

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:

(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

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 Dobee, 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, Dobee, 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

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.

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 Kilsil 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”.

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.

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.

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.

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://deeplink.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.

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 Milieudedefensie [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>

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 and 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.

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.

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. Ogbeidi 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 199, 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.

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. Rüland 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

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.

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 Dobee, 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).

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..

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 SIPC 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.

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 been 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.

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.

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-autaofr/> <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).

“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 Dobee; 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.

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

- 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.

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.

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.

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.

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.

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

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.

(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”.

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

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.

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>.

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>.

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.

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.

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.

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.

(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**).

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).

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.

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

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.

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.

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.

various occasions. In his testimony in the American Kiobel case (**exhibits 57 and 58**) George Ukpog, 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 Ukpog 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 Ukpog'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 Ukpog, vol. I, 23 October 2003 (exhibit 57), pp. 176-180; Public Deposition George Akpan Ukpog, vol. II, 24 March 2004 (exhibit 58).

²⁰⁴ See also chapter **Fout! Verwijzingsbron niet gevonden..**

²⁰⁵ Public Deposition George Akpan Ukpog, 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.

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 Ukpog.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 Ukpog, 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 Ukpog 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.

“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 Ukpog, 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**).

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).

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).

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.

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.

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.

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".

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.

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 .

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.

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.

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.

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**).

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.

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 Ukpog (exhibits 24 and 25).³¹³ Ejiogu also stated that Ukpog and Okuntimo met each other regularly, usually in Ukpog’s office in the Industrial Area, but also at Ukpog’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 Ukpog’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 Ukpog’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, Ukpog also asked the RSISTF to intervene in Shell’s Industrial Area, see pp. 26-28.

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).

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 Oronoto 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 Oronoto 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 Oronoto 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.

“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.

- 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)”.

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).

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 Ukpog, vol. I, 23 October 2003 (exhibit 57), p. 149-152; Public Deposition George Akpan Ukpog, 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 Ukpog: "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 Ukpog (exhibit 57), p. 170.

³⁴⁴ See section 8.2.48.2.4, at 201.

³⁴⁵ See for example at 182, 206 and 215.

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 Ukpog, 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.

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.”

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 Ukpog, 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 Ukpog, “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 Ukpog, vol. II, 24 March 2004 (exhibit 58), p. 279.

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>.

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 unmistakeable. 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 Ukpang, 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.

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.

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.

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. Oronoto 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 Oronoto 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.

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 Orono 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).

“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”.

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 Juneor 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.

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 Limpa 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.

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.

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).

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."

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.

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.

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.

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.

“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!”

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.

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.

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.

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.

“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 Coonference, 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.

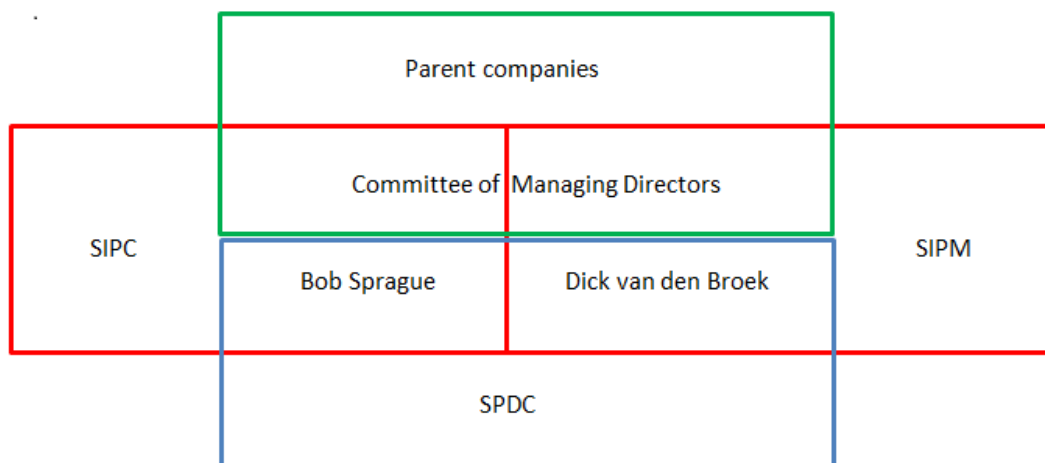
⁴⁸⁷ Public Deposition John Jennings, 26 February 2004 (exhibit 34), pp. 27-28.

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.

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.

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.”.

“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**).

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.

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".

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”

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

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".

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 Agbakoba, 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).

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.

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 Obobo* (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.

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

12. LIST OF EXHIBITS

Documents claimants

1. Affidavit of Marriage Esther and Barinem Kiobel, 8 mei 1991
2. Letter to Barinem Kiobel from different Ogoni chiefs, 5 mei 1994
3. Letter to Barinem Kiobel and letter from the U.S. Congressional Human Rights Caucus, 6 May 1994
4. Curriculum Vitae Barinem Nubari Kiobel
5. Written transcript pressconference Lt. D.M. Komo, 22 mei 1994
6. Marriage Agreement Nordu Eawo and mrs. Mkem Barima, 27 augustus 1981
7. Marriage Agreement regarding the marriage of Paul B. Levula and mrs. Vureka Charity Levula, 8 augustus 1992
8. Memorandum Barinem Kiobel, 2 juni 1994
9. Memorandum Barinem Kiobel, 3 juni 1994)
10. Ukala, 24 January 1995, Official starvation of Ken Saro-Wiwa, Ledum Mitee and dr. Kiobel
11. Plea for clemency for dr. Barinem Kiobel, 7 november 1995
12. Plea for clemency on behalf of our convicted husbands, 8 november 1995
13. Termination of Appointment, D.M. Komo Kiobel, 29 juli 1994
14. Declaration of the Ministry of Internal Affairs Benin, 13 September 1996

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15. Achebe, Emeka, Public Deposition vol. II, 6 February 2003
16. Agbakoba, Olisa, declaration 2 May 2017
17. Anderson, Brian, Public Deposition 13 February 2003
18. Basnett, Mike, Public Deposition 18 June 2003
19. Broek, Richard van den, Public Deposition 17 February 2003
20. Cloughly, T., Public Deposition 11 February 2003
21. Danwi, Charles Suanu, Affidavit, 16 February 1995

22. Detheridge, Alan, Public Deposition vol. I, 3 February 2003
23. Douglas, Oronto, Verklaring 4 February 2009
24. Ejiogu, Boniface, Public Deposition vol. I, 22 May 2004
25. Ejiogu, Boniface, Public Deposition vol. II, 23 May 2004
26. Falana, Femi, Declaration 16 June 2017
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29. Idigma, Lebara Tony, Public Deposition, vol. I, 24 July 2003
30. Imomoh, Egbert, Public Deposition vol. I, 17 June 2003
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32. Ikari, Benson, Public Deposition, vol. I, 28 July 2003
33. Israel, Blessing, Public Deposition 28 May 2004
34. Jennings, John, Public Deposition 26 February 2004
35. John-Miller, Anslem, Public Deposition 25 July 2003
36. Kiobel, Esther, Public Deposition vol. I, 29 July 2003
37. Kiobel, Esther, Public Deposition vol. II, 5 December 2003
38. Kiobel, Esther, Declaration 12 February 1995
39. Kponee, Raphael, Public Deposition 26 May 2004
40. Kunenu, Dumle J. Public Deposition 14 May 2004
41. Mitee, Ledum, Declaration 2 May 2017
42. Moody-Stuart, Mark, Public Deposition 15 April 2004
43. Neebani, Princewill Nathan, Public Deposition 13 May 2004
44. N-Nah, James B. Public Deposition 16 October 2003
45. Nkpah, Naayone, Extra Deposition 19 March 2004
46. Nwidoh, Vincent Tomebamri, Public Deposition 25 May 2004
47. Nwidor, Israel, Public Deposition 24 September 2003

- 48. Nwiyon, Eebu Jackson, Public Deposition 24 May 2004
- 49. Okocha, O.C.J., Verklaring 8 December 2003
- 50. Okonkwo, Dozie, Public Deposition 19 June 2003
- 51. Omuku, Precious Sotonye, Public Deposition 19 April 2004
- 52. Onyeagucha, Uche, Declaration 15 June 2017
- 53. Osunde, Osazee, Public Deposition 22 October 2003
- 54. Siegel, Jordan I., Declaration 5 February 2009
- 55. Sprague, Robert, Public Deposition 10 February 2003
- 56. Udofia, J.R. Public Deposition 24 October 2003
- 57. Ukpong, George Akpan, Public Deposition vol. I, 23 October 2003
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- 59. Watts, Philip B., Public Depositions, vol. I, 16 April 2004
- 60. Watts, Philip B., Public Deposition, vol. II, 17 April 2004
- 61. Wifa, Victor Barima, Public Deposition 2 April 2004
- 62. Wiwa, Owens, Public Deposition vol. I 9 December 2003
- 63. Wiwa, Owens, Public Deposition vol. II 24 May 2004
- 64. Wood, Nick, Public Deposition 16 June 2003

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- 65. Minutes of the meeting of the Board of Directors of Shell Nigeria, 5 September 1991
- 66. Minutes of meeting Conference 14 October 1992
- 67. 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
- 68. Shell, Note from William Dick (HSEL, Head of Health, Security and Environment in Lagos, Shell Nigeria) to Godwin Omene (DMD), 23 February 1993
- 69. File note Shell Nigeria, Egbert Imomoh (GME) meeting with Chief Rufus Ada George, 18 March 1993

70. Telex Philip Watts to SIPC and SIPM, 11 May 1993
71. Minutes of meeting with Willbros, SPDC, MOSOP and the Nigerian regime, 11 May 1993
72. Urgent Telex Philip Watts to SIPC Londen and SIPM Den Haag, 11 May 1993
73. Fax Emeka Achebe (SPDC) to SIPC London and SIPM The Hague, 12 May 1993
74. Background Briefing Note SPDC with regards to the pressconference about Ken Saro-Wiwa of 24 May 1993 in The Hague
75. Telex SIPC to Shell Nigeria, 2 June 1993
76. Letter Philip Watts to Mervyn David, Security Advisory SIPC, forwarded to – amongst others – EP Mark Moody-Stuart , 13 August 1993
77. Letter Philip Watts to the servicecompanies, forwarded to – amongst otehrs – EP Mark Moody-Stuart, 17 August 1993
78. Message Imomoh to Philip Watts, 26 October 1993
79. Shell Communication regarding Korokoro, 25 December 1995
80. Shell Nigeria, Report on the Joint Location Visit by SPDC and Armed Forces Personnel to Ogoni Area Oil Fields, undated
81. Background to the Nigerian Issue, 1993
82. Ogoni Briefing Note: Recent Events at Korokoro, SPDC (Achebe) to Londen, 5 November 1993
83. Shell Inter-office Memorandum Egbert Imonoh, 8 November 1993
84. Appointment Brian Anderson as managing director of SPDC, 11 January 1994
85. Message Brian Anderson to the servicecompanies, 17 January 1994
86. Inter-office Memo Osazee Osunde, 25 Februari 1994
87. Nigeria Update, 14 March 1994
88. Briefing Notes regarding a meeting between Brian Anderson (Managing Director SPDC) and the Inspector General of Police, 17 March 1994
89. Nigeria Update, 5 April 1994
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91. 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 Shell Nigeria at the International energy Investment Seminar, Sheraton hotel and towers, Lagos, 19 April 1994, annexed to the Nigeria Update

of 25 April 1994

92. Nigeria Update, 2 May 1994
93. Nigeria Update, 20 May 1994
94. Nigeria Update, 30 May 1994
95. Nigeria Update, 6 June 1994
96. Nigeria Update 12 June 1994
97. Nigeria Update, 27 June 1994
98. Nigeria Update, 10 July 1994
99. Nigeria Update, 20 July 1994
100. Nigeria Update, 26 July 1994
101. Nigeria Update, 28 July 1994
102. Nigeria Update, 4 August 1994
103. Nigeria Update, 5 August 1994
104. Nigeria Update, 8 August 1994
105. Nigeria Update, 12 August 1994
106. Nigeria Update, 22 August 1994
107. Nigeria Update, 23 August 1994
108. Nigeria Update, 24 October 1994
109. Message Alan Detheridge to Brian Anderson, 10 November 1994
110. Briefing notes John Barry to Brian Anderson regarding the visit of Maarten van den Berg (indicator MGDMB), 1 February 1995
111. Note Martin Christie to at least 16 recipients within the Shell-concern, 10 March 1995
112. Internal Memo Alan Detheridge to Brian Anderson, 16 March 1995
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
114. Nigeria Update, 16 April 1995

- 115. Nigeria Update, 10 July 1995
- 116. Nigeria Update, 23 July 1995
- 116a. Inter-office Memorandum, 22 August 1995
- 117. Nigeria Update, 25 September 1995
- 118. Message Alan Detheridge to Anderson, 27 September 1995
- 119. Minutes of Meeting Conference, 11 October 1995
- 120. Nigeria Update, 16 October 1995
- 121. Telex M. Christie to the Nigeria Issue Contact Group, 23 October 1995
- 122. Nigeria Update, 2 November 1995
- 123. Telex Brian Anderson to Group Managing Director Maarten van den Bergh, 14 November 1995
- 124. Minutes of Meeting CMD, 17 November 1995
- 125. Telex Caroline Tipper, Media Relations Shell Centre, undated
- 126. Nigeria Update, 6 December 1995
- 127. Nigeria Update, 11 December 1995
- 128. Letter Philip Watts to Brian Anderson, 24 January 1996

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- 129. Letter J.R. Udofia (Divisional Manager East, SPDC) to the Commissioner of Police, 29 October 1990
- 130. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 7 January 1993
- 131. Letter Willbros to SPDC, 23 January 1993
- 132. Minutes of meeting between Achebe, Owuku and Okonkwo, 15 and 16 February 1993 in London and 18 February 1993 in The Hague
- 133. Letter J.R. Udofia to Rufus Ada George, 19 March 1993
- 134. Letter MOSOP to Willbros, 7 April 1993
- 135. Report of Willbros to SPDC, Review of events leading to the withdrawal of workforce from the Bomu Area, 3 May 1993
- 136. Letter J.R. Udofia (GME SPDC) to Rufus Ada George, 4 May 1993

137. Letter Philip Watts to Alhaji Ibrahim Coomassie (Inspector General Of Police, Nigerian Police Force), 1 December 1993
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149. Letter Chief G.O. Akinluyi to Shell, 8 September 1994
150. Letter Anderson to Alhaji Ibrahim Coomassie (Inspector General Of Police, Nigerian Police Force), 12 September 1994
151. Letter I.O. Ahize, (Legal adviser Shell Nigeria), to O.C.J. Okocha, 1 December 1994
152. Letter W.J.C. Dick to Humanitex (Nig) Ltd., 6 February 1995
153. Payment Shell Nigeria to O.C.J. Okocha, 8 February 1995
154. Letter Brian Anderson to OMPADEC, 30 March 1995
155. Letter Eric Nickson (Head Media Relations) to Glen Ellis, 1 November 1996
156. Letter Eric Nickson (Head Media Relations SIPC) to Paul Brown and Andy Rowell, 6 November 1996

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157. Annual accounts 1992 SPDC

- 158. Annual accounts 1992 Shell International Petroleum Company
- 159. Annual accounts 1992 Shell Transport and Trading
- 160. Annual accounts 1995 Royal Dutch/Shell Group of Companies
- 161. Annual accounts 1995 Shell Transport and Trading
- 162. Form 20-F United States Security and Exchange Commission 1995 Koninklijke Nederlandsche Petroleum Maatschappij and The Shell Transport and Trading Company, plc
- 163. Press release Shell, 31 October 1995
- 164. Press release Brian Anderson, 8 November 1995
- 165. Shell, “Clear thinking in troubled times”, 19 November 1995
- 166. SPDC, Nigeria Brief: Ogoni and the Niger Delta, 1996
- 167. Annual accounts 1997 Koninklijke Nederlandse Petroleum Maatschappij N.V.
- 168. WCC Report “Ogoni – the struggle continues” Comments by Shell
- 169. Group Governance Guide Royal Dutch/Shell Group, December 2001
- 170. Annual Accounts 2004, Koninklijke Nederlandse Petroleum Maatschappij N.V.
- 171. Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2005
- 172. Form 20-F United States Securities and Exchange Commission, Royal Dutch Shell, plc, 2015

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- 173. Affidavit Barinem Kiobel in support of motion, application for bail, undated
- 174. Counter-affidavit Barinem Kiobel, undated
- 175. Written affidavit Barinem Kiobel
- 176. PRC, Confirmation of the judgement of the Ogoni Civil Disturbance (Special) Tribunal
- 177. Submissions Fawehinmi regarding the application for bail
- 178. Summons to accused Barinem Nubari Kiobel, 28 January 1995
- 179. Transcripts Ogoni 9-trial, 6 February 1995

- 180. Transcripts Ogoni 9-trial, 21 February 1995
- 181. Transcripts Ogoni 9 trial, 23 February 1995
- 182. Transcripts Ogoni 9-trial, 27 February 1995
- 183. Transcripts Ogoni 9-trial, 28 February 1995
- 184. Transcripts Ogoni 9 trial, 29 March 1995
- 185. Transcripts Ogoni 9-trial, 7 April 1995
- 186. Transcripts Ogoni 9 trial, 22 May 1995
- 187. Transcripts Ogoni 9-trial, 24 May 1995
- 188. Transcripts Ogoni 9-trial, 26 May 1995
- 189. Transcripts Ogoni 9-trial, 31 May 1995
- 190. Transcripts Ogoni 9-trial, 7 June 1995
- 191. Transcripts Ogoni 9-trial, 19 June 1995
- 192. Transcripts Ogoni 9 trial, 21 June 1995
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- 194. Declaration Paul Levula

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- 195. Defendants' supplemental responses to Wiwa plaintiffs' second set of interrogatories pursuant to the Court's november 6, 2008 order, 17 december2008
- 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
- 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)
- 198. Privilege log Wiwa v. Royal Dutch Petroleum Company, et al, Kiobel v. Royal Dutch Petroleum Company, et al, oktober 2003

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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 Liquified Natural Gas Limited, a liquified gas project in Nigeria
NNPC	Nigerian National Petroleum Corporation

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)

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)	Group Managing Director (MGDCH)	Group Managing Director (MGDCH)	Group Managing Director (MGDCH)	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			

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 Ruiter 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

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	

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	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				Communicatio ns Advisor	Communicatio ns Advisor	Emeka Achebe

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

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
Neebani , 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

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.

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.

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.