

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HRH EMERE GODWIN BEBE OKPABI;
EMERE FORTUNE OLAKA OBE;
EMERE AKE OLUKA;
HONOURABLE PRINCEWILL AKE IGWE;
HONOURABLE DANDYSON NGAWALA;
CHIEF LAWRENCE OSARO OYOR, for themselves
and on behalf of the People of Ogale in Eleme Local
Government, Rivers state,

Case No. 11-14572

Plaintiffs,

v.

ROYAL DUTCH SHELL, PLC;
SHELL PETROLEUM DEVELOPMENT
COMPANY (NIG) LTD,

Defendants.

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COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This is a Complaint seeking a Judgment for economic losses, punitive and compensatory damages and other relief against the Defendants for the Defendants' actions of pollution, contamination and environmental degradation of the Plaintiffs'

community's land and water in violation of the Plaintiffs right to clean water, clean environment adequate for their health and well being, minimum enjoyment of life and right to life, enjoyment of the best attainable state of physical and mental health, healthy and productive life in harmony with nature and right to a general satisfactory environment favorable to their development as guaranteed by the Customary International Law and other Treaties of the United Nations to which the United States and Nigeria are parties, including the Constitution and Laws of the Nigeria and African Charter of Human and Peoples Rights and other laws of the United states of America.

2. The Defendants are responsible for violations of several internationally recognized human rights as stipulated by the United Nations. These rights comprise the right to food, the right to work, the right to an adequate standard of living, and the right to health, clean water and a healthy environment.

3. The Defendants' operations in Nigeria are well below internationally recognized standards to prevent and control pipeline oil spills. The Defendants have not employed the best available technology and practices that they use elsewhere in the world.

4. The Amnesty International describes the impacts of oil spills on the Plaintiffs' communities as follows: "People living in the Niger Delta have to drink, cook with and wash in polluted water. They eat fish contaminated with oil and other toxins – if they are lucky enough to be able to still find fish. The land they farm on is being destroyed. After oil spills, the air they breathe smells of oil, gas and other pollutants. People complain of breathing problems and skin lesions – and yet neither the government nor the oil companies monitor the human impacts of oil pollution".

5. The Complaint also seeks an order for the payment of compensatory and punitive damages as well as injunctive Orders to abate the nuisance.

THE PARTIES

6. Plaintiff, His Royal Majesty, Emere Godwin Bebe Okpabi, a citizen of Nigeria, King, paramount ruler, spiritual leader, as well as, the custodian of the Ogale kingdom in Eleme Local Government Area of Rivers State, Nigeria. As the King, spiritual leader and custodian of the Ogale land and culture, His Royal Majesty, Plaintiff Emere Godwin Bebe Okpabi is competent to bring this action in a representative capacity on behalf of the people of Ogale Community in accordance with Ogale custom and tradition.

7. Plaintiff Emere Fortune Olaka Obe is a citizen of Nigeria and a high chief of Ogale Kingdom in Eleme Local Government Area of Rivers State, Nigeria.

8. Plaintiff Emere Ake Oluka is a citizen of Nigeria and a high chief of Ogale kingdom in Eleme Local Government Area of Rivers State, Nigeria.

9. Plaintiff, the Honorable Rable Princewill Ake Igwe, is a Community leader and representative of the people in Ogale kingdom in Eleme Local Government Area of Rivers State, Nigeria.

10. Plaintiff, the Honorable Dandyson Ngawla, is a community leader and representative of the people of Ogale Kingdom in Eleme Local government Area of Rivers State, Nigeria.

11. Defendant Royal Dutch Shell, PLC, (LSE: RDSA, RDSB), commonly known as Shell, is a global oil and gas company headquartered in the Hague, Netherlands with its registered office in London, United Kingdom. Royal Dutch Shell is vertically integrated and is active in every area of the oil and gas industry, including

exploration and production, refining, distribution and marketing, petrochemicals, power generation and trading. It also has major renewable energy activities, including biofuels, hydrogen, solar and wind power.

12. Defendant Royal Dutch Shell, through their wholly owned subsidiaries, are major investors in Nigeria and explore for, produce and sell energy products derived from Nigerian oil and natural gas.

13. Royal Dutch Shell wholly owns Shell Petroleum, Inc., a holding company, incorporated and organized under the laws of Delaware with offices in Houston, Texas, which in turn wholly owns Shell Oil Company ("Shell USA"), a corporation incorporated in Delaware with offices in Houston, Texas, and doing business across the United States.

14. Shell USA was formed by Royal Dutch/Shell for corporate finance purposes to conduct its business in the U.S. and, as such, Shell USA is the agent of Royal Dutch Shell. Upon information and belief, Defendant Royal Dutch Shell controls the activities of Shell United States.

15. Defendant Shell Petroleum Development Company Nigeria Limited was incorporated under the laws of the Federal Republic of Nigeria.

16. Defendant Shell Petroleum Development Company Limited is the largest private-sector oil and gas company in Nigeria. Most of its exploration and production activities are concentrated in the land, swamp, offshore (shallow and deep) provinces of the Niger Delta. Upon information and believe, Defendant Royal Dutch Shell Controls the activities of Shell Petroleum Development Company Nigeria Limited.

JURISDICTION

17. The Court has jurisdiction of this case under 28 U.S.C. §1332 because the parties have diverse citizenship and the amount in controversy exceeds \$75,000.00. Jurisdiction is also invoked pursuant to 28 U.S.C. §1331 (federal question) because the Plaintiffs have alleged the violation of the U.S. Constitution or laws of the United States or Treaties to which the United States is a party and 28 U.S.C. §1350 (Alien Tort Claims Act). The Alien Tort Claims Act provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

18. The Court also has personal jurisdiction over the Defendants and venue is proper in this District because the Defendants market to customers in this District, the products whose crude exploration is at issue and whose pollution has caused massive damages and violations complained of in this action.

19. In addition, Plaintiffs invoke the supplemental jurisdiction of this Court, 28 U.S.C. §1367, over claims based upon laws of the State of Michigan.

FACTUAL STATEMENTS

20. The Niger delta is one of the most polluted regions in the world, with more oil spilled across the region each year than the oil spilt in the Gulf of Mexico in 2010. According to Nigerian government figures, there were more than 7,000 spills between 1970 and 2000, and there are 2,000 official major spillage sites, many going back decades, with thousands of smaller spills still waiting to be cleared up.

21. According to Amnesty International, more than 13 million barrels of oil have been spilt in the Delta, twice as much as by BP in the Gulf of Mexico's spill.

22. The Plaintiff's Community is one of such communities in the Niger Delta Region of Nigeria. Due to the Defendants' negligent actions, a large volume of oil has continued to spill from Defendant's operations.

23. The Plaintiffs are people of Ogale Community in Eleme Local Government in Rivers State. The Community is one of the oil producing communities in the State where the first named Defendant has been carrying out oil exploitation and production of crude oil since 1958. Owing to the first named Defendant's indiscriminate pollution of the environment in Ogale Community, the Plaintiffs have also suffered severe health hazards and threats to their lives and violation of their right to development.

24. Due to the Defendants' oil exploration in the Plaintiffs land and failure by Shell and others to meet minimum Nigerian or own standards, the Plaintiffs community is now characterized by heavy contamination of land and underground water courses, sometimes more than 40 years after oil was spilled. With community drinking water at dangerous concentrations of benzene and other pollutants and soil contamination more than five metres deep in many areas with most of the spill sites, which the Defendants claimed to have cleaned, is still highly contaminated with dumping of contaminated soil in unlined pits and water coated with hydrocarbons more than 1,000 times the level allowed by Nigerian drinking water standards.

25. Following this pollution of the environment in Nsisioken Ogale Community and other oil producing communities in Rivers State by the Defendants, the Government of Nigeria commissioned the United Nations Environment Programme (UNEP) study the nature and extent of oil contamination in and around Ogoniland in Rivers State.

26. Plaintiff Nsisioken Ogale Community in Eleme Local Government Area of Rivers State is one of the oil producing communities around Ogoniland in Rivers State and was covered by the aforementioned study.

27. The environmental assessment carried out by the UNEP confirmed the pollution of the soil by petroleum hydrocarbons and contamination of drinking water wells in Nsisioken Ogale Community in Eleme Local Government, Rivers State. The report indicted the Defendants, as the people of the Ogale Community have been drinking water contaminated with benzene at level 900 times above the World Health Organization Guideline.

28. The UNEP Report specifically states that, "***The most serious case of groundwater contamination is at Nsisioken Ogale in Eleme Local Government Area close to a Nigerian National Petroleum Company product pipeline where an 8cm layer of refined oil was observed floating on the ground which serves the community wells***". Plaintiffs at trial will rely on the Final Report and the Executive Summary of UNEP findings on the Environmental Assessment of Ogoniland.

29. The UNEP Report further states that the people of Nsisioken Ogale Community have for several years been drinking water contaminated with benzene, a known carcinogen at levels over 900 times above the World Health Organization guideline.

30. In order to know the extent of the hazards to the health of the Plaintiffs, the report recommends a medical examination and assessment of the health status of the inhabitants of Nsisioken Ogale Community, the provision of drinking water, post signs to warn people not to fish, swim or bath in the contaminated areas.

31. The Defendants have not taken any concrete steps to protect the environment, provide safe drinking water or subject the endangered people of Nsisioken Ogale Community to medical assessment and treatment.

32. While receiving the Report from the UNEP, President Goodluck Jonathan promised in The Nation Newspaper of August 5, 2011, to implement the recommendations.

SUMMARY OF THE UNEP REPORT AND FINDINGS

33. A major new independent scientific assessment, carried out by the United Nations Environment Programme (UNEP) at the insistence of the Federal Government of Nigeria, shows that pollution from over 50 years of oil operations in the region has penetrated further and deeper than many may have supposed.

34. UNEP's scientific assessment is focused on Ogoniland, a kingdom which covers close to 1,000 square kilometers in Rivers State, southern Nigeria. Ogoniland is situated in the Niger Delta region, the third largest mangrove ecosystem in the world.

35. The Plaintiffs' Ogale Community in Eleme Local Government Area of Rivers state is one of the Communities covered by the UNEP assessment and one of the worst areas affected by the pollution as a result of the Defendants' actions.

36. The UNEP's environmental assessment represents an unprecedented effort to examine the extent, nature and implications of oil contamination in the Plaintiffs' Community and options for remediation.

37. Over a 14-month period, the UNEP team examined more than 200 locations, surveyed 122 kilometres of pipeline rights of way, reviewed more than 5,000 medical records and engaged over 23,000 people at local community meetings.

38. Detailed soil and groundwater contamination investigations were conducted at 69 sites, which ranged in size from 1,300 square metres (Barabeedom-K.dere, Gokana local government area (LGA) to 79 hectares (Ajeokpori-Akpajo, Eleme LGA).

39. Altogether more than 4,000 samples were analyzed, including water taken from 142 groundwater monitoring wells drilled specifically for the study and soil extracted from 780 boreholes.

KEY FINDING BY UNEP

40. Some areas, which appear unaffected at the surface, are in reality severely contaminated underground and action to protect human health and reduce the risks to affected communities should occur without delay says UNEP's *Environmental Assessment of Ogoniland*.

41. In at least 10 Ogoni communities where drinking water is contaminated with high levels of hydrocarbons, public health is seriously threatened, according to the assessment that was released today.

42. In the Plaintiff's Community at Nisisioken Ogale, in western Ogoniland, families are drinking water from wells that are contaminated with benzene- a known carcinogen-at levels over 900 times above World Health Organization guidelines. The site is close to a Nigerian National Petroleum Company pipeline.

43. UNEP scientists found an 8 cm layer of refined oil floating on the groundwater which serves the wells. This was reportedly linked to an oil spill which occurred more than six years ago.

44. While the report provides clear operational recommendations for addressing the widespread oil pollution across Ogoniland, UNEP recommends that the

contamination in Nisisioken Ogale warrants emergency action ahead of all other remediation efforts. While some on-the-ground results could be immediate, overall the report estimates that countering and cleaning up the pollution and catalyzing a sustainable recovery of Ogoniland could take 25 to 30 years.

45. This work will require the deployment of modern technology to clean up contaminated land and water, improve environmental monitoring and regulation and collaborative action between the government, the Ogoni people, and the oil industry.

46. According to Achim Steiner, UN Under-Secretary General and UNEP Executive Director, said the report provided the scientific basis on which a long overdue and concerted environmental restoration of Ogoniland, a kingdom in Nigeria's Niger Delta region, can begin. The oil industry has been a key sector of the Nigerian economy for over 50 years, but many Nigerians including the plaintiffs herein have paid a high price, as the UNEP assessment has revealed.

47. The clean-up of Plaintiffs' Community will not only address a tragic legacy but also represents a major ecological restoration enterprise with potentially multiple positive effects.

OTHER FINDINGS

48. Among its other findings are:
- a) Control and maintenance of oilfield infrastructure in the Plaintiffs Community has been and remains inadequate: the Shell Petroleum Development Company's own procedures have not been applied, creating public health and safety issues.
 - b) The impact of oil on mangrove vegetation has been disastrous. Oil pollution in many intertidal creeks has left mangroves-nurseries for fish and natural pollution filters-denuded of leaves and stems with roots coated in a layer of bitumen-type substance sometimes one centimetre or more thick.

- c) The five highest concentrations of Total Petroleum Hydrocarbons detected in groundwater exceed 1 million micrograms per litre ($\mu\text{g/l}$) - compared to the Nigerian standard for groundwater of 600 $\mu\text{g/l}$.
- d) When an oil spill occurs on land, fires often break out, killing vegetation and creating a crust over the land, making remediation or re-vegetation difficult. At some sites, a crust of ash and tar has been in place for several decades.
- e) The surface water throughout the creeks in and surrounding Ogoniland contain hydrocarbons. Floating layers of oil vary from thick black oil to thin sheens.
- f) Despite community concerns, the results show that fish consumption in Ogoniland, either of those caught locally or purchased from markets, was not posing a health risk.
- g) The UNEP Report says that fish tend to leave polluted areas in search of cleaner water. However, the fisheries sector is suffering due to the destruction of fish habitat and highly persistent contamination of many creeks. Where entrepreneurs have established fish farms for example their businesses have been ruined by an "ever-present" layer of floating oil.

49. The Plaintiffs' community is exposed to hydrocarbons every day through multiple routes. While the impact of individual contaminated land sites tends to be localized, air pollution related to oil industry operations is all pervasive and affecting the quality of life of close to one million people.

50. Artisanal refining (a practice whereby crude oil illegally obtained from oil industry operations is refined in primitive stills), is endangering lives and ultimately causing pockets of environmental devastation in Ogoniland and neighboring areas. Remediation by enhanced natural attenuation (RENA) - a way of boosting the ability of naturally-occurring microbes to breakdown oil and so far the only remediation method observed by UNEP in the Plaintiffs Community has not proven to be effective. Currently, SPDC applies this technique on the land surface layer only, based on the assumption

that given the kind of oil concerned, factors such as temperature and an underlying layer of clay, hydrocarbons will not move deeper. However, in 49 cases UNEP observed hydrocarbons in soil at depths of at least 5 m.

UNEP NEXT STEP RECOMMENDATIONS

51. Through a combination of approaches, individual contaminated land areas in Plaintiffs' Community can be cleaned up within five years, while the restoration of heavily-impacted mangrove stands and swamplands will take up to 30 years. However, according to the report, all sources of ongoing contamination must be brought to an end before the clean-up of the creeks, sediments and mangroves can begin.

52. The report further recommends establishing three new institutions in Nigeria to support a comprehensive environmental restoration exercise.

53. A proposed **Ogoniland Environmental Restoration Authority** would oversee implementation of the study's recommendations and should be set up during a Transition Phase, which UNEP suggests should begin as soon as possible.

54. The Authority's activities should be funded by an **Environmental Restoration Fund for Ogoniland**, to be set up with an initial capital injection of \$1 billion U.S., contributed by the oil industry and the government, to cover the first five years of the clean-up project.

55. A recommended **Integrated Contaminated Soil Management Centre**, to be built in Ogoniland and supported by potentially hundreds of mini treatment centers, would treat contaminated soil and provide hundreds of job opportunities.

56. The report also recommends creating a **Centre of Excellence in Environmental Restoration** in Ogoniland to promote learning and benefit other

communities impacted by oil contamination in the Niger Delta and elsewhere in the world.

57. Reforms of environmental government regulation, monitoring and enforcement, and improved practices by the oil industry are also recommended in the report.

THE CRUDE OIL AND HUMAN HEALTH EFFECTS OF OIL POLLUTION

58. The crude oil contains benzene and other volatile organic compounds ("VOCs") - chemical compounds that can affect the environment and human health such as ethylbenzene, toluene, xylene and naphthalene, polycyclic aromatic hydrocarbons ("PAHs"), diesel fumes and heavy metals such as aluminum, cadmium, nickel, lead and zinc.

59. According to a presentation made in June 2010 to the Institute of Medicine of the National Academies entitled "Assessing the Human Health Effects of the Gulf of Mexico Oil Spill: An Institute of Medicine Workshop," dermal exposure to certain VOCs in crude oil can cause redness, swelling, irritation and rash and blisters on the skin and mucous membranes. Inhalation exposure to certain VOCs in crude oil can cause ocular redness, soreness, watering and itching. Inhalation exposure to certain other VOCs in crude oil can cause coughing, throat irritation, shortness of breath and wheezing. Inhalation exposure to other VOCs in crude oil can also affect the nervous system causing nausea, vomiting, dizziness, irritability, confusion and weakness of extremities. Ingestion of food or water containing VOCs from crude oil can cause nausea, vomiting and diarrhea.

60. Chemicals such as benzene and PAHs are toxic components of crude oil and of grave concern. These and many other chemicals in crude oil are volatile, moving

from the oil into the air. Once airborne, they can blow over the ocean for miles, reaching communities far from the spill. They may be noticed as petroleum odours. Consequently, both those working on the spill and people who are a distance from it can be exposed to crude oil chemicals in the air.

61. According to the Agency for Toxic Substances and Disease Registry ("ASTDR"), which is part of the U.S. Department of Health and Human Services, benzene is a known mutagen and carcinogen. Benzene in the crude oil can cause a variety of specific effects described in the recent Centers for Disease Control ("CDC") summary of benzene toxicity: ventricular fibrillation, congestive gastritis, toxic gastritis, pyloric stenosis, myalgia, kidney damage, skin irritation and burns, swelling and edema, vascular congestion in the brain and lethal central nervous system depression.

62. A 2007 CDC review of benzene toxicity concluded that there is substantial human evidence that benzene causes leukemia. It also reports aplastic anemia (a precursor of leukemia), chromosomal abnormalities in lymphocytes and bone marrow cells, damage to the immune system and abnormal development of blood cells. When blood cells are deficient, this can cause other serious medical conditions, including infection due to a lack of leukocytes and increased cardiac stress due to a lack of erythrocytes. Long term low level oral and inhalation exposures have also caused peripheral nervous system abnormalities, distal neuropathy, difficulty sleeping and memory loss.

63. As noted by Dr. Lisa Kaplowitz of the U.S. Department of Health and Human services, in her June 15, 2010 testimony before Congress: "Oil can remain toxic in the environment for years."

64. At all times relevant to this litigation, Defendants knew or should have known that the crude oil contains chemicals hazardous to human health and to the environment and ecosystems. The oil spill and the resulting contamination of the Plaintiff's environment and ecosystem have caused and will continue to cause harm to people living and working in the Plaintiff's community.

BREACHES OF THE OECD GUIDELINES BY DEFENDANT SHELL REGARDING OIL ACCURATE POLLUTION DATA IN PLAINTIFFS COMMUNITY

65. In their complaints to the Organization for Economic Co-operation and Development (*OECD*) UK and Dutch National Contact Points under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises on the failure by the Defendants to provide accurate data, report and information to the OECD as prescribed by its Guidelines, the Amnesty International, Friends of the Earth International and Friends of the Earth Netherlands allege that as a an accumulative result of constant pollution by the Defendants and the omission of the Defendants to give accurate data of such occurrence, the Defendants have breached the OECD Guidelines in their communication on oil spills in the Niger Delta.

66. They further allege that the Defendants provide misleading information and omit mention of relevant facts about causes of oil spills. Additionally, the Defendants base their reports on biased and unverified information, thus failing to provide reliable and relevant information to external stakeholders. Incorrect and conflicting messages about causes of oil spills further contribute to low quality non-financial information.

67. In particular, the Amnesty International, Friends of the Earth International and Friends of the Earth Netherlands alleged that the Defendant have breached the following OECD's Regulations which are hereby incorporated as part of this Complaint:

- A. **The section on *Disclosure (III)***, which states that enterprises "should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance," and that "[enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported." In particular, Shell has breached points 1, 2 and 4 (e) of this section, which require that:
- 1 Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas.
 2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported. 4. (e) Enterprises should also disclose material foreseeable risk factors.
- B. **The section on *Environment (V)***, which states that enterprises should "take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development." Specifically, Shell has breached points 2 and 3, which require that: 2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation. 3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

- C. **The section on *Consumer Interests (VII)***, which states that enterprises should "act in accordance with fair business, marketing and advertising practices." Specifically, point 4 requires that enterprises "[n]ot make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair."

GENERAL ALLEGATIONS

68. The right to a minimally adequate environment clearly prohibits the specific type of conduct alleged here. Indeed, various international human rights bodies have held likewise with respect to acts that impinge upon fundamental rights on a mass scale.

69. International law provides sufficient criteria by which a court can evaluate plaintiffs' claims. Actions that may be expected to cause long-term, widespread and severe harm to the environment that prejudices the health or survival of a population violate customary international law.

70. Beginning in 1972, the community of nations has repeatedly recognized that individuals have a right to a minimally adequate environment. In that year, 114 nations, including the United States, declared in the Stockholm Declaration that humankind "has the fundamental right to . . . adequate conditions of life, in an

environment of a quality that permits a life of dignity and well-being." Stockholm Declaration, Principle 1.

71. The international community reaffirmed its recognition of the right in 1990 when the United Nations General Assembly adopted by consensus a resolution recognizing that "all individuals are entitled to live in an environment adequate for their health and well-being." G.A. Res. 45/94 (1990).

72. Two years later, at the largest gathering of nations ever held, more than 178 nations including the United States again affirmed the right in the Rio Declaration, which unanimously acclaimed that "[h]uman beings . . . are entitled to a healthy and productive life in harmony with nature." Rio Declaration, Principle 1.

73. The recognition in these Declarations that individuals have a right to a minimally adequate environment created "an expectation of adherence." The Rio Declaration has subsequently been recognized as an "authoritative statement of the international community" regarding the right to a minimally adequate environment of a quality that permits a life of dignity and well-being." Stockholm Declaration, Principle 1.

74. The international community reaffirmed its recognition of the right in 1990 when the United Nations General Assembly adopted by consensus a resolution recognizing that "all individuals are entitled to live in an environment adequate for their health and well-being." G.A. Res. 45/94 (1990).

75. Plaintiffs' causes of action also arise und the Customary International Law, Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948) and other Treaties of the United Nations to which the United States and Nigeria are parties including the Constitution and Laws of the Nigeria and African Charter of Human and Peoples Rights and other laws of the United States of America.

76. The sanctity of life is also guaranteed by Section 33(1) of the Nigerian Constitution which provides that:“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”

77. In furtherance of this unassailable right to life, Article 4 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (CAP A9) LFN 2004 provides thus:“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”.

78. The contamination of the water of the Plaintiffs by the Defendants is hazardous and it is a great threat to the existence and survival of the Ogale Community. This is a violation of section 33 of the Nigerian Constitution, which provides for deprivation of the fundamental right to life.

79. The defendants also violated Article 21 (5) of the African Charter which provides that: “State parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources”.

80. The practice of releasing chemical harmful by the 1st Defendant to the drinking water of the people of Ogale Community is a direct negation of the provision of Article 21 (5) of the African Charter.

81. The Plaintiffs, under the international law, the African Charter, the Nigerian Constitution and the United Nation Treaties, have the right to qualitative water and clean environment.

DEFENDANTS' CULTURE OF IMPUNITY IN NIGERIA

82. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

83. The Plaintiffs have decided to file their action in the United states because of the Defendants culture of impunity , lack of respect and disregard for judicial process in Nigeria thereby effectively using the slow process of the Nigerian legal system to frustrate litigation.

84. On many occasions, the defendants have spent decades fighting lengthy appeals that bled the victims dry in legal costs. The culture of impunity include but not limited to the following: refusal to comply with a 2006 Judgment in which the defendants were ordered to pay \$1.5bn in damages to the Ijaw communities of Bayelsa State. Since 2005, refusal to comply with another court order to end gas flaring in the Iwherekan community. The The Ejama Ebubu community has waited more than 40 years for Shell to clean an oil spill from 1970.

COUNT I Negligence

85. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

86. The Defendants owe a duty to Plaintiffs, as well as to all persons who might foreseeably be harmed by the pollution and the environmental degradation, to exercise due care in the operation, maintenance and handling of its oil exploration and operations in the Plaintiffs community.

87. At all times relevant to this litigation, Defendants knew or should have known that:

- a. crude oil contains chemicals hazardous to human health and to the environment and ecosystems;
- b. Plaintiffs should be adequately and timely warned of the harmful effects of crude oil spill and the hazardous substances which the oil contains and which are being released into the environment; and
- c. Defendants' failure to otherwise exercise reasonable care in the operation, maintenance and handling of the oil well would result in harm to Plaintiffs.

87. Defendants' continuing acts of negligence fall far below the duty of care owed to Plaintiffs amounting to a breach of that duty. Defendants owed Plaintiffs the following duties:

- a. a duty to clean up the oil spill and prevent future spills thereof.
- b. a duty to equip Plaintiffs to avoid exposure to hazardous substances ;
- c. a duty to otherwise exercise reasonable care in the operation, maintenance and handling of the well in order to avoid harm to Plaintiffs.

88. As a result, Plaintiffs suffer and continue to suffer damages and all of Plaintiffs' damages were caused in fact by Defendants' breach of their duties.

89. Defendants' breach of duties posed and continue to pose an unreasonable risk of harm to Plaintiffs.

90. Defendants are liable in ordinary negligence to Plaintiff.

91. The danger and risk of harm to Plaintiffs was reasonably foreseeable and Defendants are liable therefrom.

COUNT II
Gross Negligence

92. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

93. Defendants owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the manufacture, maintenance and operation of the oil wells and additionally owed and breached duties to Plaintiffs to guard against and/or prevent the risk of the oil spills which has continued to occur therein.

94. Defendants have a heightened duty of care to Plaintiffs because of the great danger associated with exposure to oil and/or other hazardous chemicals.

95. Defendants breached their legal duty to Plaintiffs and failed to exercise reasonable care and acted with reckless, wilful, and wanton disregard in the negligent failure to contain the Oil Spills.

96. Defendants knew or should have known that their wanton or reckless conduct would foreseeably cause Plaintiffs' injury and/or property damage.

97. Defendants' wanton or reckless conduct, as described herein, entitles Plaintiffs to punitive damages. The amount of punitive damages recoverable by Plaintiffs is not lawfully limited to the amount of their compensatory damages, but rather should be a multiplier of same sufficient to both punish Defendants and deter similar wrongdoing in the future.

COUNT III
Nuisance

98. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

99. The Defendant's oil spill has significantly interfered with the Plaintiffs' right to use and enjoy their environment including the cultivation of their farms without the oil spill and other associated pollution.

100. Prior to the spill, Plaintiffs enjoyed the use of their land for farming, fishing and fresh water well and carried out other economic and recreational pursuits in the area.

101. Since the oil spill, which is still continuing, Plaintiffs have been unable to freely enjoy his environments and many have lost their livelihoods.

102. As a result of the oil spill, Plaintiffs are constantly exposed to harmful environment or other harmful chemicals resulting from the Oil Spill at levels, amounts, and under conditions different from the general public.

103. Moreover, all Plaintiffs are subjected to foul and harmful odours emanating from the crude oil spill;

104. Plaintiffs have no adequate remedy at law.

105. There exists an imminent likelihood of irreparable harm if injunction is not issued.

106. The threatened harm to the Plaintiffs and class members outweighs any potential harm to Defendants.

107. Granting the injunction does not contravene a substantial public interest.

108. Plaintiffs have a substantial likelihood of success based on the allegations, and Plaintiffs' allegations are likely to be proven and are not merely speculative.

109. Plaintiffs are entitled to judgment finding Defendants liable to Plaintiffs for damages, including costs of future medical screening and monitoring, for the creation of a public nuisance and a judgment for injunctive relief to abate the nuisance.

COUNT IV
The Oil Pollution Act

110. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

111. The Oil Pollution Act, 33 U.S.C. § 2701, *et seq.* (the "OPA") imposes liability upon a "responsible party for a...facility from which oil is discharged...into or upon navigable waters or adjoining shorelines" for the damages that result from such incident as well as removal costs. 33 U.S.C. § 2702.

112. Plaintiffs are entitled to damages pursuant to Section 2702(b)(2)(B), which provides for recovery for damages to real and/or personal property, including "damages for injury to, or economic losses resulting from destruction of, real and/or personal property.

COUNT V
Negligent Infliction of Emotional Distress

113. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

114. The actions of Defendants, and each of them, constituted a negligent infliction of emotional distress upon said Plaintiffs.

115. Defendants, and each of them, carelessly and negligently inflicted said emotional distress through a wanton and reckless pollution of the Plaintiffs' community.

116. Defendants are liable for said conduct in that Defendants careless actions in the operation of its oil heads and pipelines are responsible in bringing about the negligent infliction of emotional distress of the Plaintiffs.

117. As a direct and legal result of Defendants' wrongful acts, Plaintiffs have suffered and will continue to suffer significant physical injury, pain and suffering and

extreme and severe mental anguish and emotional distress actionable under the laws of Michigan, United States and Nigeria.

COUNT VI
Intentional Infliction of Emotional Distress

118. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

119. The acts described herein constitute outrageous conduct in violation of all normal standards of decency and are without privilege or justification.

120. These outrageous acts are continuing, intentional and malicious and done for the purposes of causing Plaintiffs to suffer deprivation, mental anguish and extreme emotional and physical distress.

121. As a result of Defendants' acts, Plaintiffs are constantly placed in great fear for their lives and are forced to suffer severe physical and psychological abuse and agony.

122. Defendants are liable for said conduct in that Defendants careless actions in the operation of its oil heads and pipelines are responsible in bringing about the negligent infliction of emotional distress the Plaintiffs actionable under the laws of Michigan, United States and Nigeria.

COUNT VII
Cruel, Inhuman, or Degrading Treatment

123. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

124. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of Michigan, the laws of

Nigeria, and the international treaties, agreements, conventions and resolutions described herein.

125. The Plaintiffs are placed in great fear for their lives and forced to suffer severe psychological abuse and agony.

126. Defendants are liable for said conduct in that Defendants willful and negligent actions resulting in the oil pollution and its dire consequences on the Plaintiffs for a prolonged period of time cause the cruel, inhuman or degrading treatment of Plaintiffs.

COUNT VIII
Punitive Damages

127. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

128. Defendants focused primarily on profit while disregarding public and environmental health and safety while undertaking their ultra-hazardous activities in the Plaintiff's community.

129. Defendants engaged in conduct so reckless, wilful, wanton and in such utter and flagrant disregard for the safety and health of the public and the environment in their activities leading up to the Spill, as alleged herein, that an award of punitive damages against them at the highest possible level is warranted and necessary to impose effective and optimal punishment and deterrence. Plaintiffs, society and the environment cannot afford and should never be exposed to the risks of continuing spill that has not been abated and all of which were caused by the by Defendants' misconduct herein.

130. The Defendant's corporate culture caused and allowed it to disregard the lessons it should have learned and applied from previous incidents; instead, it continued to place others at risk in the interests of cost-cutting and financial gain.

131. Defendants' conduct was oppressive, wanton, malicious, reckless, or grossly negligent each time they:

- (a) failed to properly maintain and/or operate the oil well ;
- (b) operate the oil well without due care and consideration for the safety of lives and property;
- (c) failed to take appropriate action to avoid or mitigate the accident and avoid any future occurrence;
- (d) failed to ensure that the oil well and its head were free from defects, properly maintained and/or in proper working order;
- (e) failed to provide appropriate disaster prevention procedure;
- (f) failed to have an appropriate spill response plan or readily available spill response plan.

132. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

133. Defendants' conduct, as described more fully hereinabove, is at the highest level of reprehensibility, warranting and necessitating the imposition of punitive damages at the highest level, because Defendants' conduct was motivated by financial gain; because it endangered human and environmental health and safety; because it caused devastating damage and loss to the livelihoods, businesses, and properties of Plaintiffs; because it is not isolated or accidental, but part of a culture and ongoing pattern of conduct that consistently and repeatedly ignored risks to others in favor of financial advantage to Defendants; and because it has accordingly caused societal

harm, moral outrage and condemnation, and the need to punish Defendants and deter further repetition by Defendants or others.

134. Accordingly, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

COUNT IX
Compensatory damages

135. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs, as if fully restated herein.

136. Defendants focused primarily on profit while disregarding public and environmental health and safety while undertaking their ultra-hazardous activities in the Plaintiff's community.

137. Defendants engaged in conduct so reckless, wilful, wanton and in such utter and flagrant disregard for the safety and health of the public and the environment in their activities leading up to the Spill, as alleged herein, that an award of punitive damages against them at the highest possible level is warranted and necessary to impose effective and optimal punishment and deterrence. Plaintiffs, society and the environment cannot afford and should never be exposed to the risks of continuing spill that has not been abated and all of which were caused by the by Defendants' misconduct herein.

138. The Defendant's corporate culture caused and allowed it to disregard the lessons it should have learned and applied from previous incidents; instead, it continued to place others at risk in the interests of cost-cutting and financial gain.

139. Defendants' conduct was oppressive, wanton, malicious, reckless, or grossly negligent each time they:

- (a) failed to properly maintain and/or operate the oil well
- (b) operate the oil well without due care and consideration for the safety of lives and property.
- (c) failed to take appropriate action to avoid or mitigate the accident and avoid any future occurrence;
- (d) failed to ensure that the oil well and its head were free from defects, properly maintained and/or in proper working order;
- (e) failed to provide appropriate disaster prevention procedure;
- (f) failed to have an appropriate spill response plan or readily available spill response plan.

140. Defendants' conduct, as described more fully hereinabove, is at the highest level of reprehensibility, warranting and necessitating the imposition of compensatory damages at the highest level, because Defendants' conduct was motivated by financial gain; because it endangered human and environmental health and safety; because it caused devastating damage and loss to the livelihoods, businesses, and properties of Plaintiffs; because it is not isolated or accidental, but part of a culture and ongoing pattern of conduct that consistently and repeatedly ignored risks to others in favour of financial advantage to Defendants; and because it has accordingly caused societal harm, moral outrage and condemnation, and the need to punish Defendants and deter further repetition by Defendants or others.

Accordingly, Plaintiffs are entitled to an award of compensatory damages in an amount to be determined at trial.

COUNT X

Violation of International Treaties and Obligations of the US and Nigeria

140. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs as if fully restated here.

141. Defendants actions have violated the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of Michigan, the laws of Nigeria, and the international treaties, agreements, conventions and resolutions described herein in which the United states and Nigeria are Parties. Including but not limited to the following;

- (a) Customary International Law,
- (b) the Rio Declaration on Environment and Development,
- (c) the United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945); the Stockholm Declaration of the United Nations Conference on the Human Environment.,
- (d) the Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- (e) the International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc, GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
- (f) the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment and
- (g) the International Convention on Civil Liability for Oil Pollution Damage, art. III; Bamako Convention, art. 4(3)(b)(1991), Clean water Act and the Oils Pollution Act..
- (h) Violation of other international treaties and obligations to which the United States and Nigeria are Parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. An Order directing the Defendants to carry out the following emergency measures:
 - i. Ensure that all contaminated drinking water wells in Ogale Community are destroyed forthwith.
 - ii. Provide adequate sources of drinking water to the people of Ogale Community in Eleme Local Government in Rivers State on daily basis forthwith.
 - iii. Ensure that the people of Ogale Community in Eleme Local Government in Rivers State are medically examined to assess the effect of the contaminated water already consumed by them forthwith; such implementation of a medical screening and monitoring program to be funded by the Defendants ,
2. Award of payment of economic and compensatory damages in the sum of \$1 Billion U.S. for over Fifty years of pollution, environmental degradation and damages to the community land and losses suffered by the Plaintiffs; community. Many of the Plaintiffs families have no livelihood left after the pollution.
3. Punitive damages
4. Immediate cleaning up operations of the pollution.
5. Award of reasonable attorney fees and the cost of this litigation;
6. Award such other reliefs as the court may deem, equitable, injunction to abate the public nuisance created by Defendants;
7. Injunction to abate the unwanted, offensive conduct by Defendants;
8. Injunction to require monitoring of air and water;
9. Payment of reasonable Attorney fees and

10. Any other and further relief available under all applicable s federal laws that the Court considers reasonable and just.

Respectfully submitted,

/s/Benjamin Whitfield, Jr.
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Attorneys for Plaintiffs
220 West Congress St., 2nd Floor
Detroit, MI 48226
(P23562)

Dated: October 18, 2011

DEMAND FOR TRIAL BY JURY

Pursuant to *Fed. R. Civ. P. 38(b)* Plaintiffs demands trial by jury of all issues so triable under the law.

Respectfully submitted,

/s/Benjamin Whitfield, Jr.
Benjamin Whitfield, Jr. & Assoc., P.C.
Attorneys for Plaintiffs
220 West Congress St., 2nd Floor
Detroit, MI 48226
(P23562)

Dated: October 18, 2011