

Shell Oil: Guilty in World Court of Public Opinion

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Shell Oil has agreed to pay reparations in the case in a New York court that implicated it in the 1995 execution of the Nigerian activist Ken Saro-Wiwa. It is only by a mix of radical social pressure – “tree-shaking” – and the power of the courtrooms – “jam-making” – that challenges can be maximised to corporations which exploit the African continent.

In one of the 20th century’s most notorious assassinations Nigerian eco-social justice activist and writer Ken Saro-Wiwa was killed alongside eight other Ogoni leaders in November 1995, for opposing the exploitation of the Niger Delta’s environment and people. Shell Oil was implicated in the execution, and on 8 June, after being sued in US courts by the families of those executed, the firm agreed to pay \$15.5 million in an out of court settlement, part of which will go into a development trust and fund. Saro-Wiwa’s legacy includes sustained struggles against the petroleum industry – including an armed guerilla movement that departed from Saro-Wiwa’s pacificism – and the demand, “leave the oil in the soil!”

“We sometimes feed conflict by the way we award contracts, gain access to land, and deal with community representatives”, Shell Nigeria admitted in 2003.

It was a modest confession from a corporate giant that has long collaborated with the state to access the Niger Delta’s oil and gas resources, systematically destroying the indigenous ecology through spills, deforestation, flaring and dumped waste, and in the process fuelling climate change that threatens our collective future on the planet.

A more substantive confession followed on 8 June when Shell finally agreed to pay \$15.5 million – about four hours’

profits – for its “sins” in November 1995. It was either that, or face New York’s Southern District Court and a reportedly hostile judge, Kimba Wood.

As a key plaintiff, Ken Wiwa Jr, explained in *The Guardian*,

Anti-climax doesn’t quite describe this moment because you know, deep down, that the settlement is only the beginning of a process that you hope will lead to a better outcome for all the stakeholders in this issue but it is the end, for sure, of a 13-year-long court case.

At the same time, however, the Nigerian state was still engaging in traumatising the people of the delta, leaving the villages of Opuye, Okerenkoro, Kurutie and Oporoza (site of the new documentary *Sweet Crude*¹ burned to the ground. Hundreds of Ijaw people – both armed activists and civilians – are feared dead. Journalists are still banned from the area.

As a result, International Criminal Court prosecutor Luis Moreno Ocampo was asked by solidarity activists to indict the Nigerian government of Yar’Adua, on grounds of

the land, water and aerial bombardment of a large area in Gbaramatu Kingdom... The killings in the Delta today can be traced back to similar massacres in 1990 in Umecheum, in Ogoni led by Major Gen Paul Okuntimo in the mid-1990s, and the 1999 massacre in Odi under the command of Col Agbabiaka. To date no investigation of previous massacres has been undertaken, although each was well documented.

Niger Delta and Saro-Wiwa

This sort of damage to the delta goes back five decades, when in 1958 the local residents discovered huge oil reserves. In 2006, the Niger Delta Natural Resource Damage Assessment and Restoration Project declared the region “one of the 10

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most important wetlands and marine ecosystems in the world". But although 20 million people directly depend on shared natural delta resources such as fisheries, fertile land and water sources, Shell alone has been responsible for 2,900 oil spills.

Many have stood up to say "enough!", but perhaps it was Ogoniland civic leader and writer/poet Ken Saro-Wiwa who is best known for a courageous socio-environmental struggle against Shell, especially after mobilising 300,000 non-violent protesters in early 1993.

South African anti-apartheid campaigner Dennis Brutus recalls his last meeting with the 54 year-old Saro-Wiwa, at the University of Pittsburgh: "Ken seemed very gloomy – even pessimistic: as if he had a foreboding that he would be executed on his return to Nigeria".

Brutus travelled to Johannesburg soon thereafter:

The us poet Amiri Baraka and I brought a letter to President Nelson Mandela's office appealing for a stronger role in preventing his execution. But the functionary who took the letter was not encouraging.

Brutus reminds us:

Saro-Wiwa was executed in a bungled operation, with three attempts. The evidence has emerged that the Nigerian regime of Sani Abacha acted on instructions of Shell Oil.

Saro-Wiwa's son Ken, brother Owens and other victims' descendants sued Shell under the Alien Tort Claims Act (ATCA), a law Brutus himself helped to publicise as part of a suit demanding apartheid reparations from multinational corporations that profited from apartheid by colluding with the white South African military prior to 1994.

Shell's Role

Families of Saro-Wiwa and other victims claim that from 1990-95, Shell requested and financed Nigerian soldiers to repress a peaceful environmental justice movement with deadly force. On 10 November 1995, the "Ogoni Nine" were executed after being framed for murder and tried by the military.

In addition to Saro-Wiwa, those killed were youth leader John Kpuinen, Barinem Kiobel, Saturday Doobee, Nordu Eawo,

Daniel Gbokoo, Paul Levera, Felix Nuate and Baribor Bera.

It is estimated that in the Niger Delta 1.5 million tonnes of oil have spilled since drilling began 51 years ago, costing more than \$5 billion in annual environmental damage.

Last year, Nigerian President Yar'Adua finally conceded the obvious:

There is a total loss of confidence between Shell and the Ogoni people. So, another operator acceptable to the Ogonis will take over.

But Yar'Adua's regime, like others before it, is rife with corruption and collaboration, and Shell has hung on in a country responsible for 10% of its profits. The bulk of Nigeria's wealth is held offshore by corrupt officials, and is estimated at over \$100 billion. Over 80% of the state's revenue is derived from the delta region. According to international agencies, just 1% of the population rakes in 80% of oil and gas revenues.

It is not only Nigerian money that flows out. In Cape Town, Pastor Barry Saro Wuganaale assists Ogoni exiles who still face exile "because of founded fears of persecutions by the government against those who believe in the liberation of their motherland". Nigeria, considered to be the us' new oil cushion, is the seventh largest producer in the world pumping out a minimum of 900,000 barrels of crude each day. Nigeria is of crucial geopolitical importance to the us, which imports almost 50% of Nigerian oil.

Inevitably, the World Bank is in on the action, and last month the Nigerian *Guardian* newspaper editorialised,

Having fleeced the country while acting as agents of the Paris and London clubs of creditor countries, the World Bank/IMF seek to perform similar exploits as agents of private international oil companies operating under Nigerian jurisdiction in 'getting more enforceable commercial framework about the supply of gas' for local generation of electricity... Plans by World Bank/IMF to accord Nigeria-based multinational oil companies the status of sovereign states subvert and contravene provisions of the 1999 Constitution.

Even greater amounts of oil and profits would flow to those companies were it not for militant activists of the Movement for the Emancipation of the Niger Delta (MEND), who kidnap foreign workers both for ransom and to halt the destruction. AS MEND spokesperson Jomo Gbomo put

it a year ago, after an attack on a Shell facility, "Our candid advice to the oil majors is that they should not waste their time repairing any lines as we will continue to sabotage them".

A ceasefire ended in January, and MEND attacked a few more foreign oil installations. But it was only last month, following the state's bombing of Gbaramatu kingdom, that an "all-out war" was declared by militants. MEND reportedly destroyed nine army gunboats and captured three others, which is why, it claims, the army engaged in

indiscriminate aerial bombardment on the defenseless civilians... Casualties are mostly women, children and the elderly who could not get away quickly into the bush or high sea.

As a result, MEND insisted, all oil companies should "evacuate and cease oil production until further notice".

Saro-Wiwa had made the same demand, using peaceful strategies and tactics.

The military dictatorship holds down oil – producing areas such as Ogoni by military decrees and the threat or actual use of physical violence so that Shell can wage its ecological war without hindrance...

He said in his closing statement at the trial:

This cozy, if criminal, relationship was perceived to be rudely disrupted by the non-violent struggle of the Ogoni people. The allies decided to bloody the Ogoni in order to stop their example from spreading through the oil-rich Niger Delta,

Shell claims it operates on the policy of non-interference with judicial and political processes. Company spokesperson Robin Lebovitz claims Shell asked for clemency for Saro-Wiwa and was "shocked and saddened" when he and the others were killed. Yet it was documented that Shell executives met with the Nigerian High Commission in London, stating that if the "Ogoni virus" spreads to other areas in the delta it would be the end of the oil business. Shell's then head Bryan Andersen has admitted he approached Owens Wiwa with "the possibility that [Shell] would be prepared to put in some humanitarian aid...in exchange for the undertaking to soften their official stance" on reparations.

The plaintiffs allege that Shell hired Nigerian police for internal security; that Shell purchased vehicles and arms for the

military; that Shell requested military support to build a pipeline through Ogoni land; and that Shell assisted and financed the Nigerian military to repress the resistance of the Ogoni people. Shell is also accused of participating in the arrest of Ken Saro-Wiwa and John Kpuien on fake murder charges and of bribing witnesses to produce false testimony.

Claims and Compensation

In 1997, after Holocaust victims' descendants filed cases under ATCA against Swiss banks and German companies, they ultimately settled out of court for \$1.25 billion. Other ATCA cases settled out of court included opponents of the Burmese ('Myanmar') junta who sued the collaborating oil firm Unocol, and Chinese democracy activists who punished Yahoo! for turning over private information to Beijing security officials.

Critiques of malevolent firms and even colonial-era states are intensifying. Other cases include claims by the Herero people against Germany for genocide carried out in what is now Namibia (then a German colony) between 1904 and 1908, and other ATCA cases against other oil firms which have despoiled the Niger Delta.

For example, the case *Bowoto vs Chevron* was heard last November in San Francisco, with Chevron acquitted by a district court in a jury trial. The case originated a decade earlier, when Nigerian armed forces worked closely with Chevron security, killing two unarmed Ilaje community members engaged in a sit-in at the firm's Parabe Platform. Others were permanently injured and indeed tortured by the military. In February, Chevron (whose record profits in 2008 amounted to \$23.8 billion) rubbed salt in the Ilaje people's wounds by seeking reimbursement of \$485,000 in legal fees for the case, including \$190,000 in photocopying charges.

More promisingly for ecological reparations activists, a global warming lawsuit was settled out of court last month by Friends of the Earth, Greenpeace and the cities of Boulder in Colorado and Arcata, Santa Monica and Oakland in California. Their targets were the us Export-Import Bank and Overseas Private Investment Corporation, which invested, loaned or insured \$32 billion in fossil fuel projects from 1990-2003 with no regard to the us National Environmental Policy Act (NEPA).

At present, us cities have formal standing to sue for damages from climate change under NEPA, in the wake of a 2005 federal ruling, but others – especially in the continent least responsible and most vulnerable to global warming, Africa – may have future recourse, perhaps under ATCA. The defendants agreed to important concessions in the settlement, rather than monetary damages; both will incorporate CO₂ emissions into future planning.²

While the ecological debt doctrine continues to be built, there is ongoing interest in contestation of illegitimate and odious debts associated with African dictatorships. In the wake of Ecuador's January 2009 debt default, this appears a promising grass roots pressure discourse, since so many African countries have residual or historic debts associated with the financing of dictators by western governments and banks. Given the inadequacy of the 2005 G-7 finance ministers' concessions (the Multilateral Debt Relief Initiative) just prior to the G-8 meetings in Gleneagles, a movement began to promote a "Fair and Transparent Arbitration Process" meant to promote cancellation – or if not, then repudiation – of African external debt.

Courtrooms to Street Protest

Some of these are elite processes, and suffer from the broader cul-de-sac of global governance paralysis. After all, since the Basel Convention on Trade in Toxics (1992) and Montreal Protocol on ChloroFluoro-Carbons (1996), there have been no world problems tackled effectively by power blocs of neoconservative, neoliberal or even post-Washington global elites (consider the failed Doha Agenda of the World Trade Organisation, stagnant United Nations reform, truncated Bretton Woods democratisation and the counterproductive Kyoto Protocol).

In contrast, there are a myriad of other more militant, grass roots-driven strategies presently at work, exemplified by historic AIDS medicines victories against Big Pharma and the us and South African governments by the South African Treatment Action Campaign (TAC) and their international supporters. These included two crushing 2001 defeats for TAC's opponents in the courts, including South Africa's Constitutional Court.

Other anti-corporate victories have been claimed by civil society members of the Africa Water Network, especially Accra's "campaign against privatisation" and Johannesburg's "anti-privatisation forum and coalition against water privatisation".

In the wake of years of militant protest, the latter groups won a high court victory last April against the public agency Johannesburg Water (managed from 2001-06 by the giant firm Suez of Paris), resulting in a judgment doubling the universal free basic water allocation to 50 litres per person per day and banning prepayment metres, in a case the state appealed last month and which is likely to go to the constitutional court as well.

It is becoming clear, in such cases, that it is only in the mix of radical social pressure – "tree-shaking" – and the power of the courtrooms – "jam-making" – that the threat to corporations which exploit Africa can be maximised.

As Ken Wiwa, Jr described the Shell victory,

History will show that this was a landmark case. Multinationals now know that a precedent has been set, that it is possible to be sued for human rights violations in foreign jurisdictions... The settlement is a living, breathing example of how and why the commitment to peace, non-violence and dialogue is the best way to resolve the challenges in the Niger Delta.

Some of his father Ken Saro-Wiwa's last words are the most inspiring:

I have no doubt at all about the ultimate success of my cause, no matter the trials and tribulations which I and those who believe with me may encounter on our journey. Nor imprisonment nor death can stop our ultimate victory.

NOTES

- 1 The documentary is hosted at www.sweetcrudemovie.com.
- 2 <http://www.foe.org/climatelawsuit>.

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