

Shell Settlement a Sign of Hope for Corporate Accountability

By Paul Hoffman

The settlement last week of claims that Shell was complicit in the executions of Ken Saro-Wiwa and the other "Ogoni 9" in November 1995, as well as numerous other human rights violations, is another important building block in the emerging system of accountability for international human rights violations. It was also a small but significant measure of justice for the 10 plaintiffs and their families after a hard-fought, 13-year legal battle with one of the largest corporations in the world.

The case, brought by the Center for Constitutional Rights, began in 1996 not long after the Ogoni 9 were executed by the military dictatorship of Sane Abacha, despite pleas for clemency by Nelson Mandela, President Clinton and other world leaders. The "trial" was a show trial lacking in the most basic elements of due process. The trial and execution of the Ogoni 9 was simply a way for the military dictatorship to rid itself of a charismatic leader and a movement, the Movement for the Survival of the Ogoni People, that posed a threat to the way the Nigerian government and major oil companies exploited the riches of the Niger Delta without any benefits to the people living there.

Ogoni is one of the oil-producing areas of the oil-rich Niger Delta. It has a population of a little more than 500,000 people in an area one quarter the size of Rhode Island. Shell's footprint loomed large in almost every aspect of Ogoni life. Oil operations contributed to the destruction of the environment. The Ogoni is a land of great poverty and few resources and remains that way today despite the billions of dollars of oil removed from it and other parts of the delta.

MOSOP, which Saro-Wiwa led, rose up in response to these crushing realities. In December 1992, the group made demands that Shell negotiate, which Shell ignored. In January 1993, more than half of the Ogoni population engaged in peace-

ful public protests against Shell and in support of MOSOP's demands. Saro-Wiwa also brought the plight of the Ogoni to world media attention, which threatened to the ability of the Nigerian government and Shell to continue exploiting the delta's oil without addressing the demands of local communities affected by these operations.

The plaintiffs were victims of the crackdown that followed. The gist of the case against Shell was that the company was responsible for the human rights violations suffered by the plaintiffs because it actively assisted the military regime in a wide variety of ways and that the joint venture between the government and Shell used the increasingly aggressive military and police to provide security for oil operations.

The lawsuit was based on the Alien Tort Statute, a law passed by the first Congress in 1789 as a statement to the world that our new nation was committed to enforcing the "law of nations." The statute allows "aliens" to bring tort claims for violations of the law of nations. As the U.S. Supreme Court found in its 2004 decision in *Sosa v. Alvarez-Machain*, the Founders intended the Alien Tort Statute to be implemented by the federal courts without any further action by Congress.

The statute was little used before the emergence of international human rights law in the aftermath of the Nuremberg trials. The international community responded to the atrocities of World War II by creating international standards to prevent and punish the scourge of genocide, crimes against humanity, torture, extra-judicial executions and other fundamental human rights protections. These universally recognized standards were at the heart of the plaintiffs' claims.

The landmark 1980 case *Filartiga v. Pena*, also brought by the Center for Constitutional Rights, established the precedent that the Alien Tort Statute could be used to bring civil actions against torturers who could be found in the United States for torture committed in a foreign

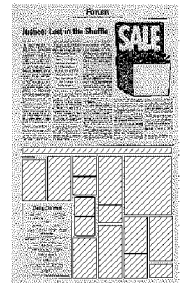
country. Since *Filartiga* there have been dozens of decisions affirming the use of the Alien Tort Statute to redress fundamental human rights violations in civil actions in U.S. courts. Since 1997 courts have found that this principle applies to the complicity of corporations in such fundamental human rights violations.

The Wiwa case has been one in which these fundamental principles of corporate accountability have been forged. Twice the case was dismissed, only to be reinstated by the Court of Appeals, setting important precedents for the statute. To be sure, the Alien Tort Statute applies only to the most egregious human rights violations and only when plaintiffs can demonstrate that the corporations in question played a significant role in bringing about the violations. In *Wiwa*, Chief Judge Kimba Wood rejected all of Shell's efforts to have the case dismissed. The case was set to be tried before a New York jury when the settlement was reached. Shell had run out of options.

The public settlement provided \$10.5 million to the plaintiffs and the estates they represented, including the fees and costs of litigation. In addition, the plaintiffs created a trust with an initial \$5 million contribution for the benefit of the Ogoni people. The Kiisi Trust (Kiisi is the Ogoni word for progress) will distribute funds, after consulting with local Ogoni communities, for education, literacy, women's programs and other projects.

Some have argued that these amounts are trivial in comparison to Shell's vast financial resources. It was never the plaintiffs goal to bankrupt Shell. No amount of money could restore Saro-Wiwa and the other Ogoni leaders hanged with him to the Ogoni people. The plaintiffs sought some measure of justice for the enormous harms they and their family members suffered.

Shell did not want to pay the plaintiffs a dime. Corporations like Shell are allergic to accountability



and are fighting with all of the considerable tools at their disposal to thwart Alien Tort Statute litigation designed to obtain a small measure of accountability for violations of the most fundamental human rights norms recognized by all nations. Every settlement makes it harder for major corporations to ignore the prospect of legal accountability in U.S. courts if they refuse to distance themselves from such human rights crimes. Hopefully, corporations like Shell will use their enormous power to prevent human rights violations so that there will be fewer widows to bring Alien Tort Statute actions. Hopefully further litigation under the statute will inspire more actions of this kind in the future.

In a world in which the Goliaths like Shell so often crush the Davids of the world, the courageous plaintiffs in the *Wiwa* case used their slingshots to hold Shell to account in court and in the court of public opinion. In doing so, they have obtained a measure of justice for themselves and their long-suffering families, some resources for an Ogoni people in desperate need of resources, and have added their names to the roster of human rights heroes who have used a statute as old as the Republic itself to make international human rights a reality now and in the future.

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