

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator of the Estate of his deceased father KEN SARO-WIWA, and OWENS WIWA and BLESSING KPUINEN, individually and as Administratrix of the Estate of her husband, JOHN KPUINEN, and JANE DOE

Plaintiffs,

v.

ROYAL DUTCH PETROLEUM COMPANY and SHELL TRANSPORT AND TRADING COMPANY, p.l.c.,

Defendants.

96 Civ. 08386 (KMW)

Before Magistrate Judge
Henry B. Pitman

NOTICE OF MOTION


PLEASE TAKE NOTICE that, upon the First Amended Complaint, a copy of which is annexed hereto, and the annexed declarations of Lawrence Collins, executed on March 26, 1997, Lawrence Collins, executed on May 16, 1997, J.K. Franx, executed on March 21, 1997, J.K. Franx, executed on May 13, 1997, Jyoti Munsiff, executed on March 24, 1997, and Robbert van der Vlist, executed on March 25, 1997 (all of which, except for Mr. Collins' May 16, 1997 declaration and Mr. Franx's May 13, 1997 declaration, are copies, the originals having been filed with Defendants' March 27, 1997 Notice of Motion to dismiss the original complaint in this action), Defendants Royal Dutch Petroleum Company and The "Shell"

Transport and Trading Company, p.l.c. will move this Court before Hon. Henry B. Pitman, Magistrate Judge at the United States Courthouse, Courtroom 518, 40 Foley Square, New York, New York, for an order dismissing the First Amended Complaint pursuant to: (i) Fed. R. Civ. P. 12(b)(1) on the ground of lack of subject matter jurisdiction; (ii) Fed. R. Civ. P. 12(b)(2) on the ground of lack of in personam jurisdiction; (iii) Fed. R. Civ. P. 12(b)(6) on the ground of failure to state a claim upon which relief can be granted; (iv) Fed. R. Civ. P. 9(b) on the ground of failure to plead fraud with particularity; and (v) the doctrine of forum non conveniens; and granting such other relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's April 9, 1997 Scheduling Order, opposing papers to this motion are required to be served upon the undersigned on or before June 23, 1997.

May 16, 1997

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator of the Estate of his deceased father **KEN SARO-WIWA**, **OWENS WIWA** and **BLESSING KPUINEN**, individually and as Administratrix of the Estate of her husband, **JOHN KPUINEN**,

Plaintiffs.

-against-

ROYAL DUTCH PETROLEUM COMPANY and **SHELL TRANSPORT AND TRADING COMPANY**, p.l.c.,

Defendants.

96 Civ. 8386 (KMW)

Before Magistrate Judge
Henry B. Pitman

DECLARATION OF
LAWRENCE COLLINS

LAWRENCE COLLINS declares:

1. Since 1968 I have been a Solicitor of the Supreme Court of England and Wales, and since 1971 a partner in Herbert Smith, solicitors, where I am now Head of the Litigation and Arbitration Department. During the whole of that period I have had an extensive practice in litigation and arbitration with an international element, and have considerable experience in cases involving the conflict of laws and foreign relations law. I have the degree of Master of Laws from Columbia University, New York, and I have wide experience of litigation in the United States, and I have advised the United States Government, and the United States Securities and Exchange Commission.

2. In addition, I have since 1987 been the General Editor of Dicey & Morris on The Conflict of Laws (11th edition 1987 and 12th edition 1993), which is generally regarded as the leading book on that subject in England and the Commonwealth. I have also published other books and many articles on the subject. For my academic work in this field I was awarded the degree of Doctor of Laws by Cambridge

University in 1994, and elected a Fellow of the British Academy in the same year. Since 1989 I have been an elected member of the Institut de Droit International. Since 1975 I have been a Fellow of Wolfson College, Cambridge, and since 1982 a Visiting Professor at Queen Mary and Westfield College, London.

3. The statements and conclusions in this declaration are true to the best of my knowledge and belief and are based on my knowledge of English law and my review of the Complaint in the above-captioned action.

4. If this lawsuit were brought in the English court, that court would have jurisdiction over both The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport") and Royal Dutch Petroleum Company ("Royal Dutch"). I say this for the following reasons.

5. In English proceedings, where the potential defendant is domiciled in one of the States which is a party to the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, and the case is a civil and commercial matter falling within the Convention (as any proceedings in England on the facts disclosed in the Complaint would be), then issues of jurisdiction fall to be determined by reference to the Convention. The United Kingdom is a party to the Brussels Convention, which is given effect in United Kingdom law by the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act"), Section 2 and Schedule 1. The Netherlands is also a party to the Brussels Convention.

6. The principal rule under the Brussels Convention (Article 2) is that, subject to a number of exceptions for extended jurisdiction, a defendant domiciled in a Contracting State must be sued in the courts of that State.

7. The effect of Section 16 and Schedule 4 of the 1982 Act is that a party domiciled in a particular part of the United Kingdom (England and Wales, Scotland, or Northern Ireland) must be sued in that part.

8. For the purposes of the Brussels Convention, the "seat" of a company is to be treated as its domicile, and in order to determine that seat, the court is to apply its own rules of private international law: Article 53.

9. By Section 42(1) of the 1982 Act, the "seat" of a corporation is treated as its domicile; and by Section 42(3), a corporation will have its seat in the United Kingdom if (a) it was incorporated or formed under the law of a part of the United Kingdom and has its registered office in the United Kingdom, or (b) its central management and control is exercised in the United Kingdom.

10. A corporation with its seat in the United Kingdom will be regarded as having its seat in England if its registered office is in England or its central management is exercised in England: 1982 Act, Section 42(4).

11. Shell Transport is incorporated under the Companies Acts 1862-1893 and has its registered office in London. It follows that Shell Transport's seat is in England, that it is domiciled in England, and that it may be sued in England.

12. By Section 42(6) of the 1982 Act, a corporation will have its seat (and hence, its domicile) in a State other than the United Kingdom if either (a) it is incorporated under the law of the State and has its registered office there, or (b) its central management and control is exercised in that State. Royal Dutch is a Netherlands corporation without a branch in England. Hence, it has its seat in the Netherlands and is domiciled there for Brussels Convention purposes.

13. Article 6(1) of the Brussels Convention provides that: "A person domiciled in a Contracting State may also be sued...[w]here he is one of a number of defendants, in the courts for the place where any one of them is domiciled." In Kalfelis v. Schroder, Case 189/87 [1988] E.C.R. 5565, the European Court confirmed that Article 6(1) must be interpreted so as to avoid it being abused to oust the jurisdiction of the courts of the Contracting State in which a defendant is domiciled. There must therefore be a connection between the claims made against each of the defendants, and the nature of that connection must be given a uniform interpretation. Article 6(1) therefore applies where the actions brought against the various defendants are related when the proceedings are instituted, *i.e.* where it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

14. In my opinion, in the present circumstances and on the basis of the facts alleged in the Complaint, if this lawsuit were brought in the English court, that court would be entitled to exercise jurisdiction over Royal Dutch under Article 6(1) of the Brussels Convention, notwithstanding that Royal Dutch is domiciled in the Netherlands. This is because Shell Transport can be sued in England, and Article 6(1) will apply to permit Royal Dutch to be joined as a co-defendant: the same claims are made in the Complaint against both Shell Transport and Royal Dutch, and so the relevant degree of connection exists between the claims against each of the potential defendants.

15. All of the acts complained of occurred outside England, and accordingly the English rules of the conflict of laws relating to foreign torts will apply. In 1996, when the Private International Law (Miscellaneous Provisions) Act 1995, Part III, came into force, these rules were altered (except in defamation cases, where the common law rules will continue to apply) so as to apply the law of the place of the tort, subject to its displacement if it appears from all the circumstances that it is substantially more appropriate for the applicable law to be the law of another country. But the 1995 Act applies only to acts or omissions occurring on or after it came into force on 1 May 1996.

16. Consequently the common law rules on choice of law in tort will apply in this case. Their effect is that, as a general rule, an act done in a foreign country is a tort and actionable as such in England only if it is both (1) actionable as a tort according to English law, or in other words is an act which, if done in England, would be a tort; and (2) actionable according to the law of the foreign country where it was done: Phillips v. Eyre (1870) L.R. 6 Q.B.1. This rule is subject to an exception (modelled on section 145 of the American Law Institute, Conflict of Laws, Restatement Second) to the effect that a particular issue between the parties may be governed by the law of the country which, with respect to that issue, has the closest and most significant relationship with the occurrence and the parties: Boys v. Chaplin [1971] A.C. 356; Red Sea Insurance Co. Ltd. v. Bouygues S.A. [1995] 1 A.C. 190 (P.C.); Dicey & Morris, Conflict of Laws, 12th ed., 1993, pp. 1480 et seq. I should also mention that different considerations apply where the plaintiff relies on claims originally vested in a deceased person but which have been transmitted or transferred

to the plaintiff. There is no English authority on the point, but it is likely that, in such a case, the transmissibility of any tortious claims vested in the deceased should be governed by the law applicable to the administration of his movable estate, which will normally be the law of his last domicile: Dicey & Morris, 12th ed., 1993, p. 1521.

17. As to limb (1) of the "double actionability" rule, the Complaint alleges matters which would in principle give rise to causes of action in English law. English law recognises assault, battery and false imprisonment as giving rise to claims in tort. Additionally, claims for the tort of negligence will arise when breach of a relevant duty of care by the defendant results in direct physical harm or (in certain circumstances) in nervous shock to the plaintiff. Where the victim subsequently dies, claims for bereavement and loss of pecuniary benefit may be brought for the benefit of certain of the victim's dependants under the Fatal Accidents Act 1976. I express no view as to whether the matters alleged in the Complaint are actionable under Nigerian law (such as to satisfy limb (2) of the "double-actionability" rule), or as to whether such claims as may originally have been vested in Ken Saro-Wiwa and John Kpuinen have been transmitted or transferred under Nigerian law to Ken Wiwa and Blessing Kpuinen (assuming Nigeria to have been the last domicile of Ken Saro-Wiwa and John Kpuinen). Since all of the facts are connected solely with Nigeria, the only effect of the Restatement-style exception to the "double-actionability" rule would be to allow for the application of Nigerian law to the exclusion of English law: this would only be relevant in the event that English law did not recognise a cause of action which Nigerian law did recognise.

18. I state no opinion about whether or not the English court would conclude that the Complaint actually states a cause of action for any of the claims contained therein. In particular, there is a principle of English law, the limits of which are uncertain, but which is similar to, and influenced by, the act of state doctrine in the United States, that the English court will not sit in judgment on the acts of a foreign government in its own territory (Luther v. Sagor [1921] 3 K.B. 532, 548, applying Underhill v. Hernandez, 168 U.S. 250, 252 (1897); Dicey & Morris, 12th ed., 1993, pp.108-111).

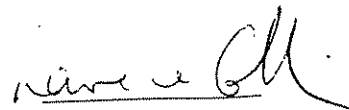
19. In England the law relating to damages in cases with a foreign element is partly procedural and partly substantive. The quantification or assessment of damages is a matter of procedure for the *lex fori* (English law). The English court will, whatever the *lex loci delicti*, assess general damages in accordance with its own domestic law (Kohnke v. Karger [1951] 2 K.B. 670); on the other hand, questions such as whether loss of earning capacity or pain and suffering are admissible as heads of damage, all questions of remoteness of damage, and whether exemplary damages are recoverable, are rules of substantive law, and hence subject (unless the exception applies) to the double actionability principle (*e.g.* M'Elroy v. M'Allister, 1949 S.C. 110).

20. In principle, damages are recoverable in English law for the torts of assault, battery, false imprisonment and for the negligent infliction of direct physical harm or nervous shock (although it has been held that no recoverable loss survives for the benefit of the deceased's estate where the victim has died instantaneously: Hicks v. Chief Constable of South Yorkshire Police [1992] 2 All ER 65 (H.L.)). In cases of wrongful death, limited damages for bereavement are recoverable on behalf of the spouse of the victim, or on behalf of the victim's parents if the deceased was an unmarried minor child (Fatal Accidents Act 1976, Section 1A); and damages for loss of pecuniary benefit may be sought on behalf of dependants falling within a slightly broader category (including the victim's former spouse and children or other descendants) (Fatal Accidents Act 1976, Section 1(1)). I express no view as to issues of the recoverability of damages under Nigerian law.

21. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in London, England

on 26 March 1997.



Lawrence Collins

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KEN WIWA, individually and as Administrator of the Estate of his deceased father KEN SARO-WIWA, OWENS WIWA, BLESSING KPUINEN, individually and as Administratrix of the Estate of her husband, JOHN KPUINEN, and JANE DOE,
Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM COMPANY and SHELL TRANSPORT AND TRADING COMPANY, p.Lc.,

Defendants.

96 Civ. 8386 (KMW)

Before Magistrate Judge
Henry B. Pitman

SECOND DECLARATION OF
LAWRENCE COLLINS, Q.C.

LAWRENCE COLLINS declares:

1. I have been asked by Cravath, Swaine & Moore to make a further declaration, supplementing my first declaration in the above-captioned action dated 26 March 1997. I shall use in this declaration the same abbreviations as in my first declaration.
2. Paragraphs 1 and 2 of my first declaration set out my professional qualifications and experience. I will not repeat those details here, but would add that since the date of my first declaration, I have also been appointed Queen's Counsel.
3. The statements and conclusions in this declaration are true to the best of my knowledge and belief and are based on my knowledge of English law and my review of the First Amended Complaint. As in my first declaration, I express no view on issues of Nigerian law.

4. The purpose of this second declaration is to give my opinion on whether certain matters relied on by Plaintiffs as establishing additional claims for relief, specifically those set out at paragraphs 122-127 and 155-170 of the First Amended Complaint, might also give rise to causes of action in English law. Whilst I will therefore confine myself in this declaration to identifying such causes of action in English law as are likely to be material, I should repeat for the avoidance of doubt that the availability of relief in proceedings in England remains subject to the same restrictions described in my first declaration (arising from the operation of the relevant English choice of law rules and from the possible operation of that principle of English law which is akin to the act of state doctrine in the United States).

5. As in my first declaration, I will first set out the potentially relevant causes of action, and then deal separately with the issue of damages.

6. Paragraphs 122-127 of the First Amended Complaint set out Plaintiffs' Sixth Claim for Relief, headed "Violation of the Rights to Life, Liberty and Security of Person and Peaceful Assembly and Association". Various assertions of fact are made, in essence relating to allegations of beating, shooting, arrest, detention and execution. In this regard, I repeat the points made at paragraph 17 of my first declaration, to the effect that English law recognises assault, battery and false imprisonment as giving rise to claims in tort, and also that in certain circumstances where the victim has died, claims for bereavement and for loss of pecuniary benefit may be brought for the benefit of certain of the victim's dependants under the Fatal Accidents Act 1976.

7. Paragraphs 155-170 of the First Amended Complaint set out Plaintiffs' Twelfth Claim for Relief, headed "Violations of the Racketeer Influenced and Corrupt Organizations Act". The allegations made in paragraphs 155-170 are wholly unparticularised, but the essential complaint appears to be that Shell Transport and Royal Dutch entered into a conspiracy with certain un-named "agents and co-conspirators" to conduct the affairs of an alleged common enterprise through a pattern of "racketeering activity". The pattern of racketeering activity complained of is alleged (sub-paragraphs 165(a)-(e)) to have included (again unparticularised) acts of arson, murder, bribery, wire fraud and extortion.

8. In principle, English law recognises conspiracy as a tort, and the tort may take one of two forms: the first is conspiracy to use unlawful means; and the second is conspiracy to injure (that is, to cause deliberate damage to the plaintiff without just cause, albeit that the means used are lawful). It is now clear since Lonrho plc v. Fayed [1992] 1 A.C. 448 that an essential element of the latter form of conspiracy is that the defendant had the predominant purpose of injuring the plaintiff. But this element is not required in the case of conspiracy to use unlawful means, which in the present context is the most relevant form of the tort. As to the meaning of "unlawful means", it has been held that whenever an act is itself tortious, a combination to do that act is a tortious conspiracy (per Lord Wright in Crofter Hand Woven Harris Tweed Co. v. Veitch [1942] A.C. 435, at p. 462), and so for example a combination which does damage to the plaintiff by means of violence or fraud is actionable in English law (ibid). It is also commonly suggested (although the limits of the principle are uncertain) that if the act aimed at by the combination is criminal, then it is a tortious conspiracy, and that a combination to commit a crime is actionable (even if the injured party would have had no action in tort merely on the basis of the crime itself), provided that damage is caused (see Clerk & Lindsell on Torts (17th edition, 1995), p. 1273, referring to Lord Wright in Crofter and to McKinnon v. Woolworth Limited (1968) 70 D.L.R. (2d) 280: combination to demand money by extortion an actionable conspiracy even if the crime of extortion not a tort).

9. As to certain of the individual acts relied on in the First Amended Complaint:

First, implicit in any allegation of arson is a trespass to the plaintiff's goods: and again, English law recognises trespass to goods as a tort: Torts (Interference with Goods) Act 1977, section 1(b).

Second, as to the allegation of murder, I repeat the comments made above and in paragraph 17 of my first declaration concerning assault and battery, and claims under the Fatal Accidents Act 1976.

Third, as to the allegation of extortion, if that is said to have comprised the use of force or of threats of physical violence, then in principle there would be claims

for assault and/or battery in English law (battery involving actual physical contact, the essence of assault being any act causing reasonable apprehension of a battery).

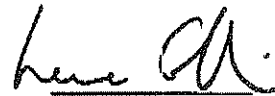
Fourth, English law recognises deceit (i.e., fraudulent misrepresentation) as a tort, but only in cases where it is shown that a false representation has been made either (a) knowingly, or (b) without belief in its truth, or (c) recklessly, careless whether it be true or false (Derry v. Peek (1889) 14 App. Cas. 337, at p. 376, per Lord Herschell). Additionally, the representation must be one of fact, and it must be intended to be acted upon, and in fact acted upon, by the plaintiff.

10. As to the question of damages in relation to the various causes of action described in paragraphs 6-9 above, I have already expressed the view in my first declaration (paragraph 20) that, in principle, damages are recoverable in English law for the torts of assault, battery and false imprisonment, and I have also described in my first declaration the nature and extent of damages recoverable under the Fatal Accidents Act 1976. I add that, in principle, damages are also recoverable in English law for the torts of conspiracy, trespass to goods, and deceit.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in London, England

on 16 May 1997.



Lawrence Collins Q.C.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator
of the Estate of his deceased father
KEN SARO-WIWA, OWENS WIWA and BLESSING
KPUINEN, individually and as Administratrix
of the Estate of her husband, JOHN KPUINEN,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM COMPANY and
SHELL TRANSPORT AND TRADING COMPANY, p.l.c.,

Defendants.

96 Civ.8386
(KMW)

Before
Magistrate
Judge
Henry B. Pitman

DECLARA-
TION OF
J.K. FRANX

J.K. FRANX declares:

1. I am a partner at the De Brauw law firm in The Netherlands. I have been a practicing attorney in The Netherlands for the past seven years with the De Brauw law firm. I served as a judge for the District Court Leeuwarden for five years, and for the District Court Amsterdam for five years, where I was later Vice-President for one year. I also served as deputy Attorney-General of the Supreme Court of the Netherlands for thirteen years. In addition to my meester in de rechten (Mr) ("juris doctor"), I am a doctor in de rechten (Dr) ("Ph.D") from the University of Amsterdam, and was a professor at Vrije Universiteit ("Free University"), Amsterdam where I taught courses in private international law and comparative law. I

am currently a member of the Dutch Standing Government Committee for Private International law, and have been since 1969. I have personal knowledge of the matter hereinafter stated, and said matter is true and correct to the best of my knowledge and belief.

2. The conclusions below are based primarily on my extensive knowledge of Dutch law and my review of the Complaint in the above-captioned action.

3. The Netherlands is an available forum in which Plaintiffs could file this lawsuit. Dutch jurisdiction law considers The Netherlands to be the "natural" forum for any action against a defendant whose domicile or whose company seat is in The Netherlands. The main rule of Dutch jurisdiction holds that the judge of the defendant's domicile or of the defending company's seat has jurisdiction over all suits against the defendant, regardless of the suit's nature or factual basis. Defendant Royal Dutch Petroleum Company ("Royal Dutch") is domiciled in The Hague, The Netherlands. Since Royal Dutch is domiciled and its company seat is in The Hague, the Arrondissementsrechtbank ("District Court") 's-Gravenhage ("The Hague"), The Netherlands, would have jurisdiction over Plaintiffs' claims against Royal Dutch in this action. A plaintiff's nationality and place of residence in a case like this (all plaintiffs residing outside The Netherlands) are irrelevant to the exercise of jurisdiction by the Dutch courts.

4. If Royal Dutch is sued in the court of its domicile in The Netherlands, that court would also have jurisdiction over Defendant The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport"). A defendant domiciled in a state which is a party to the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (a "Contracting State") may be sued in the courts of another Contracting State where his co-defendant is domiciled and sued, provided a close connection exists between the claims against both defendants. Shell Transport is domiciled in London, England. Thus, the District Court The Hague (the seat and domicile of Royal Dutch) has jurisdiction over Shell Transport in this action, since it is domiciled in England (a Contracting State) and the claims against both Defendants are the same.

5. The Dutch courts permit litigation on the

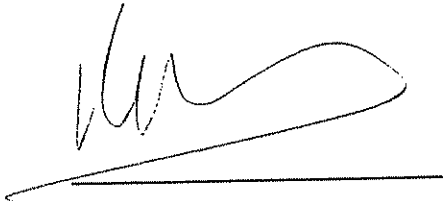
subject matter of each of the claims in the Complaint (i.e., summary execution; crimes against humanity; torture; cruel, inhuman or degrading treatment; arbitrary arrest and detention; wrongful death; assault and battery; intentional infliction of emotional distress; negligent infliction of emotional distress; and negligence). I state no opinion about whether or not a Dutch court would conclude that the particular Complaint filed by the Plaintiffs actually states a cause of action for any of the claims contained therein.

6. If Plaintiffs successfully prosecuted their claims in the Dutch courts, the Dutch courts would be able to provide a satisfactory remedy. In accordance with Dutch private international law, a Dutch court will apply the law of the state where the torts have been committed or where the damage has had its effect. However, if the applicable law or the application thereof is manifestly contrary to the Dutch public order, a Dutch court will apply Dutch law instead.

7. A judgment rendered in any Contracting State (including both The Netherlands and the United Kingdom) is recognized in the other Contracting States without any special procedure other than a simple procedure provided for in the Convention and without review of the merits of the decision. A judgment in a United States court however, is not enforceable in The Netherlands.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in The Hague,
The Netherlands, on 21 March, 1997.



J.K. Franx

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator
of the Estate of his deceased father
KEN SARO-WIWA, OWENS WIWA and BLESSING
KPUINEN, individually and as Administratrix
of the Estate of her husband, JOHN KPUINEN,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM COMPANY and
SHELL TRANSPORT AND TRADING COMPANY, p.l.c.,

Defendants.

96 Civ.8386
(KMW)

Before
Magistrate
Judge
Henry B. Pitman

DECLARA-
TION OF
J.K. FRANX

J.K. FRANX declares:

1. I refer to my Declaration of March 21, 1997 which has to be considered to be incorporated into this Declaration.

2. The Dutch courts permit litigation on the subject matter of each of the claims in the First Amended Complaint dated April 29, 1997.

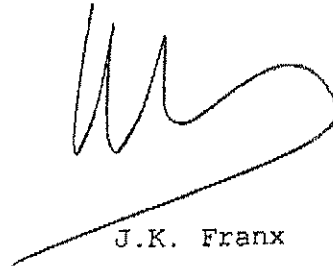
3. The basic facts necessary for the crimes listed in paragraph 165 (a)-(e) (arson, murder, bribery, wire fraud, extortion) could give rise to civil causes of action in Dutch law. The concept of tort ("unlawful act") in Dutch law has a general nature and comprises every act and

default violating written or unwritten Dutch or international law. Basically all crimes mentioned above are crimes under written Dutch law or violations of unwritten Dutch law.

4. The Dutch Constitution recognizes the rights to life, liberty and security of person and peaceful assembly and association. So violations of such rights are actionable as torts ("unlawful acts") in Dutch law.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in The Hague,
The Netherlands, May 13th, 1997.



J.K. Franx

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Ken WIWA, individually and as Administrator of the
Estate of his deceased father KEN SARO-WIWA,
OWENS WIWA AND BLESSING KPUINEN,
individually and as Administratrix of the Estate of her
husband, JOHN KPUINEN,

Plaintiffs,

- against -

ROYAL DUTCH PETROLEUM COMPANY and
SHELL TRANSPORT AND TRADING COMPANY,
p.l.c.,

Defendants

96 Civ. 8386 (KMW)

Before
Magistrate Judge
Henry B. Pitman

DECLARATION OF
JYOTI MUNSIF

JYOTI MUNSIF declares:

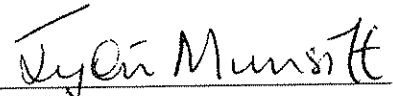
1. I am the Secretary of The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport"). I am familiar with the corporate records and activities of Shell Transport. I have personal knowledge of the facts hereinafter stated, and said facts are true and correct to the best of my knowledge and belief at all times relevant to the allegations of the complaint filed herein.
2. Shell Transport is a public company organised and existing under the laws of England with its principal and only place of business in London, England. The Board of Directors of Shell Transport, which consists of 8 members (none of whom is an employee of Shell Oil Company), meets in England. The shareholders' meetings of Shell Transport are also held in England.
3. Shell Transport is a holding company. Shell Transport and another corporation (Royal Dutch Petroleum Company ("Royal Dutch"), a Dutch company) together own, directly or indirectly, investments in various companies known collectively as the Royal Dutch/Shell group of companies. As such, Shell Transport is solely an

investment vehicle. Shell Transport does not engage in operational activities. It derives the whole of its income, except for interest income on cash flow balances or short-term investments, from its interest in the companies known collectively as the Royal Dutch/Shell group of companies.

4. Shell Transport is a corporation separate and distinct from Royal Dutch. Shell Transport is a corporation separate and distinct from the individual companies in which Royal Dutch and Shell Transport directly or indirectly own investments, which are for convenience referred to collectively as the Royal Dutch/Shell group of companies. The use of the phrase "Royal Dutch/Shell group of companies" is a convenience to refer collectively to these various separate and distinct entities; the "Royal Dutch/Shell group of companies" is not a separate entity.
5. Shell Transport has not (except for activities related to having American Depositary Receipts), at any time relevant to the allegations of the complaint filed herein, either by itself or through its agents:
 - (a) had an office, employee, place of business, postal address, or telephone listing in the United States, including in the State of New York;
 - (b) regularly carried on, contracted or solicited business in the United States, including in the State of New York;
 - (c) been licensed or applied for a license to do business in any state or territory of the United States, including in the State of New York;
 - (d) had or been required to have a designated agent for service of process in the United States, including in the State of New York;
 - (e) owned, used or possessed any real property located in the United States, including in the State of New York;

- (f) contracted to supply any goods or services in the United States, including in the State of New York;
 - (g) had any agents assigned to work for it on a regular basis in the United States, including in the State of New York; or
 - (h) maintained any bank accounts or other property in the United States, including in the State of New York.
6. Shell Oil Company is a corporation duly organised and existing under the laws of the State of Delaware, with its principal place of business in Houston, Harris County, Texas. Shell Transport is a separate entity, for tax and other purposes, from Shell Oil Company. Thus, the officers of Shell Transport and the officers of Shell Oil Company are different individuals; Shell Oil Company has its own capital, including its own operating capital; and Shell Oil Company has its own employee benefit programs. Shell Oil Company is not the alter ego of Shell Transport, is not a branch, division or department of Shell Transport, is not the assumed, business, trade or other name of Shell Transport, and was not formed by Shell Transport for tax or corporate finance purposes to conduct the business of Shell Transport in the United States.
7. There are no employees of Shell Transport at Shell Oil Company's offices in New York.
8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in London, England
on 24th March, 1997.


Jyoti Munsiff

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator of the Estate of his deceased father KEN SARO-WIWA, OWENS WIWA and BLESSING KPUINEN, individually and as Administratrix of the Estate of her husband, JOHN KPUINEN,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM COMPANY and SHELL TRANSPORT AND TRADING COMPANY, p.l.c.,

Defendants.

96 Civ. 8386 (KMW)

Before

Magistrate Judge
Henry B. Pitman

DECLARATION OF
ROBBERT
VAN DER VLIST

ROBBERT VAN DER VLIST declares:

1. I am the General Attorney of N.V. Koninklijke Nederlandsche Petroleum Maatschappij, known as Royal Dutch Petroleum Company ("Royal Dutch"). I am familiar with the corporate records and activities of Royal Dutch. I have personal knowledge of the facts hereinafter stated, and said facts are true and correct to the best of my knowledge and belief at all times relevant to the allegations of the complaint filed herein.
2. Royal Dutch is a public company organized and existing under the laws of The Netherlands with its principal and only place of business in The Hague, The Netherlands. The Supervisory Board of Royal Dutch, which consists of seven members (none of whom is an employee of Shell Oil Company), and the Board of Management of Royal Dutch, which consists of three members (none of whom is an employee of Shell Oil Company), meet in The Netherlands. The shareholders' meetings of Royal Dutch are held in The Netherlands, as required by the law of The Netherlands.

3. Royal Dutch is a holding company. Royal Dutch and another corporation (The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport"), an English company) together own, directly or indirectly, investments in various companies known collectively as the Royal Dutch/Shell Group of companies. As such, Royal Dutch is solely an investment vehicle. Royal Dutch does not engage in operational activities. It derives the whole of its income, except for interest income on cash flow balances or short-term investments, from its interest in the companies known collectively as the Royal Dutch/Shell Group of companies.

4. Royal Dutch is a corporation separate and distinct from Shell Transport. Royal Dutch is a corporation separate and distinct from the individual companies in which Royal Dutch and Shell Transport directly or indirectly own investments, which are for convenience referred to collectively as the Royal Dutch/Shell Group of companies. The use of the phrase "Royal Dutch/Shell Group of companies" is a convenience to refer collectively to these various separate and distinct entities; the "Royal Dutch/Shell Group of companies" is not a separate entity.

5. Royal Dutch and Shell Transport own, directly or indirectly, three holding companies, namely Shell Petroleum N.V., a corporation duly organized and existing under the laws of The Netherlands; The Shell Petroleum Company Limited, a corporation duly organized and existing under the laws of England; and Shell Petroleum Inc., a corporation duly organized and existing under the laws of Delaware. Shell Petroleum N.V. and The Shell Petroleum Company Limited between them hold all of the shares in various service companies and, directly or indirectly, interests in various operating companies. For example The Shell Petroleum Company Limited is the beneficial owner of all the shares of The Shell Petroleum Development Company of Nigeria Limited, a Nigerian corporation doing business in Nigeria.

6. Royal Dutch has not (except for activities related to having its shares listed on the New York Stock Exchange), at any time relevant to the allegations of the complaint filed herein, either by itself or through its agents:

- a. had an office, employee, place of business, postal address, or telephone listing in the United States, including in the State of New York;
- b. regularly carried on, contracted or solicited business in the United States, including in the State of New York;
- c. been licensed or applied for a license to do business in any state or territory of the United States, including in the State of New York;
- d. had or been required to have a designated agent for service of process in the United States, including in the State of New York;
- e. owned, used or possessed any real property located in the United States, including in the State of New York;
- f. contracted to supply any goods or services in the United States, including in the State of New York;
- g. had any agents assigned to work for it on a regular basis in the United States, including in the State of New York; or
- h. maintained any bank accounts or other property in the United States, including in the State of New York.

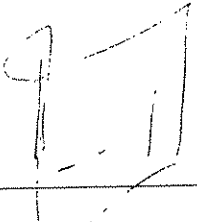
7. Shell Oil Company is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Houston, Harris County, Texas. Shell Oil Company is wholly owned by Shell Petroleum Inc.. Shell Oil Company is principally engaged in the exploration, development, production, purchase, transportation and marketing of crude oil and natural gas, and the purchase, manufacture, transportation and marketing of oil and chemical products. The business and affairs of Shell Oil Company are managed by and under the direction of its Board of Directors. The Board of Directors of Shell Oil Company consists of eleven directors, seven of whom are not employed by Royal Dutch, Shell Transport, Shell Oil Company or any company of the Royal Dutch/Shell Group of companies. The Board of Directors of Shell Oil Company meets in the United States.

8. Royal Dutch is a separate entity, for tax and other purposes, from Shell Oil Company. Thus, the officers of Royal Dutch and the officers of Shell Oil Company are different individuals; Shell Oil Company has its own capital, including its own operating capital; and Shell Oil Company has its own employee benefit programs. Shell Oil Company is not the alter ego of Royal Dutch, is not a branch, division or department of Royal Dutch, is not the assumed, business, trade, or other name of Royal Dutch and was not formed by Royal Dutch for tax or corporate finance purposes to conduct the business of Royal Dutch in the United States.

9. There are no employees of Royal Dutch at Shell Oil Company's offices in New York.

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in The Hague, Netherlands
on 25th March, 1997.



Robbert van der Vlist