

## **Holding Big Oil Accountable for Human Rights Violations on Foreign Soil**

### *Wiwa v. Royal Dutch Petroleum Co.*

Jennifer M. Green, Judith Brown Chomsky, Beth Stephens, Anthony DiCaprio, Maria LaHood, Debra Gordon, Agnieszka Fryszman, Maureen McOwen, Richard L. Herz, Jonathan G. Kaufman, Abby Rubinson, Marco B. Simons, Jacqui Zalberg, Susan Farbstein, Paul Hoffman and Julie Shapiro



For decades, Royal Dutch Shell had worked with the Nigerian military to suppress demonstrations carried out against the oil company's use of land in the Ogoni region of Nigeria. Shell allegedly colluded with the Nigerian government to bring about the arrest and execution of the Ogoni 9, a group of activists hanged on Nov. 10, 1995, after a "trial" before a special military tribunal based on fabricated charges. Their crime: peacefully resisting Shell's operations in the oil-rich Niger Delta, where the company had a long history of environmental damage and human rights abuses against the Ogoni people. One of the nine executed by the Nigerian military was Ken Saro-Wiwa, an internationally renowned author and environmental activist who was the leader of the Movement for the Survival of the Ogoni People (MOSOP).

After 13 years of litigation, Shell agreed on the eve of trial to pay \$15.5 million to settle *Wiwa v. Royal Dutch Petroleum Co.*, which charged the oil giant with complicity in the deaths of the Ogoni 9 and torture of other MOSOP leaders. The settlement was the result of the tenacity and dedication of a legal team headed by three attorneys with New York's Center for Constitutional Rights (CCR), **Jennifer M. Green** (now teaching at University of Minnesota Law School), **Judith Brown Chomsky**, and **Beth Stephens**, who were ably assisted by **Anthony DiCaprio** of Rye, N.Y., a former CCR attorney; **Maria LaHood** and **Debra Gordon** of CCR; **Agnieszka Fryszman** and **Maureen McOwen** of Cohen Milstein Sellers & Toll PLLC in Washington, D.C.; **Richard L. Herz**, **Jonathan G. Kaufman**, **Abby Rubinson**, **Marco B. Simons** and **Jacqui Zalberg** of EarthRights International in Washington, D.C.; **Susan Farbstein** of the International Human Rights Clinic at Harvard Law School; **Paul Hoffman** of Schonbrun DeSimone Seplow Harris & Hoffman LLP in Venice, Calif.; and **Julie Shapiro**, a professor at the University of Seattle School of Law.

The landmark \$15.5 million settlement compensated 10 individual plaintiffs, including family members of the deceased victims, and established a trust for the Ogoni people to fund initiatives in education, skills development, agricultural development, women's programs, small enterprise support, and adult literacy. It is one of only a handful of successful settlements in cases brought under the Alien Tort Statute against corporations charged with complicity in human rights violations.

Green, Chomsky and Stephens filed the *Wiwa* case against Shell on Nov. 8, 1996, in the U.S. District Court for the Southern District of New York. It was the first case ever filed against a foreign oil company for complicity in human rights abuses. Nearly five years later, the legal team filed a related case, *Wiwa v. Anderson*, against the head of Shell's Nigerian operations at the time of the Ogoni 9's executions. Both suits were brought under the Alien Tort Statute (ATS) by relatives of the deceased Ogoni 9 and surviving MOSOP leaders who had been tortured and detained.

The *Wiwa* litigation was a rollercoaster ride marked by battling procedural and substantive hurdles at every turn, from personal jurisdiction over Shell parent and subsidiaries to the role of

international law in determining the availability of theories of liability under the ATS. Depositions were taken in five countries on three continents. At one point, the defendants served the plaintiffs with over 1,000 requests for admission, an abuse of process that the plaintiffs' attorneys navigated without foreclosing important lines of argument. One of the legal team's key strategies was to keep the pressure on Shell at all times, no matter how busy the team was with trial preparation. When the district court dismissed Shell's Nigerian subsidiary from the case for lack of personal jurisdiction, the attorneys convinced the Second Circuit to send the case back to the district court for reconsideration. Shell officials had been counting on portraying themselves as innocent corporate executives in Europe, far from the fray in Nigeria. By reopening the front against Shell's Nigerian subsidiary, which allegedly was directly complicit in abuses against the plaintiffs and their families, the legal team created a powerful incentive for Shell to settle.

Over the course of 13 years, the victims' attorneys also won precedent-setting rulings, including judicial acknowledgement that foreign companies may be held liable for human rights violations in United States courts and that the United States has an affirmative policy of providing redress for violations of international human rights law. Although Shell did not own up to its responsibility for the human rights abuses suffered by the plaintiffs and their communities, the settlement is widely regarded as a tacit admission of liability.

The *Wiwa* litigation sends a strong message to corporations, governments, and powerful individuals that abusive acts have a significant cost, even when they take place in countries where violators of international human rights law have typically enjoyed complete impunity. It confirmed for the first time that the U.S. courts are open to vindicating human rights claims, including those filed against foreign corporations. The case has also served as a model for litigation in the courts of several countries, including the United States, against Shell and other multinational corporations for engaging in environmental and human rights abuses. ■