Advisor, East	
Anderson, Brian				Managing Director and chairman of the board of SPDC	Managing Director and chairman of the board of SPDC	Sprague, Detheridge, Colligan, Van Den Broek
Imomoh, Egbert	Exploration and Production Liaison SIPM	Exploration and Production Liaison SIPM	General Manager East and board member SPDC starting Aug 1993 (GME)	General Manager East and board member Shell (GME)	General Manager East and board member (GME)	Sprague during his work at SIPM, after that Watts and Anderson
Lawson-Jack, Steve			Head Public Affairs	Head Public Affairs	Head Public Affairs	Precious Omuku
Omene, Godwin		Deputy Managing Director and board member SPDC (DMD)	Deputy Managing Director and board member SPDC (DMD)	Deputy Managing Director and board member SPDC (DMD)		
Omuku, Precious	Chief Geologist, SPDC	Chief Geologist, SPDC	Manager Health Safety Environment Public Affairs (HSEE)	Manager Health Safety Environment Public Affairs (HSEE)	Manager Health Safety Environment Public Affairs (HSEE)	
Osunde, Osazee	Electoral Officer in the National Electoral Commission	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	Head of Intelligence and Surveillance East	George Ukpong
Oteri, Victor	Security Advisor	Security Advisor	Security Advisor	Security Advisor	Security Advisor	
Shonekan, Ernest	Board member SPDC	Board member SPDC	Alternately: Chairman of Civilian Transitional Council, Interim President, and right-hand man to Abacha	Right-hand man to Head of State Abacha	Right-hand man to of State Abacha	

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Udofia, Joshua	General Manager Eastern Division (GME)	General Manager Eastern Division (GME)	General Manager Eastern Division (GME)			
Ukpong, George			Head of Security for the Eastern Division, SPDC	Head of Security for the Eastern Division, SPDC	Head of Security for the Eastern Division, SPDC	Precious Omuku
Watts, Philip	Managing Director and chairman of the board of SPDC (tot 24 februari 1994)	European coordinator for Shell	Sprague, Detheridge, Colligan, Van Den Broek			
Wood, Nick				Communicatio ns Advisor	Communicatio ns Advisor	Emeka Achebe

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Nigerian regime

Naam	1991	1992	1993	1994	1995
Abacha, Sani	Minister of Defence under Head of State Babangida	Minister of Defence under Head of State Babangida	Head of State Nigeria	Head of State Nigeria	Head of State Nigeria
Abubakar, Alhaji					Nigerian High Commissioner in London, contactperson of the Nigerian regime for SIPC, indicator AAA
Ada-George, Rufus		Governor of Rivers State	Governor of Rivers State		
Ali, Hammid Ibrahim					Lieutenant-Colonel in the Nigerian army and judge in the Ogoni 9-trial
Coomassie, Alhaji			Inspector General of the Nigerian Police Force (NPF)	Inspector General of the Nigerian Police Force (NPF)	Inspector General of the Nigerian Police Force (NPF)
Komo, Dauda Musa			Military Administrator Rivers State (replacing Ada-George)	Military Administrator Rivers State	Military Administrator Rivers State
Okuntimo, Paul	Member of the Second Amphibious Brigade	Member of the Second Amphibious Brigade	Head of the Rivers State Internal Security Task Force	Head of the Rivers State Internal Security Task Force	Head of the Rivers State Internal Security Task Force
Shonekan, Ernest	Board member SPDC	Board member SPDC	Alternately: Chairman of Civilian Transitional Council, Interim President, and right-hand man to Abacha	Right-hand man to Head of State Abacha	Right-hand man to Head of State Abacha

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Other persons involved

Name	Description
Agbakoba, Olisa	One of the lawyers of the Ogoni 9, witness in this case.
Arikpo, Etwoa Enyong	One of the three judges in the Ogoni 9-trial
Ashton-Jones, Nick	Journalist and environmental activist, witness in this case
Auta, Ibrahim	Chairman of the Civil Disturbances Special Tribunal
Barima Wifa, Victor	Plaintiff in the Kiobel-case
Bera, Baribor	One of the Ogoni 9, executed in 1995
Bera, Victoria	Claimant in this case, widower of Baribor Bera
Danwi, Charles	Bribed witness in the Ogoni 9 trial
Douglas, Oronto	One of the lawyers of the Ogoni 9
Eawo, Blessing	Claimant in this case, widower of Nordu Eawo
Eawo, Nordu	One of the Ogoni 9, executed in 1995
Ejiogu, Boniface	Right-hand man to Paul Okuntimo, witness in this case
Falana, Femi	One of the lawyers of the Ogoni 9, witness in this case
Idigma, Tony Legbara	Plaintiff in the Kiobel-case
Ikari, Benson	Plaintiff in the Kiobel-case
John Miller, Anslem (Bishop)	Plaintiff in the Kiobel-case
Kiobel, Barinem	One of the Ogoni 9, executed in 1995
Kiobel, Esther	Claimant in this case, widower of Kiobel
Kponee, Raphael	Member of the SPY-police, stationed at the Shell Industrial Area between 1991 and 1998, witness in the Kiobel-case
Kunenu, Dumle	Plaintiff in the Kiobel-case
Lete Allens, Gbarale	Citizen of Ogoni-village Kpaen, witness in the Kiobel-case
Levula, Charity	Claimant in this case, widower of Paul Levula
Levula, Paul	One of the Ogoni 9, executed in 1995
Mitee, Ledum	Former (vice-)president MOSOP, suspect in the Ogoni 9-trial, witness in this case
Nebani , Princewill Nathan	MOSOP-activist, witness in the Kiobel-case
Nkpah, Naayone	Bribed witness in the Ogoni 9 trial, witness in this case
N-Nah, James	Plaintiff in the Wiwa-case
Nwidoh, Vincent	Member of the SPY-police, stationed at the Bonny Terminal between 1988 and 1994, witness in the Kiobel-case
Nwidor, Israel	Plaintiff in the Kiobel-case
Nwiyon , Eebu Jackson	Member of MOPOL between August 1993 and August 1995, member of the RSISTF for several months, witness in the Kiobel-case
Okocha, O.C.J.	In 1991 and 1992 Attorney General and Commissioner of Justice of Rivers State, in 1994 and 1995 Shell's lawyer who held a watching brief for them during the Ogoni 9 trial
Onyeakucha, Uche	One of the lawyers of the Ogoni 9, witness in this case
Saro-Wiwa, Ken	Former MOSOP president, one of the Ogoni 9, executed in 1995
Siegel, Jordan I.	Associate Professor of Corporate Strategy at the Michigan Ross School of Business, expert in the Kiobel-case
Ukala, Emmanuel	One of the lawyers of the Ogoni 9, witness in this case
Whyte, Neil	General Manager Willbros, SPDC's contractor who worked on the TNP in 1993
Wiwa, Owens	Ken Saro-Wiwa's brother, plaintiff in the Wiwa cas

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15. TIMELINE MOST IMPORTANT EVENTS

- 1958** Shell begins the oil extraction and production in Ogoniland
- 1990** MOSOP (Movement for the Survival of the Ogoni People) is incorporated by Ken Saro-Wiwa.
- SPDC's request for assistance of the Mobile Police Force against demonstrations in the village of Umuechem leads to dozens of deaths and almost five hundred destroyed houses.
- 1993** *January:* at least 300,000 Ogoni protest the consequences of the oil exploitation by Shell. The many demonstrations in Ogoniland force SPDC to withdraw.
- January-February:* Shell returns to Ogoniland under the protection of soldiers to lay the Trans Niger Pipeline (TNP).
- February:* Meetings in London between representatives of the service companies and SPDC regarding the situation in Ogoniland and the role of Saro-Wiwa and MOSOP. They agree "to keep each other more closely informed to ensure that movements of key players, what they say and to whom is more effectively monitored".
- 4 May:* At SPDC's request, governor Ada-George sends an army unit to Ogoniland, which forcibly ends a protest against Shell, killing one of the protestors.
- July – April 1994:* Hundreds of Ogoni are killed and thousands are left homeless in 'ethnic conflicts' in which the army is involved and which are logistically supported by Shell.
- 26 August – 17 November:* Ernest Shonekan, former SPDC board member, ruled as interim President for three months.
- October:* SPDC enters Ogoniland under false pretences, protected by 26 Nigerian soldiers led by Major Paul Okuntimo, in order to determine the safety measures that would be required to resume the oil production in Ogoniland. In Korokoro, the visit results in a violent confrontation with the local population, in which two villagers are killed.
- 17 November – 8 June 1998:* Sani Abacha has taken power. Shonekan acts as Vice President.
- November-December:* The European Union announces sanctions against Nigeria, *inter alia* a limitation of the arms trade.
- 1 December:* SPDC Managing Director Philip Watts requests that the Nigerian *Police Inspector General* increases SPDC's safety by deploying 1,200 police officers, known as the *Oil Production Area Police Command*. In exchange, Shell promises to pay the costs, which include salaries, accommodation, uniforms, automatic weapons and vehicles.

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13 December: In a letter to Lt. Col. Komo, de *Military Administrator* van Rivers State, Shell points out the economic consequences of the protests in Ogoniland and identifies the places where protests are being held.

28 December-5 January: MOSOP leaders Ledum Mitee and Owens Wiwa are detained and Saro-Wiwa is placed under house arrest to prevent massive protests during Ogoni Day.

1994 The *Rivers State Internal Security Task Force* (RSISTF) is incorporated. Major Paul Okuntimo (later Lt. Col) is appointed as commander.

25 February 1994: Shell pays Okuntimo and his militia an additional allowance for their acts in Korokoro and "*as a show of gratitude and motivation for a sustained favourable disposition towards SPDC in future assignments*".

At the discretion of the Nigerian regime, SPDC negotiates with an arms dealer regarding the import of military arms with a value of more than half a million dollars.

Intensive exchanges occur between SPDC, the service companies and the parent companies, *inter alia* regarding the purchase of weapons, disturbances in Ogoniland and Ken Saro-Wiwa.

19 April: Egbert Imomoh (*General Manager East* SPDC) meets with Lt. Col. Komo, the *Military Administrator* of Rivers State.

21 April: The regime internally announces *Operation Restore Order in Ogoniland*.

2 May: In a meeting with Abacha, Managing Director Brian Anderson points out the Ogoni and Saro-Wiwa as the parties responsible for destroying Shell facilities in Ogoniland.

12 May: Okuntimo writes the following in his 'restricted' memo to Komo: "*Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence*".

21 May: Four Ogoni leaders are murdered in Gokana.

22 May: Many Ogoni leaders – including Ken Saro-Wiwa and Barinem Kiobel – are arrested by order of Komo and detained without charges.

May-August: The RSISTF undertakes punitive expeditions in at least sixty villages in Ogoniland, in which numerous people are molested and murdered and houses are looted and destroyed. Hundreds of Ogoni are arrested and detained in RSISTF detention facilities.

November: Incorporation of the *Ogoni Civil Disturbances Special Tribunal* to try the Ogoni leaders for the murder of four Ogoni chiefs.

1995 *6 February:* Start of the Ogoni 9 trial. Attorney Okocha reports with a *watching brief* for SPDC.

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16 and 27 February: Two witnesses testify under oath that they have been bribed to make incriminating statements in exchange for money and a job with Shell. According to the witnesses, Shell's attorney Okocha was present at the bribery.

16 March: Meeting in London between Shell officials and representatives of the Nigerian regime. Agreement to coordinate the media policy regarding the Ogoni 9 trial.

March: Shell incorporates the *Nigeria Issue Contact Group* to implement a *Group Wide Action Plan*.

16 April: In an internal memo, Anderson expresses the expectation that Saro-Wiwa will be sentenced to death.

April-May: Brian Anderson negotiates in three meetings with Owens Wiwa regarding the fate of the suspects in the Ogoni 9 trial. Anderson offers to influence the outcome of the Ogoni 9 trial if MOSOP ceases its international protests. From his prison cell, Ken Saro-Wiwa rejects Shell's offer.

June: Independent observer Birnbaum publishes a damaging report on human rights violations at the Ogoni 9 trial.

22 June: The attorneys of the suspects in the Ogoni 9 trial withdraw in protest.

23 July: Anderson and Abacha discuss the overdue payments of the regime and future projects. Anderson explains to Abacha that Shell cannot openly support the regime due to international pressure.

31 October: Nine of the fifteen suspects are sentenced to death by the Special Tribunal.

10 November: The condemned persons, including Barinem Kiobel, Baribor Bera, Nordu Eawo and Paul Levula, are executed.

November-December: the international community imposes sanctions on Nigeria. The World Bank withdraws from projects in Nigeria.

November-December: the NLNG project, a collaborative venture between - primarily - Shell and the regime is settled.

8 December: Abacha thanks Anderson for the fact that "*Shell had remained steady under pressure*" and rejoices at the NLNG deal.

- 1996** *8 November:* Various surviving relatives of *inter alia* Ken Saro-Wiwa and victims of the violence in Ogoniland sue Shell before the American court.
- 2002** *1 September:* Esther Kiobel and eleven other (surviving relatives of) Nigerian activists from the Ogoni area sue Shell before the American court.
- 2009** Shell settles with the plaintiffs in the American Wiwa lawsuit for an amount of USD 15.5 million.
- 2013** The U.S. Supreme Court decides that it does not have any jurisdiction in the American Kiobel case.

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WRIT OF SUMMONS:

On this ^{28th} day of ^{June} two thousand and seventeen, at the request of

- (1) Mrs **Esther Duke Kiobel**, of Dallas, United States of America
- (2) Mrs **Victoria Bera**, of Winnipeg, Canada,
- (3) Mrs **Blessing Ken Nordu**, of Giokoo, Gokana, Nigeria and
- (4) Mrs **Charity Vureka Levula**, of Bomu, Gokana, Nigeria,

all choosing their address for service in this matter at Linnaeusstraat 2A in Amsterdam (1092 CK) at the offices of Prakken d'Oliveira, Human Rights Lawyers, of which firm Ms. Ch. Samkalden and Mr. T. de Boer are handling this case and acting as counsel;

I,

Mr. Erik Jozef Maria van Hal,
gerechtsdeurwaarder gevestigd te 's-Gravenhage
en daar kantoorhoudende aan het Nassauplein 21

With the proviso that the exhibits will not be served together with the summons, but will be submitted into the proceedings in a timely fashion,

have summoned:

(1) the legal entity under foreign law **Royal Dutch Shell, plc**, with its registered office in England and Wales in accordance with the articles of association and its registered office in The Hague, at Carel van Bylandtlaan 30 (2596 HR), serving my writ there at its office address and leaving a copy of this writ with:

(2) the public company **Shell Petroleum N.V.**, with registered office in The Hague, a successor by universal title of the public company N.V. Koninklijke Nederlandsche Petroleum Maatschappij, with registered office in The Hague, at Carel van Bylandtlaan 30 (2596 HR), serving my writ there at its office address and leaving a copy with:

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 (3) the legal entity under foreign law **the Shell Transport and Trading Company, limited**, with its registered office in London, United Kingdom and its principal place of business at the Shell Centre in London, SE1 7NA, United Kingdom,

for which I, bailiff, pursuant to Section 56 of the Dutch Code of Civil Procedure, in my capacity as transmitting agency as referred to in the Implementing Act of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 (EU Service Regulation), have on this day transmitted two copies of this writ to the receiving agency in London, United Kingdom, that is:

Royal Courts of Justice
Room E16 Strand
WC2A 2LL London
United Kingdom

this transmission has taken place by registered post;

an English translation of this summons is attached;

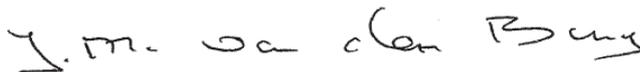
the form referred to in Article 4(3) of the above Regulation has been completed in English by me, bailiff;

I have asked the receiving agency to serve this summons on the respondent in the manner described under 5 in the above "request for service of documents" form, that is service according to the law of the state addressed (form 5.1) and to return to me, with the certificate of service referred to in Article 10 of the above Regulation, one copy of the copy of this writ to be returned, accompanied by an English translation, also transmitted to the respondent on this day by Fedex, giving notice that receipt of this document may be refused if it is not in English, or a language that the respondent understands, and that in the event of refusal the document must be returned to me, bailiff, within one week, accompanied by the completed form

 (4) the legal entity organised under foreign law **Shell Petroleum Development Company of Nigeria, limited**,

with registered office in Port Harcourt, Rivers State, Nigeria, and principal place of business at Rumuobiakani, Shell Industrial Area, P.O. Box 263,

therefore serving my writ at the Public Prosecutor's Office at the Court of The Hague at Prins Clauslaan 60 and leaving two copies of this writ and an English translation with:



employed at this office

and also sending a copy of this writ to the respondent by Fedex

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11. CLAIM

The claimants request the court to enter judgement, provisionally enforceable as far as possible:

- I. to rule that the defendants acted unlawfully towards the claimants and are jointly and severally liable to them for the damage that they have suffered and will suffer in the future as a result of the defendants' unlawful actions, which damage is to be assessed during separate follow-up proceedings and settled according to the law, all this plus the statutory interest up to the date of settlement in full;
- II. to order the defendants within 21 days of the judgment to compel the CEO of Royal Dutch Shell, in any case the CEO of SPDC, to make a public apology for the role that Shell played in the events leading to the death of the claimants' spouses and to publish the text of this statement clearly visible on its website, subject to a penalty of €20,000 per day (or a sum to be determined by the court in accordance with the proper administration of justice) that they fail to comply with this order;
- III. to order the defendants jointly and severally to pay the extrajudicial costs;
- IV. to order the defendants, jointly and severally, to pay the costs of these proceedings, including the subsequent costs.

The cost of this: €80.42

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends to the right.