

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, <i>et al.</i> ,	Plaintiffs,	
– against –		96 Civ. 8386 (KMW)(HBP)
ROYAL DUTCH PETROLEUM COMPANY, <i>et al.</i> ,	Defendants.	
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KEN WIWA, <i>et al.</i> ,	Plaintiffs,	
– against –		01 Civ. 1909 (KMW)(HBP)
BRIAN ANDERSON,	Defendant.	

**AMENDED JOINT PRETRIAL ORDER**

Having conferred amongst themselves and with the Court pursuant to Rule 16 of the Federal Rules of Civil Procedure, and in accordance with the individual rules of the Honorable Kimba M. Wood, the parties adopt the following statements, directions and agreements as the Joint Pretrial Order in this case:

**I. FULL CAPTION OF THE ACTIONS**

There are two actions:

KEN WIWA, individually and as Administrator of the Estate of his deceased father, KEN SARO-WIWA; OWENS WIWA; BLESSING KPUINEN, individually and as the Administrator of the Estate of her late husband JOHN KPUINEN; KARALOLO KOGBARA; MICHAEL TEMA VIZOR; LUCKY DOOBEE, individually and as Administrator of the Estate of his late brother SATURDAY DOOBEE; FRIDAY NUATE, individually and as Administrator of the Estate of her late husband FELIX NUATE and their surviving children; MONDAY GBOKOO, individually and as Administrator of the Estate of his late brother DANIEL GBOKOO; DAVID KIOBEL, individually for harm suffered for the death of his father Dr. BARINEM KIOBEL; JAMES B. N-NAH, individually and as Administrator of the Estate of late brother UEBARI N-NAH and his surviving children,

96 Civ. 8386  
(KMW)(HBP)

Plaintiffs,

– against –

SHELL PETROLEUM, N.V., formerly ROYAL DUTCH PETROLEUM COMPANY; SHELL TRANSPORT AND TRADING COMPANY, LTD., formerly THE “SHELL” TRANSPORT AND TRADING COMPANY, p.l.c.

Defendants.

KEN WIWA, individually and as Administrator of the Estate of his deceased father, KEN SARO-WIWA; OWENS WIWA; BLESSING KPUINEN, individually and as the Administrator of the Estate of her late husband JOHN KPUINEN; MICHAEL TEMA VIZOR; LUCKY DOOBEE, individually and as the Administrator of the Estate of his late Brother, SATURDAY DOOBEE; FRIDAY NUATE, individually and as Administrator of the Estate of her late husband FELIX NUATE; MONDAY GBOKOO, individually and as Administrator of the estate of his late brother DANIEL GBOKOO; DAVID KIOBEL, individually for harm suffered for the death of his father Dr. BARINEM KIOBEL,

01 Civ. 1909  
(KMW)(HBP)

Plaintiffs,

– against –

BRIAN ANDERSON,

Defendant.

## II. TRIAL COUNSEL

The names, addresses, and telephone and fax numbers of trial counsel are as follows:

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**III. STATEMENT AS TO SUBJECT MATTER JURISDICTION**

A. Plaintiffs' Statement as to the Basis of Subject Matter Jurisdiction

Plaintiffs do not believe it is appropriate to brief issues of subject matter jurisdiction in the JPTO; these issues have been extensively briefed elsewhere. Defendants' contention on the applicability of Nigerian law is not an issue going to subject matter jurisdiction and is therefore improperly raised here; Defendants' waiver of this issue is addressed below in Section IV.A., Summary of Claims and Defenses. Plaintiffs provide the following brief statement of the basis of jurisdiction:

1. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1350 (Alien Tort Claims Act) for Plaintiffs' claims for extrajudicial killing (summary execution); crimes against humanity; torture; cruel inhuman or degrading treatment; arbitrary arrest and detention; and violations of the rights to life, liberty and security of person and peaceful assembly and association.

2. This Court has jurisdiction over Plaintiffs' claims of violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1964(c).

3. In addition, Plaintiffs invoke the supplemental jurisdiction of this Court, 28 U.S.C. § 1367, for plaintiffs' claims for wrongful death, assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence.

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

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

6. Plaintiff Blessing Kpuinen brings this action individually and as administrator of the estate of her husband, John Kpuinen, now deceased, who was a subject, citizen, and resident of Nigeria. Plaintiff Kpuinen presently resides in the United States and was a citizen of Nigeria and on March 19, 2004, became a citizen of the United States.

7. Plaintiff Karalolo Kogbara is a citizen and resident of Nigeria.

8. Plaintiff Michael Vzor is a citizen of Canada and a citizen of Nigeria, currently residing in Canada.

9. Plaintiff Lucky Doobee brings this action individually and as administrator of the estate his brother, Saturday Doobee, now deceased, who was a subject, citizen, and resident of Nigeria. Plaintiff Doobee is a resident of Nigeria and citizen of Nigeria.

10. Plaintiff Friday Nuate brings this action individually and as administrator of the estate of her deceased husband, Felix Nuate, and their surviving children. Felix Nuate, now deceased, was a subject, citizen, and resident of Nigeria. Plaintiff Nuate is a resident and citizen of Nigeria.

11. Plaintiff Monday Gbokoo brings this action individually and as administrator of the estate of his brother, Daniel Gbokoo, now deceased, who was a subject, citizen, and resident of Nigeria. Plaintiff Gbokoo is a resident and citizen of Nigeria.

12. Plaintiff David Kiobel brings this action individually and for harm suffered for the death of his father Dr. Barinem Kiobel. He is a citizen and resident of the United Kingdom.

13. Plaintiff James N-nah, brings this action individually and on as Administrator of the estate of his late brother, Uebari N-nah, and the surviving children of Uebari N-nah, who was a subject, citizen, and resident of Nigeria. Plaintiff N-nah is a resident and citizen of Nigeria.

B. Defendants' Statement as to the Absence of Subject Matter Jurisdiction

This Court does not have subject matter jurisdiction over any of plaintiffs' claims.

*First*, this Court does not have subject matter jurisdiction over plaintiffs' claims under the Alien Tort Statute, 28 U.S.C. § 1350. (*See* Defs.' Motion to Dismiss Pls.' ATS Claims, *Wiwa* Docket Nos. 331, 350, 351; *see also* Defs.' Int'l Law Br. 1-14, *Wiwa* Docket No. 303.) Plaintiffs assert no claim for direct liability against defendants and there is no norm of customary international law that proscribes any of the alleged acts of defendants—the “perpetrator[s] being sued”—in this case. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 n.20 (2004). Furthermore, this Court does not have subject matter jurisdiction over Blessing Kpuinen's ATS claims because she is a U.S. citizen. (*See* Int'l Law Br. 80-81.)

*Second*, this Court does not have subject matter jurisdiction over plaintiffs' claims under federal-question jurisdiction, 28 U.S.C. § 1331. As the Supreme Court noted in *Sosa*, not “every grant of jurisdiction to a federal court carries with it an opportunity to develop common law”. 542 U.S. at 731 n.19. “Section 1350 was enacted on the congressional understanding that courts would exercise jurisdiction by entertaining some common law claims derived from the law of nations; and we know of no reason to think that federal-question jurisdiction was extended subject to any comparable congressional assumption”. *Id.*

*Third*, this Court does not have subject matter jurisdiction over plaintiffs' claims for summary execution and torture under the Torture Victim Protection Act, 28 U.S.C. § 1350, note. Plaintiffs have abandoned their claims under the TVPA. Indeed, the Court has stated on this very claim that an amended complaint supersedes the original and that plaintiffs failed to raise this issue in response to the Court's claim chart. (2/23/09 Order at 7 n.7; *see also* Defs.' Int'l Law Br. 29-30.)

*Fourth*, this Court does not have subject matter jurisdiction over plaintiffs' claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c). (*See* Defs.' Motion to Dismiss Pls.' RICO Claim, *Wiwa* Docket Nos. 309, 328.) This case involves alleged harms committed by Nigerians in Nigeria allegedly suffered by foreign plaintiffs, with no significant and material effects in the United States. *See, e.g., North South Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1052 (2d. Cir. 1996).

*Fifth*, this Court does not have supplemental jurisdiction over plaintiffs' claims under 28 U.S.C. § 1367. Because this Court does not have subject matter jurisdiction over plaintiffs' ATS claims, it may not exercise supplemental jurisdiction under § 1367. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). To the extent this Court does exercise supplemental jurisdiction over plaintiffs' non-ATS claims, those claims are governed by Nigerian law.

*Sixth*, plaintiffs cannot seek punitive damages, treble damages, or their costs of suit and attorneys fees for any of their claims. No United States court has awarded treble damages to a plaintiff for an ATS claim and no United States court that has awarded punitive damages to a plaintiff under the ATS has done so against a private actor or corporation based on theories of indirect liability. Furthermore, international law does not recognize punitive or treble damages. *See, e.g., Velásquez Rodríguez Case*, Inter-Am. C.H.R., Report No. 7/89, ¶ 38 (July

21, 1989); International Law Commission, Commentaries to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, 53rd Sess. 235, 245-46 & n.549, 279, (2001); *Re Letelier and Moffitt*, (1992) I.L.R., vol. 88, 727, at 741.

#### **IV. SUMMARY OF CLAIMS AND DEFENSES**

##### **A. Plaintiffs' Summary of Claims**

In the interests of efficiency, given the number of plaintiffs and claims asserted, plaintiffs state herein a very brief summary of each plaintiff's claims. Defendants waived reliance on Nigerian law by failing to assert it as an issue or defense previously. In ordering the amended JPTO, the Court did not give leave to defendants to assert new defenses or raise new legal issues. Plaintiffs object to defendants' belated attempt to cure their waiver. Plaintiffs' position on choice of law is set out in the jury instructions submissions. An exhaustive list of each claim asserted against each defendant by each plaintiff is annexed hereto in chart form for the Court's convenience.<sup>1</sup>

#### **REPRESENTATIVE PLAINTIFFS**

1. The administrators of the estates of Ken Saro-Wiwa, John Kpuinen, Saturday Doobee, Felix Nuate, Daniel Gbokoo, and Uebari N-nah (collectively the "Deceased"), seek damages from defendants Shell Petroleum N.V., formerly Royal Dutch Petroleum Co., and Shell Transport and Trading Co. Ltd., formerly Shell Transport and Trading Co. p.l.c., (collectively the "Companies"), and Brian Anderson ("Anderson") for their direct and indirect liability for violation of internationally accepted norms under the Alien Tort Statute, 28 U.S.C. § 1350 ("Alien Tort Statute") and 28 U.S.C § 1331. The representatives of the Deceased allege that tortious acts of the Companies and Anderson constitute extrajudicial killing (also known as summary execution), crimes against humanity, torture, cruel inhuman or degrading treatment,

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<sup>1</sup> These claims are also reflected in Plaintiffs' Fifth Amended Complaint against Royal Dutch/Shell and Third Amended Complaint against Brian Anderson, as well as the chart of claims presented to this Court in October 2008. Defendants make a number of contrary assertions in their statement of claims and defenses which plaintiffs note as follows: (1) Contrary to Defendants' summary claims and defenses, Ken Wiwa, Blessing Kpuinen, Lucky Doobee, Friday Nuate, Monday Gbokoo, and David Kiobel each assert individual claims for extrajudicial killing/summary execution, torture, and arbitrary arrest and detention, and Ken Wiwa has asserted individual claims for cruel, inhuman or degrading treatment; (2) Contrary to Defendants' summary, Ken Wiwa has asserted individual claims for wrongful death and negligent emotional distress; (3) Contrary to Defendants' summary, Blessing Kpuinen has asserted an individual claim for wrongful death; (4) Contrary to Defendants' summary, Michael Vizer has never asserted a claim for wrongful death, and (5) Contrary to Defendants' summary, Friday Nuate has asserted representative claims for negligent infliction of emotional distress and negligence.



arbitrary arrest and detention, and violations of the right to life, liberty, and security of person and peaceful assembly and association. The administrators each seek compensatory and punitive damages in an amount to be proven at trial. The representative claims brought by David Kiobel on behalf of his siblings were dismissed.

2. The administrators of the estates of Ken Saro-Wiwa and John Kpuinen seek damages from the Companies and Anderson under state law invoking supplemental jurisdiction, 28 U.S.C. § 1367, for their direct and indirect liability for tortious acts of the Companies and Anderson which constitute the torts of wrongful death, assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. The administrators of the estates each seek compensatory and punitive damages in an amount to be proven at trial.
3. The state law claims brought invoking supplemental jurisdiction, 28 U.S.C. § 1367, by the administrators of the estates Saturday Doobee, Felix Nuate, Daniel Gbokoo, and Uebari N-nah against the Companies were dismissed. The representative claims of David Kiobel on behalf of his siblings were dismissed.
4. The administrators of the estates of Saturday Doobee, Felix Nuate and Daniel Gbokoo seek damages from Anderson under state law invoking supplemental jurisdiction, 28 U.S.C. § 1367, for their direct and indirect liability for tortious acts of Anderson constitute the torts of negligent infliction of emotional distress, and negligence. The representatives each seek compensatory and punitive damages in an amount to be proven at trial. The state law wrongful death, assault and battery, and intentional infliction of emotional distress claims brought by the representatives of the estates of Saturday Doobee, Felix Nuate and Daniel Gbokoo were dismissed.

#### **SURVIVOR PLAINTIFFS**

5. Plaintiffs Ken Wiwa, Blessing Kpuinen, David Kiobel, Lucky Doobee, Friday Nuate, Monday Gbokoo, and James N-nah (the "Survivors") bring claims against the Companies and Anderson for their direct and indirect liability for injuries they have suffered individually, which occurred in violation of internationally accepted norms under the Alien Tort Statute and 28 USC § 1331. The Survivors allege that the tortious acts of the Companies and Anderson constitute extrajudicial killing (also known as summary execution), crimes against humanity, torture, cruel, inhuman or degrading treatment, and arbitrary arrest and detention. The Survivors each seek compensatory and punitive damages in an amount to be proven at trial.
6. Plaintiff Ken Wiwa brings direct and indirect liability claims against the Companies and Anderson under state law invoking supplemental jurisdiction, 28 U.S.C. § 1367, for injuries he suffered individually and alleges that the tortious acts of the Companies and Anderson constitute the torts of wrongful death, negligent infliction of emotional distress, and negligence. Ken Wiwa seeks compensatory and punitive damages in an amount to be proven at trial.

7. Plaintiff Blessing Kpuinen, brings direct and indirect liability claims against the Companies and Anderson under state law invoking supplemental jurisdiction, 28 U.S.C. § 1367, for injuries she suffered individually and alleges that the tortious acts of the Companies and Anderson constitute the torts of wrongful death, assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. Blessing Kpuinen seeks compensatory and punitive damages in an amount to be proven at trial.
8. The state law claims against the Companies for intentional infliction of emotional distress, negligent infliction of emotional distress and negligence brought by Lucky Doobee, Friday Nuate and Monday Gbokoo and James N-nah were dismissed.
9. Lucky Doobee Friday Nuate, and Monday Gbokoo and James N-nah seek damages from Anderson under state law invoking supplemental jurisdiction, 28 U.S.C. § 1367, for negligent infliction of emotional distress, and negligence through direct and indirect liability. The representatives each seek compensatory and punitive damages in an amount to be proven at trial. The claims of Lucky Doobee, Friday Nuate, Monday Gbokoo and James N-nah for wrongful death, assault and battery, and intentional infliction of emotional distress were dismissed.

#### **PLAINTIFF KARALOLO KOGBARA**

10. Plaintiff Karalolo Kogbara (“Kogbara”) brings direct and indirect liability claims against the Companies under the Alien Tort Statute and 28 U.S.C. § 1331 for crimes against humanity, torture, cruel, inhuman or degrading treatment, and violations of the right to life, liberty, and security of person and peaceful assembly and association. Kogbara seeks to recover compensatory and punitive damages in an amount to be proven at trial.
11. Plaintiff Kogbara brings state law direct and indirect liability claims invoking supplemental jurisdiction, 28 U.S.C. § 1367, against the Companies for assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. Kogbara asserts that the Companies’ tortious acts constitute assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. Kogbara seeks to recover compensatory and punitive damages in an amount to be proven at trial.
12. Plaintiff Kogbara brings a federal claim against the Companies for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, et. seq.

#### **PLAINTIFF MICHAEL TEMA VIZOR**

13. Plaintiff Michael Tema Vzor (“Vzor”) brings direct and indirect liability claims against the Companies under the Alien Tort Statute and 28 U.S.C. § 1331 for crimes against humanity, cruel, inhuman or degrading treatment, torture, arbitrary arrest and detention, and violations of the right to life, liberty, and security of person and peaceful assembly and association. Vzor seeks to recover compensatory and punitive damages in an amount to be proven at trial.

14. Plaintiff Vizor brings direct and indirect liability claims against the Anderson under the Alien Tort Statute and 28 U.S.C. § 1331 for crimes against humanity, torture, cruel, inhuman or degrading treatment, and violations of the right to life, liberty, and security of person and peaceful assembly and association. Vizor seeks to recover compensatory and punitive damages in an amount to be proven at trial.
15. Plaintiff Vizor's state law claims against the Companies for assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence were dismissed.
16. Plaintiff Vizor brings state law claims against Anderson for negligent infliction of emotional distress, and negligence. Vizor seeks to recover compensatory and punitive damages in an amount to be proven at trial. Vizor's claims against Anderson for assault and battery, and intentional infliction of emotional distress were dismissed.
17. Plaintiff Vizor's federal claim against the Companies for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, et. seq. was dismissed.

#### **PLAINTIFF OWENS WIWA**

18. Plaintiff Owens Wiwa ("Owens") brings direct and indirect liability claims against the Companies and Anderson under the Alien Tort Statute for crimes against humanity, cruel, inhuman or degrading treatment, arbitrary arrest and detention, and violations of the right to life, liberty, and security of person and peaceful assembly and association. Owens Wiwa seeks to recover compensatory and punitive damages in an amount to be proven at trial.
19. Plaintiff Owens brings direct and indirect liability state law claims against the Companies and Anderson for assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. Owens asserts that the tortious acts of the Companies and Anderson constitute assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. Owens seeks to recover compensatory and punitive damages in an amount to be proven at trial.
20. Plaintiff Owens brings a federal claim against the Companies for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, et. seq.

PLAINTIFF ↓	DEFENDANT(S) →
<p><b>Ken Wiwa, in his individual capacity</b></p>	<p><b>Wiwa I</b>  <i>Shell Petroleum N.V.</i><sup>2</sup>  <i>Shell Transport and Trading Co. Ltd.</i><sup>3</sup></p> <p><b>Claims Under the Alien Tort Statute, 28 USC § 1350, and 28 USC § 1331 (“ATS and 1331 Claims”)</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims invoking Supplemental Jurisdiction, 28 U.S.C. § 1367 (“State Law Claims”)</b></p> <ol style="list-style-type: none"> <li>6. Wrongful Death</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>
	<p><b>Wiwa II</b>  <i>Brian Anderson</i></p> <p><b>Claims Under the Alien Tort Statute, 28 USC § 1350, and 28 USC 1331 (“ATS and 1331 Claims”)</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5.</li> <li>6. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims invoking Supplemental Jurisdiction, 28 U.S.C. § 1367 (“State Law Claims”)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Negligent Infliction of Emotional Distress</li> <li>9. Negligence</li> </ol>

<sup>2</sup> Formerly Royal Dutch Petroleum Co.

<sup>3</sup> Formerly Shell Transport and Trading Co. p.l.c.

PLAINTIFF ↓	DEFENDANT(S) →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i>  <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
<p><b>Ken Wiwa, as the administrator of the estate of his deceased father Ken Saro-Wiwa</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional Infliction of Emotional Distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional Infliction of Emotional Distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>
<p><b>Owens Wiwa, in his individual capacity</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Crimes Against Humanity</li> <li>2. Cruel, Inhuman or Degrading Treatment</li> <li>3. Arbitrary Arrest and Detention</li> <li>4. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>5. Assault and Battery</li> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol> <p><b>Other Federal Claims</b></p> <ol style="list-style-type: none"> <li>9. Violation of the Racketeer Influenced and Corrupt Organizations Acts, 18 U.S.C. § 1962 et seq.</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Crimes Against Humanity</li> <li>2. Cruel, Inhuman or Degrading Treatment</li> <li>3. Arbitrary Arrest and Detention</li> <li>4. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>5. Assault and Battery</li> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>

<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i>  <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
<p><b>Blessing Kpuinen, in her individual capacity</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Wrongful Death</li> <li>7. Assault and Battery</li> <li>8. Intentional Infliction of Emotional Distress</li> <li>9. Negligent Infliction of Emotional Distress</li> <li>10. Negligence</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Wrongful Death</li> <li>7. Assault and Battery</li> <li>8. Intentional Infliction of Emotional Distress</li> <li>9. Negligent Infliction of Emotional Distress</li> <li>10. Negligence</li> </ol>
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PLAINTIFF ↓	DEFENDANT(S) →
<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i> <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p> <p><b>Karalolo Kogbara, in her individual capacity</b></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p> <p>N/A</p>
<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>Crimes Against Humanity</li> <li>Torture</li> <li>Cruel, Inhuman or Degrading Treatment</li> <li>Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>Assault and Battery</li> <li>Intentional Infliction of Emotional Distress</li> <li>Negligent Infliction of Emotional Distress</li> <li>Negligence</li> </ol> <p><b>Other Federal Claims</b></p> <ol style="list-style-type: none"> <li>Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 et seq.</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>Crimes Against Humanity</li> <li>Cruel, Inhuman or Degrading Treatment</li> <li>Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>Assault and Battery (<b>DISMISSED</b>)</li> <li>Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>Negligent Infliction of Emotional Distress</li> <li>Negligence</li> </ol>
<p><b>Michael Vizor, in his individual capacity</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>Crimes Against Humanity</li> <li>Torture</li> <li>Cruel, Inhuman or Degrading Treatment</li> <li>Arbitrary Arrest and Detention</li> <li>Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>Assault and Battery</li> <li>Intentional Infliction of Emotional Distress</li> <li>Negligent Infliction of Emotional Distress</li> <li>Negligence</li> </ol> <p><b>Other Federal Claims (DISMISSED)</b></p> <ol style="list-style-type: none"> <li>Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 et seq</li> </ol>

<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i> <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
<p><b>Lucky Doobee, in his individual capacity</b></p>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>
<p><b>Lucky Doobee, as the administrator of the estate of his deceased brother Saturday Doobee</b></p>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional Infliction of Emotional Distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death (<b>DISMISSED</b>)</li> <li>8. Assault and Battery (<b>DISMISSED</b>)</li> <li>9. Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>



<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i> <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
<p><b>Friday Nuate, in her individual capacity</b></p>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>	<p><b>ATS Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>
<p><b>Friday Nuate, as the administrator of the estate of her deceased husband Felix Nuate</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional Infliction of Emotional Distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death (<b>DISMISSED</b>)</li> <li>8. Assault and Battery (<b>DISMISSED</b>)</li> <li>9. Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>

<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i> <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
<p><b>Monday Gbokoo, in his individual capacity</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>
<p><b>Monday Gbokoo, as the administrator of the estate of his deceased brother, Daniel Gbokoo</b></p>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional Infliction of Emotional Distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>	<p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death (<b>DISMISSED</b>)</li> <li>8. Assault and Battery (<b>DISMISSED</b>)</li> <li>9. Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>

<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →	
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i> <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p> <p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>6. Intentional Infliction of Emotional Distress</li> <li>7. Negligent Infliction of Emotional Distress</li> <li>8. Negligence</li> </ol>	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p> <p><b>ATS and 1331 Claims</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> </ol> <p><b>State Law Claims</b></p> <ol style="list-style-type: none"> <li>6. Wrongful Death (<b>DISMISSED</b>)</li> <li>7. Assault and Battery (<b>DISMISSED</b>)</li> <li>8. Intentional Infliction of Emotional Distress (<b>DISMISSED</b>)</li> <li>9. Negligent Infliction of Emotional Distress</li> <li>10. Negligence</li> </ol>
<p><b>David Kiobel, on behalf of his siblings, Stella Kiobel, Leesi Kiobel, and Baridi Kiobel, and on behalf of his minor siblings Angela Kiobel and Godwill Kiobel</b></p>	<p><b>ATS and 1331 Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional infliction of emotional distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>	<p><b>ATS and 1331 Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Arbitrary Arrest and Detention</li> <li>6. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>7. Wrongful Death</li> <li>8. Assault and Battery</li> <li>9. Intentional infliction of emotional distress</li> <li>10. Negligent Infliction of Emotional Distress</li> <li>11. Negligence</li> </ol>

<b>PLAINTIFF</b> ↓	<b>DEFENDANT(S)</b> →
	<p><b>Wiwa I</b></p> <p><i>Shell Petroleum N.V.<sup>2</sup></i>  <i>Shell Transport and Trading Co. Ltd.<sup>3</sup></i></p>
<p><b>James B. N-nah, in his individual capacity</b></p>	<p><b>ATS and 1331 CLAIMS</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>5. Intentional Infliction of Emotional Distress</li> <li>6. Negligent Infliction of Emotional Distress</li> <li>7. Negligence</li> </ol>
<p><b>James B. N-nah, as the administrator of the estate of his deceased brother, Uebari N-nah</b></p>	<p><b>ATS and 1331 CLAIMS</b></p> <ol style="list-style-type: none"> <li>1. Extrajudicial Killing/Summary Execution</li> <li>2. Crimes Against Humanity</li> <li>3. Torture</li> <li>4. Cruel, Inhuman or Degrading Treatment</li> <li>5. Violations of the Right to Life, Liberty, and Security of Person and Peaceful Assembly and Association</li> </ol> <p><b>State Law Claims (ALL DISMISSED)</b></p> <ol style="list-style-type: none"> <li>6. Wrongful Death</li> <li>7. Assault and Battery</li> <li>8. Intentional Infliction of Emotional Distress</li> <li>9. Negligent Infliction of Emotional Distress</li> <li>10. Negligence</li> </ol>
	<p><b>Wiwa II</b></p> <p><i>Brian Anderson</i></p>
	<p>N/A</p>
	<p>N/A</p>

B. Defendants' Summary of Claims and Defenses

1. *Wiwa v. Royal Dutch Petroleum et al.*

Plaintiffs purport to bring indirect liability claims against defendants pursuant to the Alien Tort Statute, 28 U.S.C. § 1350 for some or all of the following: (1) summary execution, (2) crimes against humanity, (3) torture, (4) cruel, inhuman, or degrading treatment, (5) arbitrary arrest and detention, and (6) violation of the rights to life, liberty and security of person and peaceful assembly and association. Defendants' motion to dismiss all of these claims for lack of subject matter jurisdiction is currently pending before the Court.

The following is a summary of each plaintiff's ATS claims notwithstanding the lack of subject matter jurisdiction:

- Ken Wiwa purports to bring representative claims for all (1) through (6) of the ATS causes of action listed above. Ken Wiwa has not asserted any individual claim for (1), (3), (4), (5) or (6).
- Owens Wiwa purports to bring individual claims for (2), (4), (5), and (6). Owens Wiwa has not asserted any individual claim for (1) or (3). Owens Wiwa has not asserted any representative claim.
- Blessing Kpuinen purports to bring representative claims for all (1) through (6). Blessing Kpuinen has not asserted any individual claims for (1), (3), (5) or (6).
- Karalolo Kogbara purports to bring individual claims for (2), (3), (4) and (6). Karalolo Kogbara has not asserted any individual claim for (1) or (5). Karalolo Kogbara has not asserted any representative claim.
- Michael Tema Vizer purports to bring individual claims for (2), (3), (4), (5) and (6). Michael Tema Vizer has not asserted any individual claim for (1). Michael Tema Vizer has not asserted any representative claim.
- Lucky Doobee purports to bring representative claims for all (1) through (6). Lucky Doobee has not asserted any individual claims for (1), (3), (5) or (6).
- Friday Nuate purports to bring representative claims for all (1) through (6). Friday Nuate has not asserted any individual claims for (1), (3), (5) or (6).

- Monday Gbokoo purports to bring representative claims for all (1) through (6). Monday Gbokoo has not asserted any individual claims for (1), (3), (5) or (6).
- David Kiobel purports to bring individual claims for (2) and (4). David Kiobel has not asserted any individual claims for (1), (3), (5), or (6). David Kiobel no longer asserts any representative claim. Those claims were dismissed by the Court (2/23/09 Order) and abandoned in the Fifth Amended Complaint.
- James N-nah purports to bring representative claims for (1), (2), (3), (4) and (6). James N-nah has not asserted any individual claims for (1), (3), (5) or (6).

Plaintiffs also purport to bring state law claims against defendants pursuant to 28 U.S.C. § 1367 supplemental jurisdiction for some or all of the following: (7) wrongful death; (8) assault and battery; (9) intentional infliction of emotional distress; (10) negligent infliction of emotional distress; and (11) negligence. Defendants dispute that supplemental jurisdiction may be exercised in this case. (*See supra* Defendants' Statement as to the Absence of Subject Matter Jurisdiction.) These claims are governed by Nigerian law. Under Nigerian law, there is no cause of action for intentional infliction of emotional distress or negligent infliction of emotional distress.

The following is a statement regarding each plaintiff's state law claims notwithstanding the lack of subject matter jurisdiction:

- Ken Wiwa purports to bring representative claims for all (7) through (11) of the state law claims listed above. Ken Wiwa has not asserted any individual claim for (7), (8), (9) or (10).
- Owens Wiwa purports to bring individual claims for (8), (9), (10) and (11). Owens Wiwa has not asserted any individual claim for (7). Owens Wiwa has not asserted any representative claim.
- Blessing Kpuinen purports to bring representative claims for all (7) through (11). Blessing Kpuinen has not asserted any individual claim for (7).

- Karalolo Kogbara purports to bring individual claims for (8), (9), (10) and (11). Karalolo Kogbara has not asserted any individual claim for (7). Karalolo Kogbara has not asserted any representative claim.
- Michael Tema Vizer, Lucky Doobee, Friday Nuate, Monday Gbokoo, David Kiobel and James N-nah no longer assert any individual or representative state law claims. Each of those claims was dismissed by the Court. (9/29/06 Order at 9.) Moreover, these plaintiffs abandoned these claims in their Fifth Amended Complaint.

Plaintiffs Owens Wiwa and Karalolo Kogbara also purport to bring a claim against defendants pursuant to RICO, 18 U.S.C. § 1962 *et seq.* Defendants' motion to dismiss this claim for lack of subject matter jurisdiction is currently pending before the Court. Michael Tema Vizer's RICO claim was dismissed by the Court. (9/29/06 Order at 9.)

Defendants asserted the following defenses in their answer to the Fourth Amended Complaint: (1) lack of subject matter jurisdiction, (2) lack of personal jurisdiction, (3) claims are barred by statute of limitations, (4) claims are barred by the act of state doctrine, (5) claims are barred by principles of comity, (6) failure to exhaust Nigerian remedies, (7) plaintiffs lack standing, (8) damages are not available for official government acts, (9) plaintiffs cannot impose liability for law enforcement personnel efforts, (10) persons other than defendants bear responsibility for defendants, and (11) improper addition of Royal Dutch Shell, p.l.c. as a defendant. The only defenses from the answer that remain to be tried are (1), which is the subject of two pending motions, (8), (9), and (10). In addition, defendants assert that plaintiffs have no credible, admissible evidence to support any of their claims.

2. *Wiwa v. Anderson*

Karalolo Kogbara and James N-nah are not plaintiffs in the action against Mr. Anderson.

Plaintiffs purport to bring indirect liability claims against Mr. Anderson pursuant to the Alien Tort Statute, 28 U.S.C. § 1350 for some or all of the following: (1) summary

execution, (2) crimes against humanity, (3) torture, (4) cruel, inhuman, or degrading treatment, (5) arbitrary arrest and detention, and (6) violation of the rights to life, liberty and security of person and peaceful assembly and association. Mr. Anderson's motion to dismiss all of these claims for lack of subject matter jurisdiction is currently pending before the Court.

The following is a summary of each plaintiff's ATS claims notwithstanding the lack of subject matter jurisdiction:

- Ken Wiwa purports to bring representative claims for all (1) through (6) of the ATS causes of action listed above. Ken Wiwa has not asserted any individual claims for (1), (3), (5) or (6).
- Owens Wiwa purports to bring individual claims for (2), (4), (5), and (6). Owens Wiwa has not asserted any individual claim for (1) or (3). Owens Wiwa has not asserted any representative claim.
- Blessing Kpuinen purports to bring representative claims for all (1) through (6). Blessing Kpuinen has not asserted any individual claims for (1), (3), (5) or (6).
- Michael Tema Vizer purports to bring individual claims for (2), (4) and (6). Michael Tema Vizer has not asserted any individual claim for (1), (3) or (5). Michael Tema Vizer has not asserted any representative claim.
- Lucky Doobee purports to bring representative claims for all (1) through (6). Lucky Doobee has not asserted any individual claims for (1), (3), (5) or (6).
- Friday Nuate purports to bring representative claims for all (1) through (6). Friday Nuate has not asserted any individual claims for (1), (3), (5) or (6).
- Monday Gbokoo purports to bring representative claims for all (1) through (6). Monday Gbokoo has not asserted any individual claims for (1), (3), (5) or (6).
- David Kiobel purports to bring individual claims for (2) and (4). David Kiobel has not asserted any individual claims for (1), (3), (5), or (6). David Kiobel no longer asserts any representative claim. Those claims were dismissed by the Court (2/23/09 Order) and abandoned in the proposed Third Amended Complaint.



Plaintiffs also purport to bring state law claims against Mr. Anderson pursuant to 28 U.S.C. § 1367 supplemental jurisdiction for some or all of the following (7) wrongful death; (8) assault and battery; (9) intentional infliction of emotional distress; (10) negligent infliction of emotional distress; and (11) negligence. Mr. Anderson disputes that supplemental jurisdiction may be exercised in this case. (*See supra* Defendants' Statement as to the Absence of Subject Matter Jurisdiction.) These claims are governed by Nigerian law. Under Nigerian law, there is no cause of action for intentional infliction of emotional distress or negligent infliction of emotional distress.

The following is a statement regarding each plaintiff's state law claims notwithstanding the lack of subject matter jurisdiction:

- Ken Wiwa purports to bring representative claims for all (7) through (11) of the state law claims listed above. Ken Wiwa has not asserted any individual claim for (7), (8), (9) or (10).
- Owens Wiwa purports to bring individual claims for (8), (9), (10) and (11). Owens Wiwa has not asserted any individual claim for (7). Owens Wiwa has not asserted any representative claim.
- Blessing Kpuinen purports to bring representative claims for all (7) through (11). Blessing Kpuinen has not asserted any individual claim for (7).
- Michael Tema Vizer, Lucky Doobee, Friday Nuate, Monday Gbokoo, and David Kiobel no longer assert any individual or representative claims for (7), (8) or (9). Each of those claims was dismissed by the Court. (9/29/06 Order at 9.) Moreover, plaintiffs abandoned these claims in their proposed Third Amended Complaint.
- Michael Tema Vizer purports to bring individual claims for (10) and (11). Michael Tema Vizer has not asserted any representative claim.
- David Kiobel no longer asserts any representative claim. Those claims were dismissed by the Court (2/23/09 Order) and abandoned in the proposed Third Amended Complaint.
- Lucky Doobee and Monday Gbokoo purport to bring individual and representative claims for (10) and (11).

- Friday Nuate purports to bring individual claims for (10) and (11). Friday Nuate has not asserted any representative claim.

There is no RICO claim asserted against Mr. Anderson.

Mr. Anderson asserted the following defenses in his answer to the Amended Complaint: (1) lack of subject matter jurisdiction, (2) claims are barred by statute of limitations, (3) claims are barred by the act of state doctrine, (4) claims are barred by principles of comity, (5) failure to exhaust Nigerian remedies, (6) plaintiffs lack standing, (7) damages are not available for official government acts, (8) plaintiffs cannot impose liability for law enforcement personnel efforts, and (9) persons other than Mr. Anderson bear responsibility. The only defenses from the answer that remain to be tried are (1), which is the subject of a pending motion, (7), (8), and (9). In addition, Mr. Anderson asserts that plaintiffs have no credible, admissible evidence to support any of their claims.

## **V. TRIAL BY JURY AND TRIAL DURATION**

### **A. Plaintiffs' Statement as to Trial by Jury and Trial Duration**

Plaintiffs seek a jury trial. They anticipate that they will present their case in three weeks or less.

### **B. Defendants' Statement as to Trial by Jury and Trial Duration**

Plaintiffs have listed over 1102 exhibits and 76 witnesses (72 fact and 4 experts). For example, plaintiffs intend to call all seven Benin witnesses at trial—one live and six by deposition. While defendants intend to move to preclude the testimony of each of these witnesses, if they were permitted to testify there is approximately 60 hours of deposition testimony to play. We estimate that that would take nearly three weeks of trial time. Furthermore, plaintiffs intend to call 23 witnesses who have no personal knowledge that defendants committed any of the acts alleged in this case. The testimony of those 23

witnesses—on top of the other witnesses on plaintiffs’ list—would take up at least several months of trial.

Unless and until plaintiffs provide a realistic list of witnesses and a realistic list of intended trial exhibits, defendants cannot estimate the number of trial days needed to present their case.

## **VI. MAGISTRATE JUDGE**

The parties have not consented to trial of the case before a Magistrate Judge.

## **VII. STIPULATIONS OR AGREED STATEMENTS OF LAW OR FACT**

There are no such stipulations.

### **A. Plaintiffs**

Plaintiffs sent their 45 proposed stipulations of fact and law to Defendants on March 13, 2009, the agreed upon date. On March 18, 2009 (at 10:48 pm), plaintiffs received defendants’ 449 proposed stipulations of fact. These statements were taken from defendants’ Requests for Admission - not only those which plaintiffs had admitted, but also those which plaintiffs had denied, those which plaintiffs had only admitted some aspect of, and those which plaintiffs lacked knowledge to admit or deny. On March 25, 2009 (at 6:08 pm), defendants submitted 18 counter-proposed stipulations to plaintiffs’ proposed stipulations without explanation.

Counsel for the parties conducted a brief meet and confer on the stipulations on March 26, 2009. Defendants’ counsel initially refused to explain why he rejected plaintiffs’ proposed stipulations, stating simply that he rejected them all and had provided alternatives, and demanding to know plaintiffs’ reasons for rejecting any of those alternatives. Counsel discussed defendants’ proposed alternatives, and plaintiffs’ counsel agreed to several of them and proposed to further revise some others. Because there was insufficient time to review defendants’ proposed stipulations, plaintiffs provided a list in writing on March 27<sup>th</sup> of those stipulations

which we agreed to and proposed alternative language for some others. On March 30<sup>th</sup>, defendants provided plaintiffs with 35 revised counter-proposed stipulations to plaintiffs' proposed stipulations. That same day, plaintiffs' counsel agreed in writing to several of the stipulations, disagreed with several, and proposed some alternatives.

On March 31<sup>st</sup>, counsel again met and conferred on the stipulations, and defendants' counsel refused to discuss any of plaintiffs' proposed revisions to defendants' proposed stipulations, rejecting any changes to stipulations that had been admitted as Requests for Admission, including refusing to change "Ogoniland" to "Ogoniland, also known as Ogoni," or simply "Ogoni." Plaintiffs' counsel explained that there were reasons not to stipulate to everything that had been admitted as a Request for Admission, including that the proposed stipulations were irrelevant, incomplete, out of context, and/or purported to state language from a document that spoke for itself. At the meet and confer, plaintiffs' counsel agreed to stipulate to a few more of defendants' proposed stipulations, but defendants' counsel again refused to discuss any alternative language to others. For example, at one point plaintiffs' counsel asked about rephrasing a proposed stipulation, and defendants' counsel simply said "No" without waiting for any suggestion. Finally, defendants' counsel intimated that they may refuse to agree to any stipulations since plaintiffs' counsel would not accept all of defendants' proposed stipulations and all of defendants' proposed changes to stipulations originally proposed by plaintiffs.

Pursuant to the Court's March 16, 2009 order, Plaintiffs corrected their Responses to Defendants' Third Sets of Requests for Admission to *Wiwa* Plaintiffs to reflect that a witness may have admissible testimony (including a party-opponent admission) under the Federal Rules of Evidence even if she does not have personal knowledge of the matter, as confirmed by the Court's Order. Plaintiffs clarified who has personal knowledge of what facts as set forth in

Defendants' Third Sets of Requests for Admission to *Wiwa* Plaintiffs by providing Defendants with a revised version of Plaintiffs' Responses on Monday, March 23, 2009, five (5) business days after the Court's March 16<sup>th</sup> order.

B. Defendants

Defendants intend to use plaintiffs' admissions in response to requests for admission, including requests for admission related to, *inter alia*, the following topics: SPDC Quits Ogoni; Trans-Niger Pipeline; Botem Tai; Ogoni/Andoni Conflict; Korokoro; January 20, 1994 Ken Saro-Wiwa Letter; Ogoni Civil Disturbances Tribunal and Clemency Efforts; Meetings Between Ken Saro-Wiwa or Owens Wiwa and SPDC; Other Plaintiffs; and General/Miscellaneous.<sup>4</sup>

Defendants proposed stipulations of fact based on these RFA answers. Plaintiffs refused to stipulate to these admissions, asserting that they did not want the admission to be included in a stipulation and that documents "speak for themselves", and so on. Defendants' counsel therefore has decided not to spend further time on negotiating a stipulation of facts.

In addition, plaintiffs did not comply with the Court's March 16, 2009 Order on RFAs. Defendants intend to make a motion because of this non-compliance with the Court's Order.

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<sup>4</sup> These RFAs include those in Defendants' Second Set of Requests for Admission to the *Wiwa* Plaintiffs; Brian Anderson's Second Set of Requests for Admission to the *Wiwa* Plaintiffs; Defendants' Third Set of Requests for Admission to the *Wiwa* Plaintiffs, Brian Anderson's Third Set of Requests for Admission; Defendants' Fourth Set of Requests for Admission Directed to All Plaintiffs, and Defendants' Fifth Set of Requests for Admission to *Wiwa* Plaintiffs and Sixth Set of Requests for Admission to *Kiobel* Plaintiffs.

**VIII. WITNESSES TO BE OFFERED BY THE PARTIES****A. Plaintiffs' Listing of Fact Witnesses**

The witnesses listed have either personal knowledge or testimony admissible under the Federal Rules of Evidence, most notably Rule 801(d)(2).

1.	Achebe, Emeka	In Person or By Deposition
2.	Anderson, Brian	In Person or By Deposition
3.	Ashton-Jones, Nick	In Person
4.	Baanen, Tuagei Edward	In Person
5.	Barry, John	By Deposition
6.	Basnett, Mike	By Deposition
7.	Birnbaum, Michael	In Person
8.	Boele, Richard	In Person
9.	Cloughly, Tim	By Deposition
10.	Detheridge, Alan	In Person or By Deposition
11.	Doobee, Lucky	In Person
12.	Douglas, Oronto	In Person
13.	Ejiogu, Boniface	By Deposition
14.	Ellis, Glenn	In Person
15.	Falana, Femi	In Person
16.	Fawehinmi, Chief Gani	In Person
17.	Fleshman, Michael	In Person
18.	Gbarale, Lete Allens	By Deposition
19.	Gbokoo, Monday	In Person
20.	Herkströter, Cor	By Deposition
21.	Idamkue, Freddie	By Deposition
22.	Ikari, Benson	By Deposition

23.	Imomoh, Egbert	In Person or By Deposition
24.	Israel, Blessing	By Deposition
25.	Jackson, Ebu	In Person
26.	Jennings, Sir John S.	By Deposition
27.	John-Miller, Doumbari Anslem	By Deposition
28.	John-Miller, Augustine	By Deposition
29.	Kiobel, David	In Person
30.	Kiobel, Esther	By Deposition
31.	Kloppenburger, Ruud	By Deposition
32.	Kogbara, Karololo	In Person
33.	Kote-Witah, Anthony	By Deposition
34.	Kpea, Chief Steven	In Person
35.	Kponee, Raphael	By Deposition
36.	Kpuinen, Augustine	In Person
37.	Kpuinen, Blessing	In Person
38.	Kretzmann, Stephen	In Person
39.	Kunenu, Dumle Jackson	By Deposition
40.	Mitee, Ledum	In Person
41.	Moody-Stuart, Sir Mark	By Deposition
42.	Neebani, Nathan	By Deposition
43.	Nkpa, Nanyone	In Person
44.	N-nah, James	In Person
45.	Nuate, Friday	In Person
46.	Nwidor, Israel	By Deposition
47.	Nwinee, Pius Barikpoa	By Deposition
48.	Nwidoh, Vincent	By Deposition
49.	Nwipko, Kendricks Dorle	By Deposition

50.	Obani-Nwibari, Noble	In Person
51.	Olukuya, Tayo	In Person
52.	Okonkwo, Dozio	By Deposition
53.	Okonto, Ike	In Person
54.	Omuku, Precious Sotonye	By Deposition
55.	Onyeagucha, Uche	In Person
56.	Osaror, Prince	By Deposition
57.	Osunde, Osazee	By Deposition
58.	Oteri, Victor	By Deposition
59.	Rowell, Andy	In Person
60.	Soyinka, Wole	In Person
61.	Sprague, Robert	By Deposition
62.	Tillery, James	By Deposition
63.	Tusima, Kpobari	By Deposition
64.	Udofia, Joshua	By Deposition
65.	Ukpong, George	By Deposition
66.	Van Den Broek, Richard	By Deposition
67.	Vizor, Michael	In Person
68.	Watts, Sir Philip Beverly	By Deposition
69.	Wifa, Victor	By Deposition
70.	Wiwa, Ken	In Person
71.	Wiwa, Owens	In Person
72.	Wood, Nick	By Deposition

B. Plaintiffs' Position on Defendants' Objections to Plaintiffs' Fact Witnesses

Plaintiffs will proffer witnesses with relevant, probative and admissible evidence. The subject of their testimony will include the witnesses personal knowledge of party admissions, of the conduct of defendants and their agents and representatives in Ogoni, of the conduct of the



Special Tribunal, of the participation of defendants' representative at the proceeding before the Special Tribunal, of the bribery of witnesses to give false testimony against plaintiffs' decedents, of the widespread violence against the Ogoni, about defendants' knowingly false public statements about events in Ogoni and Nigeria and the participation of their agents in those events.

Plaintiffs will provide defendants with the names and particulars of the proposed translators. Although some witnesses who gave depositions in English, the depositions reveal problems with their fluency in English. Therefore plaintiffs intend to have them testify in their native language through a court approved translator.

Plaintiffs object to the defendants' affirmative use of deposition testimony of any defendant witness who has been identified by defendants as testifying in person at trial.

C. Defendants' Objections to Plaintiffs' Listing of Fact Witnesses

Defendants object to and intend to make a motion *in limine* to preclude testimony of each of the following witnesses on the basis that they cannot provide any relevant testimony because they do not have personal knowledge (required by Rule 602 of the Federal Rules of Evidence) that defendants committed any of the acts alleged in this case: (1) Olisa Agbakoba; (2) Nick Ashton-Jones; (3) Robert Azibaola; (4) Tuagei Edward Baanen; (5) Michael Birnbaum; (6) Richard Boele; (7) Oronto Douglas; (8) Glenn Ellis; (9) Femi Falana; (10) Chief Gani Fawehinmi; (11) Michael Fleshman; (12) Chief Steven Kpea; (13) Augustine Kpuinen; (14) Stephen Kretzmann; (15) Sister Majella McCarron; (16) Ledum Mitee; (17) Nanyone Nkpa; (18) Noble Obani-Nwibari; (19) Tayo Olukuya; (20) Ike Okonto; (21) Uche Onyeagucha; (22) Andy Rowell; and (23) Dr. Wole Soyinka.

Defendants also object to and intend to make a motion in limine regarding plaintiffs' lack of personal knowledge with respect to defendants' alleged conduct

Defendants also object to and intend to make a motion *in limine* to preclude testimony and related documents of each of the Benin witnesses: (1) Prince Osaror, (2) Boniface Ejiogu, (3) Eebu Jackson [Nwiyon], (4) Vincent Nwidoh, (5) Raphael Kponee, (6) Lete Gbarale, and (7) Blessing Israel.

The following people on plaintiffs' witness list who plaintiffs intend to testify in person were deposed with the assistance of a translator: Lucky Doobee, Monday Gbokoo, Karalolo Kogbara, James N-nah, Friday Nuate. To the extent plaintiffs intend to use a translator for these witnesses at trial, defendants reserve the right to object to the translator plaintiffs propose. The rest of the witnesses on plaintiffs' list who were deposed were deposed in English.

D. Plaintiffs' Listing of Expert Witnesses

1.	Keller, Dr. Allan	In Person
2.	Siegel, Jordan	In Person
3.	Smith, Dr. Hawthorne	In Person
4.	Watts, Michael	In Person

E. Defendants' Objections to Plaintiffs' Listing of Expert Witnesses

Defendants intend to make motions *in limine* to exclude the reports and testimony of each of plaintiffs' expert witnesses.

F. Defendants' Listing of Fact Witnesses

In addition to those persons listed below, defendants reserve the right to call all named individual parties and any and/or all of the persons listed by plaintiffs as witnesses at the time of trial. Defendants further reserve the right to call additional witnesses at the time of trial for purposes of impeachment and/or rebuttal. Defendants intend to offer testimony of the following witnesses in their case in chief:

1.	Achebe, Emeka	In Person
2.	Anderson, Brian	In Person
3.	Detheridge, Alan	In Person
4.	Herkströter, Cor	In Person
5.	Imomoh, Egbert	In Person
6.	Moody Stuart, Sir Mark	In Person
7.	Omuku, Precious	In Person
8.	Osunde, Osazee	In Person
9.	Tillery, James K.	In Person or By Deposition*
10.	Udofia, Joshua	In Person
11.	Ukpong, George	In Person

\* James Tillery is not within defendants' control. As such, we do not yet know if he will be available and/or willing to testify in at trial in person. Accordingly, we have designated from his deposition in addition to listing him as an in person witness.

G. Plaintiffs' Objections to Defendants' Listing of Fact Witnesses

In communications prior to the drafting of this Joint Pretrial Order, defendants refused to identify which witnesses they intended to provide live and which would be presented through deposition testimony. Plaintiffs will object to defendants' use at trial of deposition testimony of any witness not identified specifically as testifying by deposition. Plaintiffs will file a motion in limine to preclude defendants from presenting, in their case in chief, the deposition testimony of any witness who is not clearly identified as testifying by deposition and/or for whom defendants did not designate deposition testimony affirmatively in this order.

H. Defendants' Expert Witnesses

Defendants have not designated anyone as an expert pursuant to Rule 26 of the Federal Rules of Civil Procedure.

**IX. DEPOSITION TESTIMONY TO BE OFFERED BY THE PARTIES**

A. Plaintiffs' Designations and Defendants' Objections, Defendants' Counterdesignations and Plaintiffs' Objections, Plaintiffs' Rebuttal Designations and Defendants' Objections

1. Plaintiffs' Statement

Attached as Exhibit A is a document which includes all plaintiffs' deposition designations, defendants' counter-designations as well as both parties' objections and plaintiffs' rebuttal designations. Because defendants' counsel was unavailable, the parties did not meet and confer on the deposition designations. Plaintiffs provided to the Court on March 20, 2009, a CD containing plaintiffs' designations and counter-designations on the depositions transcripts themselves.

2. Defendants' Statement

Defendants have created Exhibit A, which contains all the designations and objections covered under this heading.

B. Defendants' Designations and Plaintiffs' Objections, Plaintiffs' Counterdesignations and Defendants' Objections, Defendants' Rebuttal Designations and Plaintiffs' Objections

Defendants have created Exhibit B, which contains all the designations and objections covered under this heading.

**X. EXHIBITS TO BE OFFERED BY THE PARTIES**

A. Plaintiffs' Exhibits

1. Plaintiffs' Statement

Exhibit C is a list of plaintiffs' exhibits and defendants' objections. Plaintiffs reserve

the right to present demonstrative or illustrative exhibits and F.R.E. 1006 summaries.

Plaintiffs dispute defendants' assertion that either party may admit into evidence, without objection, exhibits which appear on the opposing parties' Exhibit list. Documents may be admissible by one party and not by another, for example a document may contain a party admission which is not hearsay when offered by the opposing party but which may be inadmissible hearsay if proffered by the author or a related party. Also documents may be admissible for a limited purpose but not generally admissible to prove the facts asserted within.

As per the court's order of trial procedure, prior to trial, plaintiffs will provide redacted versions of their exhibits where they intend to introduce only a selected part of the document.

Plaintiffs further dispute defendants' contention that they may introduce unredacted documents which have not been exchanged with plaintiffs where all parties to this litigation have the documents only in redacted form.

As of March 31, 2009 at 10:00 pm, Defendants had still not provided any explanation as to why documents they produced should not be deemed authentic and admissible, as required by the Court's March 26, 2009 order.

Plaintiffs dispute defendants' characterization of the meet and confer over the exhibit lists, which plaintiffs contend was not done in good faith by defendants. Over the course of a day-long, face-to-face meet-and-confer session, defense counsel stated that she was not authorized to come to any agreements and that Rory Millson was unavailable. Plaintiffs contend that the failure of the parties to reach a consensus on a number of proposed exhibits is the result of Defendants failure to meet and confer prior to the filing of this Amended Joint Pre Trial Order.

2. Defendants' Response

Defendants assert that either party should be permitted to offer into evidence, without objection, any and all exhibits that appear on both plaintiffs and defendants' lists of exhibits to be offered in their respective case in chief as well as any and all exhibits to which neither party has objected on any ground.

On March 18, 2009, counsel for plaintiffs confirmed that their "real list" was indeed the 56-page long list of some 1300 unnumbered exhibits plaintiffs provided to defendants on March 6, 2009. This list, even after negotiation, still contains many unidentifiable documents, incomplete documents, duplicate documents, compilations of separate documents, and many documents without bates numbers. Trial counsel for defendants reviewed each document listed on plaintiffs list and provided plaintiffs with both objections as well as the identity of incomplete documents or multiple document exhibits. Counsel for plaintiffs insisted that defendants "be prepared to discuss [the real list] in its entirety". Accordingly, the parties held a meet and confer on March 19, 2009 and then on March 31, 2009, at which time plaintiffs added a number of additional documents to their exhibit list.<sup>5</sup>

Defendants created Exhibit C for the initial JPTO, which contains plaintiffs' exhibit list, along with defendants' objections. Defendants created a revised Exhibit C to reflect changes that were made as a result of discussions between the parties. Plaintiffs then submitted yet another revised exhibit list at 12:15 pm today containing 1102 exhibits. Defendants have reviewed that list and the no fewer than 27 exhibits listed for the first time and created a new Exhibit C, which is attached hereto.

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<sup>5</sup> Defendants object to these additional documents as untimely submitted after the filing of the initial JPTO.

B. Defendants' Exhibits

The parties have created Exhibit D, which contains defendants' exhibit list along with plaintiffs' objections. In addition to the documents listed in Exhibit D, defendants reserve the following rights:

- to introduce any and/or all of those documents listed by plaintiffs as exhibits;
- to introduce additional exhibits for purposes of impeachment and/or rebuttal;
- to use additional documents as demonstrative or illustrative exhibits; and
- to introduce documents that have yet to be produced as of the date of this list and documents that defendants presently have only in redacted form that are yet to be produced in less redacted form.

Defendants have created Exhibit E, which contains the documents that, at present, defendants intend to offer as rebuttal exhibits. Plaintiffs have designated deposition testimony from six of the seven Benin witnesses and listed the seventh as an intended live witness. Plaintiffs have also listed as an exhibit in several different locations the "Facts Sheet" document (*e.g.*, K3789-90), which is a forgery. Defendants intend to make a motion *in limine* to exclude the Benin testimony and related documents and the Facts Sheet forgery in all of its iterations as well as all testimony to be offered on this subject. If and only if these motions are denied in whole or in part and the testimony or documents are deemed admissible in whole or in part for any purpose, defendants intend to offer the rebuttal exhibits set forth in Exhibit E. The documents listed in Exhibit E are listed solely in response to documents and testimony plaintiffs have indicated they intend to offer at trial which defendants will seek to preclude. The documents are listed below without prejudice to defendants' objections to these documents to the

extent they are listed on plaintiffs' list, which defendants expressly reserve. In addition to the documents listed in Exhibit E, defendants reserve the following rights:

- to introduce additional exhibits for purposes of impeachment and/or rebuttal;
- to introduce as rebuttal exhibits any documents that have yet to be produced as of the date of this list and documents that defendants presently have only in redacted form that are yet to be produced in less redacted form.

C. Plaintiffs' Objections

Plaintiffs believe that there has been no meaningful efforts by defendants to meet and confer over plaintiffs' objections. During the day-long, face-to-face meet-and-confer session, defense counsel stated that she would not agree to the authenticity of any documents received from defendants' subsidiary SPDC despite the fact that they had been produced in discovery by defendants.

Plaintiffs further object to any designation of "Rebuttal Exhibits." The Court's Pretrial Procedures do not instruct the parties to submit lists of exhibits to be offered solely as rebuttal, nor do they require an opposing party to indicate its objections thereto. Accordingly, Plaintiffs reserve their right to object to all evidence offered by Defendants as rebuttal.

**XI. PROPOSED VOIR DIRE QUESTIONS AND REQUESTS TO CHARGE**

A. Plaintiffs' Proposed Voir Dire and Objections

Plaintiffs' proposed voir dire is attached as Exhibit F.

Plaintiffs object to Questions 11 and 15.c. of Defendants' Proposed Voir Dire as improper:

11. Please indicate if you have any strong feelings about dictatorships.

15.c. Please indicate if you have any strong feelings about any of the following: c. the death penalty.

These questions serve no purpose other than to introduce Defendants' theory of the case. They are not designed to illicit information that is useful, but to prejudice potential jurors against the



case. In Question 15.c., “the death penalty” could be replaced with “extrajudicial killings” to be more fair.

B. Defendants’ Proposed Voir Dire and Objections

Defendants’ proposed voir dire is attached as Exhibit G.

Defendants object to plaintiffs’ proposed voir dire overall on several grounds.

*First*, plaintiffs have included over 120 questions, which is not realistic and will result in an unduly lengthy and burdensome voir dire process.

*Second*, plaintiffs have included several irrelevant and/or overbroad questions. For example, at page 1, plaintiffs suggest questions such as “please tell us something about yourself and your family”. Similarly, at page 2, plaintiffs suggest questions such as “what do you like best about your job”, and “what kinds of spare time activities do you enjoy”. These questions are overbroad and/or irrelevant, and will result in unnecessary delay and burden on the prospective jurors.

*Third*, plaintiffs have included several questions that are either duplicative of questions covered elsewhere in plaintiffs’ voir dire or in defendants’ proposed voir dire. For example, plaintiffs’ suggestion at page 1 for the narrative “tell us something about yourself and your family” is duplicate of the questions contained at pages 1 through 3. Another example is at page 5, where plaintiffs suggest a litany of questions regarding whether the prospective juror had any prior involvement in a lawsuit, but again at page 8 suggest a series of questions about whether any business or organization the juror has worked for or been involved in has been sued. These questions are cumulative.

*Fourth*, plaintiffs have included a series of questions regarding damages. These questions are highly prejudicial to defendants. The jurors should simply be asked if they can follow the law.

*Fifth*, plaintiffs have included several questions that are vague and ambiguous and would be confusing to the jurors. For example, at page 2 plaintiffs suggest the question “Have you ever worked for a company which was a subsidiary of another company or a parent company which had subsidiaries”. This question is compound and unintelligible.

*Sixth*, plaintiffs use the term “Shell” throughout, which is vague and ambiguous and prejudicial given this case involves issues of corporate separateness. All questions should refer to the entities by their actual names.

*Seventh*, plaintiffs use rhetoric in some of their questions, which is improper. For example, at page 7 plaintiffs suggest as part of a question regarding the ATS to state that the ATS “allows people from foreign countries to sue a company which does business here for grave violations of the law of nations”. This entire sentence should be stricken as both prejudicial and incorrect.

C. Jury Charge Request

The Jury Charge Request will be filed under separate cover on April 1, 2009.

**XII. STATEMENT OF MOTIONS *IN LIMINE***

A. Plaintiffs’ Motions *in Limine*

In addition to a general objection about relevance and authenticity, Plaintiffs propose to make the following motions *in limine*:

1. Motion to exclude evidence of alleged statements made by Ken Saro-Wiwa according to defense witness testimony, including but not limited to testimony of Udofia and Achebe, as well as to exclude evidence of alleged statements made by Ken Saro-Wiwa related in supposed meeting minutes, as prejudicial and as inadmissible hearsay.

2. Motion to exclude evidence of Ogoni violence, including but not limited to: evidence of violence by Ogoni youths against SPDC and by the military against SPDC;

evidence contained in Willbros communications; evidence related to the Henry Mogbolu incident; and evidence related to the alleged disappearance of a seismic party in Ogoni in 1988, as prejudicial and as inadmissible hearsay.

3. Motion to exclude evidence of alleged violence in Ogoni against SPDC after 1993 and to exclude evidence that Ogoni became more violent thereafter or was more violent than other areas of Nigeria as prejudicial and as inadmissible hearsay.

4. Motion to exclude evidence regarding whether or not people believed Ken Saro-Wiwa to be guilty as prejudicial and as inadmissible hearsay.

5. Motion to exclude the Okocha declaration as well as any evidence that he withdrew from representing Shell during the trial of the Ogoni Nine as prejudicial and as inadmissible hearsay.

6. Motion to exclude evidence of alleged statements including by John Kpuinen about Ogoni violence or incitements or threats to violence as prejudicial and inadmissible hearsay.

7. Motion to exclude evidence that Herkstroeter's alleged appeal for clemency for Ken Saro-Wiwa was delivered to or received by Abacha as inadmissible hearsay.

8. Motion to exclude evidence describing the murder of the Four Ogoni Chiefs as prejudicial and as inadmissible hearsay.

9. Motion to exclude evidence of payments to and/or bribery of the Benin witnesses as prejudicial and as inadmissible hearsay.

10. Motion to exclude evidence that Nigeria considered MOSOP to be a terrorist organization as prejudicial and as inadmissible hearsay.

11. Motion to exclude evidence about Ken Saro-Wiwa's alleged statements that he wanted to be a martyr and/or regretted his actions towards Shell, including but not limited to statements made in letters to his brother and alleged statements contained in Defendants' meeting minutes, as prejudicial and as inadmissible hearsay.

12. Motion to exclude evidence of the fire vehicle incident at Korokoro as prejudicial and as inadmissible hearsay, including Defendants' Intended Trial Exhibits 26-29.

13. Motion to exclude evidence of vigilante activities in Ogoni, including but not limited to those related to Nathan Neebani, and to exclude evidence of Ken Saro-Wiwa's alleged correspondence with the government about such activities, as prejudicial and as inadmissible hearsay.

14. Motion to exclude purported public statements of Shell Nigeria that are prejudicial and are inadmissible hearsay.

15. Motion to exclude evidence that Ogonis were critical of Ken Saro-Wiwa, including but not limited to criticism for backing out of the Andoni-Ogoni peace accord, as prejudicial and as inadmissible hearsay.

16. Motion to preclude defendants from presenting in their case-in-chief deposition testimony of any witness whom they did not clearly identify as testifying by deposition and/or for whom they did not designate deposition testimony affirmatively in the Joint Pretrial Order.

17. Motion to preclude defendants from offering any testimony about Mr. Okocha or any other Shell counsel's brief before the Civil Disturbances Special Tribunal, including what he did there, what instructions he received, and what information he provided.

B. Defendants' Motions *in Limine*

Defendants intend to make the following motions *in limine*:

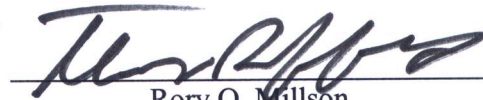
1. Motion to exclude “Wiwa Plaintiffs’ Expert Report of Professor Jordan I. Siegel” and the testimony of Professor Jordan I. Siegel.
2. Motion to exclude “Wiwa Plaintiffs’ Expert Report of Dr. Hawthorne Smith, Ph.D” and testimony of Dr. Hawthorne Smith.
3. Motion to exclude “Wiwa Plaintiffs’ Expert Report of Dr. Allen Keller” and testimony of Dr. Allen Keller.
4. Motion to exclude “Wiwa Plaintiffs’ Expert Report of Professor Michael Watts” and the testimony of Professor Michael Watts.
5. Motion to exclude evidence regarding the 1990 Umuechem incident and other non-Ogoni incidents.
6. Motion to exclude evidence regarding the forged “Facts Sheet”. Plaintiffs will not provide defendants the name of the witness who will sponsor this document.
7. Motion to preclude Benin testimony and/or documents.
8. Motion to preclude testimony of witnesses who lack personal knowledge.
9. Motion to preclude certain evidence regarding the environment.

IT IS ORDERED that the Court, in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto, upon application of counsel for either party made in good faith or upon motion of the Court, shall modify this Pretrial Order upon such conditions as the Court may deem just and proper.

Dated: April 1, 2009  
New York, New York

CRAVATH, SWAINE & MOORE LLP

by



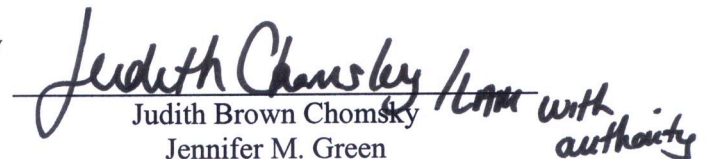
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CENTER FOR CONSTITUTIONAL RIGHTS

by



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*Attorneys for Wiwa Plaintiffs*

SO ORDERED:

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Hon. Kimba M. Wood  
United States District Judge  
April \_\_, 2009