



**Case profile: Shell lawsuit (re Nigeria)**  
*Business & Human Rights Resource Centre*

## Case profile: Shell lawsuit (re Nigeria)

### ***Kiobel v. Shell***

In 1996, Royal Dutch/Shell was sued in US federal court by Esther Kiobel, the wife of Dr. Barinem Kiobel - an Ogoni activist who was member of the Movement for the Survival of the Ogoni People (MOSOP). MOSOP campaigned against the environmental damage caused by oil extraction in the Ogoni region of Nigeria and for increased autonomy for the Ogoni ethnic group. Barinem Kiobel and other members of MOSOP were detained illegally in 1994, held incommunicado in military custody, then tried by a special court established by the military government using procedures in violation of international fair trial standards, convicted of murder and executed. The suit alleges that Shell, through its Nigerian subsidiary Shell Petroleum Development Company of Nigeria (SPDC), provided transport to Nigerian troops, allowed company property to be used as staging areas for attacks against the Ogoni and provided food to the soldiers and paid them. The plaintiffs claimed the defendant companies were complicit in the commission of torture, extrajudicial killing and other violations pursuant to the Alien Tort Claims Act (ATCA).

In March 2008, the district court granted the defendants' motion to dismiss for lack of personal jurisdiction. On 16 November 2009, the plaintiffs' motion for reconsideration was granted asking the court to re-examine the issue of jurisdiction. The court said in the motion that a direct business relationship between the USA and SPDC must be established in order for ATCA to apply. On 21 June 2010, the district court ruled that the plaintiffs had not shown that this direct business relationship had existed, and the judge dismissed the suit against SPDC. The plaintiffs appealed this ruling, and on 17 September 2010 the court of appeals issued a sweeping opinion addressing ATCA lawsuits involving corporate defendants. The majority opinion affirmed lower court's dismissal of the lawsuit, and it also stated that ATCA could not be used to sue corporations for violations of international law. A separate opinion was written by the third judge from the appeals court panel, who concurred with the majority in judgment only. This judge vigorously disagreed with the majority's reasoning; he wrote that the majority's opinion dealt a "substantial blow to international law and its undertaking to protect fundamental human rights." On 14 October 2010, the plaintiffs filed a petition for rehearing and rehearing en banc with the court. The court of appeals, on 4 February 2011, refused to rehear the case. The plaintiffs petitioned the Supreme Court in June 2011 asking it to hear an appeal of the lower court's ruling. On 17 October 2011 the Supreme Court announced that it would hear the plaintiffs' appeal in this case. Oral arguments will be held in early 2012.



*Relevant links for Kiobel v. Shell:*

- "[Torture Suits Against Companies Including Shell Draw U.S. High Court Review](#)", Greg Stohr, Bloomberg, 17 Oct 2011
- "[US court upholds key Shell ruling in Nigeria case](#)", Jonathan Stempel, Reuters, 4 Feb 2011
- "[2nd Circuit Rejects Corporate Liability in Alien Tort Cases](#)", Mark Hamblett, New York Law Journal, 20 Sep 2010
- "[Nigeria Torture Case Decision Exempts Companies From U.S. Alien Tort Law](#)", Bob Van Voris & Patricia Hurtado, Bloomberg, 17 Sep 2010
- "[Judge Kimba Wood Dismisses Defendant from Aliant Tort Statute Class Action for](#)

[Lack of Personal Jurisdiction](#)", Russell Jackson, Jackson on Consumer Class Actions & Mass Torts, 25 Jun 2010

Esther Kiobel, et al. v. Royal Dutch Petroleum Company et al.

- [PDF] [Kiobel, et al. v. Royal Dutch Petroleum - Brief for Petitioners](#), 14 Dec 2011
- [PDF] [Kiobel, et al. v. Royal Dutch Petroleum - Petition for Writ of Certiorari](#), 6 Jun 2011
- US Court of Appeals for the Second Circuit: [PDF] [Kiobel, et al. v. Royal Dutch Petroleum](#), et al., 4 Feb 2011 [order denying plaintiffs' petition for rehearing]
- [PDF] [Petition for rehearing and rehearing en banc for Plaintiffs-Appellants-Cross-Appellees](#), 14 Oct 2010
- US Court of Appeals for the Second Circuit: [PDF] [Order affirming District Court's dismissal of lawsuit](#), 17 Sep 2010
- US District Court for the Southern District of New York: [PDF] [Opinion and Order regarding 2008 motion to dismiss](#), 21 Jun 2010
- [Opinion and Order re Plaintiffs' motion for reconsideration](#), 16 Nov 2009
- [Opinion and Order](#), 25 Jun 2009

### ***Wiwa v. Shell***

A related claim was filed by Ken Wiwa (son of the late Ogoni activist Ken Saro-Wiwa who was executed together with Barinem Kiobel in 1995) and other members of MOSOP. The Wiwa lawsuit was filed against the same defendant companies as the Kiobel lawsuit. This lawsuit alleged that the Nigerian military government and security forces committed human rights violations, including torture and summary execution of MOSOP members, to suppress MOSOP's activities and that Royal Dutch/Shell was complicit in the commission of these abuses. The plaintiffs won several pre-trial rulings, including on motions by the defendants to dismiss the case.

In early June 2009, the parties announced that they had agreed to a settlement in the case for \$15.5 million. The settlement provides compensation for the ten plaintiffs and covers a portion of the plaintiffs' legal costs. The settlement also establishes The Kiisi Trust, intended to benefit the Ogoni people, which will be governed by independent trustees. This trust is to fund initiatives in Ogoni such as education, women's programmes, adult literacy and small enterprise support.



*Relevant links for Wiwa v. Shell:*

- "[Shell settles human rights suit for \\$15.5M](#)", Chris Kahn, Associated Press, 8 Jun 2009
- [video] [Shell in court over alleged Nigeria crimes](#), Al Jazeera English, 3 Jun 2009
- "[Shell must defend Nigerian rights suit, judge says](#)", David Glovin, Bloomberg, 23 Apr 2009
- "[Shell Faces Human Rights Grilling](#)", Tim Webb, Independent [UK], 11 Apr 2004
- "[Big Oil and an Activist's Death: Family Sues to Probe Role Played by Shell in Nigerian's Execution](#)", Elizabeth Neuffer, Boston Globe, 03 Jun 2001
  
- Shell:
  - [Shell in Nigeria: Issues](#)
  - [Shell settles Wiwa case with humanitarian gesture](#), 8 Jun 2009
  
- [PDF] [Statement of the Plaintiffs in Wiwa v. Royal Dutch/Shell, Wiwa v. Anderson](#),

[and Wiwa v. SPDC](#), Lucky Doobee, Monday Gbokoo, David Kiobel, Karalolo Kogbara, Blessing Kpuinen, James N-nah, Friday Nuate, Ken Saro-Wiwa, Jr., Michael Vizor, Owens Wiwa, 8 Jun 2009

- [PDF] [Statement of Plaintiffs' Attorneys in Wiwa v. Royal Dutch/Shell, Wiwa v. Anderson, and Wiwa v. SPDC](#), 8 Jun 2009

- EarthRights International (NGO representing plaintiffs): [Wiwa v. Royal Dutch Petroleum \(Shell\)](#) [includes links to court opinions and plaintiffs' complaints filed in this case]

- Center for Constitutional Rights (NGO representing plaintiffs):

- [Wiwa v. Royal Dutch Petroleum](#) [synopsis]

- [PDF] [On Eve of Trial, Settlement Agreements Provide \\$15.5 Million for Compensation to Nigerian Human Rights Activists and to Establish Trust Fund](#), 8 Jun 2009

- The Case Against Shell [joint project of EarthRights International and Center for Constitutional Rights]: [Wiwa v. Shell](#)

- US Circuit Court for the Second Circuit:

- [PDF] [Wiwa v. Shell](#), 14 Sep 2000 [reversal of lower court's dismissal of the case]

- US District Court for the Southern District of New York:

- [PDF] [Wiwa v Shell – Settlement Agreement and Mutual Release](#), 8 Jun 2009

- [PDF] [Wiwa v. Shell - Denial of Defendants' Motion to Dismiss](#), 23 Apr 2009

- [PDF] [Wiwa v. Shell – Dismissal of RICO claims against defendants](#), 18 Mar 2009