

Oil Industry on Trial

Nigerian Activist, Long Dead, Gets His Day in Court

By JAD MOUAWAD

Fourteen years after the execution of the Nigerian author and activist Ken Saro-Wiwa by Nigeria's former military regime, **Royal Dutch Shell** will appear before a federal court in New York to answer charges of crimes against humanity in connection with his death.

The trial, scheduled to begin on Wednesday, will examine allegations that Shell sought the aid of the former Nigerian regime in silencing Mr. Saro-Wiwa, a vociferous critic, in addition to paying soldiers who carried out human rights abuses in the oil-rich but impoverished Niger Delta where it operated.

Shell strongly denies the charges.

But the trial is the latest in a series of cases aimed at some of the world's biggest oil companies, asserting misdeeds in developing countries where they were once seen as unassailable. Oil companies are being sued on charges of environmental damage, collusion with repressive governments and contributing to human rights abuses, among others.

Chevron, for example, could face up to \$27 billion in liability in Ecuador for pollution of the jungle.

Exxon Mobil is being sued by Indonesian villagers from the province of

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Aceh who allege human rights violations committed by soldiers hired to guard a natural gas plant.

And these legal challenges are just the latest tests for an industry increasingly hard pressed to find new sources of petroleum.

The most prominent case of supposed company complicity — the execution of Mr. Saro-Wiwa and eight other members of the Ogoni tribe — led to fierce protests against Shell, which was already under heavy criticism from environmentalists for its record in the Niger Delta. The event, which ignited worldwide condemnation of Nigeria, prompted changes in Shell's approach to community relations in Nigeria and elsewhere.

While civilian rule has returned to Nigeria, violence in the delta has escalated in recent years, fueled by poverty, corrup-



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Nigeria is rich in oil, but its people are impoverished.

tion and graft. Over the last week, there has been a new round of fighting between government forces and militant rebel groups, which have declared an "all-out war" in the region and threatened the operations of oil companies.

The civil suit was brought by relatives of Mr. Saro-Wiwa and other victims of Nigeria's former military regime, who are taking advantage of a Supreme Court decision that gives foreign victims of human rights abuses a measure of access to American courts.

The suit asserts that in the early 1990s, Shell became worried about Mr. Saro-Wiwa's campaign to protest the impact of oil production throughout the Niger Delta. The suit asserts that Shell feared Mr. Saro-Wiwa's activities would disrupt its operations and tarnish its image abroad, and "sought to eliminate that threat,

through a systematic campaign of human rights violations."

Shell said the allegations were "false and without merit." In a statement, Stan Mays, a company spokesman, said: "Shell in no way encouraged or advocated any act of violence," and, in fact, "attempted to persuade that government to grant clemency."

The case could have global repercussions for the oil industry, said Arvind Ganesan, the head of the business and human rights practice at Human Rights Watch.

In the last decade, oil companies have been under increasing pressure to comply with strict standards of behavior while operating in countries with poor human rights records and few democratic controls.

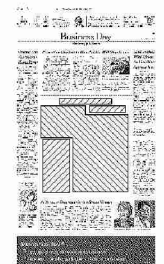
"The lesson here is that these cases aren't going away," Mr. Ganesan said. "If a jury found Shell guilty, this would change the behavior of the industry pretty quickly."

The lawsuit was filed by the **Center for Constitutional Rights**, a New York law firm specializing in human rights, on behalf of Mr. Saro-Wiwa's son and other plaintiffs who fled Nigeria's military regime and did not trust they could sue Shell in Nigerian courts even after civilian rule returned in 1999.

The current suit was brought under the Alien Tort Claims Act, an arcane law written in 1789 to fight piracy, which is increasingly being used for lawsuits asserting human rights violations that occurred overseas. The Supreme Court ruled 6 to 3 in 2004 that foreigners could use American courts in limited cases, like crimes against humanity or torture. While sovereign states cannot be sued, American courts have accepted that a wide variety of actors, including corporations, can be called to account.

So far no corporation has been found guilty under the alien tort law, though human rights lawyers note that several cases are still moving through the court system.

In 2004, Unocal, a California oil company accused of using slave labor in the construction of a pipeline in Burma during the 1990s, agreed to compensate vil-



lagers there. The terms of the settlement were not made public.

Last year, Chevron was cleared of wrongdoing by a jury after being accused of complicity in the shooting of Nigerian villagers who occupied an offshore oil barge in 1998 to protest its environmental record and hiring practices.

Shell's activities in the Niger Delta, a region of mangroves and swamps roughly the size of Maryland where most of Nigeria's oil is located, have long been criticized by environmentalists. Shell drilled the country's first successful well in 1956, and has since dominated Nigeria's oil sector, through decades of civil war, military rule and authoritarian governments.

In recent years, protests against government corruption have become more violent. The operations of Shell, in particular, have been come under attack from militant groups seeking a greater share of the country's oil wealth.

For Ken Saro-Wiwa Jr., who returned to Nigeria from exile in 1999, the trial could provide bitersweet vindication of his father's campaign.

"My father always said that one day Shell would be on trial," said Mr. Saro-Wiwa, who now works as an adviser to the government on community issues. "It's important for those involved in the conspiracy against my father to be held to account. It's a communal exorcism, if you like, for Shell to account and bear responsibility for what it did."

The elder Mr. Saro-Wiwa, who founded the Movement for the Survival of the Ogoni Peoples in 1990, was one of the most vocal critics of Shell for the damage done to the delta communities, including gas flaring and the destruction of mangroves to make way for pipelines.

According to the lawsuit, a Shell official identified Mr. Saro-Wiwa as being "influential" in organizing the protests and sought the assistance of the Nigerian government to silence him.

The company is also accused of

paying soldiers who committed human rights abuses and providing them with transportation, including helicopters. During a military raid, one plaintiff, Karalolo Kogbara, was shot by Nigerian troops while she was speaking out against the destruction of crops bulldozed to build a pipeline.

"We are not saying that Shell just did business in a bad place," said Jennie Greene, a lawyer with the Center for Constitutional Rights. "Shell was an actor here. Shell wasn't just standing by."

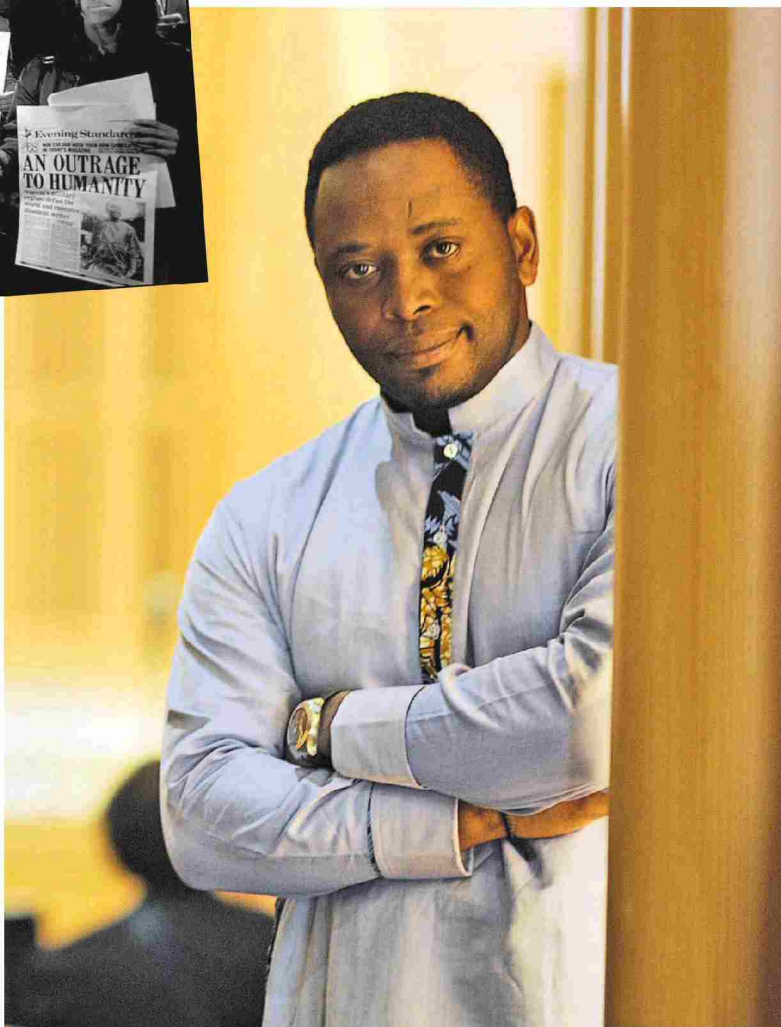
Mr. Saro-Wiwa was arrested in 1994 and put on trial before a special military court along with the other Ogoni advocates, on charges that human rights groups and Western governments said were trumped up. Despite international pressure, Shell initially refused to intervene, saying at the time, "the company does not get involved in politics."

The lawsuit charges that Shell bribed at least two crucial witnesses to change their testimony during the trial. It also asserts that Shell's manager in Nigeria at the time, Brian Anderson, met with Owens Saro-Wiwa, Mr. Saro-Wiwa's brother and also a plaintiff, and tried to pressure the jailed activist to abandon his struggle in exchange for help in securing his release. Mr. Saro-Wiwa reportedly refused.

Shell's chief executive eventually faxed Gen. Sani Abacha, Nigeria's military ruler, a request for a pardon after Mr. Saro-Wiwa's appeal for clemency was denied. By then it was too late: Mr. Saro-Wiwa and the other advocates were hanged on Nov. 10, 1995.

Shell denied it had sought to silence Mr. Saro-Wiwa.

"Shell attempted to persuade that government to grant clemency; to our deep regret, that appeal — and the appeals of many others — went unheard," Shell said in its statement. "We were shocked and saddened when we heard the news."



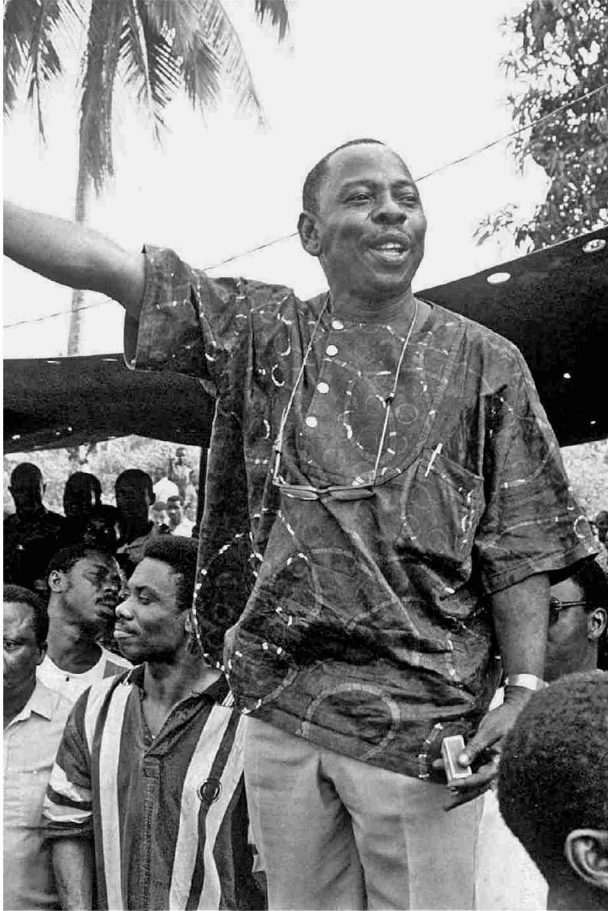
JENNIFER S. ALTMAN FOR THE NEW YORK TIMES. ABOVE: CHARLES MILLER/ASSOCIATED PRESS. INSET

Ken Saro-Wiwa Jr. says Royal Dutch Shell had a hand in his father's execution in 1995. Protestors, inset, gathered in London shortly after the killing.

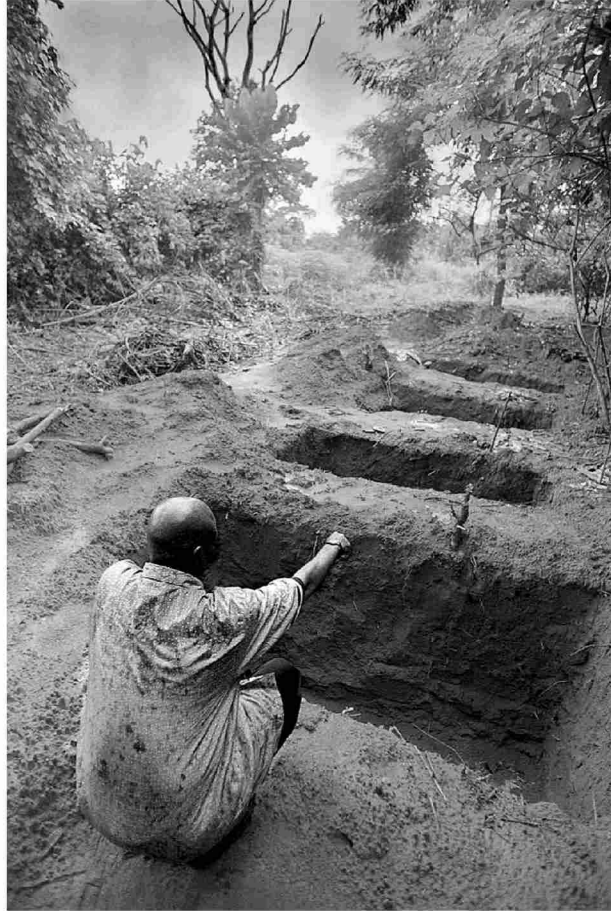


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Ken Saro-Wiwa Jr. in Manhattan this month. His father had been critical of human rights abuses in Nigeria.



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Ken Saro-Wiwa in 1993. At right, a grave digger in Port Harcourt, Nigeria, points to where Mr. Saro-Wiwa may have been buried.